

THE 2ND
ASIAN OMBUDSMAN CONFERENCE

THE OMBUDSMAN OF KOREA



Opening Ceremony



Opening Address (Mr. Choi, Jong-Baik, The Chief Ombudsman of Korea)



Opening Address (Mr. Kim, Ki-Joon, Prime Minister of Korea)



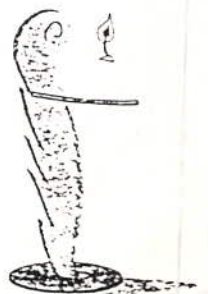
OPENING CEREMONIES



↳ Address in Reponse (Mr. A.S. Salam, The Ombudsman of Pakistan)



↳ Congratulatory Address (Dr. Marten Oostinga, President of the I.O.A)





Keynote Speech



Keynote Speech (Mr. Choi, Jong-Baik, The Chief Ombudsman of Korea)

Presentations & Discussion



Mr. Andrew So (Ombudsman, Hong Kong)



Prof. B. Bastiampillai (Ombudsman of Sri Lanka)



Banquets



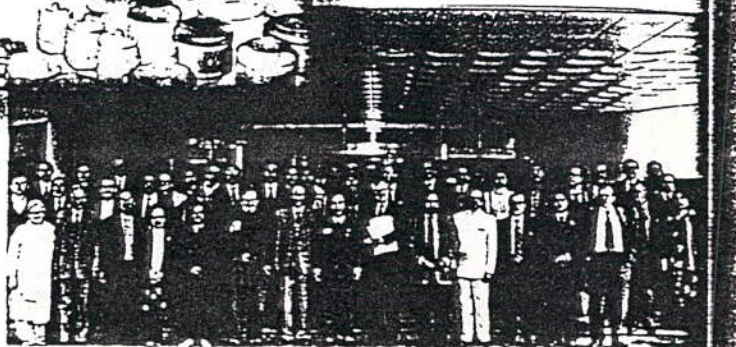
↳ Congratulatory Speech
(Mr. Kim, Han - Kyu, Minister of
Government Administration)

Field Trip



↳ Field Trip Kyongju

Visit to POSCO



Foreword



The 2nd Asian Ombudsman Conference, held on March 25, 1997, in Seoul, Korea, was productive thanks to the keen interest and unsparing support of many people at home and abroad. Taking part in the Conference were Mr. Koh, Kun, Korea's Prime Minister, Mr. Marten Oosting, Chief of International Ombudsman Institute, and many other distinguished national and international guests. By hosting this Conference just three years after being founded, the Ombudsman of Korea demonstrated its desire to further the goals of the ombudsman movement and the Asian Ombudsman Association. The notable event also attests to the selfless support and cooperation of the army of people and numerous agencies that worked so hard to bring this Conference to fruition.

Presentations made by member countries under the Conference theme – “*General Functions of the Ombudsman*” provided especially useful insights into efforts needed to further the ombudsman movement. In the long run, the Conference produced a wealth of materials and data that will be invaluable in furthering ombudsman organizations in member countries and in establishing the Asian Ombudsman Association as a catalyst for regional cooperation as we work to protect the rights of our respective peoples.

We publish this detailed report of the preparations for and results of the Conference with the hope that it will serve as a record of the enormous amount of work required to stage an international conference of this scope. We hope that it will be a useful guide for other countries picked to host Association conferences in the future.

Finally, I thank the many agencies and people who worked so hard to stage the 2nd Asian Ombudsman Conference. I can assure you that as Chief of the Ombudsman of Korea and the Asian Ombudsman Association, I will continue to work with the same level of enthusiasm and devotion that the participants displayed during the Conference. I welcome the challenge and look forward to earning the confidence and respect of all Koreans and ombudsmen throughout the region.

April 1997

Choi, Jong-Baik

Chief, The Ombudsman of Korea &
The Asian Ombudsman Association

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I . Conference Outline

A. Purpose

B. Background

C. Operation

D. List of Delegates

A. Purpose

The Conference was designed to generate momentum to drive efforts to stabilize and develop the ombudsman system in Asian countries. This was done by providing a forum in which member countries could exchange information and foster cooperative relations.

B. Background

Delegates to the 1st Asian Ombudsman Conference held in Islamabad, Pakistan on April 15 and 16, 1996, selected Seoul, Korea as the site of the 2nd Asian Ombudsman Conference.

The Ombudsman of Korea reported this decision to the Prime Minister and President in due form in August 1996. The following month, it began preparing to host the conference, sending invitation letters to officials of the International Ombudsman Institute, ombudsmen in the Asian region, and related agencies in early December 1996.

C. Operation

1. Title and Theme of the Conference

- a. Title : The 2nd Asian Ombudsman Conference
- b. Theme : General Functions of the Ombudsman
- c. Conference Agenda
 - (1) Adopting the bylaws
 - (2) Organizing the Staff of Asian Ombudsman Association
 - (3) Choosing the Venue for the next Conference

2. Period and Site

- a. The 2nd Asian Ombudsman Conference
 - (1) Period : March 25~26, 1997
 - (2) Site : Hotel Lotte, Seoul, Korea
- b. Field Trip
 - (1) Period : March 27~28, 1997
 - (2) Sites visited : Pohang Industrial Complex & Kyongju Historical Sites

3. Program

Date	Schedule
3. 25 (Tuesday)	10 : 00 ~ 11 : 00 • Registration
	11 : 00 ~ 12 : 00 • Opening Address by Mr. Choi, Jong-Baik (Chief Ombudsman, Korea) • Congratulatory Address by Dr. Marten Oosting (President, International Ombudsman Institute) • Appreciative Address by Mr. Koh Kun (Prime Minister, Korea) • Responsory Address by Mr. Abdul Shakurul Salam (Ombudsman, Pakistan)
	12 : 00 ~ 14 : 00 • Luncheon (Hosted by Minister of Government Administration, Korea)
	14 : 00 ~ 14 : 30 • Keynote Speech by Mr. Choi, Jong-Baik (Chief Ombudsman, Korea)
	14 : 30 ~ 17 : 30 • Presentation : The 1st Session - Hong Kong : Mr. Andrew So - Pakistan : Mr. Abdul Shakurul Salam - Sri Lanka : Prof. B. Bastiampillai
18 : 00 ~ 20 : 00 • Dinner (Hosted by Chief Ombudsman of Korea)	
3. 26 (Wednesday)	10 : 00 ~ 12 : 00 • Presentation : The 2nd Session - India : Mr. H. H Kantharia - Iran : Mr. Vali Khobreh - Israel : Mrs. Miriam Ben-Porat - Japan : Mr. Hisao Tsukamoto - Macao : Mr. Luis Freitas - Pakistan : Mr. Salahuddin Mirza
	12 : 00 ~ 13 : 30 • Luncheon
	13 : 30 ~ 15 : 00 • Presentation : The 3rd Session - Philippines : Mr. F. A. Villa - Vietnam : Mr. Thanh Ta Huu - Chinese Taipei : Mr. Louis R. Chao
15 : 00 ~ 17 : 30 • Conference of Asian Ombudsman Association	
3. 27 (Thursday) 3. 28 (Friday)	08 : 30 ~ 18 : 00 • Field Trip - Pohang : Industrial Site - Kyōngju : Historic Site

D. The List of Delegates

Country	Name	Position
Argentina	Dr. Silvestre Dabove	General Secretary, Defensor Del Pueblo La Nacfon
Canada	Dr. Daniel Jacoby	Executive Secretary, International Ombudsman Institute
Chinese Taipei	Dr. Louis R. Chao	Ombudsman
	Mr. Chung-Chuan Chai	Ombudsman
	Mr. Kun-Shan Hsieh	Ombudsman
	Mr. Shen-Yi Lee	Ombudsman
	Mr. Meng-Ling Chen	Ombudsman
	Ms. Maris Wen	Secretary
Hong Kong	Mr. Andrew So	Ombudsman, Office of the Ombudsman
	Mr. Kam Hung Li	Senior Investigator
	Ms. Candy Chan	Senior Investigation Officer
India	Justice H. H. Kantharia	Ombudsman of Maharashtra
	Mrs. N. H. Kantharia	Companion(Spouse)
Indonesia	Mr. Alwis Azizat Murad	Minister Counsellor of the Embassy of Indonesia
Iran	Mr. Vali Khobreh	Deputy President, General Inspectorate Organization
	Mr. Jalal Ghamous	Adviser
	Mr. Akbar Ansari	Ombudsman Adviser

Country	Name	Position
Israel	Mrs. Miriam Ben-Porat	State Comptroller & Ombudsman, Public Complaints Commissioner
	Mr. Avigdor Ravid	Director
	Mrs. Mirella Bamberger	Senior Assistant
Japan	Prof. Masajiro Kamada	President, National Federation of Administrative Counselors' Associations
	Mr. Muneharu Tani	Director of International Affairs Division
	Mr. Hisao Tsukamoto	Councillor, Management and Coordination Agency
	Mr. Hiroaki Sumida	Vice-Inspector, Management and Coordination Agency
Jordan	Dr. Abed Ali Shakhanbeh	President, Bureau of Administrative Inspection and Control
Korea	Mr. Choi, Jong-Baik	Chief Ombudsman
	Mr. Kang, Won-Il	Ombudsman
	Mr. Seok, Soon-Yong	Ombudsman
	Mr. Shin, Dae-Kyun	Ombudsman
	Prof. Lee, Sei-Hoon	Ombudsman
	Dr. Ro, Jung-Hyun	President, Korea Institute of Public Administration
	Mr. Moon, Dong-Hoo	Commissioner, Government Personnel Appeals Commission
	Mr. Choi, Im-Kyu	Secretary General, Ombudsman of Korea
Kuwait	Mr. Faisal S. Al-Gharib	Assistant undersecretary for Legal Affairs, Civil Service Commission
	Mr. Ahmad Al-Rumaihi	Legal Advisor, Civil Service Commission

Country	Name	Position
Macao	Mr. Luis Manuel G. M. Freitas	High Commissioner, The High Commission Against Corruption & Administrative Illegality
	Mr. Lino Jose Ribeiro	Assistant High Commissioner
	Dr. Ka Hung Shuen	Coordinator
	Mr. Andre Folque Terreira	Adviser
Malaysia	Mr. Mohamed Ramli Sutan	Asst. Director, Public Complaints Bureau Central Region
	Ms. Hajah Rugayah Abdullah	Director, Public Complaints Bureau Southern Region
	Mr. Haji Mislán Bin Karmani	Companion
Netherlands	Dr. Marten Oosting	President, International Ombudsman Institute
Pakistan	Mr. Abdul Shakurul Salam	Ombudsman of Pakistan
	Mr. Raja Mohammand Khurshid Khan	Ombudsman of Azad Jammu & Kashmir
	Mr. Salahuddin Mirza	Ombudsman for the Province Sindh
	Mr. Tarique Laghari	Director, Provincial Ombudsman Sindh
	Mrs. Marium Salam	Companion (Spouse)
	Mrs. Ayesha Mirza	Companion (Spouse)
	Mrs. Razia Oaiser	Companion (Spouse)
Philippines	Mr. Francisco Villa	Overall Deputy Ombudsman
	Mrs. Lilia Villa	Companion (Spouse)
Sri Lanka	Prof. Betram Bastiampillai	Parliamentary Commissioner for Administration(Ombudsman)

Country	Name	Position
Thailand	Dr. Prasit Damrongchai	Secretary General, Office of the Commission of Counter Corruption
	Mr. Wanlop Yutidhammadamrong	Legal Officer
	Mrs. Vantanee Damrongchai	Companion (Spouse)
Turkey	Mr. Halil Dag	Ambassador, the Embassy of Turkey
Vietnam	Mr. Thanh Ta Huu	Minister-Inspector General, Vietnam State Inspectorate
	Mr. Hoe Nguyen Anh	Deputy Director-Secretary
	Mr. Loc Nguyen Huu	Chief Inspector

II. Opening Ceremony

A. Opening Address

B. Congratulatory Address

C. Appreciative Address

D. Address in Response

A. Opening Address

by Mr. Choi, Jong Baik,
The Chief Ombudsman of Korea

Your Excellency, Prime Minister Koh Kun : Honorable Dr. Marten Oosting, President of International Ombudsman Institute, and delegates of the Asian Ombudsman Association ; and distinguished guests.

Speaking for the Ombudsman of Korea, I welcome each of you and thank you for traveling so far to participate in the 2nd Asian Ombudsman Conference.

The number of countries adopting an Ombudsman system has grown over the past few years. These systems, while differing from country to country, reflect the efforts of these governments to meet the needs and expectations of their citizens through a fair and democratic approach.

How do we organize and operate an Ombudsman system modified to meet the unique situations and demands of each Country ? The search for answers to that question is what brought us together today. Questions far out number answers. As such the need to exchange ideas, information, and experiences between and among countries and regions is a must.

To meet the demands for the current situations, the 6th International Ombudsman Conference held in Argentina last year identified the need for and resolved to set up regional Ombudsman associations. Then, at the Islamabad Ombudsman Conference held in Pakistan we seriously discussed about establishing an Asian Ombudsman Association.

Today, following the keynote address under the topic of "The general functions of Ombudsman in modern public administration", presentations, will be presented regarding overviews of the organization and management of the Ombudsman systems in their respective countries. With this as a foundation, we will then turn our attention to the tasks of solidifying the by-law of the Asian Ombudsman

Association, the election of executive members, and measures to be taken to set up an AOA secretariat. Finally, to foster friendly relations among participants, we will take a industrial and cultural field trip.

Compared with Europe's long history with Ombudsman systems, Asia's history in such systems is very short. Considering the growing interest Asian countries are showing in Ombudsman systems, however, the future looks very bright.

I encourage you to freely exchange ideas and opinions, and share the diverse experiences you have gained in setting up and operating Ombudsman Systems. I am confident that these efforts will lead to systems responsive to the needs and expectations of the people, and such cooperative efforts are a must for countries in this region to realize democratic government administration.

I expect that the Seoul Conference will be a major contribution to the Ombudsmanship in the 21st century.

It is our task today, therefore, to lay the foundation for the AOA by passing the by-law of the AOA and electing members of the executive board.

If we accomplish these tasks, we will have provided great momentum for future development of the system in Asian region.

Finally, I thank you for taking the time to be with us for this opening ceremony and hope that this conference will be an enjoyable, mutually productive experience.

Thank you.

B. Congratulatory Address

by Dr. Marten Oosting

President of the International Ombudsman Institute

Distinguished participants, fellow ombudsmen,

It gives me great pleasure to have the opportunity, in my capacity as President of the International Ombudsman Institute, to address you here today. I am extremely grateful to my esteemed colleague Mr Choi, the ombudsman for Korea, for having invited me to participate at this Second Asian Ombudsman Conference. I see it as a unique opportunity to become better acquainted with the ombudsmen of Asia, and to help consolidate your ties with the global community of ombudsmen. On a more personal level, I am also very pleased to be able to become acquainted with our host country for this event, Korea.

The previous world conference of the IOI, in Buenos Aires in October 1996, elected our host, Mr Choi, as one of the three IOI directors for Asia. He deserves the admiration of us all for having taken it upon himself to organise this second conference of the ombudsmen of Asia, only three years after the establishment of the office of Ombudsman of Korea. A year ago Justice Salam, one of his fellow directors and the ombudsman of Pakistan, took the excellent initiative of organising the first such conference. It is highly satisfying to see that this laid the foundations for regular contact between Asian ombudsmen. For not only are you assembled here today, but the next meeting, in 1998, has already been scheduled.

One significant consequence of your cooperation is the fact that the establishment of the Asian Ombudsman Association is one of the themes of this Conference. On behalf of the IOI Board of Directors I greatly welcome this new development. In the view of the IOI, the regions are the first platform for international cooperation between ombudsmen, and the IOI, as a global organisation, is based on them. I greatly hope that the AOA will play an important

role in the cooperation between ombudsmen in your region, under the leadership of your three members in the IOI Board of Directors : Mr Bastiampillai, the ombudsman of Sri Lanka and regional vice-president, Mr Choi and Mr Salam. I also hope that the AOA, in collaboration with the IOI, will be able to play a role in the further dissemination and development of the ombudsman as an institution here in Asia.

The ombudsman as an institution now exists in about 85 countries throughout the world. Its origins, as you will recall, lie in Scandinavia, although history teaches us that also other parts of the world have had similar facilities for monitoring the conduct of government officials in their dealings with the public, from a more or less independent vantage-point.

One of the features that characterises the modern institution of the ombudsman is that it forms part of a system of "checks and balances", a concept that originates from the constitutional tradition of the United States. I might also mention here the notion of a state based on the rule of law-the idea that the government not only creates laws, but is itself bound by them. We are talking here about facilities intended to prevent the power of public authorities from becoming absolute, without boundaries or norms, without accountability or control. History amply illustrates the excesses to which absolute power can lead.

All this means that the institution of the ombudsman is contingent upon the existence of a democratic system that allows sufficient scope for a wide range of views. It is interesting to note, in this connection, that over the past ten or fifteen years ombudsmen have been appointed for the first time in numerous countries-in Latin America and Europe, for instance-which had witnessed the end of a period of totalitarian rule, and faced the task of constructing a new democratic order. The existence and activities of an ombudsman can contribute significantly to the development of a young-and sometimes still vulnerable-democracy of this kind, and help build up public confidence in the government.

It is first and foremost the government's responsibility, of course, to ensure that public authorities make proper use of their power in their dealings with the public. Modern governments are ever more aware of this, and realise that complaints from the public can help guide them towards ways of improving the quality of their actions. Important though such internal control mechanisms may be, however,

experience has shown that the complementary role of external supervision is essential. The ombudsman's principal task is to contribute to that supervision from his own independent position, alongside the controls exerted by parliament and the judiciary. The ombudsman calls the leadership of a public body to account for the way in which it treats members of the public, and holds it responsible for what happens in that connection within its organisation, even at the lower levels.

The title of Defender of the People, which has been adopted in a number of Spanish-speaking countries, well conveys the nature of the ombudsman's task, which is to stand up for the entitlement of the citizens of a particular country to a government that treats them fairly and respects their fundamental rights. What this means is a government that acts in accordance with the laws of the land and the standards of international law, that steers clear of all corruption and in other respects too prevents the occurrence of maladministration leading to injustice. The ombudsman can fulfil this role only if the members of the public who need him have the right to approach him with their complaints about the actions of government bodies. This presupposes, I might add, that they are well-informed about this right, and more in general about their rights in relation to the government. In that respect, part of an ombudsman's task is often educational.

Another prerequisite, if the ombudsman is to fulfil his role properly, is that he must be independent in respect of the government bodies that fall within his sphere of competence. For it would be incompatible with the ombudsman's supervisory responsibility for the bodies he is intended to monitor to be capable of influencing him in any way. This goes further than the requirement that every ombudsman should have an impartial attitude; the ombudsman's independence means that he may not be subjected to the instructions of others, that his legal status affords him protection, and that his office is given sufficient funds to do its work properly. Many ombudsmen are also authorised to launch an investigation on their own initiative, which underscores their independence. This independence should also be reflected in the fact that ombudsman's work is open to scrutiny. In addition, the legislature must ensure that the ombudsman's statutory powers are wide enough to permit him to fulfil his responsibilities effectively.

The ombudsman's independence must be safeguarded institutionally, and must be respected by all parties concerned, including of course the government itself. It is

an important prerequisite for the confidence that the public must be able to repose in the ombudsman. On the basis of this independence, the ombudsman must do his work in such a way as to acquire the authority that is essential if his decisions are to be acted upon. This means, among other things, that the ombudsman and his staff must meet certain standards of professionalism.

You might be wondering why I have given this brief sketch. I shall explain. I believe that it is important for every ombudsman to have a constant awareness of his primary task, and of the fundamental conditions that must be met if he is to perform it properly. He must also help ensure that the government too remains fully alive to these crucial issues. Even things that are perhaps self-evident are worth repeating now and then. I see it as one of the IOI's responsibilities to foster this view of the ombudsman's task. The independence criterion is one of the chief items in the IOI's bylaws, and is viewed as an essential condition for the admission to voting-membership.

In my President's Message to the First Asian Ombudsman Conference, April 1996, I referred to Asia as a world in itself. Over and over again I am impressed by the enormous diversity of this vast continent : in ethnic, cultural, political, social and economic terms. This diversity also manifests itself when Asia is viewed through the eyes of an ombudsman. There are major differences, after all, between the ombudsman's offices that are represented here today, not only in their own distinctive features but also in the surroundings in which they operate. I should perhaps add that it is not easy for someone from a different continent to get a good picture, straight away, of the various ombudsman's offices in Asia and the work they do. In this connection I see it as a serious handicap that no up-to-date descriptive study of the Asian ombudsman's offices is yet available.

I greatly hope that the AOA can ensure that this gap is soon filled, so that your counterparts elsewhere in the world have a good opportunity to become better acquainted with you. In this connection I would like to bring to your attention the International Ombudsman Yearbook-or Journal, as it has been called up to now-which is published by the IOI, and to invite you to submit contributions to this important medium for communication with your fellow-ombudsmen in other parts of the world. The AOA may also help trigger interest in the subject of the ombudsman among researchers attached to university institutes in Asia. Of course,

translation will pose a problem in all such activities, and this will have to be looked at separately.

In the most recent Directory of ombudsman's offices compiled by the IOI, there are eight listings for Asia : most of the ombudsmen concerned work at national level, and a few are active regionally. I realise that the diversity that characterises Asia may present problems in areas such as cooperation among the ombudsmen of your continent. I am referring here to factors such as political contrasts between countries, which may place international contacts under pressure. In this connection I would point out that the IOI is a non-political organisation, one that gives professionals in the same field the opportunity to meet and exchange views. Indeed, the IOI's membership consists not of countries but of ombudsman's offices -in particular insofar as they fulfil the criteria for voting-membership. I very much hope that you will succeed in helping the AOA to evolve into an open network of professionals along these lines. The IOI trusts that you will do full justice to the criteria acknowledged worldwide as essential to the recognition of an ombudsman's office.

Many countries in Asia do not yet possess an ombudsman. In some cases, this may be because an independent institution such as the ombudsman is believed to be incompatible with the existing political and constitutional systems in the country concerned. In some countries, however, a definite interest has been expressed in the establishment of an ombudsman's office attuned to the situation in the country concerned. The AOA and IOI can jointly play an important role in these countries by talking about their past experience with the ombudsman as a provision that has a positive contribution to make to open and democratic public administration. I wish you every success in pursuing this path. The IOI and your counterparts from other parts of the world will be pleased to do all they can to assist, should you so desire.

We are now on the threshold of the Second Asian Ombudsman Conference. I should like to conclude by expressing the hope that this conference will help foster the further development of the ombudsman as an institution here in Korea. I wish to extend once again my warmest thanks to Mr Choi and his staff for their hospitality, and wish you all a highly productive conference.

Thank you.

C. Appreciative Address

by Mr. Koh Kun,
Prime Minister of Korea

President marten Oosting, members of the delegations, distinguished foreign and Korean guests

It is deeply significant, I believe, that the Second Asian Ombudsman Conference is opening here in Seoul. On behalf of the Republic of Korea, I wholeheartedly welcome you.

As you know the Ombudsman system has its root in Sweden where the practice of appointing public officials to investigate citizens' complaints against government agencies came into being in 1809. The present-day Ombudsman system, as I understand it, is to protect citizens' rights and interests by solving their grievances.

In Korea, too, there were similar systems to help solve the grievances of ordinary citizens during the Chosŏn Kingdom(1392-1910) in the 15th century. One was called *Shinmun-go*, or literally, "the Petitioner's Drum" which was installed at the gate of the palace so anyone could come and beat the drum to register a complaint and receive a royal audience. Another was *osajaedo*, the dispatching of undercover royal inspectors to investigate citizens' grievances.

The Republic of Korea Government established a modern Ombudsman organization, simply called, "the Ombudsman for the Republic of Korea," as part of administrative reforms in 1994. It will soon mark its third anniversary.

Despite a relatively short period, the Korean Ombudsman have attracted high expectations and have contributed greatly to helping relieve citizen's grievances by listening and acting on their petitions. The public expects the Ombudsman to play a greater role in protecting the people's rights in the days to come.

Delegates and distinguished guests,

As a system to resolve grievances against the governments and ensure the

fairness and transparency of administration, the Ombudsman system is becoming more and more important around the world.

Throughout the world, the activities of Ombudsman, whose original function was to investigate citizens' complaints against government agencies or officials that might be infringing on their rights, now is expanding to include the role of mediating disputes between a citizen and an administrative agency or even supervising administrative affairs.

Indeed, it may well be said that the Ombudsman in virtually every country of the world serve as reform-minded innovators the recommend improvements in laws and institutions. The mission of Ombudsman is also becoming increasingly important because they act on behalf of citizens' in disputes with the administration.

For this reason, I believe, it is exceedingly significant that Ombudsman from Asian countries are gathered together for this Asian Ombudsman Conference to strengthen their foundation and exchange experiences and information.

I earnestly hope that this Seoul Conference will provide an added momentum to the activities of Ombudsman in all countries in the Asian region, while further bolstering the Ombudsman system as an invaluable institution.

I also hope that the conference will serve as a major opportunity to further cement mutual ties and increase cooperation not merely between the Ombudsman in Asia but also between Ombudsman all over the world.

I hope that your stay in Seoul throughout the conference will be rewarding and valuable. I wish you all unending progress and development.

Thank you.

D. Address in Response

by Mr. Abdul Shakurul Salam,
The Ombudsman of Pakistan

Dear delegates, participants, ladies and gentlemen. Good Morning.

It is an honour for me to speak on behalf of the participants of the Asian Ombudsman Association's Second Annual Conference, being held in the Capital city Seoul of the great Republic of Korea.

We are all very happy to be here. I may mention that Asia did not have an Association of Ombudsmen whereas other Continents had, like, Europe, North America, Australasia Pacific, represented at the international level in the International Ombudsman Institute. Asia is a vast continent spread over from Australia to Turkey. It comprise 65% population of the world. It has world powers like People's Republic of China and giants in economic field like Japan. No disrespect is meant towards any other country of the area, like my own Islamic Republic of Pakistan. The point urged is that it was a pity that Asia did not have an Association of its own. We all assembled in Islamabad, Pakistan in April 1996 and discussed the formation of the Asian Ombudsman Association.

Some twenty-seven countries were represented. They all had different laws or rules for redressal of grievances of their people. The countries had diverse social milieu and were at various level of development. Still we all succeeded to form the Asian Ombudsman Association. Not only so but country after country offered to host the second annual Conference. I must say that the representative of Korea, Mr. Dae Kyn SHIN, offered to host first, followed by the representative of Macau next year. Korean offer was accepted and we are here, We are most grateful to the people and Government of the Republic of Korea, especially Mr. Jong Baik Choi, Chief Ombudsman of Korea and his Adviser Mr. Sung Suo Cho, who remained in constant touch with all of us and has most probably made all the arrangements for

the success of the Conference. I wish him luck and thank him most profusely.

We are looking forward to hear the delegates from the various countries, exchange views and experiences and enrich our understanding of the Ombudsmanship concept and its application in various spheres of life in the countries represented here. We can all learn. The process goes on throughout life. Anybody who stops is doomed fit to be put in the casket. By learning from each other, we are better equipped to do our job in our respective countries and help people in redressal of their grievances. We are all aware that in our jurisdictions there are thousand upon thousands of people who are groaning under the misery of deprivation of what is due to them as human beings. If we can help a little bit that would be a great service. I believe that giving a helping hand to a human being is far better than achieving anything for oneself, either authority, power, riches or even ethereal bliss.

In the end, I express on my own behalf and on behalf of all the participants that we are most grateful to the people, Government of the Republic of Korea and its Ombudsman Organisation for arranging this Conference and enabling us to participate here and also to enjoy the social activities and visit the ancient city of Kyungjoo. We are looking forward with great eagerness.

Thank you all again, ladies and gentlemen

III. Keynote Speech & Presentations

A. Schedule

B. Keynote Speech

C. Presentations

■ The 1st Session

- Mr. Andrew So(Hong Kong)
- Mr. A. S. Salam(Pakistan)
- Prof. B. Bastiampillai(Sri Lanka)

■ The 2nd Session

- Mr. H. H. Kantharia(India)
- Mr. V. Khobreh(Iran)
- Mrs. M. Ben-Porat(Israel)
- Mr. Hisao Tsukamoto(Japan)
- Mr. Luis Freitas(Macao)
- Mr. S. Mirza(Pakistan)

■ The 3rd Session

- Mr. F. A. Villa(Philippines)
- Mr. Thanh Ta Huu(Vietnam)
- Mr. Louis R. Chao(Chinese Taipei)

A. Schedule

■ 3. 25(Tuesday)

14 : 00 ~ 14 : 40 **Keynote Speech**

“The General Functions of Ombudsman in Modern Public Administration” By Mr. Choi, Jong-Baik,
The Chief Ombudsman of Korea

14 : 40 ~ 17 : 20 **Presentations : The 1st Session**

① “Challenges for the Ombudsman”

– By Mr. Andrew So(Hong Kong)

– Presider : Dr. Ro, Jung-Hyun, President,

Korea Institute of Public Administration

② “The Approach of the Ombudsman and His Staff to resolve the Grievances of the People”

– By Mr. A. S. Salam(Pakistan)

– Presider : Mr. Shin, Dae-Kyun Ombudsman of Korea

③ “The Ombudsman – An aid to good governance – The Sri Lankan experience”

– By Prof. B. Bastiampillai(Sri Lanka)

– Presider : Mr. Moon, Dong-Hoo, Commissioner,

Government Personnel Appeals

Commission of Korea

■ 3. 26(Wednesday)

10 : 00 ~ 12 : 00 **Presentations : The 2nd Session**

Presider : Dr. Daniel Jacoby, Executive Secretary of I.O.I(Canada)

– India : Mr. H. H. Kantharia

– Iran : Mr. Vali-O-Lah Khobreh

– Israel : Mrs. Miriam Ben – Porat

– Japan : Mr. Hisao Tsukamoto

– Macao : Mr. Luis de Men don ca Freitas

– Pakistan : Mr. Salahuddin Mirza

14 : 00 ~ 15 : 00 Presentations : The 3rd Session

Presider : Mr. Hisao Tsukamoto, Councillor,

Management & Coordination Agency(Japan)

- Philippines : Mr. Francisco Villa

- Vietnam : Mr. Thanh Ta Huu

- Chinese Taipei : Mr. Louis R. Chao

B. Keynote Speech

The General Functions of Ombudsman in Modern Public Administration

by Mr. Choi, Jong-Baik,
The Chief Ombudsman of Korea

1. Introduction

The Ombudsman system introduced in Sweden in 1809 is no longer unique to just a few European countries. Rather, countries around the world have adopted various forms of the original Ombudsman system to meet their specific needs. This phenomenon became conspicuous after World War II as more countries moved toward administrative forms of government.

The Ombudsman system and public administration are inseparable. As such, to understand the advantages of the Ombudsman system, we must first fully understand the political system, economic situation, and socio-cultural characteristics of the country concerned. While it would be very difficult to fully comprehend the myriad factors involved, I feel that we can glean a basic understanding of the roles and benefits of an Ombudsman system if we understand some of the general limitations of public administration.

Restoring and protecting the rights of citizens have become goals of an increasing number of countries as they work to establish welfare states, while avoiding the danger of becoming police states. In this process, public administration expands its discretionary powers, which, if left unchecked, encroach on the rights and interests of the people even more than in a police state. It is natural, therefore, that many see the Ombudsman system as an efficient relief system against such infringement.

This is very similar to the advent of the "Socio-Welfare Mechanism" used to make up for failures in the market while expanding a free market economy. It is

likely that the Ombudsman system was established to compensate for administrative failures, shortcomings, and abuses that generally accompany expanded discretionary power.

Governments have developed a variety of Ombudsman systems consistent with the situations and requirements in their respective countries. It might be a good idea, therefore, to start by taking a look at the classical concepts and general characteristics of the Ombudsman system. In that light, it is an honored to have this opportunity to present a keynote address with the theme, "The General Functions of Ombudsman in Modern Administration", addressing such topics as "Limitations in Modern Administration": Where they come from and the role of the Ombudsman in overcoming them", "Changing Concepts of Human Rights: New roles for the Ombudsman", and "The Role of the Ombudsman in the 21st century".

2. Classical Concepts and General Characteristics of the Ombudsman

2. 1. Classical Concepts of the Ombudsman

It is difficult to define the Ombudsman concept in a simple statement because it is in a constant state of flux. Even within a given period, we find variations between systems due to differing situations from country to country. The classical concept of the Ombudsman was that, when unreasonable administrative actions by bureaucrats encroached on the rights and interests of the people, an Ombudsman appointed by the authorities investigated the situation and admonished the offending bureaucrat. This process led to appropriate corrective actions that protected the rights and interests of the people.

The main function of the Ombudsman is to make up for existing deficiencies in or inappropriate administering of laws and regulations. The general functions of the Ombudsman are as follows :

- (1) Enhancing functional efficiency of the government,
- (2) Warning when laws and ordinances are counter to the best interest of the people,
- (3) Making bureaucrats enforce laws fairly and ensuring that all bureaucrats operate within the law,
- (4) Enabling the people to bring bureaucrats to account for their abuse of power,

and

(5) Maintaining a balance of power among the three branches of government.

As public administration becomes increasingly involved in the lives of the people, the function and concept of the Ombudsman changes. Political encroachment on human rights, once a purely national concern, now has international implications. The main concern, now is to prevent human rights from being usurped in the economic, social, and cultural fields. Responding to this change, the functions of the Ombudsman has shifted to protecting the rights of the people against inappropriate administrative actions.

2. 2. General Characteristics of the Ombudsman

I think that we should first review the general characteristics of the Ombudsman system because every country has developed the system in a different way to satisfy their specific needs and requirements.

Some scholars classify Ombudsman systems as either public or private. I think, however, that a primary characteristic of the Ombudsman is its public nature.

The operational host of the Ombudsman is the government, whether it operates under the Executive Branch or the Legislature. Similarly, the goal of the Ombudsman is public good, not private benefit. Notwithstanding its public nature, the Ombudsman is not a government organization in the traditional sense. Considering that the Ombudsman operates with government funds and a staff of officials dispatched from government agencies, I sometimes wonder whether I should describe the Ombudsman as public or private. There are good reasons, however, for the Ombudsman to have a public nature, but not be a government organization.

The next characteristic of the Ombudsman is its relations with and alternativeness to the Legislature. The Ombudsman is usually associated with either the Legislative Branch or the Executive Branch. Even when associated with the Executive Branch, the Ombudsman operates closely with the Legislature. For example, some actions that the Ombudsman handle are civil petitions initially received by a legislator. In other cases, the Ombudsman handles matters that it should report to the Legislature.

The third characteristic of the Ombudsman is its parallel and complementary relations with the Administration. Legislative and judicial relief procedures are antagonistic to government agencies. The Ombudsman system can be complementary and cooperative with these agencies. This is possible because decisions by an Ombudsman are not compulsory but recommendatory.

Another characteristic of the Ombudsman is its customer-oriented, quasi-judicial nature, which makes it convenient and easy to use. It is a simple process to get the Ombudsman to address citizens' complaints and seek to restore their infringed rights, no matter how trivial the government may consider the complaints.

The last characteristic of the Ombudsman is its wide scope of operation. The Ombudsman handles not only unlawful acts but also unreasonableness, inefficiency, faults, delay of response, unfairness of decision, and acts of fact falling within the scope of administrative measures. The scope of the Ombudsman even extends to military affairs, police affairs, corrections, social insurance, and any other actions infringing on human rights.

3. Failure of the Administration, Limitations of Relief Systems, and Ombudsman Benefits

3. 1. Failure of the Administration

Today, more and more administrations are assuming legislative and policy-making functions that were previously exclusive functions of the legislature. Depending on the functions, the administration plays the role of fostering social values and assumes such functions as expanding the economy, developing an educational culture, and promoting social welfare and freedoms.

The administrative welfare state, which grew out of the need to make up for the failure of the free market economy, often operated under the naive belief that maximizing social efficiency was the administration's only objective. In its efforts to maximize public welfare, the administration often restricts basic rights, including the rights of individual property, also stipulated by the constitution in Korea.

Unfortunately, in Korea, administrative officials' prejudiced sense of value, personal interests, inadequate business skills, and an unreasonable organizational culture have diminished the rationality of the administration. We refer to this as a

“Failure of the Administration.” I will discuss this in more detail later.

Modern governments are generally characterized as law governed administrations. In this setting, administering existing laws often leads to actions that infringe on the personal rights and interests of citizens. An abstract law is executed by following such subordinate documents as enforcement ordinances or regulations, which in turn are the result of established guides and rules. In this process, administrative discretion deteriorates into a merry-go-round of subjective bureaucratic correctness that blindly encroaches on the rights of the people.

3. 2. Limitations of Relief Systems

Governments often deal with administrative discretion in the legislature to ensure the separation of powers. Unfortunately, most actions taken by the legislature are too specific to serve as an effective general relief system. Similarly, if one attempts to address administrative discretion through the judicial systems, the result may be equally abstract. As such, the effectiveness of relief functions processed through the legislative or judicial system is very limited. The judicial relief process is also unsuitable for resolving minor civil petitions because it involves too much time and money. At the same time, relief systems within administrative organizations, like administrative judgment systems, have also proven ineffective because the offending agencies or officials are usually tasked to judge their own actions.

Many countries have a variety of organizations that they use to protect the rights and interest of the people Korea has several. A typical one here in Korea, for example, is the lawsuit system. We also have an administrative judgment system, which is a quasi-judicial organization, and a Board of Audit & Inspection within the administration. The Presidential Secretariat and the National Assembly also have systems for addressing infringements on the rights and interests of the people.

These entities administer their respective systems, however, cumbersome procedures, excessive cost, lack of objectivity, and low effectiveness leave them incapable of protecting the rights and interests of the people. Korea finally adopted and is operating the Ombudsman system to make up for deficiencies of the other systems. Though relatively new, many consider the Ombudsman system very effective in that it is a free-of charge, fast, and convenient way to have civil complaints processed in a independent and fair manner.

3. 3. Ombudsman Benefits

3.3.1 A significant benefit of the Ombudsman is the clues it provides on administrative procedures that need to be improved. A negative characteristic in most law-governed and responsibility-oriented government agencies is their tendency to overemphasize unquestioning compliance with established administrative procedures. This tendency invariably produces passive performance at best non-performance at worst. In such cases, Ombudsman requests or recommendations may well serve as the momentum needed to foster administrative thinking that leads to improved administrative measures, laws, and ordinances.

For example, Korea has a Board of Audit & Inspection(BAI) to monitor the operations of public administration. BAI's primary function, however, focuses on ex post facto audits and inspections to uncover irregularities committed by individual government employees. Therefore, it is unfortunately true that few government officials are willing to exercise their discretionary powers to pursue flexible, reasonable administrative measures for fear of running afoul of BAI audits and inspections. The role of the Ombudsman fosters an atmosphere in which the fear of BAI audits and inspections is lessened. In this less threatening atmosphere, administrative thinking gradually replaces the established norms of passive performance and nonperformance.

It would be inappropriate for me to tout the Ombudsman as a substitute for audits and inspections or the judicial relief systems. Rather, the Ombudsman should be considered as a supplement to these systems, handling areas in which they are unable to produce the desired results.

3.3.2. Some of the newly-raised functions of the Ombudsman are, among others, recommendation, coordination, and mediation. These new functions do not address the problem of administrative failures but cope with the shortcomings in judicial relief systems caused by limitations in the law.

Laws are the least effective means of maintaining social order because they are inevitably limited. No matter how good the law, it will always have areas that are not adequately addressed. Relations between governments and citizens are established with administrative laws acting as an intermediary. The limitation of the

law, however, can cause conflicts that can not be resolved within the government/citizen relationship. In most cases, processing and coordination by arbitrate agencies are required because few laws have provisions that clearly stipulate procedures to resolve these conflicts. The Ombudsman fills the gap when no clear procedures exist.

3.3.3. Restoring public confidence in government is also one of the newly-raised functions of the Ombudsman. When government makes policies according to fixed procedures, it frequently infringes on the rights of citizens. This is often the result of pressures brought to bear by strong special interest groups with conflicting views. Is it any wonder that citizens have an instinctive distrust of governments. I am convinced, however, that the Ombudsman can diminish this distrust by processing civil complaints fairly and conveniently and pursuing appropriate corrective actions. An oft cited characteristic of public administration is that, once a procedure is decided, it becomes fixed and hard to change.

The Ombudsman is decided, it becomes fixed and hard to change. The Ombudsman can break this characteristic by fostering timely corrections to identified deficiencies within the administration.

3.3.4 The Ombudsman also functions as a PR agent for the administration. The administration of today tends to be more transparent than in the past. It is still true, however, that the barrier of bureaucratic authoritarianism remains high. Calls for more open administration reflect the growing desire among citizens for democratic administration. In response to these calls, some countries have instituted so-called "Administrative Information Opening Ombudsman" systems. As indicated, the Ombudsman can play an important role by providing information on civil petitions in otherwise closed administrative organization. In the process, the Ombudsman brings additional transparency to public administration.

3.3.5. Another benefit of the Ombudsman in the area of administration failure is its role in promoting quality of life concerns. Administrations in developing countries today usually lead national development efforts. This is especially true in Asian countries. In the quest for national development, administrations may,

however, divert their attention from the area of environmental protection. As priorities shift from quantitative growth of life to the qualitative promotion of life, positive roles of the administration also become inevitable. In this situation, we will see the benefits of Ombudsman in its role of leading the administration toward promoting the quality of life of the people while keeping pace with the changing demands of the times.

3.3.6. The Ombudsman system can also play an important role in administrative reform. Nowadays, many developing and developed countries are placing increased emphasis on reforming deep-rooted authoritarian administrations waging "Endless War Against Bureaucrats." An important factor in maximizing the result of the administrative reform is easing regulation-oriented administration, a role for which the Ombudsman system is particularly well suited.

4. Changing Concept of Human Rights and the Positive Role of the Ombudsman

Relations between a government and its people in the 20th century have evolved from "Guaranteeing the Civil Freedom and Rights from the State" to "Guaranteeing the Basic Rights of People in their Daily and Social Life by the State."

As part of this evolution, the Ombudsman became a way to practice democratic political system and further strengthen the democratic process. In other words, we came to emphasize the role of the Ombudsman as a tool of materializing abstract human rights advocated in the Universal Declaration of Human Rights, international regulations, or the Constitution.

Accordingly, more and more countries are establishing democratic political systems and introducing the Ombudsman system to ensure success. In these cases, adopting the Ombudsman system is evidence of their desire to reform. The modern administration faces growing demands for better quality of life, better education, better health, and better protection of common values. The functions of the modern Ombudsman are expanding in line with the expanding demands being placed on public administration.

For example, Ombudsman system in South American countries provide relief

functions to cope with poverty rather than simple administrative relief. Persistent calls are now being made to have the Ombudsman establish a close cooperation system with international organizations like UNESCO. We've already witnessed specific efforts in this area. Countries that have experienced oppressive ruling systems like military dictatorships look to the Ombudsman to perform the functions of protecting human rights.

The concept of human rights in the past was considered as political human rights in a narrow sense. Most countries today have started to expand this concept, which in a narrow sense meant freedom from unreasonable tyranny by a state power, to the concept of human rights with expanded political democracy.

Human rights of the past have been expanded to include econo-social and cultural human rights. In other words, the concept of human rights is shifting from the passive concept of trying to escape from state power to the positive concept in which one enjoys fair rights and reasonable distribution of public values.

People are now concerned about specific human rights in their daily lives. Such problems are now dealt with through administrative actions as more and more countries become administrative states. It is no exaggeration to say that the subject of human rights has moved from the political to the administrative arena.

5. Perspectives and Tasks of the Ombudsman in the 21st Century

It is not too much to say that Ombudsman system corresponds to the democratic political system. The operation of the Ombudsman system is unchanged under either a cabinet or a presidential form of government. Many consider the Ombudsman system the most effective organization to protect the people's rights and interests. This seems clear when you consider that in the modern administration every self-governing body introduces and operates some form of Ombudsman system. If recent trends are any indicator, the Ombudsman system will continue to develop within countries and throughout the region.

We can read the future development direction of the Ombudsman in that the Ombudsman is a symbol of the democratic political system and plays a great role in protecting human rights.

The lines between functions performed by the public and private sectors are b

becoming increasingly ambiguous. For example, modern administrations have started to perform functions that until recently had been considered the domain of the private sector. Conversely, functions that were the domain of the public sector in the past are now being performed by the private sector. As if this were not confusing enough, in many cases, the private and the public sectors have overlapping functions.

Despite the changing nature of public administration, I'm sure that the Ombudsman can play an important role as mediator between private and public interests. The Ombudsman can also be a useful tool in maximizing social efficiency by identifying turning points between private and public interests.

As every country has its respective procedures and systems for dealing with civil petitions or complaints, there may be cases of duplication of effort among organizations performing similar functions. While performing important complementary functions, the Ombudsman system can not substitute for other relief systems because its function is limited to recommending. In Korea the Ombudsman system is little known among the public and its structure has yet to be completed due to administrative obstacles.

I think the participants of the Asian Ombudsman Association today understand that this is not an easy situation. As such, I suggest that there is an urgent need for cooperation between organizations that protect the rights and interests of the people to enable us to deal with situation more effectively.

In the future people can expect to undergo infringements on their human rights and disadvantages in their daily lives caused by functions in both the public and private sectors. Anticipating this situation, some countries have set up consumers Ombudsman systems, which can be classified as a private Ombudsman. To protect the rights and interests of the people in the gray areas that exist between the private and public sectors, it is necessary for these Ombudsman systems to maintain systematic, cooperative relations, especially in areas of overlapping responsibilities.

In cases where the Ombudsman operates under a political system in which powers are vested in the three branches of government, how involved the Ombudsman can get in administrative discretion should be considered carefully. The Ombudsman systems in some countries have a very strong legal foundation,

being legal entities established under a constitution. In other countries, however, the Ombudsman systems have neither clear regulations nor specific functions and rights. In the later case, the Ombudsman has little effect. Ombudsman systems must have a firm legal underpinning before they can produce the desired results.

Special attention must also be given to avoiding duplication of efforts and conflicts among related areas. We can do this by establishing close relations between the Ombudsman system and the administrative judgment and administrative lawsuit systems, both of which play an important role in protecting the rights and interest of the people.

In the long run, we can expect the Ombudsman system to become an indispensable tool for processing civil petitions, protecting human rights, restoring human dignity, and building confidence in the democratic process. Independence and fairness are key factors to an effective Ombudsman system. We must also organize diversified operational programs to ensure these systems operate efficiently and economically.

This Seoul meeting of the Asian Ombudsman Association is especially meaningful in that multinational cooperation and exchange among countries with similar regional characteristics are urgently needed. I'm sure that our future will be very bright if we keep this urgent need in mind and use the 21st century to seek multilateral cooperation among the ombudsman systems of each country.

Thank you very much.

C. Presentations

Challenges for Ombudsman

by Andrew So,
Ombudsman, Hong Kong

Introduction

1. Every society, past and present, has its own systems and procedures, whether formal or informal, for the protection of the people and redress of grievances against abuse of power by the authority. The ombudsman institution is a device to provide a check and balance to protect the people from excesses of bureaucracy and to improve administrative processes. All the major political changes and social development in the past few decades have given rise to the rapid growth of the ombudsman and ombudsman-like institutions all over the world in response to the needs of the people.

2. Taken together, the ombudsman offices the world over are in fact one of the key institutions to enhance good governance. As members of the ombudsman institution, ombudsmen therefore share a common bond and goal in serving our communities the best we can, protecting the people and addressing the grievances of those who fall victim to abuse of powers or bureaucratic injustices. In essence, they provide a good administrative safeguard against arbitrary and overbearing government.

3. Almost every where in the world is undergoing rapid economic and social development and changes. At the same time, the process of government has become more complex and sophisticated. This is particularly so in the Asian countries. One of the major challenges for governments of the day as a result of these profound changes is to meet the increasing expectations of the public towards an open, fair and accountable administration from a better informed and educated

public who would not hesitate to come forward, question the authority if maladministration is perceived and seek redress. They want to be consulted on issues of their concern and to be informed of the reasons of decisions affecting them. They want to have more access to information. They want to participate more in government. With the rising expectations of the people expected of their governments in this fast changing world, the public are more conscious of their rights and are ready to make more demands. It is for governments to grow and develop in step with the political, social and economic development and changes of a particular country.

4. The question one has to ask now is what roles do the ombudsmen have with all the profound changes taking place in societies everywhere. Should the ombudsmen sit back and passively watch the world go by or should they attempt to influence the course of events by being adaptive and creative. With their essential characteristics of being independent, flexible, credible and accessible, I see Ombudsmen as well placed to share the challenge based on the respect of the law and individuals in responding to the needs of the public and the public sector institutions. Put it simply, ombudsmen have a key to play to enhance good governance and even a bigger role too in the present day government as an agent for change. They must not remain indifferent. They must be at the leading edge of change taking with them the concepts of justice and equity in the fulfillment of their mission.

The Hong Kong Experience

5. Over the last forty years, Hong Kong has made remarkable economic and social progress. We have become one of the major financial and business centers of the world. We are very proud of this achievement. Hong Kong's success has not come about by accident. What makes Hong Kong tick is essentially due first of all to the people of Hong Kong who are committed to stability and prosperity in their own lives, as well as in the community as a whole. It is through their hard work, relentless energy and enterprising spirits that have helped build Hong Kong today-glittering and dynamic. Secondly, it is made possible by the sound legal and independent judicial system to uphold the rule of law which provides a safe and

secure environment for the individual, for families and for business to flourish. Thirdly, it is the committed and efficient public service which contribute substantially to the success of Hong Kong.

6. That said, it has to be acknowledged that Hong Kong has greatly benefited from the support and goodwill of China, who provides us not only with food and water but also co-operation in areas of cross-border traffic, control of smuggling and illegal immigration, pollution control and health. Although 98% of the population in Hong Kong is ethnic Chinese, we have assimilated many Western principles and attitudes. This unique partnership, which based on mutual respect and understanding, has always been the linchpin of our success.

7. Hong Kong is presently anticipating another change, the greatest of it all in our history. In less than a hundred days, Hong Kong will change from a British Colony to a Special Administrative Region of China. To maintain stability and to make this transition a smooth one, one of the things we are doing is to make Hong Kong a fair and harmonious community where the rights and interests of individual citizens are respected and protected. As The Ombudsman of Hong Kong, I have an additional challenge in helping ensure the smooth transition. I have pledged to redress grievances arising from maladministration and to promote fairness and efficiency in the public administration before and beyond the transition comes 1 July 1997.

8. In the Hong Kong context, The Ombudsman, as a independent monitoring body, has a key role to play in making the government more open, fair and accountable. More importantly, he is instrumental in opening channels of communication and in bringing the government closer to the people. Let me now share with you some of my experiences in meeting the challenges, in giving a new vitality to the ombudsman institution in Hong Kong and in introducing planned changes to meet the needs of the community in the form of a case study.

The Establishment of the Office of the Ombudsman in Hong Kong

History
9. Perhaps, it is useful to first of all briefly go back to history. The ombudsman concept and the need for an ombudsman with an emphasis on redressing public

grievances first came to Hong Kong in the mid-sixties. The first statutory appointment of the Ombudsman (formally known as Commissioner for Administrative Complaints prior to legislative amendments introduced in December 1996) was made by Government in 1989 and the purpose of the office is to provide the people with a means through which an independent person outside the public service can investigate and report on grievances arising from administrative decisions, acts, recommendations or omissions.]

10. In February 1994, I took up my appointment as the second Ombudsman of Hong Kong. I had in mind a mission and vision which I consider central to the development of the ombudsman institution in the Hong Kong context. Together with my colleagues, we set the Ombudsman Office with a mission to bring improvements in the quality and standard of and promote fairness in the public administration. We are also committed to a vision to further fairness and efficiency in the public administration, help develop a public service culture characterized by dedication, commitment, accountability, openness, professionalism, quality service and performance and ensure the continued stability and prosperity of Hong Kong.

[Roles and Powers] of The Ombudsman

11. While investigation into allegation of maladministration is the primary function of every ombudsman, the ombudsman has in fact many useful and larger roles to play nowadays. My roles as I see it are largely the same as ombudsman in other parts of the world. [They include –

- Redressing individual grievances against maladministration in the public sector.
- Making bureaucracy more human.
- Lessening the gap between the Government and the public.
- Preventing abuses by acting as a citizens' watchdog.
- Righting individual wrongs.
- Indicating the facts when public servants are unjustly accused.
- Facilitating administrative reforms in the public sector.

12. Insofar as my powers and jurisdictions are concerned, they were brought on par with those of my ombudsman colleagues worldwide through legislative

amendments in June 1994 to strengthen the role of The Ombudsman and widen his powers and jurisdiction comprising –

- replacement of the referral system by direct access by the public to The Ombudsman for lodging of complaints ;
- expansion of jurisdiction to major public bodies. The intention is gradually to extend the Ombudsman's jurisdiction to all major bodies, the activities of which have a direct and significant impact on the daily livelihood of the public ;
- allowing the publication of anonymised investigation reports at any time ; and
- giving The Ombudsman the power to initiate direct investigation even no complaints were received on the matter.

Rising to the Challenges as an agent for Change

13. When I first assumed my office as The Ombudsman of Hong Kong, I see my office as an agent for change. It is a tall order. But it is not an impossible task because the Ombudsman is well positioned to be at the leading edge of change, to initiate planned changes to meet the many challenges given the wide range of powers vested in the ombudsman to facilitate his work and the essential characteristics which make the institution different from other redress avenues. They include –

- independence of operation from government ;
- impartiality of investigation into allegations of maladministration and administrative unfairness ;
- accessibility by general public ;
- availability of speedy and informal resolution of complaints ;
- wide investigation powers ;
- broad jurisdiction covering government institutions and other major public bodies ;
- remedial powers including recommending changes to government practice, policy, legislation where warranted ;
- power to recommend improvements, corrective measures to remedy administrative wrong doing to prevent recurrences ;

- power to appoint staff ;
- power to present reports to the appointing body and the legislature ;
- powers to publicize the activities of the office and anonymised investigation reports thus arousing people's attention of their civic rights and explain to the public what would be the reasonable expectations of the public administration ; and
- powers to initiate direct to own-motion investigations focusing on specific issues of wide community concern or systemic problems.

14. All these powers and characteristics work in the ombudsman's favour. What is important is for the ombudsman to make good use of the ombudsman concept and the powers vested in the ombudsman to be continued of relevance to the people in meeting their needs and in coping with the changes.

Monving Towards a Proactive Approach

15. What is required of the ombudsman to be a successful agent for change is for him to be able to adopt a visionary approach in helping redesign, reinvent and reinvigorate the public service in raising the standard of services and in meeting the rising expectations and aspirations of the people they serve. One thing is certain, the ombudsman has an important role to guide and influence the public service to reorient their control systems to prevent the recurrences of the problems. In this respect, we have had certain successes by instituting a proactive stance in serving the community.

One area deserves special mentioning is my office's initiative to conduct systemic reviews in which a full and impartial investigation into areas of wide public concern is possible.

16. Under the former referral system previously in force, my approach to problems and situations was necessarily a reactive one, basing on complaints received. With the new power given me to conduct direct investigations, we are now able to adopt a more proactive approach. This is particularly useful to –

- (a) follow through related problems which investigation of the complaint alone may not be able to resolve ;

(b) nip problems in the bud ; and

(c) resolve repeated complaints, once and for all, by addressing the fundamental problems which may not be the subject of the complaint, but are believed or suspected to be the underlying reasons for complaint.

17. Although this is a heavy commitment on my scarce resources, we find that the time and efforts so spent are well justified. Prevention is always better than cure. If the problems are not suitably countered at the first available opportunity, by the time of manifestation or proliferation, they would become much more difficult, complex, and time-consuming to resolve. Also more grievances and sufferings would have been caused to the affected persons, if timely action was not taken.

18. The question has been asked why in a potential case for direct investigation, no individual has come forward to lodge a complaint? There is a variety of reasons. In some cases, although complaints are lodged, they are misdirected at the symptoms and not the underlying causes. In other cases, while the suspected maladministration may not affect any particular individual immediately, if timely action is not taken, it may eventually develop into a perplexing problem affecting a lot of people. We have in the past two and a half years completed seven direct investigations and we intend to undertake more.

Public Education, Publicity Initiatives and Participation in Government

19. The Ombudsman must be clearly visible and accessible if he is to be of any service to the public. To promote greater public awareness and to make the public know that The Ombudsman has the power and is readily available to help them resolve their problems and redress that grievances free of charge, we have launched a series of public education and awareness initiatives.

These include publication of anonymised investigation reports and a monthly news bulletin, roving exhibitions, publicizing services on television and radio, mounting posters in public areas, distributing publicity video for use by schools, delivering talks to schools and universities and meetings with district boards and other statutory organizations.

20. Last year, we introduced a post-free complaint form for the benefit of those who would like to air their grievances. A Resource Centre, with a full collection of this Office's publications such as the Ombuds News and investigation reports, and other ombudsmen's publications has been established and is open to the public for the purpose of public education, bringing the ombudsman institution closer to the public we serve, and promoting the concept of ombudsmanship.

21. Our efforts have led to an eight and fifteen-fold increase in the number of inquiries and complaints received compared with the pre-direct access era. So much so that my office has been cautioned by some quarters of the community that we should guard against the danger of making The Ombudsman's Office a victim of its increased accessibility. However, I view these as positive indications that the ombudsman institution is better understood and utilized and the general public is ready to contribute to the fair and efficient operation of the public service by coming forward to lodge their complaints.

22. I once compared a government and its people to a clock and its pendulum as the government machinery depended on and was operated by the people. The government should thus turn to the people for information and direction. This way, the clock and the pendulum would work and swing in unison. The public education and publicity initiatives of my office to improve and increase visibility and accessibility are based on this premise and it is gratifying to note that our efforts have not gone unrewarded. The number of complaints lodged with this Office shows that the people are willing to participate and contribute to the smooth and efficient operation of the government. Their complaints provide useful information on the shortcomings and areas of concern in the public administration. They are also indications that organizations concerned are more forthcoming in taking appropriate actions to improve their standard and quality of service which is of paramount importance for having a stable and prosperous community.

Community Involvement

23. Everyone is a unique person and can make a difference to his community by what he does. The efficient and fair operation of the public administration can only

be achieved through the concerted effort and constructive actions of each and every individual. We therefore see the need of involving more sectors of the community in the ombudsman system in one way or the other. We have established three Panels of Advisors with professionals and academics in the legal, medical and engineering fields to assist my office in undertaking thorough and impartial investigations requiring their expert input.

24. We have also enlisted the assistance of the Non-official Justices of the Peace in bringing our attention to areas of concern or the deficiencies in the public administration. This is in line with the constant belief that more dedicated and righteous men and women should be actively involved in the building of a just and fair society for all to live in. Our experience confirms that there are certainly no lack of such noble minds in every community who are ready to come forward and devote themselves to this common cause. There is a reservoir of goodwill and support towards the work of the ombudsman.

25. We find that some young people in Hong Kong are not too concerned about fairness and justice and operation of government. I consider that this modern ethic will eventually undermine the fairness and justice in our society. Hence, it is relevant to include the role and responsibilities of The Ombudsman in the curriculum of both primary and secondary schools. My Office is now working with the education and youth services on a programme to encourage fair and clean government. I hope my Office will be able to bring about changes in the ethical standard and principles by instilling a sense of fairness in the minds of young people at the early stage of their development.

Introducing Alternative Dispute Resolution Methods in Resolving Complaints

26. In our continuous efforts to provide a better service in complaint handling to the community, we have introduced an internal complaint handling programme whereby my office will refer simple complaints to complainee organizations for investigation with my office monitoring their reply and intervening when the organizations fail to address and/or resolve the complaints satisfactorily. We have

had considerable success as the programme is able to afford an alternative dispute resolution to problems capable of speedy resolution when the complainants are more concerned with resolving the problems and that the issues do not involve major administrative faults.

27. We are about to launch a mediation service as another alternative dispute resolution method in resolving complaints. Mediation often enables complaints to be dealt with timely and results in greater satisfaction among complainants and complainee organizations. This is in line with the ombudsman concept in striving for a resolution to a problem rather than finding of fault. The aim of mediation is to foster a "win-win" situation, i. e. both the complainant and the complainee organization should not have a feeling of loss at the end of the process.

28. Those alternative dispute resolution methods appear to be revolutionary to the traditional investigation function of the ombudsman. They are far from it. As a matter of fact, we are maximizing the use of our limited resources through the use of nonadversarial dispute resolution techniques in ombudsmanship, the hallmarks of which are "speed and quality." We see this initiative as affording the conditions and environment under which the ombudsman offers to improve the quality of governance by facilitating a direct dialogue and encouraging communication between the complainant and complainee organization thus bringing the government closer to the people it serves.

29. With a view to enhancing the awareness of staff of the organizations under my jurisdiction and enlisting their support towards promoting professionalism in complaint management, we have introduced an annual Ombudsman's Awards Scheme. Under this scheme, this Office will present The Ombudsman's Awards to those organizations whose performance in complaint management is exemplary and praiseworthy.

Administrative Fairness Checklist and Administrative Ethics Checklist

30. To assist organizations under my jurisdiction to assess their standard of service, my Office has published an Administrative Fairness Checklist in 1995 which, though by no means exhaustive, serves as a rational basis for appraising

fair, consistent and reasonable public service. I am pleased to note that the Administration has found it useful and widely promulgated the principles of public consultation (i.e. timeliness, purpose of consultation, scope of consultation, presentation of all relevant information, publicity, and the importance of informing the public of the results of consultation exercises) to the public service.

31. My Office has also developed an Administrative Ethics Checklist to provide general guidelines on the standards of good administrative ethical practices. It is hoped that the checklist will assist public officers in the best performance of their duties and the public administration in conducting good human resource management.

Professionalism of the Ombudsman Office

32. To bring about improvements in the quality and standard of and promote fairness in the public administration, my Office seeks the achievement and maintenance of high standards of performance and administrative ethical practices on the part of the public sector institutions under my jurisdiction. In so doing, I consider it important that my office must seek to maintain standards no less high on our own part.

33. I am of the view that an investigation is not a passive process of receiving complaints and responses and weighing them up. It is not just a review of existing documents and materials. It is an active process of relentlessly and logically probing into the problem until the truth is known. It is often said that justice delayed is justice denied. I have also kept my working and investigation procedures under review with a view to identifying opportunities for simplification and streamlining and seeking improvements possible to cope with the demands and the expectations of the community.

34. As I expect my staff to perform their duties to the highest level of integrity and professionalism, a code of conduct has been developed for my staff's reference and adherence. We are also formulating our own performance indicators and performance pledge as we are equally accountable to the community we serve. These are part and parcel of our performance management strategy. This is to

ensure professionalism and quality of our work. My Office, like other ombudsman institutions, gains moral influence for acceptance of opinions and recommendations based on the integrity of processes, the intellectual logic of reasons supporting the opinion, and well established goodwill. We are also practising a culture of user, consumer friendly service which we expect from any public sector institutions.

Conclusion

35. I am pleased to say that the ombudsman institution in Hong Kong, despite its relatively short history, has become an integral part of the Hong Kong system and has gained recognition from the public as independent channel to deal with complaints on maladministration. There is no room for complacency as there is scope in strengthening the coverage and services of The Ombudsman Office and inculcating the ombudsman concept among the public sector organizations and the public we serve. In the case of Hong Kong, we have many and varied challenges for the ombudsman. The direction we are heading is to strengthen and build upon existing mechanisms through the introduction of practical and sustainable measures to meet the concerns of the community, to respond to the extent of anticipating changes by planned changes thus contributing towards a fair and efficient public administration. Our emphasis is to be of continued relevance in bringing about fairness in the administration and bring the government closer to the people as we approach the 21st century.

36. To the ombudsman institutions at large, the greatest challenge is for members to be at the leading edge of change, to reflect and adopt a proactive and visionary approach and reposition ourselves as necessary in step with the development and changes having regard to political and social characteristics of individual society.

Office of The Ombudsman, Hong Kong February 1997

The Approach of the Ombudsman and His Staff to resolve the Grievances of the People

by Mr. Abdul S. Salam,
Ombudsman of Pakistan

Distinguished Ombudsmen, delegates, ladies and gentlemen,
Good afternoon.

First of all I express my gratitude to the Government and people of Korea, especially Mr. Dae Kyn SHIN, representatives of the Ombudsman of Korea who offered in Islamabad in April, 1996 to host the Second Conference of the Asian Ombudsman Association (AOA) in the great country of Korea. The topic of my talk is "The Approach of the Ombudsman and his Staff to Resolve the Grievances of the People".

It is axiomatic that an Ombudsman and his staff is the product of the milieu in which they live. They are conditioned by their beliefs, education, experiences and outlook towards life. Further, they are guided, empowered, and enabled by the laws by which they are created or appointed. These provide the parameter within which they operate. Their success or failure depend upon the response of the authorities over whom they exercise the authority. These in turn reap the fruit or cut short their life on the understanding or perception of the people about their responses or actions. I may illustrate my points with reference to Pakistan from where I come. His salary; when he was promoted; how much service he had rendered and where. In the case of Federal Government employees or its agency's, I may state that the man may have served in any place, in any of the four Provinces, so the service has to be verified from all the places and from all heads of the Accounts Departments of the respective Provinces where the employee had served. All this, of course, is not possible for the widow. She may have no means of going to the places of postings of her husband nor she may have access to the Officers who

have to verify the service rendered by her husband. On receipt of the application of the widow, we call upon the Head of the Office where he had served last about which the lady had mentioned and ask the officer to trace out the service particulars of the employees who was posted under him and to find out what would be the pension payable to the lady. If the deceased had worked in other places, the Officer-in Charge would be asked to get all the information from wherever it was required. After calculation of pension and other dues is made, the Officer competent to sanction the pension is directed to do the needful and send an authorization for payment of pension to the Local Officer who would disburse the amount to the lady. The case would be closed on receipt of a report from the Agency and the widow that she had got the pension and other dues of her deceased husband. All this is done as fast as possible not only by writing letters but was sending messages from fax or through phone. In the nearly two years since I took over, thousands of widows have been allowed to have pensions or other dues of their deceased husbands for which they had been waiting for long.

Action has being taken sometime *suo motu* when it came to notice through Press or otherwise that a person had suffered on account of the action of Federal Government or any of its Agency. Entire investigation is made by the Officers of the Organization and relief wherever possible is made available to the person aggrieved.

I must state that the Office of the Ombudsman operates over the Federal Government Departments or its Agencies. Certain matters are expressly excluded from it jurisdiction. It excludes matter which is *sub-judice* before a court of competent jurisdiction or tribunal; or relates to the external affairs of Pakistan or dealing of Pakistan with any foreign State or government; or relates to, or connected with the defence of Pakistan or any part thereof, the military, naval and air forces of Pakistan, or the matters covered by the laws relating to those forces. Also complaints on behalf of a public servant or functionary concerning any matters relating to the Agency in which he is, or has been, working in respect of any personal grievance relating to his service matters. However, I may mention that except in matters which are *sub-judice* or pending before a court of competent jurisdiction or tribunal, in other matters if I am satisfied that the complainant has a genuine grievance or needs help, I point out the facts and the relevant rules to the

authorities concerned whether of Foreign Affairs Division or, Department of Defence. More often than not the authorities respond positively and grant relief to the persons concerned. I may give two examples. If a Pakistani abroad has been killed in an accident and under the law of the country his heirs are entitled to compensation, if any one of them applies to the Ombudsman's Office, we write to the Foreign Ministry to take up the matter on behalf of the heirs with the relevant authorities in the country concerned and since we would have got all the facts and applicable law narrated, it would become easier for the Foreign Ministry to handle the matter and get it settled. It has happened in many cases. In matters relating to the personnel of the Military, if some person comes up with a grievance that he or she was not able to get relief, we state the facts and bring the matter to the notice of the relevant authorities who quite often grant relief to the aggrieved person. At this juncture, I may state that even if the aggrieved person has no right to but otherwise deserves sympathy, the Defence authorities have been considerate to grant relief to the individual. I may mention here a case here of a soldier who while on leave in his village was murdered. His wife asked for pension. She was told by the Military authorities that she would not be entitled to pension because her husband had not served the minimum eligibility required for grant of pension which was 10 years. He had only served for seven years. Secondly, he had died not in performance at his military duty but in a private dispute. During the course of investigation, it had come to light that the deceased had left an old widow mother, a young widow with a suckling child, leaving no property or land etc. Accepting the aforesaid facts of ineligibility, we concluded that the young widow was nevertheless in straitened circumstances and in distress. The matter came to the notice of the Head of the Accounting Department of the Military i.e. the Adjutant General who sanctioned Rs. 35,000 (approximately 900 US dollars) out of his discretionary funds.

Another case of the interest is that a Car Driver who had driven the case of the Founder of the Nation from 1947 till his retirement in late 1980s. He had taken some loan to build a house. He retired from service and subsequently died. His widow asked for remission of the balance amount of the loan obtained from the Housing Society, a Federal Government controlled agency. After getting all concession which the Housing Society could lawfully give, a balance of about Rs.

25,000/-was left payable by the widow. I did not quiet know how to help the widow. Therefore, after recording all the facts, I submitted the Findings to the President, who out of his discretionary funds allowed payment of the balance amount. These cases are illustrative of the fact that the Ombudsman and his staff do their best to help the poor people even in matters which are not directly under their jurisdiction.

The jurisdiction itself is quiet extensive as it permits the Ombudsman to intervene wherever there is any 'maladministration' in any Agency, meaning thereby 'a Ministry, Division, Department, Commission or office of the Federal Government or statutory corporation or other institution established or controlled by the Federal Government excluding the Supreme Court, the Supreme Judicial Council, the Federal Shariat Court or a High court.'

The maladministration is defined to include "a decision, process, recommendation, act of omission or commission which :

- a) "is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide an for valid reason ; or
- b) is perverse, arbitrary or unreasonable, unjust, 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 excess; and
- (e) neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities."

Generally, a complaint has to be made within three months from the date on which an aggrieved person first has notice of the matter alleged in the complaint but the Ombudsman is authorized to take up the investigation in pursuance of a complaint which is outside the time, if he considers special circumstances which may be proper. When we come to know that the person concerned is illiterate or lacks knowledge or means and he could not come up within time but has a real grievance, we will enquire into and investigate the complaint.

The procedure of handling the complaint is that when it is made, it is taken up

by a responsible officer to see if it is within the jurisdiction or deserves sympathetic consideration in the peculiar circumstances, as mentioned in the above illustrations. The Officer then put his recommendations for admission or otherwise of the complaint to a senior officer who too scrutinizes the matter. He makes his own recommendations and then the third higher officer will decide as to whether to proceed with the investigation in accordance with the aforesaid principles or not. If the complaint is not admitted for investigation, the complainant is informed why his complaint was not processable. If, on the other hand, the complaint is admitted for investigation, it is assigned to an Investigating Officer who is generally an experienced officer of the kind of the work. I may reiterate that we have Investigating Officers who have been deputed from the Officers cadres of the Federal Government and after scrutiny of their record accepted by the Ombudsman, or others who were directly appointed by the Ombudsman from amongst the officers who have served in the public sector or otherwise are found fit to undertake investigative work and have the spirit of service and aptitude to deal with people having a grievance. They are issued instructions and directions to proceed as if they or their kiths were the complaints or they were in the shoes of the complainants and what they would do or not do to get redressal of the grievance of the complainants. Not only this but they should also help, assist and sympathize with the complainants. They should advise them what to do.

I may state here that people with knowledge or resources or having high stakes have means or knowledge to get redressal of their grievances either from the administration or Courts. But others who do not know what to do or cannot do anything to get redressal of their grievance, we stand by them and support them for redressal of their grievances. Even after investigation if it is found that the complainant's grievance was not quite well founded, he will by that time come to be convinced that every stone had been unturned to help him and that the authorities against whom he had the grievance had been brought before him, and explained why he could not be granted the relief. This much is a great solace to the complainant. I may state that a poor complainant who would have no access or able to approach the high functionary of the State is satisfied when the officer is brought before him to explain in the process of the hearing. The satisfaction on his face is just to be seen to be realized that how poor people do not even have the

hope that they could ever see or state their grievances to the high officials.

For the purposes of investigation, the Ombudsman can require an officer or member of the agency concerned to furnish any information or to produce any document which in the opinion of the Ombudsman is relevant or helpful in the conduct of the investigation. Recently an Ordinance has been passed known as "Freedom of Information Ordinance, 1997" under which the following records of public offices are declared to be the public record i.e. '(a) instructions, policies and guidelines; (b) record relating to sale, purchase, lease, mortgage, acquisition or transfer in any other manner of properties both movable and immovable; (c) record pertaining to approvals, consents, permissions, concessions, benefits, privileges, licences, contracts, permits, agreements, and any other advantages; and (d) final orders including decisions taken at all meetings.' Any citizen of Pakistan on payment of prescribed fee on an application can obtain the information contained in any of the above public record including a copy of such record. He is to be supplied the same within 21 days. If the applicant is not provided the information or copy of the record within the prescribed time or the designated official refuses to give the information or copy on the ground that the applicant is not entitled to receive such information or copy, the applicant may, within thirty days of the last date prescribed for giving the information or copy or the communication of the designated official's order declining to give the information or copy, file a complaint with the Ombudsman. The Ombudsman may, after hearing the applicant and the concerned official, direct the officer to give the information or copy of the record as the case may be or reject the application.

It is provided under the law establishing Ombudsman Organization (PO1 of 1983) that if after considering a matter on a complaint or on his own motion or reference by the President, the Federal Judicial Council or the National Assembly or on a motion by the Supreme Court or a High Court, as the case may be, the Ombudsman is of the opinion that the matter considered amounts to maladministration, he shall communicate his findings to the Agency concerned:

- “(a) to consider the matter further,
- (b) to modify or cancel the decision, process, recommendation, act or omission;
- (c) to explain more carefully the act or decision in question;

- (d) to take disciplinary action against any public servant of any Agency under the relevant laws applicable to him;
- (e) to dispose of the matter or case within a specified time;
- (f) to take action on his findings and recommendations to improve the working and efficiency of the Agency, within a specified time; or
- (g) to take any other step specified by the Mohtasib (Ombudsman)."

The Agency shall, within the prescribed time as may be specified by the Ombudsman, inform the Ombudsman about the action taken on his recommendations or the reasons for not complying with the same. If the reasons are valid the recommendations may be modified, otherwise these have to be implemented.

There is no provision in the law for entertaining a review application of the complainant, if his complaint after investigation has been rejected. Yet out of an abundant caution if the complainant comes up with the plea that his case had not been investigated properly or some aspects were omitted from consideration, he is re-heard and the matter is re-examined and relief granted, if possible.

The Investigating Officers have all the powers which are available to a Civil Court for attendance of any official, production of documents, recording of evidence or for examination of the witnesses etc.

Ombudsman has also the powers to punish for contempt as the Supreme Court of Pakistan has, if any person;

- (a) abuses, interferes with, impedes, imperils, or obstructs the process of the Mohtasib in any way or disobeys any order of the Mohtasib;
- (b) scandalises the Mohtasib or otherwise does anything which tends to bring the mohtasib, his staff or nominees or any person authorized by the Mohtasib in relation to his office, into hatred, ridicule or contempt;
- (c) does anything which tends to prejudice the determination of a matter pending before the Mohtasib; or
- (d) does not other thing which, by any other law, constitutes contempt of court."

Of course, fair comments in good faith and in public interest on the working of the Ombudsman or his staff does not constitute contempt. However, if a person is

committed for the offence, he has a right to appeal to the Supreme Court of Pakistan.

It is further provided that "no court or other authority shall have jurisdiction:

- (1) to question the validity of any action taken, or intended to be taken, or order made, or anything done or purporting to have been taken, made or done under this Order: or
- (2) to grant an injunction or stay or to make any interim order in relation to any proceedings before, or anything done or intended to be done or purporting to have been done by, or under the orders or at the instance of the Mohtasib."

It is also provided in the Order that "the provision of this Order shall have effect notwithstanding any thing contained in any other law for the time being in force."

These provisions are brought to the notice to show that the jurisdiction of the Ombudsman is very extensive and redressal of the grievances of the people against maladministration by any Federal Government Department or Agency is set right or redressed. The law provides that all Executive authorities through-out the country shall 'act in aid' of the Ombudsman. Consequently, there is no impediment in the functioning of the Ombudsman's Organization.

Our approach has been to resolve the grievances of the people with utmost speed, least expenditure to the complainants, avoiding legal formalities and with total sympathy with the aggrieved persons. We have through-out placed greatest emphasis on the urgency in redressal of grievances, especially of deprived sections of the society, such as widows, pensioners, old people, very young people, poor sections of society and incapacitated persons. We have also been giving great importance to the urgent release of pensions and retirement benefits, death claims, payments from Welfare Funds, payment of insurance claims and medical expenses. Urgent relief has to be provided also in the cases of serious losses caused by the carelessness of Government Departments, such as compensation for death by electrocution of persons or animals caused by inadequate maintenance of transmission and distribution lines, and disconnection of services of daily and vital use of the people, e.g. electricity, telephones and gas by the Corporation's officials.

In Pakistan we ensure an easy, economical and expeditious means of redressal of

citizens' complaints against those Departments and Government officials who are not discharging their duties and responsibilities for the benefit of the people in accordance with laws, rules and regulations.

In Pakistan the Ombudsman is an impartial arbiter between the citizens and Government functionaries. He acts independently of the executive. He holds a tenure post for 4 years. He is appointed by the President on the advice of the Prime Minister of Pakistan, who is the leader of the National Assembly of Pakistan. The speedy and satisfactory resolution of grievances is taken very seriously.

The procedure of complaints handling as evolved in Pakistan is simple, and easily understandable by an average person, who may be illiterate. A person aggrieved has only to send an application pointing out his grievances against a particular Department. The complaints can be sent by him either to Islamabad, the Headquarters, or Regional offices which are located in Lahore, Karachi, Peshawar and Quetta, the provincial Capitals of each of the four Provinces of Pakistan. Illiterate persons, especially from back-ward and rural areas who visit our offices, are guided even in getting the complaints written on a plain piece of paper, if the complaint is within jurisdiction. If not, they are informed where to lodge the complaint, whether with the Provincial Ombudsman or in a Court of Law. But in cases of hardship to widows or pension and insurance claims against Provincial departments, the complaints are forwarded to the concerned Departments with the advice to redress the grievance and in case that is not done, then a reasoned recommendation is made to the competent authority.

The complaint registering process is totally without any expense to the complainant. No lawyers are needed. He is invariably given sympathetic hearing. For during the investigation of the complaints by the staff it has been directed to ensure that the complaints are marked to the dealing officer by considering the place of residence of the complainant. The establishment of the Regional Offices has primarily been made for the benefit of the complainants, so that they can approach the office nearest to their place of residence, with least possible expense in travelling.

After the registration of the complaint, the Office get it investigated, causing least inconvenience to the complainant, through the concerned Government

Departments and Agencies. The complainant is kept fully informed about the progress of his case and the replies received from the Government Departments. He is not called upon frequently come to the office for hearings or ascertaining progress of his case. Only on few occasions, when his presence is essential, he is called for a hearing, thus keeping his expenses to the minimum. I personally go through each complaint and myself hold hearings with the Government Agencies and with the complainant(when considered essential or when he so desires) to see that justice is done to him and his grievances are adequately and satisfactorily resolved.

In Pakistan too, like the World over the non-vocal sections of society are prone to victimization through bureaucratic excesses, neglect and carelessness. Consequently, special emphasizes is placed in my office on urgency of redressal of grievances of pensioners, old people, widows, incapacitated persons, and poorer sections of society, who cannot take up their justifiable grievances in a court of law, produce evidence and get relief. They have no means of access to the administrative authorities from where they can have relief. It is not easy for an ordinary poor man to have access to senior Government officers who are too busy have no time to listen to the long-winded woes and grant relief. Our officers always extend a helping hand to these persons, even when initially the information provided is sketchy. We glean the information and cause of grievance carefully, especially in the cases of illiterate persons, from back-ward areas.

Heart rending are the cases of retired employees, of their widows and of insurance and death claims. Although rules provide that pension cases should be finalized in time, yet this is not always done. All paper work is required to be completed before the date of retirement, which is known years before the event, so that the dues can be paid soon after retirement. Some-time, nothing is done. When the man retires, he is made to run from pillar to post, to get his service verified from various offices, which he can hardly manage. The situation is worse in the case of widows. It is gratifying to note that almost all who approached the Ombudsman's Office in this behalf got relief in the shortest possible time.

Insurance claims by poor people, especially from rural areas, reveal how they were not being dealt with sympathetically. Sales representatives of the Insurance Corporation approach people. Being acquaintances or friends or relatives, they

persuade people to purchase Insurance policy. They fill in the Proposal form. Most of the insured put their signatures or thumb impressions on the form, written in English. A vast majority do not know what it contains, and what are the implications. The Sales representative endorses a certificate that he has known the insured for so many years and that the latter is fit for being insured. The Proposal form is verified by Sales Officer of the Institution and countersigned by a still higher officer. Premium is collected by the Corporation's representative and deposited with the Insurance company. Thereafter, the insured is issued the Policy of Insurance. When the insured dies, the beneficiary, mostly his widow or nominee, claims the insurance amount. It is then that the Insurance authorities start raising objections, that the insured was not in good health and had not disclosed this is the form, or that he had not been regular in payment of premia, or that the Policy had lapsed. Effort is made to deprive the insured's relatives of insurance dues, posthumously taking advantage of the ignorance or illiteracy of the people. Through detailed investigations, tens of thousand of such cases, were resolved to the satisfaction of the aggrieved persons.

We have directed the Water and Power Development Authority in hundreds of cases to promptly pay compensation to widows or relatives of those persons who got electrocuted, because of improper transmission and distribution lines.

In most of these cases the senior officers of the Departments themselves realize that a more careful investigation of the case would have resulted in providing relief to the complainants. This has lead to the amicable settlement of a large number of such cases. I appreciate the cooperation extended to me and my staff in redressing the grievances of the people by most of the departmental officers.

Ladies and gentlemen so far I have been giving you a brief account of our approach to resolve various types of grievances of the people. However, this is only the beginning of our real work, which is to take steps to gradually eliminate maladministration from the Government Departments under our jurisdiction.

After carefully studying the complaints and discussions with the senior officers of various Department, real causes of frequently recurring complaints are analysed, to find out how their recurrence can be prevented. If the agency's instructions to the field offices are not clear or open to various interpretations, the Agencies are advised to further clarify and if necessary, modify their instructions, rules or

regulations. They are advised to instruct and guide their officers and functionaries to help the citizens and deal with their cases sympathetically. In case the aggrieved people had not understood the rules, or the public in general was not following the laid down instructions, or filling in the forms correctly, then the Agency is advised to issue clear instructions for the public so that the forms are correctly filled and the correct procedures are followed. The Agencies have been called to issue requisite newspaper hand-outs where-over necessary to inform the public. It is impressed on all the Agencies that mere issuance of instructions to its junior officers in the field is not enough. A proper monitoring system must be placed in position to see that instructions are being followed by all officers. Action should be taken against those who are not implementing the Agency's policies correctly.

To inform Pakistan's large population, spread in villages, towns and cities, about the functions of the Ombudsman office and the simple procedure which is to be followed for redressal of the grievances against maladministration, details of resolved and redressed complaints are regularly published in the newspapers. Moreover, members of the staff and I inform the public about the types of complaints handled by the office, the procedure of complaints lodging, handling, redressal and the means available to the people to get relief, when the departments do not solve their problems after their repeated requests.

T.V. and Radio programmes and interviews have been very helpful in projecting the work done and system followed by the office. Effort is made to keep the people informed about the working of our offices.

The approach of the office in resolution of complaints is also through amicable settlement of the complaints. The emphasis is that the officers of Government Departments should deal with the public in a helpful and sympathetic fashion to quickly solve their problems. Maximum effort is made to bring about this change in attitude through persuasion and not coercion. The difficulties of the officers are fully appreciated. Many times the officers are so hard pressed that they are unable to solve the grievances of a complainant, when it is first brought to their notice, because they are unable to devote the requisite time and grant a patient hearing. In such cases, the Agencies are requested to extend maximum help to the officers, so that they can discharge their duties to the satisfaction of the general public. I have

myself delivered lectures to groups of senior government officers in their Staff colleges and the National Institute of Public Administration, where they come regularly for training and refresher courses. I also invite Heads of Institutions and officers of various ministries to the office to come and see that the office of the Ombudsman not only resolves the grievances of the public but helps in the improvement of policies and procedures of various Departments, so that the officers can discharge their duties more smoothly, sympathetically and quickly for the benefit of the people.

At the end of every year the Ombudsman's Office in Pakistan analyses the total work carried out by all its offices in the country. The total number of complaints received during the year, the complaints accepted for investigations, the complaints resolved, and the cases against each Department or Ministry are tabulated. The type of maladministration are analysed e.g. delay, inattention, neglect, inefficiency, ineptitude, unjust and biased decisions, or actions contrary to law and rules, administrative excesses, arbitrary decisions, discrimination and favouritism, decision based on corrupt motives, and other causes. The number of complaints against each Federal Agency is noted, as a percentage of the total complaints, to see which Agencies were prone to the greatest number of complaints and what was the type of maladministration. Thereafter, the causes are carefully analysed and recommendations are formulated for the prevention of recurrence of the various types of complaints.

In cases where despite various instructions issued by the Government Departments and the officers for the elimination of delays, no appreciable results are achieved and inordinate delays continue to occur, and the number of complaints increase, 'Case Studies' are conducted by my office alongwith representatives of the Agencies. The recommendations of these 'Case Studies' are also submitted to the Government for carrying out necessary improvements.

To inform the President of Pakistan, the Prime Minister, Members of the National Assembly and the public at large, all the data and my recommendations are published every year in the form of an 'Annual Report' in the first three months of every year. This report is submitted by the Ombudsman to the President of Pakistan and the Prime Minister of Pakistan, to apprise them of the work done, the problems encountered, and the recommendations made for removal of

maladministration from Government Departments. Such reports help the Government in reducing the grievances of the people against Government Departments, thus improving the quality of life of the people.

To sum up, Ladies and Gentlemen, my approach and that of my staff in resolving the grievances of the people is to do so with speed, sympathy and compassion for the aggrieved persons, while winning the cooperation of the Government officers. The approach is to bring about a basic change in the attitude of the bureaucracy while improving the rules, regulations and systems and making the officers accountable for their action. This is to ensure that the change is of a permanent nature and is based on cooperation and not coercion, where-ever possible. Strong action is only taken where absolutely essential. It is in this way that we hope to eradicate the basic causes of grievances of the people and improve their quality of life which is the basic desire of every Government.

Uptill now I have been giving you a birds' eye view of the approach and working of the Ombudsman and his staff in Pakistan. You may have discerned that many matters are by no means exclusive prerogative of Pakistan. These are germane in and applicable to the Ombudsman world over. To my mind the approach of the Ombudsman and his staff should be, in nut shell, that if they were in place of the complainant what would they have liked to be done to them. The age old maxim is still true: "Do unto them what you would like to be done to you."

In the end, I most earnestly and sincerely thank you all for giving me such a patient hearing

I am at your service for answering any question you may wish to ask.

The Ombudsman - an aid to good governance - the Sri Lankan experience

by Prof. B. Bastiampillai,
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Public Administration is basically a translation of legislation and policies into action. It is carried out by Public officers under the supervision and guidance of Parliamentary Ministerial executives or Executive Presidents. To execute policy or law, public officers are vested with authority. However, in every day life, the citizen occasionally suffers an improper exercise of authority or abuse of power. This is owing to misuse of authority in administration.

The office of the Ombudsman exists so as to redress grievances suffered by citizens owing to maladministration. A Government's authority is extensive and sometimes exclusive, and total as in regard to preservation of law and order in society or the grant of travel documents. Hence the citizens have to depend much in the course of their lives on the acts of the Government's executive officials. And as the Government has to discharge its executive functions it is endowed with enormous power, that calls for answerability and checks.

In dealing with the Government the average citizen finds that one lacks either the expertise or experience which the executive machinery of government abundantly possesses. Hence the average citizen has to rely on public officials who deliver services. Moreover an individual citizen transacting business with the Government is in the position of a passive recipient of the State's services. The Ombudsman becomes an intermediary or mediator in ensuring that individual citizens receive their due services efficiently and effectively. The Ombudsman in an economical and speedier manner often endeavours to assure citizens of fast and

prompt public services, services to which the public are entitled.

No doubt, in democracies parliamentary representatives and judicial officials are there to act as a brake on arbitrary or authoritarian executive action. But more easy to avail oneself of would be the Ombudsman's services because there lie often unfettered easy access. It is ready and simple access that strengthens the office of Ombudsman ; an Ombudsman insulated from the public is of no use.

Executive misplaced action, neglect or indifference can often lead to an infringement of fundamental freedoms or basic rights and a breach of natural justice. Misadministration can mean denial of legitimate dues to citizens. Furthermore, bureaucratic neglect, error or indifference can result in the citizen can be the victim of officials' subverting authority to serve some other purpose than public interest. Even public officers can exercise authority with an eye on gain. This can damage the citizen. In such instances the easiest recourse a citizen can resort to so as to enjoy a right to gain redress will be the Ombudsman. The Ombudsman exists in order to make public administrators and actions responsible and accountable to sovereign people, ultimately. In this way the Ombudsman contributes to turn governance and administration efficient and effective elements, not oppressive but valuable to citizens.

From ancient days institutions somewhat resembling the Ombudsman had been there, in the East or the West. China had officials deputed by early Emperors to report upon the woes of the people owing to maladministration so as to correct wrongs. The Roman civilization too had practices that assured that grievances of the people will be discerned and remedied. Both in the Islamic countries and in medieval Christendom of Europe records prove of rulers trying to ascertain grievances of people and redress them. Grievance resolution is not new.

But the Ombudsman, as it has grown into today, is a more developed and better refined grievance solving institution. Origins of the contemporary Ombudsman can be traced more accurately to the establishment of the institution in Sweden in 1809. This genesis demonstrated that the Ombudsman too was accountable to the legislature, and eventually to sovereign people. Equally importantly, the Ombudsman got transformed into an instrument of redressing wrongs perpetrated on the public citizen by the public executive. The Scandinavian countries led the other countries in forming the system of the Ombudsman to meet

challenges of modern day sophisticated administration. Finland in 1919 and Denmark in 1955 set up their own grievance resolving institutions or the Ombudsman system.

It is apposite to remark at this juncture that in May 1959 the captivating scenic venue of the University of Ceylon in Peradeniya was the meeting point for convening the United Nations Seminar on Human Rights. New Zealand was represented by her Attorney General and Deputy Secretary of Justice. Soon after, in 1962, New Zealand spearheaded Commonwealth countries in establishing an Ombudsman system.

Sri Lanka was inspired to follow lessons learned at the UN Seminar of 1959. Her Prime Minister S.W.R.D. Bandaranaike recognised that liberty, freedom and justice were only relative possessions in comparison to the aggregating enormous powers of the State. He correctly diagnosed that the exercise of discretionary and quasi judicial authority by administrative establishments could tend to degenerate into wrong-doings and the commission of injustices to citizens. Prime Minister, Bandaranaike, turned his thoughts towards the creation of remedial mechanisms to stem the misuse or abuse of massive state power and make it serve the people's interests.

Already there were mechanisms for detecting, criticising and correcting administrative wrongs and official mistakes. For instance, the General Treasury, the Auditor General and the Parliament's Public Accounts Committee and similar mechanisms were there to exercise some control, especially in financial matters, over administration of funds expenditure and revenue.

Such instruments of review and rectification were inadequate to make certain that government service to the public is rendered effectively, efficiently and fairly. Within Parliament, the executive is always under the vigilance of the legislature. Even then individual citizens found it not easy to obtain redressal of their grievances suffered through inefficient or poorly run public services. Legislators found themselves compelled to bear too much with supervision when government was growing increasingly complex complicated and such of activities time consuming. Clearly in addition to the judiciary the need was imperatively felt for an Ombudsman to ensure fair and good public services.

Finally only by 1978 with the enactment of a fresh Constitution a Parliamentary

Commissioner for Administration, otherwise called as the Ombudsman was constitutionally provided for. Article 156 in Chapter XIX charged this Ombudsman with the duty of investigating and reporting upon complaints or allegations of the infringement of fundamental rights and other injustices by public officers and officers of public corporations, local authorities and similar institutions in accordance with the provisions of such laws. The term Parliamentary Commissioner is uniquely peculiar to Commonwealth countries. New Zealand named her Ombudsman so as do Britain and Sri Lanka.

Subsequently the Parliamentary Commissioner for Administration Act No. 17 of 1981 was enacted. It delineated the functions, duties responsibilities and powers that would enable the Ombudsman in Sri Lanka to discharge his responsibility. Wide ranging authority was conferred upon him and this facilitates the efficient performance of the Ombudsman's duties. Any injustice caused to a citizen or the public by the violation of fundamental rights embodied in the Constitution or caused by dereliction of duties, negligence or wilfulness of a public service official or public authority officials can be examined by the ombudsman. Then he could propose condign remedies or redressal. The remedy could mean the restitution of a due right, compensations for losses, rectification of erroneous actions. Public corporations and local authorities too were subject to examination in a similar way by the Ombudsman. He could likewise remedy or rectify the wrongs that surface at the scrutiny into their actions following complaints.

There nevertheless was a problem with Act No. 17 of 1981 because an aggrieved party could reach the Ombudsman only through Parliament. A public petition had to be forwarded by a Member of Parliament to the Speaker of the Legislature. He would refer the petition to the Public Petitions Committee which could then send it the Ombudsman for inquiry and report. This was cumbersome. In Sri Lanka, the single serious problem with the Ombudsman system was difficulty of access to and remoteness of the Ombudsman from the public. Obstacles to access necessarily implied a dilution of the effectiveness of the Ombudsman system as a public grievance resolving mechanism. Naturally petitions were few and access to the Ombudsman was not so common. }

However, under the Presidency of Chandrika Kumaratunge Bandaranaike the present [Parliament enacted the Parliamentary Commissioner for Administration

(Amendment) Act No. 26 of 1994 which provided the citizen direct access to the Ombudsman. Petitions could be sent straight to the Ombudsman by members of the public. The number of petitions addressed dramatically increased. In November and December 1994 the number of petitions according to the old practice amount to only 22 and 171 respectively. No sooner was the amendment to the earlier practice made valid the number of petitions in two months, February and March 1995 totalled 1,393 and 876 respectively. Thus uninhibited and easy access to the Ombudsman was introduced.

Now a further facility to transmit petitions to the Ombudsman has been afforded to the public. The petitioners can present their complaints to the offices of Divisional Secretaries in close proximity to their homes, particularly in rural areas. They in turn would transmit to the Ombudsman. This relieves the petitioners from even seeing out the correct address of the Ombudsman and from appending a postage stamp for posting any petition. Easy access was made even easier.

Doubtlessly, easy and open access is cardinal to making an Ombudsman service really effective. The problem to contend with in this connection is to create public awareness of the office and services rendered by the Ombudsman. This is more important in regard to inhabitants in rural areas, particularly if remote. Recently a small pamphlet has been produced by the office of the Ombudsman in Sri Lanka which details the more important information of value and use to the public. Such small publications about the office of the Ombudsman and services have been made available by the Ombudsman elsewhere, in Canada and Britain. As the pamphlet is distributed free it is another aid to make access to the Ombudsman further effective and freer.

The use of the electronic and print media also helps in spreading an awareness of the Ombudsman. The Television and Radio, the print media and other forms of popular media can be utilized to increase an awareness of the system of the Ombudsman among the public. The Ombudsman could also address groups and associations and even around the country and thereby widen awareness of the office, its functions and responsibilities. To make access to the Ombudsman surer and common the spread of an awareness about the office is vital. The more literate a country is the easier it is to cultivate among people an awareness of the Ombudsman. Awareness creation is indispensable to open access being

strengthened.

The effectiveness of the institution of an Ombudsman is largely dependent on it being cost free to the public. It really should function as "the poor man's Court." The Sri Lankan Ombudsman's services are provided totally free of cost and without any discrimination to the public. This is important considering that Sri Lanka has a multi-ethnic, multi-religious and multi-lingual population. Inquiries and all related correspondence are conducted in the three languages in vogue in the Island ; Sinhalese, Tamil and English. This also ensures access to the Ombudsman service since it creates public confidence in the office and an understanding of its services.

The procedure adopted is also deliberately made simple to be followed because no legal or other representation by another party is permitted to the petitioners. The petitioners send in their complaints which are initially examined by the Ombudsman to discuss whether a prima facie case of a grievance exists. If, evidently, a prima facie case is diagnosed then a copy of the petition is referred back to the public office that had given cause for complaint for observations. This is but fair since an allegation has to be referred to the office that had accounted for it so as to obtain their defence or justification for their action in accordance with equity. A chance to answer should be there so that inquiry does not rest with one sided study.

Such observations, defence or justification is referred back again to the complainant. If the complainant demonstrates reasonably dis-satisfaction with the explanation or clarification afforded then the Ombudsman conducts an inquiry. All concerned parties are invited. At the end of the inquiry which might take one session or more according to the complexity of the complaint, and after all relevant evidence has been examined and views heard, then the Ombudsman arrives at the determination. If the complaint is not proven then the petition is dismissed. But if the complaint is proved then redress is afforded, a wrong is remedied, an injustice is set right in accordance with the tenets of equity. The proceedings are not legalistic but conducted according to the practice and precepts of equity so that fairness and reasonableness prevail. Juridical or legalistic examination is substituted by a fair scrutiny.

The Ombudsman's determination is recommendatory and not mandatory or

legally binding. Often it is executed, although more so with some delay. If it is not executed within a stipulated time period then the Ombudsman obtains a report on the failure to implement the recommended course of action. [Along with the report in terms of the Parliamentary Commissioner for Administration (Amendment) Act No. 26 of 1994, the Ombudsman submits a copy of his determination to the President and to the Speaker of the Parliament. It has been the practice thereafter for the President to order further action which often has resulted in the execution of the determination of the Ombudsman.]

Even from Parliament there can be pressure to have the determination carried out, but this is unusual in the practice of Sri Lanka. There also have been instances where at the initiation of action by the Ombudsman when he calls for a report itself on the petition from a public authority action has been taken to remedy a wrong or redress a grievance. Some petitions thus get settled with hardly any delay.

The Ombudsman in Sri Lanka has to suffer from some constraints. The provision of open and free access to the public since 1995 has accounted for a spate of petitions. Unfortunately since Deputy Ombudsman for which the law provides have still not been appointed all petitions cannot be attended to expeditiously. This has created some discontent among petitioners. The effectiveness of a grievance resolving mechanism such as the Ombudsman is undoubtedly measured by the prompt and delay-free attention paid to complaints. So the need for Deputy Ombudsman in order to dispose speedily of petitions has been emphasized by the Ombudsman in the forthcoming report for the year 1996. The plea may receive the Government's favourable attention. Public access to an Ombudsman would depend to a great extent on the speed with which attention is paid to public complaints. Delay can lead to disillusionment among citizens. They may turn hesitant to approach the Ombudsman. So prompt attention to the public is essential if there is to prevail ready access to the Ombudsman.

[There was an amendment in 1991 to the Parliamentary Commissioner for Administration Act No. 17 of 1981-Act No.19 of 1991.] This piece of legislation raised the retirement age of the Ombudsman from 68 to 70. After that the retiree can accept no public office except with Presidential permission. Generally the Ombudsman once appointed cannot be easily removed except by the President of

Sri Lanka on an address by the Parliament and resolution. Security of tenure is assured. The independence of the Ombudsman is therefore strengthened and his non-partisan conduct is no in jeopardy. He is not subject to the control of any Ministry. Once appointed by the President, an Ombudsman's emoluments are fixed by resolution of Parliament and cannot be decreased during the tenure of office. All these conditions do positively contribute to enhance the Ombudsman's freedom to act solely in terms of his finding in an impartial and neutral manner. It is most important that the Ombudsman should not only be free but also appear to be independent if the office is to command the confidence of the public. It is only confidence of the citizens in the Ombudsman that again could contribute toward a ready and unrestrained access to the office from citizens for redress from alleged public wrongs.

The Sri Lankan Ombudsman is restrained from investigating into certain offences and actions. The Ombudsman cannot inquire into actions of the President who also is immune from legal suit and into actions of Ministers or Deputy Ministers. No inquiries against judicial officers, the Auditor General, the Commissioner of Elections and similar Authorities are possible. Inquiries cannot be instituted into actions which are sub-judice or had been subjected to law suit or, into acts taken on the advice of the Attorney General or the Law Officers. Nor can an Ombudsman re-inquire into any matter which already had been scrutinized by or predecessor Ombudsman. The appointment, dismissal or disciplinary control of public officers do not come under scrutiny of the Ombudsman as there is a constitutionally provided Public Service Commission to do so. Actions taken in terms of laws governing security or in a state where measures are enacted and exercised on considerations of security too cannot be investigated.

These restrictions on an Ombudsman's authority does not necessarily limit the effectiveness or usefulness of the institution. The relatively modest powers and limited competence of the Ombudsman of Sri Lanka do not make the office impotent. Experience indicates that the assistance of the Ombudsman is eagerly and largely sought. Exercising judgment and tact Ombudsman gets his determination often accepted and executed by public officials. The number who seek the Ombudsman's intervention illustrate that the office enjoys public credibility and this contributes to increase public access to the institution. It is trust which drives

citizens to the Ombudsman.

The Ombudsman because of the inquiry he conducts and the determination he issues increases the individual citizen's faith in governmental administration. The activities of the Ombudsman tends to protect the public in their transactions with government institutions. He turns out to be "a citizen's defender" although not an advocate of a complainant's case. Public authorities are compelled to act responsibly and correctly since their misdemeanours can be unearthed by the Ombudsman and corrected. This function naturally subscribes to improve the quality of administration.

The presence of an Ombudsman protects citizens from ill-effects of arbitrary exercise of authority by public institutions. It is ensured through the grievance inquiry and resolving office that public officials act only in terms of regulations and rules and fair norms of conduct that should inform and influence government's relations with the public. The Ombudsman makes certain that the actions of the public officers remain legal and equitable. Even the exercise of discretionary authority needs to be defensible and rational. The Ombudsman definitely spurs government to function better and fairer.

Only that is lawful and correct have to be done by a government authority. The Ombudsman is vigilant and also exercises surveillance over the functioning of public authority. Any allegations of maladministration will prompt the Ombudsman to investigate and report upon the right or wrong of a state institution or official.

Much is done to improve the standards of governance in the country by the Ombudsman. The Ombudsman coaxes the state authorities to correct faults, to remedy wrongs committed against citizens, and to raise standards of management and executive action. Improprieties, unfairness and lethargy or lackadaisical behaviour towards citizens found on examining complaints against public authorities are probed into and recommended to be remedied. Public administration is urged to conform to rectitude and legitimacy. Thereby the Ombudsman betters the quality of governance.

Importantly the Ombudsman in Sri lankan can be a deterrent to, or prophylactic mechanism against wrongful public administration, tardiness in the discharge of public duties and general maladministration. The existence of the Ombudsman makes public officials be they in departments or statutory bodies to act with due

circumspection so as not to error commit wrong. It is clear that no public official likes to be brought to book before an aggrieved party. The Ombudsman forms an impediment to callous, careless or apathetic attention to duty by government officials. More so, would the public authorities be careful enough to avoid misdeeds deliberately committed by them because the Ombudsman can call them to account for an act of omission or commission if it had wrought wrong to a member of the public. The presence of the Ombudsman drives public officials and institutions to improve and be fairer in taking any executive action. This will logically upgrade the quality and standards of governance.

The Sri Lankan Ombudsman is required to submit annual reports to the President and Parliament respectively. Such reports are published. Thus administration comes under public scrutiny itself through the reports, and sometimes comments by the media on the reports. No public official or authority would like this sort of publicity being accorded to misdeeds and wrongs. Although names and other details lead to definite misdeeds and wrongs. Although names and other details lead to definite identification are with-held yet guesses could be intelligently made. This factor too contributes in making the Ombudsman a preventive instrument in relation to bad public administration and enables the Ombudsman to maintain high quality administration and equitable good governance. Confidentiality of the Ombudsman's activity in inquiries are conducive to free inquiry and create more confidence in dealings which help in identifying wrongs and remedying them.

The average citizen of today is overwhelmed and overawed by the complexities of today's public administration, the plethora of rules and regulations underlying administration, and by often a faceless and nameless bureaucracy. In such a context the Ombudsman standing in between the citizens and government acts as an umpire or referee. He ensures fairplay and play according to the rules of the game. Thereby public authorities are goaded to cater to the interests and welfare of the citizens in the course of administration. If this task and obligation is performed effectively as it is being attempted in Sri Lanka then access will be enthusiastically sought by the public to the Ombudsman.

Another final but important point to be made is the service rendered by the Ombudsman in contributing towards improving procedures and processes of

administration. This is done by detecting faults in prevailing practices and system in administration. wherever there are deficiencies the Ombudsman urges a department or service to supply them. When faulty or unreasonable practices or procedures are discovered the Ombudsman wants them excised and better practices and procedures to be followed. Similarly the Ombudsman advises improvements in defective systems or the replacement of unfair rules and regulations with fairer ones Thus maladies are systemic, urged to be eradicated and better systemic changes are urged to be substituted instead. Continuing review of administration and prompting improvements of it time to time is yet another significant contribution to better governance by the Ombudsman. Nothing succeeds like success so will access to the Ombudsman and efficacy of his services be in the eyes of the public ; citizens will judge the Ombudsman according to his performance.

Ombudsmen : Indian Scenario

by Justice H. H. Kantharia,
Lokayukta of Maharashtra, India

In the governmental set up, the critical task of public administration is entrusted to the popularly elected politicians called Ministers and officially appointed personnel called bureaucrats. In legal terminology, they are known as public servants. Good conduct and ethical practices are two cardinal principles of public administration. The expectations of the people for fairness and justice in public administration are the same everywhere irrespective of their race, culture and the structure of the Government.

The responsibility of the Government has increased by leaps and bounds with the growth of concept of Welfare State. It has been perceived many a times that there is a tendency of the ruling class to protect the interests of the "haves" and ignore those of the "have nots." Therefore, it is essential that people should have faith and confidence in the administrative elite and at the same time be assured that any action taken by them is for the overall development of the nation and its people. If the public servants do not resort to arbitrary, capricious, discriminatory and fanciful actions, there could be good rapport between the people and the Government and consequently the greatest good for the largest number of the people could be achieved. Transparent and clear public administration is a "must" for any Government of the time and public accountability is the core and conscience of public administration.

The Administrative Reforms Commission was appointed on January 5, 1966 by the president of India. While dealing with one of the terms of reference, namely, "to consider the problems of citizen's grievances," it unanimously recommended that the Ombudsman type of machinery be set up in India. The Commission recommended two types of Ombudsman i. e. Lokpal at the Central level and

Lokayukta at the State level to inquire into allegations of corruption against public functionaries and for investigation of administrative actions taken by or on behalf of the Government or certain public authorities in certain cases and for matters connected therewith. The Commission had felt urgent need for such institution in view of the inadequacies in the existing system and for introduction of supplementing the already existing agencies like the Courts and Tribunals which were not always within the reach of the common people because of various factors including cumbersome procedures, long delays, litigation cost etc. In addition, the Commission found that there was a vast area of cases arising out of the unjust exercise of executive powers for which no remedy was available. Again, in the context of the oft-expressed public opinion against the prevalence of corruption and for ensuring the highest standards of efficiency and integrity in the public administration and for making administrative wing accountable and transparent, the Commission had underscored the need to set up 'Ombudsman' type of institutions throughout the country.

Accordingly, the Government of India introduced the Lokpal Bills in the Parliament 1968, 1971, 1977, 1985 and 1989 but could not pass the said Bills for one reason or the other. The present United Front Government introduced the Lokpal Bill, 1996 in the Lok Sabha on September 13 last year for setting up the office of the Lokpal with a Chairman and two Members for a fixed term of five years. The Bill is pending consideration of the Indian Parliament. Thus, up to now, there is no national Ombudsman in India.

However, thirteen States in the country have provided for the institutions of Lokayuktas and Upa-Lpkayukas (Ombudsmen and Deputy Ombudsmen) and two States have appointed Public Men's Corruption (Investigations and Inquiries) Commissions to enquire into grievances and allegations of corruption against the public men and functionaries and the matters connected therewith. In some of these States, the institutions are not functioning at present for want of appointments of the incumbents.

The appointments to the office of the Lokayukta and/or Upa-Lokayukta are made by the State Governor who is the executive head. He appoints Lokayuka in consultation with the Chief Justice of the High Court of the concerned State and the leader of the Opposition in the State Legislative Assembly. The appointment of

the Upa-Lokayukta is made in consultation with the Lokayukta.

In some of the States there are no specific qualifications laid down for the appointment of Lokayukta and/or Upa-Lokayukta. However, some of the States have specifically stipulated such qualifications. Normally, those who are appointed to the office of the Lokayukta are the retired Judges of the Supreme Court or retired Chief Justices or retired Judges of the High Courts. Upa-Lokayukta is selected from the lot of the retired administrators and the Lokayukta/Upa-Lokayukta holds office for a fixed tenure of five years.

In order to ensure independence and impartiality, the Lokayukta/Upa-Lokayukta has been debarred from being a Member of Parliament or State Legislatures. In addition, they are also disqualified from holding any office of trust or profit. Keeping any connection with any political party or carrying on business or practising any profession is also prohibited. After retirement, the Lokayukta/Upa-Lokayukta shall be ineligible for further employment under the respective State Governments or for any employment under or office in any such local authorities, corporations, Government undertakings and Government companies or Societies.

The Lokayukta/Upa-Lpkayukta can be removed from office by the Governor for proved misbehaviour or incapacity. However, this procedure is not uniform in all States. But normally provisions are made to remove the Lokayukta/Upa-Lokayukta after an enquiry in accordance with Article 311(2) of the Constitution of India and address by each House of the State Legislature supported by a majority of the total membership of the House and a majority of not less than two thirds of the Members of that House present and voting.

The functions of the Lokayukta/Upa-Lokayukta are to investigate any action which is taken by or with the approval of a Minister or a Secretary or any other public servant referred to in the Acts or notified by the Government in consultation with the Lokayukta. Action means administrative action taken by way of a decision, a recommendation or a finding in any manner and includes wilful failure or omission to act and all other expressions connoting such action shall be construed accordingly. They are also authorized to investigate complaints of allegations of corruption in relation to a public servant if the concerned public servant has abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue harm or hardship to any other person or

was actuated in the discharge of his functions as such public servant or personal interest or improper or corrupt motive or is guilty of corruption or lack of integrity in his capacity as such public servant or is found in possession of property disproportionate to his known sources of income. They are further authorized to enquire and investigate into the acts of maladministration of public servants where such action or administrative procedure or practice governing such action is unreasonable, unjust, oppressive or improperly discriminatory or where there has been negligence or undue delay in taking such action or the administrative procedure or practice governing such action involves undue delay thereby causing injustice or undue hardship to a citizen.

The actions which are ordinarily excluded from the jurisdiction of the Lokayukta /Upa-Lokayukta are those meant for investigation of crime or protecting the security of the State, governing purely commercial relations of administration and actions taken in respect of appointments, removals, pay, discipline, superannuation and other matters relating to the conditions of service of Government servants and grant of honours and awards.

The Lokayukta/Upa-Lokayukta shall conduct investigation in private so that the identity of the complainant and of the public servant complained against is not disclosed to the public or press at any stage of investigation and thereafter. Thus, sufficient care has been taken to reputation and character of the public servant and the complainant. Frivolous or vexatious and complaints made not in good faith are not investigated.

For the purpose of enquiry and/or investigation, the Lokayukta/Upa-Lokayukta may require any public servant or any other person to furnish any relevant information. To achieve this object, the Lokayukta and the Upa-Lokayukta have been assigned all the powers of a Civil Court in respect of summoning and enforcing the attendance of any person and examining him on oath, requiring the discovery and production of any document, receiving evidence on affidavit, requisitioning any public record or copy thereof from any court or office, issuing commissions for examinations of witnesses and documents and such matters as may be prescribed. The proceedings before the Lokayukta/Upa-Lokayukta shall be deemed to be a judicial proceeding within the meaning of Section 193 of the Indian Penal Code. In some of the State Acts, the provision for search and seizure

of documents is also made.

The Lokayukta/Upa-Lokayukta, after being satisfied that an act complained of has resulted in injustice or undue hardship to the complainant or any other person, shall recommend to the public servant and the competent authority concerned that such injustice or undue hardship shall be remedied or redress made within such time as may be specified. The competent authority shall examine the report forwarded to it and within one month, in case of grievances, or the expiry of the term specified in the report, specify the action taken for compliance. However, the time limit for compliance with regard to a report in case of allegation of corruption will be three months from the date of the receipt of the report. In case of allegation against the public servant, if the Lokayukta/Upa-Lokayukta is satisfied that the allegation can be sustained either wholly or in part, he shall report in writing and communicate his findings and recommendations, along with the relevant documents, materials and other evidence, to the competent authority. If the Lokayukta/Upa-Lokayukta is not satisfied with the action taken against the public servant, he may make a Special Report upon the case to the Governor and inform the complainant accordingly. The Lokayukta/Upa-Lokayukta shall also present a consolidated Annual Report on the performance of their functions to the Governor of the State. The Governor, on receipt of such Special or Annual Report, shall cause a copy thereof with explanatory memorandum to be laid before each House of the State Legislature.

Every person who wilfully or maliciously makes any false complaint to the Lokayukta/Upa-Lokayukta may be convicted and sentenced to imprisonment upto three years and shall also be liable to fine. Any act of intentional insult or obstruction of proceedings or bringing into disrepute the Lokayukta/Upa-Lokayukta, while they are conducting any investigation or otherwise, shall be punishable with simple imprisonment for a term which may extend to six months or with fine or both.

Qualifications & Requirements of a Good Inspection System

by Mr. Vli-O-Lah Khobreh, Deputy President of General
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Supervision as an essential pillar for directing the affairs of a country, has a long precedent. Its functioning ways, through the centuries have been gradually transformed. In recent decades its growth has had a considerable rapidity. Every now and then, throughout the world are found, new ways and innovations for inspection. these are of course encountered differently in every country. Some consider inspection as an obstacle for executive affairs of the governments which inflicts unnecessary expenses on public section, while some other are of the conviction that inspection is of high significance.

In this essay, we have tried, to give a brief description of the aims and concepts of supervision, inspection, control, and other pertaining subjects as well.

Practically supervision, inspection and control, are of similar meaning and conception. they are of high importance concerning the principles of management. Their significance due to the public or private organization can not be ignored.


No doubt, because of the ever extension of the size and scope of the administrative of institutions, the extension of the scope of the activities of inspections too are more urgent. As an instance, in our country, Iran, inspection organizations in view of the increase of the population, economic, industrial, cultural, and social development which have necessitated new government administrations are of distinct position.

The principles 54, 55, 174 and of the constitution have realized its importance through establishment of special agents as state audit office, court of administrative justice and general inspection organization.

In fact, supervision and control is a relation between two agents or systems, The result is directing the scope of any agent(that which is inspected) in accordance

with the aim of the inspector system. Consequently each inspection system consists of three components : inspector, inspected, and the relationship network.

Inspector, is the agent who through behavioral messages affects the activity and procedure of the inspected, directing it to the desired and correct ends. On the other hand, that which is inspected, by receiving the connecting messages corrects its ways.

In cultural management, goals of inspections are as below 

- a) To compare what should be done with what which has already been realized.
- b) To analyze past and current procedure for making practical plans.
- c) After comparing the aforesaid items, in case of any difference and deviation, to remedy the correct ones.
- d) To maintain the essential procedure, information obtaining system plans the past and the desired procedure, comparing the costumed differences, deviations and the critical degrees of each one. Then, based upon the final results, urgent remedies for the realization of the aims would be materialized.

According to this definition, inspection has its own distinct concept. Its activities should have a maintained procedure. This implies that, though, at present, in management, for instance control indicates planning, control itself, necessitates, program as well. Broadly speaking, it is quite different from the general planning for a certain organization. As about the former case, the purpose of all the designs for inspection is to be assured of the correspondence of the ends with desired maintained aims. In other words, inspection is to see whether any proceed is according to its executive plan. Otherwise, any deviation should be removed so that it would find no possibility to be repeated in future.

Upon these definitions, it seems the concepts of supervision and control have been relatively clarified. And by potting together the structural concepts and that of supervision, we can make a comprehensive definition for inspection proper : a collection of rules and regulations through which the ways of inspection, investigation, reporting and values of the functions of the organizations due to scopes of their procedures, responsibilities, jurisdiction and those of the officials and functionaries of the whole social and administrative system can be realized.

Any proceeding based upon the social requirements, is put forth as a design or bill to the legislative power, when approved, it would be communicated to the executive power. the executive organizations are obliged to exert it. The inspection units should see whether the aims of the approved rules are realized through the functions of the executive organizations. If not, any executive shortcoming, would be reported to the legal authority. If it is because of any defective rule, the legal remedy would be clearly explained as well.

Here, some points are of high importance

a) Any inspection system should be framed through a special and independent structure

b) The reports should be regularly sent to distinct legal authorities as appreciated.

Upon what has been said before, every inspection structure is of three components : inspector, inspected and the inspection network, thus

a) Inspector is prior to the inspected one, for the message and ordinances are first issued through the legislative power to other organizations. Then the inspection system, controls their procedure.

b) Inspection units are smaller institutions compared with the units subject to inspection. Both in personnel sections and the structural volume as well.

c) Both the inspection structure and the inspected one function as one general system, both components of a whole government system.

Based upon the current rules and procedures of inspection units

1) Control or inspection should be directed to attain certain aims. The management policies should through behavioral, and conceptual aspects of inspection, always end in attaining more improvement in the ways of behavior and procedure of the executive organizations.

2) Culture and concept of supervision have not yet obtained its true position. Both inspector and the inspected one, should find a better understanding of it.

Consequently

a) Control does not imply merely a series of functions, but indeed itself is a small system. Inspection is a special arrangement of functions consistent with

each other, which besides other small systems, ensure the improvement and survival of the whole social system.

- b) Control or inspection does not function merely to see whether the maintained aims have been attained, it implies a mechanism which not only records and removes the deviations, but draws a distinct guide line for the inspected unit to adapt itself to the environment requirements. Usually in inspections, the thought prevails that every unit being inspected may be a wrongdoer, and not does the principle of presumption innocence. This way, no doubt would end mainly and only in discovering errors and inflicting punishments, but not to true guidance and remedy. Consequently, centralization and incredibility would befall the behavior of the executive officials they would hide the facts from the sight of the inspectors. Thus affairs would deviate from the regular procedure. So there would remain no good faith vis-a-vis inspection agents.
- 4) Rules and regulations of inspection organizations are usually of commanding character.

To individuals invited for co-operation and making any possible facility in the process of inspection, no reward would be granted. On the contrary, if any agent summoned, does not co-operates in finding the desired facts during an inspection certain punishment would befall him. In this case, inspections usually cause fear and dread. If supervision or inspection is not thought of as an able arm for guidance, it will never find a firm position vis-a-vis different administrations.

- 5) To threaten the inspected units would surely end in reaction and resistance in the process of control.
- 6) Some supervision organizations, not only hear the complaints, but also ordain certain punishments for wrong doers. They should not have power of investigation and also that of functioning as a court. To have a logical supervision structure we should
- a) analyze all the rules and regulations of any related supervision system fully. Remove any rule causing any deviation from the essential functions of inspection.
- b) Supervision organization should not get involved in political affairs.
- c) Certain financial, administrative and employment rules should be made for inspection organizations.

- d) Control and inspection should keep an eye on proceeds in a way not affecting the regular and inner procedure of any inspected unit.
- e) Inspections should be directed for attaining certain goals.
- f) In order to have effective and acceptable inspection, the aims should be quite clear and known.

These are of course, the structural dimensions of inspecting. there exists a behavioral one too. The supervising organizations should have both organic and practical structure to show whenever urgent flexibility to adapt themselves to new requirements, to have self adaptability and self arrangement. the individuals who run these organizations are in fact the vital agents figuring the characteristics of the whole inspecting structure, they should be trained through attending special educational courses, appointing them from among the committed, able respectable or good morality ones, respecting social values. Inspectors would have :

- 1) Security for their functions as inspectors in reporting the errors found Security from any conspiracy or threat.
- 2) Appraising their deeds and transferring them to new position should be done through certain legal and procedure and office.
- 3) Powers granted to them should be based upon investigation and inquiry, clearly defined as well.
- 4) There should exist a certain legal authority to prosecute any probable wrongdoer inspector.
- 5) The functionaries of these inspection organizations should enjoy suitable welfare status and salary.

Indeed, improvement and remedy of the different organizations necessitate long terms. Foresight and lapse of long terms are urgent factors in appraising the proceedings. It is said that structure is a bridge built among the organization, environment and its functionaries, to improve it, necessitates the consideration of environmental and cultural causes.

The Experience of The Ombudsman in Israel

by Mrs. Miriam Ben-Porat,
State Comptroller & Ombudsman, Israel

In 1949, almost a year after the establishment of the State of Israel, the Knesset (Israel's Parliament) enacted the State Comptroller Law. Israel's State Comptroller is the parallel, in general terms, of the Auditor General, as he is universally known.

It was only in 1971 that Knesset added the functions of a Public Complaints Commissioner-known in other countries as the Ombudsman-to those of the Comptroller.

It should be noted that even before the law was amended, the Comptroller had acted in practice as a Commissioner for Complaints, since the need for such a function was sorely felt in view of the many complaints submitted to the Comptroller by the general public.

The common aim of the Comptroller and the Commissioner is to expose shortcomings in the functioning of the Executive(government offices, government companies, local authorities and others) to the scrutiny of the legislative arm, and thus enable the latter to call upon the audited bodies to mend their ways. The difference between the functions of the Comptroller and those of the Commissioner lies in the fact that the Comptroller deals with the executive's performance of its functions in general(while examining essential details), whereas the Commissioner deals with complaints from individual citizens who feel they have been wronged by unjust or unlawful acts on the part of the authorities(or those acting in their name and on their behalf). The Comptroller's objective is to improve administrative efficiency and management, whereas the aim of the Commissioner is to protect the man in the street, the ordinary citizen, against bureaucratic pulverization.

In Israel, the functions of the State Comptroller and those of the Public Complaints Commissioner have been vested in one person, which is apparently

unique. The advantages of this system will be explained at a later stage. Possibly the same advantages, or most of them, could be attained by to separate institution, if they co-operated and coordinated their activities, in order to obviate incompatible, or even conflicting, decisions.

The conclusions of the Comptroller, which are submitted in annual reports to the Knesset and given wide publicity, and those of the Commissioner are not enforceable and are therefore, mere recommendations. However, the Comptroller's conclusions and recommendations carry great public weight, and the State Comptroller's Office enjoys complete confidence as a non-political institution entrusted to a person of a prestigious status. As a result, the cases in which the recommendations are implemented are very rare indeed.

The Comptroller-Commissioner is authorized to appoint his own staff, to give them instructions and to dismiss them. In the joint institution there are 500 employees, about one-fifth of whom work in the Commissioner's office. In addition, the Comptroller-Commissioner may, to the extent that he deems necessary, avail himself of the assistance of persons who are not members of his staff. In practice he uses this power, whenever necessary, to receive expert professional advice in medical, engineering and other such matters, where there is no justification to employ them on a permanent basis, as part of his staff.

The Commissioner receives between 7,000 and 8,000 complaints every year, of which approximately 1,500~1,700 are found justified.

The examination of the complaints is inquisitorial. The Commissioner may investigate a complaint in any manner he thinks fit and is not bound by rules of procedure or evidence. He must, of course, comply with basic principles of natural justice. Unlike the Comptroller, he may not initiate an investigation without a complaint. If there is no provision of law or judicial ruling establishing the norm of behavior in any particular case, the Commissioner may lay down the norm, and having done so, the norm is applicable in all future cases unless and until it is overruled by an enactment or judicial decision.

The Aims of the Institution of Ombudsman

✓ To no small extent, the need for the institution of Ombudsman is the

consequence of the expansion of bureaucracy and the increased administrative interference in the daily life of the individual citizen. This creates a wide field for friction between the civil servants and the public at large. The modern state supplies the citizen with a wide variety of services, such as education, social welfare, housing, health, transport, employment, etc. An important source for the financing of these services are the taxes of various kinds, the levying and collection of which are also forms of interference, albeit unavoidable. In order to implement these variegated functions, the government must maintain a large management apparatus. Not only are the areas of government-citizen conflict manifold, but the factor of conflict is also high. Modern administrative law enshrines certain rights which the government must respect, such as the right to receive equal treatment, or not to be discriminated against. Other basic rights of the individual, such as freedom of speech, to demonstrate and organize, to practice the profession or trade of one's choice etc, must not be infringed in the absence of an express provision of law authorizing it. Even such a provision must be interpreted as narrowly as possible. There are countries in which these basic rights are protected by an iron-clad written constitution (which requires a special majority and stringent conditions in order to alter or annul any of its provisions). In Israel, like in England, there is still no written constitution. But the Supreme Court has, from the very beginning of the establishment of the State, laid down and reinforced a series of principles in the light of the Declaration of Independence, proclaimed at the establishment of the State, in 1948, in which the government undertakes to grant equality of rights to the people of Israel, irrespective of religion, race and sex. The Supreme Court has held further that the Declaration of Independence has a moral force by which the courts of all instances must be guided. It is true that Israel's questionable integration into the geographic area in which it exists makes the realization of this aim in the Declaration somewhat difficult, but the democratic aspirations of Israel are deeply entrenched in the conscience of the people and of the judiciary.


However, it is not sufficient that the basic rights of the individual be recognized by law. What is needed, in addition, is that the individual who feels aggrieved by the actions of the administration should have channels of appeal against such actions. The channels are varied: instances of objections and appeals against

specific decision, appeals to higher hierarchies to overrule objectionable decisions, applications to courts or tribunals and, in the last resort, petitions to the Supreme Court sitting as a High Court of Justice. Proceedings before the latter are, for courts of law, comparatively short (and in urgent cases even immediate) and the individual can receive, in appropriate circumstances, an interim injunction preserving the prevailing situation until the conclusion of the proceedings, after which the High Court is empowered to issue an order absolute against the respondent. As already noted, the High Court of Justice has created a kind of code of civil rights and has ruled, *inter alia*, that a public official is a servant of the people, not its master.

In addition to the channels enumerated above, the need was felt for another independent, extraneous body, to deal with the complaints of the citizen, for the following reasons, among the others: Firstly, the improper attitude towards the citizen by itself is not always considered as a sufficient ground for petitioning the High Court (e.g. the right of the citizen to be treated with respect and consideration); secondly, the legal formalities applicable in the High Court of Justice often necessitate hiring the services of an experienced lawyer, which are expensive—this has a deterrent effect on those of limited means, particularly in cases where the wrong suffered does not appear to justify the pecuniary outlay; and, thirdly, the procedure involved in judicial proceedings usually hampers expedition in receiving relief. The High Court of Justice operates in accordance with the adversarial principle which requires hearing both sides to a dispute, while refraining from inviting evidence at its own initiative. There is a general presumption that the administration acted properly, so that the onus to rebut it lies with the applicant who has to prove his petition justified. The presumption of proper administration, and sometimes even the right to refrain from revealing information, works to the advantage of the administration. Thus, even though the High Court is a fortress of justice, this does not relieve the applicant of the duty to show that his petition is factually and legally well-founded. In such circumstances it often happens that the citizen finds himself in the position of a little man, against the powerful administrative machine.

It is against this background that the importance of the institution of the Ombudsman becomes conspicuous, both in Israel and elsewhere. It is worthwhile

mention that in France, where in the elsewhere. it is worthwhile mentioning that in France, where in the past the opinion was prevalent that an Ombudsman was superfluous, the attitude has changed and in the year 1973, the institution was introduced, which indicates recognition of the need for it, in addition to the administrative courts. In order to fulfill his functions the Ombudsman must comply with certain conditions : access to him Ombudsman must be simple, informal and free of charge ; he must be in a position to conduct his investigations efficiently and speedily ; he must have free access to all public documents and authorities and to require officials to submit to examination ; he must be entitled to protect a wide range of rights ; and he must be independent from the Executive, in order to inspire confidence in the citizen who will need his help against the administration. If such basic conditions and help against the administration. If such basic conditions and principles exist, then there is every justification for the existence of the institution of Ombudsman.

I will now discuss the institution of Ombudsman in its Israeli context. 

The Independence of the Public Complaints Commissioner

It will be recalled that the Israeli State Comptroller is also the Public Complaints Commissioner. The Comptroller-Commissioner is elected by the Knesst in a secret ballot for a term of five years at a session convened exclusively for that purpose. He is responsible only to the Knesset and is not dependent upon the Government. Expression is given to the responsibility of the Comptroller-Commissioner to the Knesset in several ways.

Firstly, the Knesset is empowered to remove him from office by a resolution carried by a two-thirds majority of those present and voting, upon the demand of at least 20 members of the Knesset, submitted in writing to the Constitution, Law and Justice Committee of the Knesset, and upon the proposal of that Committee, after he has been given an opportunity to be heard. Secondly, the Comptroller-Commissioner must submit to the Knesset an annual report on his activities. The State Audit Affairs Committee will consider this report and submit to the Knesset its conclusions and proposals for approval. Thirdly, while in general a complaint to the Commissioner can be made only by the person aggrieved(or his attorney), an

exception is made for members of the Knesset who may complain to the Commissioner about acts injurious to other persons without their own personal involvement.

The Comptroller-Commissioner's budget is determined by the Finance Committee of the Knesset upon the proposal of the State Comptroller. It is published together with the State budget but does not constitute part of it.

By making the Comptroller-Commissioner responsible to the Knesset, expression has been given to the special status of the Comptroller-Commissioner as the long arm of the Knesset.

At the same time the Israeli legislator fortified-at first by ordinary legislation and later in a "Basic Law," due to be part of the future constitution of the State-the principle of independence of the Comptroller-Commissioner from the government-the executive arm. The Basic Law states explicitly that "in carrying out his functions the State Comptroller shall be responsible only to the Knesset and shall not be dependent upon the Government."

Combination of the Comptroller-Commissioner's Functions

In Israel the Commissioner fulfills a function which is separate from audit, although both functions are vested in one person. As a Commissioner, he concentrates on providing relief for the citizen and as Comptroller, he deals directly with improving the administration of the State, by submitting to Parliament reports exposing shortcomings and defects in the operations of the executive.

Despite these differences there is a close mutual relationship between both functions. When a series of complaints-and sometimes even an isolated one-indicates a particular trend which justifies an inspection by the Comptroller, he will, in his capacity as the Commissioner, provide the complainant with the relief which he seeks, while in his capacity as the Comptroller he will examine the conduct of the administration.

* In this way the Israeli legislature found a golden mean between the different approaches in other countries. In Germany, for example, the institution of the Ombudsman is in practice one of the parliamentary committees. In England, on the other hand, complaints may be submitted to the Parliament. The same situation exists in France. In other countries, such as Canada for example, and in several states in Australia, the Members of Parliament have no standing insofar as the submission of complaints is concerned.

Below are some examples

- (a) A large number of complaints submitted in connection with the failure to receive matriculation results in good time provided a good reason for examining the system of matriculation examinations.
- (b) Following upon a complaint to the Commissioner it was discovered that a person who had received housing aid had used the money to buy a vacation home. The matter was subsequently examined by the Comptroller.
- (c) Following upon several complaints in connection with the Execution Office's handling of judgments in cases of unhonored bills of exchange and checks, the Comptroller examined the operation of the Execution Office and recommended a method for relieving a substantial part of the work load (by finding a different solution for checks of small denominations which were the main cause of the bottleneck).

The wide scope of the joint function of the Comptroller and the Commissioner is most apparent in, for example, the case of arrests by the police. The Comptroller, in an examination of this subject, found many cases of unjustified arrest and detention. Parallel with the general inspection by the Comptroller of the subject-after which norms of behavior were laid down-the Commissioner examined various specific complaints and provided the complainants with the required relief.

Thus the combination of both functions provides a reliable source of information for the Comptroller when deciding what subjects to examine. It also prevents their "speaking in two voices" regarding the interpretation of the law, or the fixing of norms of behavior for the executive authority.

Questions of law and norms are always presented for decision to the Comptroller-Commissioner in person, in order to obviate any such chance of speaking in two voices.

* The judiciary in Israel, as in several western countries, also applies the principle which denies speaking in two voices. For example, if a person is found guilty of being an accessory to an offence, and the alleged main offender is later apprehended, tried and acquitted, then the verdict against the accessory is cancelled.

The Commissioner's Qualifications

In Israel, as in many other countries, the Commissioner is not required to have any special qualifications in the fields of law or public administration, or in any other field, although it is obvious that the Commissioner has to take into account the factual circumstances of each case. The absence of any specific qualification demand provides for a great deal of flexibility in the election of a Comptroller-Commissioner. It is possible, for example, that a sociologist or an economist could fulfill the function successfully, aided by suitable legal advisers. Nevertheless, in Israel, as in many other countries, the office of the Comptroller has been filled exclusively-in the last decade-by persons with a legal education, including judges and prominent members of the legal profession.

The legal orientation influences the speed and productivity of the fact that the Commissioner is a prominent jurist also makes it more difficult for the bodies complained against to ignore his decisions which (as already pointed out) are not enforceable and are therefore in the nature of recommendations only. For example, in a recent dispute between the Attorney General and the Commissioner concerning a legal question relating to the powers of the police, the Attorney General finally accepted the approach of the Commissioner. In actual practice all the recommendations of the Commissioner (but for rare exceptions) are implemented.

Who Can Complain

The law provides that any person may submit a complaint to the Commissioner. According to section (4) of the Interpretation Law "person" includes any association of persons. So the Commissioner can, and does, receive complaints not only from the little man but also from business corporations, some of them large ones (such as, lately, the Kupat Holim Clalit, the General Health Fund, against the Ministry of Israeli citizens or residents, so that any person, including residents of the administered territories, is entitled to complain. Despite the fact that the law provides that the complainant must be the person aggrieved, a natural guardian may complain on behalf of a minor or an incompetent person.

On the basis of the rule that "a man's agent is like himself" the complainant may be represented by a lawyer. As already mentioned, a member of the Knesset

may complain to the Commissioner against an act injurious to another person, although till now it was always with the consent, even will, of the aggrieved person. Therefore, there was so far no need to decide whether the Commissioner has the power to examine a complaint submitted by a member of the Knesset against the will of the person aggrieved. In any event, as Comptroller he does have authority to examine the conduct of the administrative body complained against. But it is a nice point, the answer to which is, *prima facie*, negative, since there would appear to be no reason for not respecting the wishes of the person directly injured, who alone should be the judge as to whether the very submission or examination of the complaint would not be detrimental to him. As is well known, in field of litigation the owner of the right which has been violated is the only one entitled to bring civil claim, or to refrain from doing so. The position is different, of course, in the case of a criminal offense, where the public is deemed to be the injured party, and the desire of any individual person to forgive the wrongdoer is irrelevant insofar as the State's right to bring an action against him is concerned (as distinct from the severity of the sentence which could be mitigated by the victim's forgiveness). It may be argued, on the contrary, that every complaint submitted by a member of the Knesset against an administrative body's misfeasance should be examined for reasons of the public good, despite the objections of the person directly injured thereby. But if that is the case, then (as already noted), the Comptroller can examine the essence of the subject. Incidentally, the right to complain to the minatory ombudsman or to the police and prison officer's ombudsman is vested in Israel not only in the injured person himself but also in close members of his family. The reason behind this lies apparently in the consideration that a policeman or soldier might be reluctant to complain against his officers or superiors.

Submission of Complaints

A complaint may be submitted in writing or taken down according to the complainant's oral statement. In both cases it must be signed by the complainant. The Commissioner has five offices at which complaints can be received orally. What is special about these offices is that they afford assistance to the complainant

in wording and phrasing can also provide instant relief to a complainant whenever necessary. In addition, the face-to-face encounter can facilitate and expedite an examination of whether or not there is any ground for the complaint. The submission of a complaint is free of charge and does not have to comply with any formalities. As a result, the way is open to each and every individual, including the indigent and the ignorant, to complain to the Commissioner. However, as has already been pointed out, the complainant must submit his complaint of his own free will and his refusal to do so or his objection to anyone else's doing so on his behalf will be respected.

The relief which a complainant receives is not necessarily in money, but can take the form, for example, of a mere declaration that his complaint is justified and that the officials concerned did not act properly. Occasionally the Commissioner will recommend that the complainant be paid compensation and may even suggest the sum to be paid. In addition, he will point out how the body complained against should have acted in the particular case under consideration or will establish a general norm of behavior for the future. It should be noted that the complainant need not specify what relief he seeks. As already stated, the complainant must sign his complaint, for anonymous complaints are not examined (although they are not always completely valueless, for they sometimes afford the Comptroller cause for instituting an investigation). A complainant's identity is revealed only to the body complained against.

In one case (reported in Annual report No. 15), a complaint was submitted against the conversion of a dwelling into a synagogue. There was a leakage from the office of the municipal council complained against, which caused great distress to the complainant. The Commissioner held that any body complained against is bound to ensure that the complainant's name and the details of his complaint are not divulged to anyone not empowered to receive them.

Complaint Against Whom

The list of bodies against whom complaints may be brought in Israel is amongst the most extensive in the world. In fact there is almost no public body whose acts cannot be complained against. Complaints may be brought against every

government office, every enterprise or institution of the State, every local authority, government companies, the Defense establishment in all its facets, administrative aspects of the courts and Knesset, and more. The complaint can be directed against any body which receives government support, and these are many in number, or against any body in the management of which the government has a share, even though a small one.

Amongst the bodies and subjects which are not eligible for examination are the President of the State, who is immune also to judicial control, the Knesset per se and the Government as a body, as distinct from any individual Minister in his capacity as head of a government office. No complaint may be brought against a judicial or quasi-judicial decision, and against any matter pending in the courts, or which has been decided in essence by a court. If a court action is brought during the Commissioner's investigation of a complaint, the investigation will be terminated. The Israeli legislator, the investigation will be terminated. The Israeli legislator has sought to leave any matter pending in the courts within the jurisdiction of all instances of the courts without any outside interference. And where the complaint has been brought before an action is filed in the courts, the legislator has seen to it that there should be no "speaking in two voices." The principle of finality of litigation also requires that a matter which has been finally decided in court should not again be contested, and certainly not before a non-judicial body.

Complaints of soldiers, police or prison officers with regard to service arrangements and terms of service or discipline in their respective bodies cannot be investigated by the Commissioner because the legislator has provided for them separate Ombudsmen. These Ombudsmen deal with matters of "service arrangements and terms of service or discipline" of the above mentioned complainants. Outside this ambit, there is nothing to prevent a soldier or policeman from complaining to the Commissioner.

Recently, Ombudsmen have been appointed by law in a limited number of public bodies, their function being to investigate complaints against those bodies. their function does not derogate from the powers and status of the Public Complaints Commissioner. If a person is dissatisfied with the decision of the internal Ombudsman he is free to lodge a complaint with our office. Section 48 of

the State Comptroller Law states.

"The provisions of any law according to which there shall be appointed in an inspected body a person, whose function is to investigate complaints against that body, shall not derogate from the powers and status of the Public Complaints Commissioner under this law."

There are also some voluntary "Ombudsmen." Amongst such are "Ombudsmen" of local authorities and (lately) one for the "Bezen" company (which is the national electronic communication monopoly).

Complaining to such Ombudsmen is like complaining to the administrative body which allegedly caused the wrong. If they succeed in settling the disputes, the matter is settled all to the good; if not, then there is nothing to prevent the complainant from turning to the Commissioner. A preliminary complaint to the offending body is always desirable, and the High Court has in many cases demanded that to be done before a petition is brought before it.

Discretionary Powers of the Commissioner

A matter in which a decision has been given and against which an objection or appeal can be brought under any law on condition that it is not a matter which is pending in a court or tribunal or in which a court or tribunal has given a decision with regard to the substance thereof may be examined by the Commissioner, if he finds that there is a special reason justifying it. This applies also to a complaint filed after a year has elapsed from the date of the act to which it relates, or from the date on which such act became known to the complainant, whichever is later.

In other words, if there is a decision of a court or tribunal regarding the subject of a complaint, even if no appeal or objection has been filed against it, the Commissioner may not investigate it, as in the absence of any appeal or objection the decision of the court is final. On the other hand, if the complainant could have filed an appeal or objection against a decision which does not enter into the substance of his action, but did not do so, there is nothing to prevent him from turning to the Commissioner. If for example, a plaintiff brought an action in court

and it was dismissed in limn as failing to reveal any cause of action, then the plaintiff, instead of appealing against the lower court's decision, can submit a complaint to the Commissioner regarding the same matter, and if the latter finds a special reason for justifying it, he can investigate the complaint.

Here too the legislator was careful to prevent talking in two voices. The provision against investigating a complaint brought more than a year after the act complained against was committed or became known to the rules of latches. A petition to the High Court of Justice is usually dismissed, in many cases, on grounds of latches after a much shorter period than a year. Here the legislator has been generous in allowing the Commissioner the discretion to investigate a complaint even after the period of prescription has elapsed.

A special reason for justifying the investigation of the above complaints would be (inter alia) the seriousness of the act complained against, its frequency, the extent of the injury to the complainant and special circumstances. In the case of a complaint which has been unduly delayed, the Commissioner would weigh up to what extent an investigation would still be of value and if the complainant had any reasonable (albeit weak) explanation for the delay in submitting his complaint. As usual, the decision not to investigate a complaint must be given to the complainant in writing and contain the reasons underlying it. The citizen is often interested in getting a sympathetic hearing no less than in getting relief. A convincing explanation could therefore satisfy him that at least the matter had been considered on its merits and with due attention.

The Commissioner may investigate a complaint in any manner he thinks fit and he is not bound by rules of procedure or evidence. If the matter complained against has been rectified, or the complainant has withdrawn his complaint, the Commissioner may (but is not bound to) discontinue the investigation. Here, as in judicial proceedings, the legislator distinguishes between the citizen's right to bring an action or to the complaint and the situation which is created at the action on the complaint has been brought. When a complaint has already been submitted, a withdrawal is not automatically recognized, although in most cases the examination is discontinued. However, sometimes the body complained against (or the defendant in a court case) is interested in having the matter thoroughly aired so that it, or he, can be cleared. A just balance of interests between the two parties requires that the

Commissioner, or the judge, exercise his discretion according to the circumstances.

Complaint About What

The subject of a complaint may any or omission contrary to law or done without lawful authority, or contrary to good administration, and even an act that, although lawful, involves a too inflexible attitude or flagrant injustice. But as already noted, only the person aggrieved by the act may complain, unless the complaint is brought by a Member of the Knesset. The framework for submission of complaints is therefore very wide, much more so than for filing causes of action in the courts of law. The range of rights, whose violation would give cause for submitting a complaint to the Commissioner, covers every right recognized by law, such as the right to contract, to receive compensation, to receive proper normative treatment from the public administration and, in addition, the right not be treated with inflexibility or flagrant in justice. A civil servant is there for required, by implication, not only to fulfill his duties, but to do so with understanding for the feelings and sensitivities of the citizen who requires his services, and refrain from insulting and inconsiderate behavior. Norms of conduct and basic principles according to which the administration must act, which are laid down in law, or by the High court of Justice, are binding on every one, in clouding Commissioner. but where no norm of conduct has been laid down in one of these two ways, then the Commissioner may do so, after which any infringement of them would constitute a cause for submitting a complaint to him.

Relief

As explained above, the complainant is not required to specify what relief he seeks, although that is desirable. The relief can, but need not, be pecuniary, depending upon the nature of the injury and the violation of the lawful right. In the case of an act which should have been performed, or should have been performed differently from the way it was, an instruction will be given requiring the act to be properly performed in so far as possible. Occasionally the relief will be only in the form of justifying the complaint, although the status quo ante cannot be restored. Even this justification constitutes relief to a citizen interested in having

established the fact that the administration had not treated him properly. A decision of this nature is often accompanied by the establishing of a norm for future conduct. Sometimes pecuniary compensation is awarded for inconvenience and suffering caused to the complainant.

Exposure of Acts of Corruption

There is one exception to the unenforceable status of the Commissioner's decisions : the protection afforded to a public official who complains about acts of corruption committed in the body in which he is employed. the public at large has an interest in the disclosure of corruption, and forewarning of such corruption can be justified not only as a noble act also as fulfillment of a moral duty, plain and simple.*

As a result of several cases in Israel where exposures of corruption had been "punished" by their superiors, a private member's bill was tabled in the Knesset in 1979 in order "to prevent a situation whereby a public servant who complains against corrupt or unlawful acts is punished."

Following upon an in-depth study by a Public Commission, a provision was introduced into the law, in 1981, which vests the Commissioner with the power to defend public officials who disclose acts of corruption. Why this power was vested precisely in the Comptroller-Commissioner is explained by the fact that "he is closely acquainted with public administrative procedure, audits it and also lays down norms which should be binding and acceptable in proper public administration." Anyone who works in one of the bodies subject to inspection by the Comptroller(enumerated above) other than a police officer, prison officer or soldier is entitled to the protection by the Commissioner, on condition that he was directly injured by the act of a superior in reaction to his reporting, in good faith and in accordance with proper procedure, any acts of corruption committed in the body in which he is employed. "Good faith" has been interpreted by the

* Sissela Bok, "Blowing the Whistle," in J.L. Fleishman, L. Liebman & M.H. Moore(eds.), *Public Duties : the Moral Obligations of Government officials*(Cambridge, Massachusetts/London, England : Harvard University Press, 1981), p. 204.

Commissioner as meaning the subjective genuine faith of the complainant in the truth of his allegations and of the facts upon which he based them.

Israel Law(as distinct from the American Whistle Blowers Act, 1978) does not demand that the employee's faith be "reasonable." But it is obvious that unreasonability could point in the direction of absence of genuine faith on his part.

The disclosure of corruption must be unconditional. It was held, for example, that where an employee would refrain from disclosing the acts of corruption if his contract with his employers was renewed, then having disclosed the corruption, because his contract was not renewed, then having disclosed the corruption, because his contract was not renewed, does not entitle him to relief.

The provision with respect to the complaint's being submitted "in accordance with proper procedure" is intended to preserve the organizational structure of the body by which the complainant is employed. Leap-forging the hierarchy when disclosing the corruption, without any obvious justification, would indicate a lack of confidence in his superiors, as though they were not fit to be included in the revelations. And turning to an extraneous body, even though it be the Commissioner or the police, without first trying to clarify the matter within the organization itself, where there is no obvious justification for it, would negate the loyalty which an employee owes to his superiors and harm the delicate web of work relations in the body employing him.

The protection of the Commissioner has been recently extended to the internal auditor of an inspected body, who has been removed from his post by his employer in reaction to his activities in fulfilling his function as an internal auditor.

In order to safeguard the rights of employees, the Commissioner may issue any order, including a provisional order. Where the complaint related to the dismissal of the employee, the Commissioner may order revocation of the dismissal or the award of special compensation to the employee, in money or in rights.

The Commissioner can also order the transfer of the employee to another post in the service of his employer.

Since the above mentioned amendments were introduced, approximately 160 complaints have been received from employees requesting the Commissioner's protection. Two dozen provisional orders were issued but only in about half of these cases were the order made absolute.

In this context the law provides that an order of the Commissioner is binding, and any person who contravenes it is deemed to have committed a disciplinary offense. It is doubtful whether, in face of the above provision, the order is enforceable by way of contempt of court, but the question has never been put to test, for the Commissioner's office has not been confronted with any case of refusal to comply with an order.

Summation

During the twenty five years of its existence the institution of Comptroller-Commissioner in Israel has become a valuable instrument for the protection of the rights of the individual against the bureaucratic machine. The importance of this protection grows as the points of dispute between public authority and the man in the street increase. The simple procedure and the absence of costs have made the approach to the Commissioner very attractive. The mutual exchange of information between the Comptroller and the Commissioner is to the great advantage of both who, despite their different functions, aspire equally to improve the orderly management of the administration, which is in duty to act as the servant of the public and not as its master. Proper management of the administration contributes towards the entrenchment of democracy.

Some people are of the opinion that the independence from the Government has turned the Comptroller-Commissioner into a fourth governmental arm as an addition to the three traditional ones (the Legislature, the Executive and the Judiciary). Others regard the Commissioner's office as the long arm of Parliament (the Knesset). One way or the other, the fact is that the Commissioner's office has become an integral part of the governmental network and occupies a well-deserved place in the democratic process.

Miriam Ben-Porat

The Systems of Administrative Counselling and Administrative Counsellors (Speech Draft)

by Hisao Tsukamoto, Councillor, Japan

Introduction

Mr. chairman, distinguished delegates, ladies and gentlemen, May I express my appreciation to the Ombudsman of Korea for inviting me to this Second Asian Ombudsman Conference and awarding me the opportunity to make a presentation on the systems of administrative counseling and administrative counselors in Japan. From my personal experience of organizing a similar conference in Tokyo three years ago with Professor Kamada, who is also here morning, I think I know how difficult as well as time-and energy-consuming it is to prepare and manage a conference of this scale. This Second Asian Ombudsman Conference in Seoul has already let me witness the immeasurable administrative resources and superb administrative skills of the Ombudsman of Korea and other supporting organizations, and also how intent the Government of Korea is on the realization of democracy and fairness in the operations of the government. [The Administrative Inspection Bureau (AIB) in the Management and Coordination Agency (MCA) (called the Administrative Management Agency before 1984 reorganization) which is an independent organization of the Prime Minister's Office and headed by a Minister of State (member of Cabinet) as its Director-General has two distinct functions of administrative inspection and administrative counseling carried out by its 1,200 staff. They together provide an effective system of administrative supervision and relief, ensuring that public administration is conducted in a democratic, effective, efficient, and fair manner, protecting the rights and interests of the citizens, and thereby securing the trust of 120 million people of Japan in their government.

Japan has a parliamentary system of government. The government is held accountable to the public through the Diet. The Courts and the independent Board of Audit are other systems to ensure administrative accountability.

The administrative inspection and the administrative counseling are the functions within the executive branch of the government to hold the administrative organs accountable to the public. They are now inseparable parts of the total system of accountability in the government by supplementing the limitations of traditional mechanisms provided by the legislative and judicial branches of the government in the face of increasing size and complexity of governmental functions.

Of these two important functions, I will discuss administrative counseling and the accompanying system of administrative counselors this morning, as it has more relevance to the typical function of Ombudsman and similar institutions in most of participating countries.

I. Administrative Counseling and Administrative counselors

A. Systems

The administrative counseling ("mediation of administrative complaints" by the provision of law [1]) was started in 1955 as people's complaints received in the process of administrative inspections had become so numerous that it was judged necessary and warranted to handle them under a separate procedure. Starting out as an operation without express statutory authority, it was made statutory function of the Administrative Management Agency in 1960 by a unanimous vote of the Diet.

Then in 1961, the system of administrative counselors was introduced, also as an operational arrangement initially, for the purpose of broadening the system's base and enhancing the accessibility to the people of administrative counseling service. In 1966, the Administrative Counselors Law was enacted to give the activities of the administrative counselors a solid statutory base [2]. The system dramatically improved the people's access to the administrative counseling system both in geographic and psychological terms.

The Administrative Counseling today is an activity in which the AIB field offices and the 5,000 administrative counselors (distinguished citizens under

commission by the State Minister for MCA and located in every municipalities) throughout the country receive citizen's complaints about the actions of the government agencies and bring the matters to a satisfactory conclusion through mediation and other statutory means.

B. Operation

Under the system of administrative counseling, a person may file a complaint to the 50 field offices of the AIB. A person may also bring the complaint to the administrative counselor in the area at their residences or at the counseling stations regularly or at appropriate times opened in the municipal offices or other public places. There are also Administrative Counseling Centers opened in the department stores in large cities.

Complaints can be filed free of charge either by phone, by letter, or by visit. The confidentiality is guaranteed.

Regarding the complaint received by the AIB field offices, the staff (numbering 200 nationwide) will study the background, confirm the fact by making site visits and requesting materials and explanations from the government agency in question if necessary, and if he finds that the complaint is well-grounded, he will proceed to mediation either in writing or by word of mouth, formally requesting the review of the case in question and encouraging a quick and satisfactory conclusion, attaching the proposal for possible remedy if considered necessary to facilitate a solution. In many cases, satisfactory solutions are obtained by simply forwarding the complaints to the agencies concerned.

As regards the complaints received by the administrative counselors, what an administrative counselor can do is statutorily distinct from what an AIB official can do. In receiving a complaint, an administrative counselor gives advice to the complainant about the matter in question and bring the complaint to the attention of the government agency in question for possible remedy, and if necessary inform the matter to the AIB for its assistance in providing solution through its mediation. In other words, the administrative counselors as private citizens cannot exercise mediation.

In actuality, however, many of the cases brought to the administrative counselors

are resolved by their hands. They are resolved typically by the administrative counselors studying the background and getting in touch with the government agencies concerned, with the latter subsequently reviewing the cases and taking corrective or remedial measures. But many cases are also closed by the administrative counselors advising the complainants that their cases could not be justified, or by furnishing appropriate information on government services, after reviewing the claims. In view of these important roles the administrative counselors play, the AIB headquarters and field offices give maximum assistance to them in acquiring basic knowledge about the systems and operations of public administration as well as skills in dealing successfully with the complainants and the government agencies.

C. Performance

The system of administrative counseling is very comprehensive and open-ended. People may bring their complaints regarding any activities of the national government agencies or public corporations. The activities of the local authorities and other organizations are also covered by the system as long as authority for such activities is delegated by the national government or such activities are wholly or partly subsidized by the national government. There is no restriction on the subject of complaint except that cases falling into a number of categories such as those pending in courts will not be acceptable for mediation.

In 1995 fiscal year (April through March), a total of approximately 230,000 cases were received under the system. Of them, about 89,000 were outside the jurisdiction (affairs of local governments, disputes between neighbors, etc.) , Of the rest, about 100,000 turned out to be those seeking advice, explanation, or information on the laws, regulations, and procedures. Finally, in about 44,000 of the cases, the complainant sought solution of grievances against government offices or improvement in administrative operations. These may be called the "grievance cases".

The grievance cases are scattered among broad areas of national public administration and it is very difficult to discern a strong trend and identify one big villain. In 1995 fiscal year, the program areas which had the larger share of the

cases were: roads; traffic safety; environmental health; rivers, dams, coasts; medical care and welfare of the elderliness; and urban planning.

Is the system of administrative counseling actually solving the problems of the complainants? On this count, the reports are encouraging. Of the 44,000 grievance cases, 30,000 were those seeking concrete remedy (other 14,000 were found to be those with no specific harms to the right or the interest of the complainant and duly treated as the opinions for the improvement of operations of government agencies in question), of which 85 percent lead to the solutions that satisfied the complainants [4].

2. The Characteristics of the System

There seem to be several important characteristics the systems of administrative counseling and administrative counselors have in the context of an effective grievance handling system in the government. They are: broad jurisdiction; easy access; credibility; and preventive remedy.

A. Broad jurisdiction

As mentioned earlier, the scope of administrative counseling covers all areas of national government administration. In addition, the fact that many of the activities of the local governments are either under delegation or funded by the national government means that most of the daily problems the citizens encounter are covered by the system of administrative counseling under the MCA. In other words, when a citizen has something to complain about the government, all he/she has to do is to get in touch with the AIB or an administrative counselor nearby.

B. Easy access

A grievance handling system is able to function only when it is easily accessible by the ordinary people. In Japan's administrative counseling system, the complainants can bring their cases to the administrative counselors in their neighborhoods in addition to the field offices of the AIB. The administrative counselors are distributed under a formula that there is at least one in each area of

municipalities, with additions made in proportion to the size of the population of each municipality. It should be borne in mind that the complainants in most cases are those already suffered in the hands of the government agencies and it often takes great courage and determination to take their complaints to the agencies in question. This psychological factor may even apply to the AIB which is a genuine third party in the matters in question but nonetheless may be regarded by the complainants as just one of the detestable government agencies. The fact of the matter is that people appear to be at ease to bring their complaints to the administrative counselors both in terms of physical and psychological distances than to the AIB field offices. In 1995 fiscal year, 67 percent of all cases handled by the system were initially brought to the administrative counselors.

Incidentally, the strengths of the system of administrative counseling in terms of accessibility may be apparent also in comparison with other system of administrative relief in Japan, namely the administrative litigation procedure in courts and administrative appeals procedure for internal review in government offices. Compared even with the less formalized and less costly administrative appeals procedure, the administrative counseling by the MCA is undoubtedly by far the easier and more comfortable for people to use in terms of procedural requirement and psychological factors.

C. Credibility

In Japan's national government, the ministries and agencies operate counseling units of their own. When compared, however, people will be feeling far more reliability in using the administrative counseling by the MCA, a "third party" in the dispute, having equal status with the ministries in question and being armed with the power of administrative inspection over such ministries. The availability of the service of administrative counselors, a complete "third party", should be having the effect of enhancing such feelings even more.

In addition, an arrangement have been made to reinforce the credibility of the system. In 1987, an advisory body to the State Minister for MCA called the Administrative Grievance Resolution Promotion Council was set up. The council is composed of seven private individuals from the judicial circle, academic circle,

mass media and others. It is an attempt to introduce outside views in the mediation of hard-to-resolve complaints like those which could be adequately redressed only by changes in the basic system of administration like revision of existing laws and regulations or by additional funding in the annual budget of the government agency concerned. The Council is asked to judge from the unrestricted outsider's point of view whether the merit of redress outweighs the costs and other implications of the remedy in these cases.

The Council in effect is an attempt to maximize the fairness and impartiality, and hence credibility, in AIB's operation of administrative counselling by enhancing its neutrality from the government bureaucracy in the exercise of mediation.

D. Preventive remedy

In the AIB's administrative counseling system, not only the individual complaints are resolved but future complaints will also be prevented. First of all, in managing the system of administrative counseling, an operational link is strategically maintained with the administrative inspection [3]. When it is found that there is a growth or recurrence of a particular kind of complaint, an administrative inspection may be conducted to produce recommendations for changes in related laws, systems, and procedures that are the root cause of the problem to prevent further occurrence of the complaints in question.

Secondly, the opinions of the above-mentioned Administrative Grievance Resolution Promotion Council submitted to the State Minister for MCA are reflected in AIB's mediations to result in innumerable cases in important changes in the systems and practices of administration that benefit not only the complainants but also other members of the public by preventing the recurrence of same complaints.

Thirdly, the administrative counselors are statutorily empowered to submit their opinions regarding improvement in public administration formulated through exercise of their duties to the State Minister for MCA. The opinions are subsequently informed to the appropriate ministries and agencies for their reviews and response to the AIB, or used as base information for designing administrative

inspections, and in not a few cases materialize in actual changes in policies and practices that gave rise to the complaints handled by the administrative counselors.

3. The Challenges

The administrative counseling which has been reinforced with the innovative arrangements described above and operated in concert with the administrative inspection may be viewed as standing very much in comparison with the ombudsman systems of other countries both in the design and the performance, namely by providing easily accessible, simple, and reliable means for people in having their grievances resolved.

It is one of the precepts of administrative reform, however, that every system and institution has to be continually reexamined to keep up with the change of times. The system of administrative counseling shall not be the exception.

For instance, there is evidence which suggests that the use of administrative counseling by the public has not yet reached its potential. In a survey conducted in 1990, the public's rate of awareness of the system of administrative counseling and administrative counselors was a not-very-high 28 per cent. Substantial resources have been put into public relations in recent years, but clearly, there is more that needs to be done in the area of publicity.

In the AIB as grievance handling organization for the national government, you will sometimes be made aware of the fact that you are dealing with only a part of the people's grievances against public administration. When people complain they do not care whether the matter is under the jurisdiction of what agencies of which levels (national or local) of government. They simply want their problems resolved and that is all. What you could do to solve their problems however is limited by the words of the statute. To cope with this dilemma, the AIB initiated under its guidance a network arrangement among grievance handling units of national and local government agencies in the late 1960's, so that people's grievances might be settled smoothly, quickly, and effectively through forwarding of cases and cooperation in finding appropriate solutions among different government agencies concerned with specific cases. Its usefulness was evidenced most recently in the aftermath of the Great Hanshin Earthquake in 1995 when the AIB took the lead in

operating the counseling centers staffed by the national and local government official and other experts in the disaster areas and provided quick responses to the demands and complaints of the quake victims. It will now be the AIB's goal to reinforce the 30-year-old cooperative arrangement to spread such operation of true "one-stop service" for people with grievances to all areas of the country and in normal times.

Concluding Remarks

And these probably will not be the only areas where improvements are needed. There may be weaknesses in the systems of administrative counseling and administrative counselors which would surface only through comparison with other country's systems. For the betterment of our systems, we will continue to be attentive to the development of Ombudsman and Ombudsman-like institutions in Asia and receptive to the strong points you will exhibit and fresh ideas you will offer to us. We would appreciate the continuing friendship and cooperation of all the institutions participating in this conference which we hope will be provided through the framework of the Asian Ombudsman Association.

I thank you very much for your attention.

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The Second Asian Ombudsman Conference

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NOTES

1. The Establishment Law of the MCA provides as its functions to "perform mediation deemed necessary concerning the complaints filed with respect to the administration of affairs within the jurisdiction of each administrative organ and the affairs mentioned in the preceding clause [affairs under delegation and subsidization : author's note]".

2. The Administrative counselors Law provides that the Director General of the MCA may commission "a person who enjoys a social confidence and is possessed of a deep understanding and ardor for improvement in administrative operations" the work of : (i) receiving people's complaints, giving necessary advises, and

informing the MCA (AIB field offices) and the administrative organs concerned of the complaints; and (ii) responding to the inquiries by the administrative organs concerned and informing the complainants of the result of review by the administrative organs concerned. They are commissioned the work for a renewable term of two years with their jurisdictional areas (usually cities, towns, or villages where they reside) designated by the Director-General. Today there are over 5,000 of them and people can find at least one of them in the area of municipalities they live in.

3. The Management and Coordination Agency Establishment Law provides that one of its functions is "to inspect the operation of administrative organ, and make recommendations if deemed necessary". For the purpose of performing the function, the above law gives Director-General of the MCA necessary authority including those of: (i) demanding the head of administrative organs submission of materials and explanations; and (ii) making on-site investigation of the operation of administrative organs. The authority is internally delegated to the heads of AIB field offices.

The objective of administrative inspection by MCA is to maintain the effectiveness of government operations, to prevent unlawful or improper practices and damages to the national treasury, and at the same time, to maintain official discipline.

Based on the analysis and evaluation of the facts found and evidences collected by the 600 staff of the AIB headquarters and field offices, the Director-General of MCA makes recommendations for improvement to other ministers. The ministers concerned are required to report to the MCA Director-General on the measures taken pursuant to the recommendations. The Director-General may also report to the Prime Minister his opinion requesting that a direction be issued to the ministers concerned to improve matters under their jurisdictions.

In its history of nearly 50 years, the administrative inspection has contributed to the elimination of misuse of funds and other corrupt practices, introduction and reform of policies and procedures, and improvement of government operations, all in keeping with the demands of the times.

4. The figure includes those of which the AIB judges that proposed remedies are reasonable even if the complainants demand otherwise.

The Ombudsman Institution at the Pawning of the 21st Century

by Luis Manuel G. M. Freitas,
High Commissioner, Macao

Mr. Jong Baik Choi, Distinguished Ombudsmen, Ladies and Gentlemen,

I would like to begin this address by greeting His Excellency, Korea's Chief Ombudsman, Mr. Jong Baik Choi, for the warm welcome given to the Asian Ombudsman and similar organization representatives, gathered here at this Second Asian Ombudsman Conference, and then to extend my greetings to all participants in this event, and wish them all success in the carrying out of their mission, in the interests of justice and social justice.

To stress the merits of this Conference in Islamabad will never be too much and those merits, I am sure, we are all agreed and committed to, will be lasting and reinforced even, at this Seoul congregation. Other than the importance it holds towards the creation of the Asian Ombudsman Association, the exchange of information and views is always a key factor on the fundamental duties and powers which we are currently honored to represent, as well as on the on-the-job experience we have gathered discharging the dignified duties and ideals that the Ombudsman represents.

Allow me to delve a little with you on the need for, and acceptance of, the Ombudsman institution at the dawning of the 21st century and, further on, to give you an overlook on the model we follow in the Territory of Macau.

Notwithstanding the fact that similar institutions existed before in Asian countries and Islamic nations, the Ombudsman was "born" in Sweden, when, according to the terms of the 1809 Constitution, the new Legislative Power (having been made independent from its Executive counterpart), appointed an Ombudsman who was committed the mission to investigate complaint by, and protect citizens from injustice by the Administration.

Notwithstanding it being a well known fact, it is always useful to recall that the Ombudsman is based on the separation of powers concept studied and promoted by the empiricists Locke, Montesquieu and Rousseau not merely to create the best structural framework for fulfilment of sovereign authority, but also and most importantly to create an overall institutional environment where individual interests are best respected and protected against government abuse.

Contemporary to the revolutionary new concept of State, the novel institution is at the center of the never-ending and inextricable issue citizen versus authority.

Although the Scandinavian Ombudsman is generally (and rightly) regarded as original, one should nevertheless still bear in mind the fact that the objectives it pursues date back to the most remote of times, being traced to Hamurabi, the founder of Babylon who, thirty six centuries ago, had already committed to the task of "enforcing justice to prevent the strong from harming the weak". Or, as inferred from the wonderful saying of Confucius follower, Mencius, who, three hundred years BC, claimed that "the individual is infinitely important, the person of the sovereign [being] the least important". These extraordinary minds-as noble as rare-were, hence, fully aware of the everlasting difficult relationship between individuals and the powers that be.

The first Ombudsman was unique in that he was a parliamentary commissioner, an officer independent from the Crown, government, courts and from the very parliament that appointed him to monitor administrative authorities' actions and defend citizens against maladministration. Although being vested with the widest authority to investigate complaints submitted by constituents to their respective parliamentary representative, he was nevertheless not granted powers of decision.

In view of these characteristics, it may be claimed rightly that the Ombudsman emerged as a fundamental intermediary between State and society, Administration and citizens, in short: between the rules and the ruled.

The Swedish example was followed by Finland in 1919, at the time of its international independence. But the most decisive event toward the development of the Ombudsman institution in the world was the 1953 establishment by Denmark of the Ombudsman Office, thus proving the concept's flexibility in adapting to different judicial systems. From them on, many other countries in various continents followed that lead. with the International Ombudsman Institute currently

reporting the institution to be established in 86 countries and run by 215 Ombudsmen.

Behind this remarkable expansion in the past forty years were the various political, social, economic and cultural changes occurred in the international scene, following the II World War. The society in which we live today has evolved dramatically throughout this century. In the past 50 years, the State's role in both economic and social affairs became increasingly active, and where once the rule was uninvolved, now State intervention is clear. The rationale for this was the rising awareness of the fact that intervention was indeed essential to ensure improved social justice and efficient economic management. Concurrently, new schools of thought were born, nurtured by the spreading of social and socialist ideals that prompted new constitutions to assert economic and social rights which could only be enforced through State intervention. Finally, technological developments and the emergence of urban industrial societies compounded the citizens' dependence on community-interest services being managed by public entities. As a result, this enlargement of state responsibilities induced profound changes in Public Administration, which ceased to be a centralized, rigidly hierarchic structure. The previously selective and ablative ways in which public interest was pursued, were replaced by a new environment in which the Administration is increasingly called upon, not only to provide services, but also to schedule out social processes. The old interfering, sometimes even aggressive, administration gave way to one that is a provider and constructive in nature.

This conjuncture of State intervention - which, to a higher or lesser degree, occurred generally throughout the world - intensified a two - way relationship between Administration and citizens: if, on the one hand, the individuals' dependence upon the former increased in terms of both frequency and length of time required, the latter became more and more pressed to cooperate with the Administration.

In view of this new course of affairs whereby more regulations were being enforced by public powers on people, it became apparent that ordinary means of political, administrative and judicial control did not always allow for a swift and efficient enough response to the various demands and modern-administration deviations. It was then noted (and it still is today) that the relationship between the

individual and the power was characterized by readily drafted rights which, however, were seldom enforced and frequently more aspired for, rather than actually fulfilled. Soon, States recognized the precarious means of protection of their subjects and realized the need for the provision of additional, simpler, swifter, less costly and more flexible-to-operate pledge than the traditional guaranties.

It was, therefore, in this context, and in a generally-spread effort of hope and lucidity, that the almost 200-year old Ombudsman thrived, with its goal of acting as a recipient of people's complaints against errors, arbitrary or negligent acts or decisions made by public administrative bodies.

The Scandinavian model served as a reference point, but the truth is that the idiosyncrasy of each country and their institutions generated so many adaptations that there are no two exactly alike Ombudsman, where powers, jurisdiction and methods of operation are concerned.

Nevertheless, regardless of different names, titles of office holders and powers vested upon them and their geographic nature - national, federal or regional (and now also supranational, as the recently instituted European Ombudsman)-all of them share at least two factors in common, appointed at the First Asian Ombudsman Conference as the necessary requirements for membership: the powers to investigate complaints for acts or negligence of public bodies and those to make recommendations to the relevant bodies in order to prevent and repair injustices.

At this point, I would like to enumerate before this Forum the various reasons why I do unreservedly subscribe to these basic principles.

Firstly, because such prerequisites are entirely consistent with the main core of the tasks carried out by this type of institutions. Secondly, because of their wide-scope nature they afford access to institutions which, despite taking advantage of Ombudsman's own attributes, had to implement vast changes in order to comply with the relevant country's specific characteristics. Last, but not least, because it keeps the door open for national institutions to expand their action to new areas, without jeopardizing their membership.

The institution operating in Macau-which is called High Commission Against Corruption and Administrative Illegality (in Portuguese, Alto Comissariado Contra a Corrupcao e Illegalidade Administrativa) shares in the distinctive marks that identify the modern Ombudsman. The legislation under which it was enacted was inspired

in its Portuguese Republic counterpart, notwithstanding the adaptations introduced to conform it to the specific characteristics of the Territory - thus once again giving ample proof of the unique nature of Macao, with its almost 500 year-old history of bridging - and bringing - together East and West.

The Statute of the Macau High Commissioner, which am very pleased to provide each honorable Colleague with a copy - establishes him as a public entity who enjoys total autonomy and is not subject to any instructions or orders except those foreseen by Law. The Commissioner, appointed for four year terms, has security of tenure and is not subject to civil or criminal liability for any recommendation, remarks or opinions made or expressed or any acts performed while discharging the duties of his office.

By law, he is required to pursue two major objectives: promote the defense of rights, liberties, guaranties and legitimate interests of individuals, guaranteeing the justice, lawfulness and efficiency of public administration; and carry out preventive actions against acts of corruption or fraud committed by public bodies and their officers.

In discharging his duties, he has jurisdiction over any public bodies and departments and their officers. His statutory authority extends to, and encompasses, the Islands Municipalities (Taipa and Coloane) and their board members, including public security bodies and services, public companies, public property operators, concessionaires of public utilities, exclusive concessionaire companies and credit institutions. Beyond his jurisdiction are only the Territory's bodies of government (Governor and Legislative Assembly) for the duration of tenure of their respective holders, and the Courts, while carrying out their jurisdictional powers.

Everyone has access to the High Commissioner, either individually, as a group or as a private corporation. Anyone can report illegality, injustice or malpractice committed by and public department. It is an universal right, whose access thereto is not limited by any rules or restrictions whatsoever. In turn, the High Commissioner may himself initiate an investigation into any facts that he becomes aware of, by any means whatsoever. Also, public departments are required to notify the HCACAAI of criminal acts or disciplinary infringements they may be aware of, and of the relevant final rulings.

The High Commissioner's activity is independent from both gracious or

contentious means foreseen by law. This autonomous proceedings principle means that the mere fact that an administrative act is pending hierarchic appeal or judicial examination does not rule out his powers to intervene or suspend at any time any administrative or judicial terms.

Where complaint and denunciations are accepted, the legislation in force provides the Office with a wide range of investigative powers, namely: inquiries, inquiry and investigation exercises, inspections (impromptu or not), interrogations, hearing of witnesses and examination of documents. The office is further empowered to notify the relevant entities to provide clarification on the matter under investigation, require public services to assist in establishing whether or not a complaint is substantiated and verify the lawfulness and propriety of the administrative procedure that prompted the complaint. Failure of public entities to comply with the mandatory co-operation requirement is liable of aggravated contempt, without prejudice to any disciplinary action that may take place.

Examination of the relevant facts is carried out by informal and expeditious means, that is, skipping the general procedures followed for production of evidence. There is, however, an exception to this informality principle: corruption or fraud complaints. In fact, whenever these are reported, investigations must be conducted in strict abidance by the legislation in force on penal proceedings. In such cases, all acts required for investigation and criminal examination are followed, except those that collide with fundamental rights, in which case the intervention of an examining magistrate must be sought.

(In discharging the duties of his office, the High Commissioner may take the following actions:

- recommend the relevant entity to redress the malpractice or injustice, by altering, annulling or revoking its unlawful or unjust act or decision
- recommend criteria for correct interpretation of juridical norms by relevant administrative authorities
- issue reprimands or memoranda to any administrative bodies
- submit norms for verification of consistency with constitutional and legal precepts
- point out to relevant bodies any legislative deficiencies or voids
- suggest drafting of new legislation

- suggest implementation of administrative measures to streamline administrative procedures and bureaucratic circuits
- notify criminal acts or disciplinary breaches
- submit cases involving criminal proceedings to the Public Prosecutor's Office inform complainants of ways, and action to be taken, in order for them to obtain fulfillment a right, protection of an interest or redress of damages
- offer clarification to either complainants or the general public on any acts concerning mismanagement-management of public matters brought to light by a complaint, or in respect of which doubts have arisen
- avail himself of the mass media as a last resort to raise public awareness to either any injustice that failed to be redressed, or for dissemination of statements, information or official notification on cases in respect of which the judicial system was violated and failed to be restored
- submit annual or special reports on the activity of his Office.

As all that has been said proves, and in line with the procedures followed by other Ombudsman, recommendation is the most characteristic feature of my job. I do not hold powers of decision. But, I do recommend, suggest, denounce, promote, announce and have a bearing on the behavior of the remaining public powers.

The success of my mission - and that incumbent on all of us - greatly depends on the manner in which we are able to prove in each individual case that our only commitment is to serve justice's nobler interests. Experience tells me that our duty to make recommendations must be always upheld with an attitude of tolerance and intellectual rectitude. No one can claim to be the holder of the absolute truth. Therefore, in our quest for truth and justice, our stance should be, as proposed by Kar Pooper, of judicious, assumed pluralism, where the widest range of possible assumptions and arguments are taken into consideration, and then those which are closer to the truth are chosen.

The equity of the institutions in which we are all honored to currently serve and represent emanates mostly from our ability to carry out an efficient duty of office, publicly recognize for its very own vital imprint on the assistance provided toward the creation of a more dignified environment for the development of an effective, swift and equitable action of Administrations, and toward bringing closer together,

and more compassionate, the relationship between power and citizens.

The future of the Ombudsman depends on how just is our ability to respond to injustice. Therefore, we must commit ourselves to carefully monitor the problems which, in today's world, Man is faced with in his dealings with public powers.

Fellow Ombudsmen,

Ladies and Gentlemen,

In fact, nowadays' societies are frequently referred to as being in crisis. The mounting importance of issues and problems over the environment, demographic explosion and decreasing food supplies, the rising number of HIV-positive people, the inability of power to eradicate poverty, violence and the proliferation of drug abuse, compounded with another endless list of concerns and incertitude bring to these the final years of the 20th century, a host of doubts and challenges. People are jittery, and intolerance, racism, xenophobia and skepticism over values abound, thus creating pockets of conflict.

On the other hand, scientific and technological developments seem unable to produce a workable solution on how to efficiently control these social disturbances.

On the other hand, if technological advancements in genetics, organ transplants and artificial insemination do bring benefits to humankind, they are certainly heralding new threats. Likewise, if progress of information techniques contributed to ease everyday life and (to borrow a very fortunate and befitting phrase from, and coined by, Canadian philosopher M. McLuhan) transformed the world into a "global village", it is also seen as taking it into a path of gradual loss of identity of precious cultural values facilitating a higher degree of State control and bureaucracy over the individual, threatening his right to privacy and civil rights.

This and other questions demand that the merits of the State visa-vis the individual, the molds upon which peoples' relationships and those between Man and Nature are being churned out be closely monitored.

These are some of the issues that, Ladies and Gentlemen, Ombudsmen actions, cannot-must not-ignore.

Thank you very much.

A Review of the Institution of Ombudsman in Pakistan

by Mr. Salahuddin Mirza,
Ombudsman for the Province Sindh, Pakistan

1. I deem it a great privilege that, in the capacity of the provincial ombudsman for Sindh, I am attending the Second Asian Ombudsman Conference here at Seoul (Korea). In our country the Ombudsman is called "Mohtasib". As you know, the idea of holding such a regional conference was floated by the Federal Ombudsman of Pakistan, Justice (Rtd) Abdul Shakurul Salam who had played host to the first Asian Ombudsman Conference at Islamabad on 15-16 April 1996 and I had the privilege to attend that Conference as well. It was on that occasion that Korea had offered to play host to the Second Ombudsman Conference and the offer was heartily welcomed by all the delegates and it was agreed to hold the Second Conference after one year. The convening of the Second Asian Ombudsman Conference on time is a great tribute to the efforts put in by the Korean Chief Ombudsman Mr. Choi, Jong Baik in adhering to that schedule.

2. I am grateful to the management of the Conference to give me a chance to address this august gathering of the Ombudsman of Asian region. To begin with, let me introduce my country to you.

3. My country, Pakistan, came into existence on 14th August 1947, when the great country of India --- from which Burma and Ceylon had already been separated and formed into independent countries under the Government of India Act 1935 --- was further divided into two countries called India and Pakistan on the basis of religion and given dominion status within the British Commonwealth of Nations under the Indian Independence Act 1947. Originally, Pakistan consisted of two wings on either side of India called East Pakistan and West Pakistan. However, the Eastern Wing separated in 1971 to form the Republic of Bangladesh.

4. The Republic of Pakistan consists of four federating units called provinces (or

States) which are North-West Frontier Province, Punjab, Sindh and Baluchistan. N. W.F.P. and Punjab are land-locked provinces or states whereas Sindh and Baluchistan abut the Arabian Sea and have a substantially long coast-line. The Province of Sindh has been the home of one of the oldest civilisations of the world known as Moenjodaro civilisation which flourished more than five thousand years ago. Thanks to the British rulers, Sindh has one of the largest and best irrigation systems of the world.

5. The institution of Ombudsman is comparatively young in my country. On the federal level, the Pakistan had established the office of Ombudsman in 1983. My Province of Sindh was the first of the four federating units to introduce the institution of Ombudsman in 1991 through an Act of the Provincial Legislature known as "Establishment of the Office of Ombudsman for the Province of Sindh Act, 1991". Recently, Punjab, another federating unit of Pakistan, has established this institution in October last (1996). The remaining two federating units of Pakistan (Baluchistan and North West Frontier Provinces) are still without this institution.

6. Under the Ombudsman Act 1991 (by which name the Act is called for the sake of brevity) the Ombudsman is appointed by the Governor of the Province for a 4-year term. I am the second incumbent in this office, having taken charge on 25th September 1995 on my retirement as a Judge of the High Court of my province.

7. Last year we had met at Islamabad and that get-together provided an opportunity to the Ombudsman of the region, who are known by various nomenclatures, to meet each other and understand the systems of accountability adopted by each of them to suit the special conditions of each country. That Regional Conference also provided a forum to discuss and exchange information on problems pertaining to the accountability of its governmental agencies. Undoubtedly, there is no piety more holy than service to humanity, especially to that segment of humanity which is weak, downtrodden and harassed due to the mischief of the government functionaries. And it is in this context that the role of the Ombudsman must be appreciated.

8. The role of the Ombudsman has correspondingly widened with the expansion of the activities and more and more involvement of the Provincial Government in

the development sector. The Government functionaries are no longer confined to the collection of revenue and maintenance of law and order. In fact, now the Government machinery has entered in almost all facets of human activity. This has necessitated the creation of the vigilant eye of the Ombudsman to oversee the activities of the Government Departments. The Government control in the domain of the water, gas, electricity, transport and education has manifold increased the interaction of the people with the Government Agencies, resulting in an unending chain of complaints. Naturally this has made the task of Ombudsman more demanding so as to ensure that the rights and privileges of the people are not infringed and they are not subjected to the official high-handedness.

9. To achieve the above objective, section 2 of the Ombudsman Act has comprehensively defined 'mal-administration' so as to cover all conceivable mal-feasance and mis-feasance of the Government functionaries. This definition is reproduced below

(1) 'mal-administration' includes

- 1) a decision, process, recommendation, act of omission or commission which :-
 - (a) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bonafide and for valid reasons; or
 - (b) is perverse arbitrary or unreasonable, unjust, 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

2) neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities"

10. Function of the Ombudsman

The investigation into all the above forms of bureaucratic mal-administration and misconduct is part of the job of the Ombudsman. These problems are more pronounced in the urban area where the people are more vocal and can air their grievance. However, problems in rural areas are more acute and call for greater attention. With this aim in view Ombudsman himself and his Investigating Officers undertake extensive tours of rural areas for hearing complaints.

11. Sir, the wealth of a country is the happiness and contentment of its people and this happiness and contentment depends upon the dispensation of justice by the state amongst its citizens both between citizen and citizen as well as between citizen and governmental agencies. Our last Prime Minister (of Pakistan) Mohtarma Benazir Bhutto, in her inaugural address at the first Asian Ombudsman Conference had very appropriately underlined this basic truth when she said that the institution of Ombudsman was established to solve the fundamental problem "facing mankind as we move into a new century and a new millennium". this fundamental problem, according to her, was "the growing sense of alienation and cynicism of the governed with their governments."

12. In actual working, bureaucrats are the direct link between the people and the government. Unfortunately, it is their selfish attitude towards people and their apathy towards their problems which alienates the people from their governments. This creates despair in them and kills their initiative and drive. It is at this stage that the institution of Ombudsman emerges as a "friend of the poor and a protector of the aggrieved and harassed."

13. As the preamble of the Establishment of the Office of the Ombudsman for the Province of Sindh Act 1991 says, the Ombudsman, besides making investigation, is required to diagnose, redress and rectify any injustice done to a person through mal-administration in the Agencies. Section-9 subsection(3) of the Ombudsman's Act, 1991, requires him to conduct studies in respect of such activities of the Agency where corruption, nepotism, exploitation and high-handedness have taken deep roots to the great harassment of the general public. This institution has so far conducted two studies --- first on the working and mal-practices of the Building Control Authority and, second, on the rampant financial indiscipline of the Local Bodies in Sindh. Recently, we have, on two separate references received from the Provincial Governor, conducted an in-depth inquiry into the foundation and structural failure of the new University Campus in Khairpur District and into the alleged mal-treatment of the prisoners at Hyderabad Central Jail.

14. The Ombudsman is not eligible for extension in service or for re-appointment or for holding any office of profit in the service of Pakistan before the expiry of two years after he ceases to hold the office of Ombudsman. He is

also not eligible for election to either Provincial or Federal Legislature for a period of two years from the date he ceases to hold the office of Ombudsman.

15. Ladies & Gentlemen! admittedly Ombudsman is armed with a good deal of powers under the Act, yet to effectively deal with various facets of mal-administration, Ombudsman needs to be strengthened especially in the sector of implementation of his decisions. The Act presents Ombudsman as the "Upholder of equity" and as a "protector of the oppressed" and to live upto this image, he requires more powers than he at present enjoys although he has been given the status of a Minister.

16. Unfortunately, the corrupt, indolent and indisciplined government functionaries have not yet reconciled themselves to the existence of the institution of the Ombudsman and consider it as a transgressor upon their rights as they were not accustomed to accountability and therefore their hostile reaction in the early years of the establishment of this institution was not un-natural. I must, however, add that after five and a half years of its existence it is being gradually accepted by the governmental agencies and its very existence is to a great extent discouraging perverse and arbitrary actions of the bureaucracy as Ombudsman can be approached without observing the formalities of a civil suit.

17. Ladies & Gentlemen, I believe that our visit to Seoul will give us an insight into the working of the institution of Ombudsman in other countries of the region where our counterparts are excelling or showing comparatively better performance and thus enable us to improve the working of our own system of Ombudsman and therefore I hope that my participation in this Conference shall be immensely enlightening and useful for me in understanding how the same objective is being achieved in the various countries and, further, how best we can pick-up some of those procedures and adopt them to suit the conditions of our society.

18. Ladies and Gentlemen, before I conclude I offer my sincerest thanks to this august audience for the patience and interest with which it has heard my speech. I hope that we shall all learn a lot from each other.

Ombudsman System in Philippines

by Francisco A. Vilia,
Overall Deputy Ombudsman, Philippines

GREETINGS: This is my fourth visit to this beautiful City of Seoul. My first visit sometime in 1981 when I made an overnight stay in this city on my way home after attending a LAWASIA Conference in Bangkok, Thailand. As I moved around the city since I arrived two days ago, I observed that it has indeed changed -highly industrialized.

The afternoon I stand before you as the representative of the Republic of the Philippines. Ombudsman Aniano A. Desierto wishes to express his regrets that he is unable to attend this conference in view of pressing matters at home that need his attention.

The Ombudsman is a creation of the new Philippine Constitution of 1987. It was enacted by the revolutionary government of the widow of the assassinated former Senator Benigno Aquino, after the overthrow of the Marcos dictatorship. To prevent a repetition of the pillage and plunder of the nation's wealth and resources as what happened in the regime of the deposed dictator, the Ombudsman as an independent anti-graft body was created with a mandate to be the "Protector of the People". In Executive Order No, 243 dated July 24, 1987, the President of the Philippines directed:

"NOW, THEREFORE, I, Corazon C. Aquino, President of the Philippines, by virtue of the powers vested in me by law, do hereby order: "Section I. The Office of the prosecution of public officers for corrupt practices in the performance of their duties. Private individuals fall under the jurisdiction of the Ombudsman if they are found to have connived and confederated with public officers in the commission of the offense.

The Ombudsman likewise has disciplinary authority over public officials and employees except members of Congress and the Judiciary. The Philippine

Constitution of 1987 insulated the Ombudsman from political interference and influence by -

1. Making in an independent office enjoying fiscal autonomy;
2. Giving the Ombudsman and his Deputies whose appointments require no Congressional Confirmation, the rank of chairman and members, respectively, of a Constitutional Commission; and
3. Prescribing for them fixed terms of office during which their salaries cannot be diminished.

The Supreme Court of the Philippines in a disbarment case recently reiterated that the Ombudsman and his Deputies are removable from Office only by impeachment.

The Ombudsman is constitutionally mandated to act promptly on complaints filed in any form or manner against public officials or employees of the government for acts or omissions which appear to be illegal, unjust, improper or inefficient. Cases investigated and prosecuted by the Ombudsman are tried in a Special Anti-Graft Court known as the Sandiganbayan. Latest amendments of the Sandiganbayan law have redefined the jurisdiction of the Special Anti-Graft Court. At present only cases of high ranking public officials are tried by the said court. Lower ranked public officers are tried by the Regional or Municipal Trial Courts.

Time and again the powers and authority of the Ombudsman has been questioned. In a suit where a water agency, Metropolitan Waterworks and Sewerage System, questioned the graft prevention powers of the Ombudsman, the Supreme Court spelled out the duties and functions of the anti-graft body, to wit:

1. To investigate and prosecute public officers who commit all kinds of malfeasance, misfeasance and non-feasance during their tenure of office;
2. To render assistance to the general public;
3. To inquire and obtain information to determine the causes of inefficiency and deficiency in the bureaucracy and to make recommendation for their elimination;
4. To adopt, institute and implement measures in the prevention, suppression and eradication of graft and corruption in the government.

On the issue of the Ombudsman's jurisdiction over public officers who are accused of violation of the penal laws, the High Court ruled in a case of a Provincial Governor charged with murder that the anti-graft agency has the power

and authority to investigate and prosecute the said elective official even if the offense charged is not office-related.

The thrust of the administration of the incumbent Ombudsman is the prevention of graft and corruption. The agency's resources are now directed more to graft prevention than prosecution. To this end the Ombudsman has instituted several graft prevention measures.

The installation of Resident Ombudsman in government agencies is one of these measures. They are tasked to conduct fact-finding investigations, initiate systems studies, and to extend assistance to the public. To date Resident Ombudsman have been posted in fifteen(15)public offices.

The Ombudsman recognizes the value of concerted action to effect a meaningful change in our society. On this note, it regards the people as potential foot soldiers in the day to day combat against corruption in the public service and in the enforcement of public accountability of public servants. Hence, it encourages community participation whereby the citizens serve as its "eyes and ears" and a partner in the fight against this social cancer.

For this purpose Corruption Prevention Units(CPUs) have been formed (1) To ensure and broaden citizen community-based participation in the drive against corruption and inefficiency in the government, (2) To serve as a focal point of various citizens' organizations, coalitions, and movement in the campaign for transparency and effective government. (3) To heighten the citizens' awareness on the value of an honest, efficient and effective government through the conduct of consultation workshops, symposia and multi-sectoral conferences.

To achieve a total and multi-sectoral approach to the campaign against graft and corruption the involvement of the youth is deemed vital and decisive. Thus the creation and establishment of Junior Graftwatch Units in every school and communities in the country. The Junior Graftwatch Unit is an organization established by student and community based youth organizations. It is an instrument in the elimination of the bureaucracy's misfits and undesirables. There is no doubt that the youth can be an effective partner of the Ombudsman in the war against corruption in the public service.

The objectives of the Junior Graftwatch Units are:

A. General:

1. To direct the growing concern and awaken the consciousness of young citizens into productive action towards the elimination or reduction of graft and corruption and its effects to the country's economy, and
2. To develop and ingrain in the youth moral values such as honesty and efficiency in preparation for their future roles as leaders of the country.

B. Specific:

3. To provide a mechanism for the young citizen's effective participation in the Ombudsman's corruption prevention campaign, and
4. To promote recognition for the youth's determined efforts for clean and honest government.

The Ombudsman continues to strengthen its Public Assistance Bureau. It acts promptly on the requests of the general public for assistance - for prompt releases of benefits and emoluments of resigning and retiring public officials and employees; for issuance of clearances for appointments and/or promotion in the government service; and other similar requests. It speedily acts on complaints against government employees of different public offices who refuse and/or fail to perform their duties due to indifference and lack of concern to the public.

In closing I am glad to state that I consider myself fortunate to be able to attend and participate in this Second Asian Ombudsman Conference - to share and exchange with you views and ideas to achieve our common goal-good and honest governance.

To you my distinguished colleagues, I say Thank you.

Good Afternoon.

Ombudsman System in Vietnam State Inspectorates

by Mr. Thanh Ta Huu,
Minister-Inspector General, Vietnam

Mr. Chairman!

Ladies and Gentlemen!

Today, The second Asian Ombudsman Conference is holding in the City of Seoul, The Capital of the great, beautiful and prosperous Country-Republic of Korea.

From Vietnam, on behalf of all members of Vietnam State Inspectorate Delegation-Vietnam Ombudsman, I would like to present my compliments to Mr. Chairman of this Conference and Ladies and Gentlemen with my best regards and best wishes... I'd like express my best gratitude to Mr. Chairman for allowing me to give my presentation at this Conference.

Ladies and Gentlemen!

Due to limited time schedule, I would like to introduce briefly to my Country's Ombudsman system-the Structure of Vietnam State Inspectorate and its operation.

Since gaining independence over 50 years ago, a new Vietnam regime came into being, Vietnam State Inspectorate was established through the historical period of Vietnam, It has made a worthy contribution to the cause of National liberation and building Vietnam in line with the Path of Socialism for the Shake of the prosperity of the Country and the welfare and happiness of the people with a society of equality and civilization, Vietnam State Inspectorate was enlarged and developed increasingly with a big progress.

Vietnam State Inspectorate is organizationally established by the Nation Assembly of Vietnam, belonging to the system and Structure of the Government. Vietnam Inspector General is elected by the National Assembly and appointed by the President. Vietnam State Inspector General, National Ombudsman, is

accountable on the run of inspection of the whole country before the National Assembly and the Government.

The organic Structure of Vietnam State Inspectorate is regulated and provided by the provisions of Laws on Inspection.

1. Functions and Powers of Vietnam State Inspectorate as follows:

-To guide and create the guideline and policies of inspection performance, inspection Strategy for the Inspectorates in all Ministries, Branches, Ministerial Bodies and the People's Committees at all levels.

-To build projects of Laws, draft Laws on Inspection and Laws on dealing with complaints and denunciations by citizens and submit the drafted Laws to the National Assembly for approval.

-To guide and examine the implementation, by all organizations, Agencies, Branches, and the Inspectorates at all levels, of the State laws on Inspection and Laws on Settlement of Complaints and denunciations by citizens. To suspend the implementation, activities, propose recommendations, to annul or to correct the inappropriate decision of the lower Inspectorates, to require Minister, Chairmen of Provinces, municipalities directly under the Central Government to suspend the implementation, to amend or to annul the incorrect, inappropriate decisions on inspection and settlement of complaints and denunciations by citizens and organizations.

-To inspect, supervise and control the implementations of State Laws, policies, the guideline as strategies, State plans following to Market System with the the management of the State and Government, by Ministries, and local levels, State enterprises, private enterprises and by carrying out an inspection to investigate onto corruption cases and malpractices.

-To require Minister, The Head of Governmental Departments and the chairmen of Provinces, municipalities to carry out inspection or to review the cases under jurisdiction regulated by the Laws.

-The Inspectorates at lower level have to deal with complaints and denunciations by citizens with the first instance. In the event that person challenge the reexamination decision, who could not petition to the Administrative Courts, the next higher level Administrative Authority has its function to deal with it, If

person may not satisfy with the reexamination decision, The Inspector General will make a final decision after examination.

– To formulate and carry out the programme of international Cooperation on Inspection.

2. Powers of Inspector-General of Vietnam State under the Laws on Inspection

– Vietnam Inspector-General has his power to suspend the execution of settlement decisions, which of Ministers, Heads of Governmental Bodies, Chairmen of Provinces, Municipalities are illegal, by examination, Inspector General will make a legal decisions. All organizations, Bodies, Agencies and individuals have to abide the decisions by Inspector General even decisions on administrative inspection, administrative supervision, investigation into Corruption and decision on Settlement of Complaints by citizens and organizations.

– To warn, temporarily suspend the official activities or the duty of the person or persons(public servants)who obstruct. or resist the exercising of functions and powers by a Delegate of inspectors established by Inspector-General.

– To appoint, release from duty, dismiss the Chief Inspectors of Provincial Local inspectorates, Municipalities (Whom are appointed by Inspector General with the proposal of appointment of Chairmen of provinces and Municipalities). Chief Inspector of Ministerial Inspectorates will be appointed by Prime Minister on the advice and proposal of Inspector General when she or he has got enough quality of standards.

3. Powers of the State Inspectorates and Inspector.

The system of Vietnam State Inspectorates consists of District local Inspectorate, provincial local Inspectorates, Municipal local Inspectorates, Ministerial Inspectorates, and Inspectorates in Branch at the central level.

Functions and powers of the Inspectorates at all levels and in all Branches, are to make decision of Inspection and dealing with complaints and denunciations by Citizens.

– To require the department, organization concerned and relevant person or persons to submit the documents, materials and other necessary informations, designate person who will be the member of the delegate of inspectors when necessary; to require an expertise on evidence, explanation or Statement when

being interviewed by the Inspectorate or Inspector. When necessary to check up the books, to seal up temporarily the documents, materials, to make a detailed list of assets and properties, to enclose the amounts at the Bank, to make decision of requiring the authority concerned detain the amount, things, objects and illegal gains, licence of business when necessary to immediately prevent the violation of laws, malpractices or relating to the relevant evidence.

-To immediately stop the act which is, or shall be likely detrimental to the interests of State, organizations or the legal rights and the interests of the citizens. To suspend the implementation of disciplinary decisions concerning removal from work when concerning a person who is collaborating with Inspectorates or concerning an inspected person when find out that who could lead the delay to inspection, settlement on complaints and denunciations by citizens.

-To warn, temporarily suspend the official activities or the duty of person, public servant who obstruct or resist the exercising of inspection or not to do any thing according to the requirement of the Inspectorates or Inspector.

-To transfer the files, records, documents concerned to judicial organs(the investigation Bureau) or people's supervision and control for prosecution when whose act constitutes actually a crime.

The Inspector has his or her authorized card granted by Inspector General. Duties and powers of Inspector is written in his or her authorized card(Inspection card). the Inspector shall exercising his or her functions and powers independently in accordance with the provisions of State laws and shall be accountable to his or her work, conclusion, decisions and regulations on Administrative inspection, supervision and the ways to deal with complaints by citizens.

Three grades of Inspectors: Inspector, chief Inspector, high-ranking Inspector, the high ranking Inspectors shall be appointed by Prime Minister on the advice and proposal of Inspector General. The Inspector shall be granted uniform, authorised card and technical means, instrument, facility for performance.

Mr. Chairman!

Ladies and Gentlemen!

For the above mentioned functions and power, Vietnam State inspectorates now have two structures as follows: Vietnam State Inspectorate, and the People's

Inspectors. The Inspector of the People's Inspectors shall be selected by the people at the local. A person, who must be qualified and has his or her good prestige. These people's Inspectors have their functions and powers to make an on-the-spot inspection, supervision on the work of the head, leaders, public servant or citizens at the on-the-spot local level when necessary to carry out an inspection in order to procure evidence for making conclusion into all cases, concerning person who violated the laws, concerned corrupt practices, malpractices forbidden by laws to support the Authorities to punish in accordance with provisions of State laws, and at the same time to deal with complaints, disputes arising internal the masses, therefore to carry out mediation to avoid conflicts or troubles.

In Vietnam, organizationally, there are 29,000 organs of the People's Inspectors in the whole country, each unit in each commune and ward, State Enterprise. It means the concretization of democracy, People have their rights as "people know, people discuss, people do and people inspect" the activities, performance of the State, Government, to carry out internal mediation into masses.

Ladies and Gentlemen!

6 months ago, I attended the VI International Conference of the International Ombudsman Institute in Buenos Aires-Argentina. Today, I have a chance to attend this Second Asian Ombudsman Conference. Our region, now, is one of active development with the tendency of developing increasingly the relationship of cooperation in all areas for the shake of peace, friendship, cooperation and development as well.

Vietnam State Inspectorate shall do its best to strengthen, develop the relationship of cooperation, coordination with the Asian Ombudsman Association and the International Ombudsman Institute.

I hope that the Asian Ombudsman Association, all of you, my friends, as my colleagues here shall do it in order to make a worthy contribution to the common development for the shake of equality, justice of each Nation and for mankind suitably according to tradition of laws, culture of each country and the International Convention being Signed by each country.

At this conference, this International forum, we will find out the suitable form of cooperation. I hope that we shall make our good cooperation, help one another by

doing our bilateral cooperation or multilateral cooperation to develop our relationship of cooperation, exchange point of views and help with one another.

Once again, I expect our successful conference.

Please accept my warm regards and best wishes...

Thank you.

Ombudsman System in Chinese Taipei

by Mr. Louis R. Chao,
Ombudsman, Chinese Taipei

1. Historical Background

The Chinese control system for public functionaries dates back more than two thousand years to the reign of Chin(246-206 B.C.) and Han (246 B.C.-A.D. 220) dynasties. At that time, government functionaries were supervised and controlled by the office of *yu shih*. The modification continued in Sui(A.D. 581-618) and Tang (A.D. 618-904) dynasties, in which the office of *yu shih* was separated into two: *Tai* and *Chien*. The former was charged with supervising civil officials and military officers while the latter was responsible for counseling the emperor. In Ming(A.D. 1368-1664) and Ching(A.D. 1664-1911) dynasties, *tu cha yuan* was set up, and the system of control and supervision was further developed. Supervision on the local level was strengthened and the number of *chien cha yu shih* was increased from 13 to 15. Toward the end of Ching dynasty, the number was further increased to 20. They were responsible for making investigations in various areas and reporting cases of impeachment to the throne. Their goal was to cite the good officials, condemn the bad ones and enforce discipline.

The founding father of the Republic of China, Dr. Sun Yat-sen advocated the five-power constitution. He took in the Western system of balance of legislative, executive and judiciary powers, and added two traditional Chinese government powers of examination and supervision (control) to complete the five-power system. When the new Republic was established in Nanking in 1912, it first implemented the three-power system of the West, leaving the power of impeachment to the parliament. The five-power system was adopted in 1928 when China was reunited in the Northward Expedition.

First, an Audit Yuan was established in February 1928 to control government finance. In February 1931, the Control Yuan was formed to serve as the highest

control organ of the National Government by exercising the powers of auditing and impeachment. At the same time, the Audit Yuan was downgraded into the Ministry of Audit and was subordinated to the Control Yuan. In 1937, after the outbreak of the Sino-Japanese War, the powers of censure and recommendation were added to the Control Yuan.

The Constitution of the Republic of China was enacted on December 25, 1947. And, the first constitutional Control Yuan was organized on June 5, 1948 by members elected by provincial, municipal representative councils and overseas Chinese communities according to the Constitution.

When the second National Assembly met in Taipei in May 1992, it approved the Additional Articles of the Constitution of the Republic of China, of which provides that the Control Yuan shall have 29 members, including a president and a vice president, all of whom shall serve a term of six years and shall be nominated and, with the consent of the National Assembly, appointed by the President. Hence, members of the Control Yuan are no longer elected by representative councils. In accordance with this constitutional amendment, the members of the second Control Yuan, began to exercise their powers on February 1, 1993.

2. Functions and Powers

According to Article 97 of the constitution, the Control Yuan may, on the basis of the investigations and resolutions of its committees, propose corrective measures and forward them to the Executive Yuan and its ministries and commissions concerned, directing their attention to effect improvements. In addition, Article 95 provides that the Control Yuan may, in the exercise of its powers of control, requests the Executive Yuan and its ministries and commissions to submit for its perusal the original orders issued by them and all other relevant documents.

Therefore, The Control Yuan is vested with the powers of impeachment, censure, and auditing. It may also propose corrective measures, receive written complaints from the people, make circuit supervision, conduct investigations and supervise examinations. The exercise of these functions begins with investigation and ends in corrective measures, impeachment, or censures. Except in the case of voluntary investigation, Control Yuan members initiate their investigations based mainly on

people's written complaints, which, when received, are referred to the first division of the Secretariat, which affixes its opinions, and then forwards them to the Yuan member on duty, who will decide the action to be taken. If the member on duty decides to subject a complaint to investigation, the Control Yuan, basing on the order of assignment decided by drawing lots, will assign its members to investigate the case and file a report. If corrective measures are recommended in the report, the case will be referred to the relevant committees for action. If it warrants impeachment or censure, it has to be examined by a reviewing committee, which is filled by Yuan members in rotation. When the case is established by the reviewing committee, it is referred to the Committee of Discipline Against Public Functionaries of the Judicial Yuan for deliberation or to the official in charge or the next higher superior of the person in question for action.

The powers of the Control Yuan are exercised as follows:

(1) Action on people's complaints

The Control Law stipulates that the control Yuan and its members may receive the people's written complaints. According to rules for implementing the Law and the regulations governing the receiving and handling of people's written complaints by the Control Yuan, a citizen, after finding a public functionary having violated his or her duties, shall list the facts and evidence in detail and report them directly to the Control Yuan or its members. The same rules stipulate that, in handling such complaints, the Control Yuan shall set up a member-on-duty office to enable its members to review and decide such complaints in rotation every day. The member on duty shall, basing on the facts contained in a written complaint, decide whether to refer it to the member in charge for investigation, send a staffer to do the investigation, entrust a relevant organization to investigate, or handle it in any other appropriate manner. Nevertheless, if the case does not fall in the jurisdiction of the Control Yuan, the complaint shall be rejected. After the complaint is processed, the Secretariat of the control Yuan, as a rule, will inform the complainants in writing.

(2) Investigation

To exercise its power of control, the Control Yuan may investigate, through its

members or its assigned staff, the ministries and commissions and their subordinate organizations on the central level or the government agencies on the local level and other public and private organizations based on the details contained in a written complaint or on newspaper reports about a public functionary allegedly being involved in the violations of law or in a case of dereliction. The Control Yuan may also entrust a relevant organization to carry out the investigation. Control Yuan members, in addition to engaging in the investigation in rotation, may initiate an investigation voluntarily.

(3) Corrective Measures

The Control Law also functions that the Control Yuan, after investigating the work and facilities of the Executive Yuan and its subordinate organs, may propose corrective measures to the Executive Yuan or its subordinate organs for improvement after these measures are examined and passed by the relevant committees. After receiving the proposal, the Executive Yuan or its relevant ministry or commission involved shall make improvement or take other action immediately and reply to the Control Yuan in writing. If the improvement is not made and the Control Yuan does not receive the reply in two months, the Control Yuan may, through resolutions by its relevant committees, raise the question in writing or summon the officials in charge for questioning.

(4) Impeachment

The Control Yuan may institute impeachment if it deems a public functionary in the central government or in a local government guilty of neglect of duty or violation of law. According to the stipulations of Additional Articles of the constitution and the Control Law a case of impeachment must be initiated by at least two members of the Control Yuan and it shall be established after reviewing by no less than nine members, excluding the two members who initiated the case. The case should be submitted to the organization in charge of punishment. A motion by the Control Yuan impeaching the President or the Vice President must be initiated by more than half of the Control Yuan members and passed by more than two-thirds of the whole of Yuan members before it is submitted to the National Assembly.

For ordinary cases of impeachment, all members of the Control Yuan can join

the reviewing committee in rotation. Thirteen members will be invited in each case, but members involved in the case shall remove themselves from the reviewing. If an impeachment case cannot pass the examination and if the members who initiated the case persist in their belief that the impeachment is warranted, the case shall be reexamined by another reviewing committee formed by at least nine different members. The decision of the second reviewing committee is final.

In case the offense involves the dereliction of duty or violation of law so serious as to require immediate remedy, the case shall be referred directly to the offender's superior in charge for immediate action. If the case involves violation of the criminal code or military law, it shall be sent to a court or court martial for appropriate action.

The President of the Control Yuan shall not attempt to influence or interfere with impeachment proceedings. All impeachment cases shall be kept confidential before it is referred to a competent disciplinary organization for action. Once the examining members decide to announce the case, the Control Yuan shall make the announcement when the case is referred to the disciplinary organ.

Any statement made by an impeached person received by the disciplinary organization shall be forwarded immediately to the Control Yuan, which, in turn, shall immediately forward it to the Control Yuan members who have initiated the case of impeachment. After receiving the statement, the said members shall communicate their opinions to the disciplinary organization within ten days. The Control Yuan may question the disciplinary organization if no action on a case of impeachment is taken in three months.

(5) Censure

When a Control Yuan member finds a public functionary has neglected his or her duty or violated the law and deems it necessary to suspend him or her from office or take immediate action, the member may file a written censure against the public functionary. If the censure is examined and approved by a reviewing committee of three other members, the Control Yuan shall forward the case to the superior in charge of the public functionary. If the case falls within the jurisdiction of civil code or military law, it shall be referred to the competent law court or court martial for action. If a Control Yuan member who is assigned to fulfill his or

her duty in a supervision district decides to make a censure proposal to the Control Yuan against a public functionary lower than the recommended rank, the member, if necessary, may notify the superior of the censured person to arouse his or her attention. After receiving the written censure, the superior or the official in charge must take appropriate action in accordance with the provisions of the Law of Discipline Against Public Functionaries within one month. The superior may suspend the censured person from duty or take other immediate actions. If the superior official considers no action should be taken, he or she shall report the case to the Control Yuan with appropriate explanation. If the superior fails to take action in compliance with the law or if the action is considered inappropriate by more than two Control Yuan members, impeachment may be proposed against the censured person. If the impeachment proceedings result in penalty for the censured person, his or her higher official or the next higher official in charge should be held responsible for dereliction of duty.

(6) Circuit Supervision

The Control Law provides that members of the Control Yuan may conduct circuit supervision. Beginning in March of each year, the circuit supervisions are carried out by ten teams each on both national and local government levels. On the national level, the organizations supervised include the Executive Yuan and its subordinate ministries and commissions, the Examination Yuan and the Judicial Yuan and their subordinate organs. On the local level, the Control Yuan teams inspect the provincial governments, the provincial-government-level municipal governments and their subordinate agencies. The supervision covers the following fields:

- (a) the administrative agenda and the execution of budgets,
- (b) the application of government policies and regulations,
- (c) the ethics of public functionaries at various levels,
- (d) the livelihood of the people,
- (e) the social conditions, and
- (f) the handling of people's complaints and other related matters.

(7) Examination Supervision

According to the Examination Law, the Examination Yuan examination shall

invite the members of the Control Yuan to supervise the proceeding of the examinations except the examinations are held for determining the qualifications of the examinees. For an examination conducted by an ad hoc committee, the control Yuan should be requested to send one or more members to exercise its power of supervision. For examinations that are presided by officials dispatched by the Examination Yuan or by organizations entrusted by the Examination Yuan, the Control Yuan may assign personnel in the locality to carry out the supervision.

(8) Audit

The power of audit is one of the control powers. The constitution states that the auditor general shall, within three months after presentation by the Executive Yuan of the final accounts of revenues and expenditures, complete the audit thereof in accordance with law, and submit the audit report to the Legislative Yuan. The power of audit, according to the Law of Audit, shall be exercised by government auditing agencies. The central government and its subordinate organizations shall be audited by the Ministry of Audit, provincial governments and the governments of cities on the provincial-government level shall be audited by the Departments of Audit, and county and county-level city governments shall be audited by the Divisions of Audit.

Government auditing duties range from supervising the government's execution of budgets to determining the financial responsibilities of public organizations. The Constitution stipulates that the legislative organs have the power to decide budgetary bills by resolution. The executive organs present the budgetary bills and execute the approved budgets, and the control organs supervise the execution of the budgets and audit the annual reports. The division of legislative, executive and control powers is distinct and their responsibilities are clear-cut.

The audit organizations are responsible for auditing the financial operations of government agencies at all levels. According to the Law of Audit, the power of audit includes:

- (a) supervising the execution of budgets,
- (b) approving the receipts and payment orders,
- (c) examining and approving financial receipts and payment orders,
- (d) detecting irregularities and dishonest behaviors with regard to property and in

financial affairs

- (c) evaluating financial efficiency,
- (f) determining financial responsibilities, and
- (g) fulfilling other auditing duties mandated by law.

The Law of Audit provides that auditors shall carry out their duties independently without interference and that the auditing agencies shall regularly or extemporaneously send their auditors to various organizations to exercise their duties. If an auditing agency does not send its auditors to an organization, it may request the organization to submit the relevant documents for random inspection. Auditing agencies may inspect the receipts, payment vouchers and property of public organizations at any time. If the auditors demand to inspect the books and vouchers or other documents, or cash and property, the persons in charge of the organizations shall not conceal them or refuse to surrender them. They shall reply to questions in detail and supply all relevant materials if asked.

If auditors find financial irregularities or dishonest conducts among the officials in various organizations, they shall report their finding to the competent audit organizations and notify the heads of the organizations of the officials for action. They may also report, through auditing organizations, to the Control Yuan to deal with the case according to law. If a criminal offense is involved, the case shall be referred to the court and reported to the Control Yuan. If the auditing agency finds an organization notoriously inefficient or neglecting its duties, it shall notify the organization's supervising agency and report to the Control Yuan.

(9) Acceptance of Asset disclosures

According to Article 4 of the Law of Asset Disclosure by Public Functionaries, the following officials shall report their assets to the Control Yuan: the President and Vice President of the Republic; the presidents and vice presidents of the five Yuans; politically assigned officials; paid senior advisors, national policy advisors and strategic advisors of the Office of the President; officials above the level of township chiefs(including urban townships and township-level cities) elected according to law; elective representatives on and above the county level(including the county-level cities). Article 11 of that Law provides that the officials who are mandated to report their assets but have failed to do so in time without appropriate

reasons shall be fined for an amount from NT\$60,000 to NT\$300,000. If he or she persists not to report in time without appropriate reasons after being notified to make the disclosure, he or she shall be sentenced up to a year in prison, detained for labor, or fined for an amount from NT\$100,000 to NT\$500,000. His or her name shall be published in government gazette if the publication is mandated by law. To cope with the implementation of the asset disclosure law, the Control Yuan set up the Department of Asset Disclosure for Public Functionaries in August 1993.

3. Conclusion

The main function of the Control Yuan is to investigate, based on the complaints of the people or reflection from the media about the illegal behavior or malfeasance by a government agency and to take corrective measures or enact an impeachment against the government agencies / civil employees for violation of law, regulation or neglect of duty. The number of Control Yuan has reduced from its original 70 to 29 since February 1, 1993. However the complaints received annually are double than before. It is probably due to the rapid change of the Taiwan society after the martial law was released.

Although the new Control Yuan has been witnessed significant progress in handling with complaints and resolving the dissatisfactions of the people against the administrative sector of the government by its commitment and hard-working, all members of the Control Yuan know that there is still much remains left to be done to perform as a protector of social equality and justice.

IV. Conference of Asian Ombudsman Association

A. Overview

B. Preparatory Committee

C. Conference of Asian Ombudsman Association

A. Overview

Mr. J. B. Choi, Chief of the Ombudsman of Korean, was the host for the Conference held in the Sapphire Ballroom, Hotel Lotte, Seoul, starting at 3:00 P.M. on March 26, 1997. Mr. K. B. Park, Deputy Director General for Intenational Training of the Central Officials Training Institute, presided over the Conference.

Fifty representatives from 21 countries participated in the Conference. Among the participants were—Dr. M. Oosting, President of the International Ombudsman Institute, Dr. D. Jacoby, Secretary General of IOI, Mr. A. S. Salam, Asian regional director of IOI, and Mr. A. So from Hong Kong. The Conference agenda called for adopting the bylaws of the Asian Ombudsman Association, organizing the Asian Ombudsman Association and its staff, and fixing the venue for the next Conference.

Korean members of the Preparatory Committee met with representatives of the other members of the Committee in the Topaz Room, Hotel Lotte, Seoul on March 24~25 to collect opinions on the main agenda of the Conference held on March 26.

There was a lively exchange of opinions regarding the three draft bylaws submitted by Iran, Korea, and Pakistan, respectively. After considerable discussion, the participants were unable to decide on a final draft version, so it decided to forgo further action on the bylaws till a later date when all member countries could participate in the discussion—China, a member of the committee, did not participate in either meeting

Mr. A. S. Salam reported the results of the committee meetings to the participants of the Conference of the Asian Ombudsman Association held March 26, at which relative recommendations received unanimous approval.

B. Preparatory Committee

The Preparatory Committee met twice—once from 4:00~8:00 P.M.on March 24 and again the next evening from 8:00~9:30. Mr. A. S. Salam from Pakistan chaired the Committee, which included Mr. S. Mirza, also from Pakistan; Mr. A. So from Hong Kong; Messrs. V. Khobreh and J. Ghamous from Iran; Prof. B. Bastiampillai from Sri Lanka; and Dr. D. Jacoby, secretary general of the

International Ombudsman Institute. Korean committee participants included: Messrs. I. K. Choi, J. B. Choi, and D. K. Shin, of the Ombudsman of Korea; Dr. J. H. Ro, president of the Korea Institute of Public Administration; and Mr. D. H. Moon, commissioner of the Government Personnel Appeals Commission.

China, one of the six member countries with representatives on the Preparatory Committee, participated in neither meeting. Meanwhile, Prof. B. Bastiampillai, having arrived late, participated in only the second meeting.

The purpose of the Committee was to ensure the smooth conduct of the Conference, which was held starting at 3:00 P.M. on March 26. It did this by collecting opinions from Committee members regarding the three draft bylaws submitted by Iran, Korea, and Pakistan; organizing the Association staff; and fixing the venue for the next Conference.

The contentious issues in the Conference were: a) whether the Association needs written bylaws; b) if yes, how the site, tenure of the staff, and hosting cycle of the general assembly should be determined; and c) scope of voting members and whether to restrict the number of members from the respective countries.

These issues were raised because of disparities in the three draft versions of the bylaws submitted. After a brisk exchange of opinions, the Committee agreed on the following points.

1. The Association needs written bylaws, the final version of which will be discussed by the Committee at an unspecified future date.

2. The Association will pursue the goals and operate under the title "The Asian Ombudsman Association" as adopted at the 1st Asian Ombudsman Conference till bylaws can be adopted, and Mr. J. B. Choi will act as chief of the Association till the next Conference.

3. In line with the agreement reached at the 1st Conference, the Association will hold its next Conference in Macao.

C. Conference of the Asian Ombudsman Association

The Conference of the Asian Ombudsman Association was held on March 26 from 3:00~4:00 P.M. After opening the Conference, Mr. J. B. Choi turned the floor over to Mr. A. S. Salam, who reported on the results of the two meetings

held by the Preparatory Committee.

Mr. Salam explained that the Committee would have to meet at some future date when China could take part in the discussion on the bylaws. He then recommended that the Association continue to operate under its current configuration, and that Mr. J. B. Choi act as Chief/President of the Asian Ombudsman Association till the next Conference. The participants approved these recommendations unanimously.

Following the Committee report, the chair moved that the next conference be held in Macao as agreed on at the 1st Ombudsman Conference. The motion was approved unanimously by the participants. This was followed by closing remarks by the chairman.

Report of the Preparatory Committee by Mr. Abdul S. Salam

Ladies and Gentlemen.

Let me perform the last right as a Chairman of the Asian Ombudsman Association. And I call a meeting to order. Ombudsman office-holders differently designated as Parliamentary Commissioner, Commissioner for Administrative Complaints etc. from 75 countries now 85 countries are members of the International Ombudsman Institute. Then, there are Regional Associations of Ombudsmen or similar office-holders in the various regions of the world like North America, Europe, Australasia Pacific. Asia, though a vast region and having about 65 percent population of the world, did not have a Regional Association. My predecessor was elected as a Director for the region by the Board of Directors of the International Ombudsman Institute. He was entrusted with the job of organizing a Regional Association.

Since his tenure expired and I was instead elected as a Director, I attended the meeting of the Board of Directors of International Ombudsman Institute at Hague from 15th to 18th of October, 1995. I had earlier led a delegation from 2nd to 10th of July, 1995 to the Peoples Republic of China and also attended the 7th International Anti-Corruption Conference at Beijing from 6th to 10th of October, 1995. I had also attended as an observer of the 4th African Regional Conference of Ombudsman on 18th to 21st of September, 1995 at Khartoum convened by Sudan. After the Boards meeting held at Hague, I was invited by Mr. Andrew So,

the Ombudsman of Hong Kong to participate as an observer in the 15th Australasian and Pacific Ombudsman Conference and the International Ombudsman Symposium from 23rd to 27th of October, 1995.

Having met the leading Ombudsmen or similar office holders and broached the subject, I felt encouraged to pursue the matter of organizing an Asian Ombudsman Association. I submitted a summary to Mohtarma Benazir Bhutto, then a Prime Minister of the Islamic Republic of Pakistan for organizing an Asian Ombudsman Conference. The Prime Minister approved the idea and provided funds for the venture. Invitations were extended to the ombudsmen or similar office-holders in the various countries of Asia. It was stated in the invitation that the main objectives of the Asian Ombudsman Conference will be as follows:

- (a) To promote the concept the ombudsman and its development in Asia.
- (b) To facilitate exchange of information and experience between ombudsmen and heads of ombudsman-like institutions of the Asian region.
- (c) To discuss the possibilities of setting up an Asian Ombudsman Association.
- (d) To discuss plans for arranging periodic conferences of the Asian ombudsman or ombudsman-like institutions.
- (e) Any other matter ancillary to the above.

The conference was held at Islamabad from 15th to 16th of April, 1996 as many as 40 delegates from 18 countries participated. Some ombudsmen regretted because of their personal engagements or on account of ill health. I was especially sorry that Sir Brian Elwood, Chief Ombudsman of New Zealand whom I had met before and who was very happy with the idea, could not participate because of his two surgeries. Mr. Marten Oosting, President of the International Ombudsman Institute sent a message that because of earlier commitment he would not be able to come himself, but he would wish the best for the conference. The ombudsmen of Australia passed a resolution for the success of the conference and sent it through Mr. Peter Boyce, Ombudsman of Northern Territory. All others sent their good wishes.

The conference was inaugurated by the prime minister of Pakistan. The first session was presided over by Mr. Justice Syed Sajjad Ali Shah, Chief Justice of the Supreme Court of Pakistan. The participants were invited by Mr. Farooq Ahmad Khan Leghari, the President of the Islamic Republic of Pakistan who

welcomed the delegates and addressed the gathering at some length. During the conference, the delegates of the various countries spoke about the systems operating in their countries. They had also sent written papers. Their contribution was enlightening and useful in understanding how the same objective was being achieved differently. To an end, there may be different ways but if the vision is clear and determinedly pursued, then one can always achieve the object.

During the discussion, it was realized that notwithstanding the diversity in various jurisdictions, the services being performed by the ombudsmen or their equivalent counterparts were of similar nature, that is to say, the redressal of grievances of people arising out of the administrative action. They decided that they should form a regional association of ombudsmen. In the fourth session, Mr. Andrew So of Hong Kong read out papers comprising the preamble, general guidelines, the way forward. Copies of these were supplied to the delegates. These papers contain as follows:

Preamble : The delegates attending the First Asian Ombudsman Conference in Islamabad, Pakistan felt the need for formation of the Asian Ombudsman Association to pool the rich resources of ideas, practical experiences and know-how of ombudsman in the Asian region as well as to render individual support and encouragement amongst the ombudsman in the region. Another enduring value of having an Association set up is the opportunity for understanding and development of each jurisdiction with a full awareness of changed laws and administrative torts throughout the region. The Association may involve the parliamentarians, and the members of Government in the support of ombudsmen. To facilitate the discussion by the delegates on formation of the Asian Ombudsman Association, the attached papers on the guidelines and on the way forward are also prepared and distributed.

Now, the general guidelines lay down at that time were:

1. The objectives of the Association shall be:

- (1) To promote professionalism in discharging our role as ombudsmen.
- (2) To facilitate exchange of information that assists the resolution of problems which ombudsmen in Asia are confronted with.
- (3) To promote the aims and concepts of ombudsmanship in Asia, including

the assistance in the establishment of new jurisdictions and assistance to newly appointed ombudsman.

2. The Association shall be non-political, democratic and professional body.

3. The Associations' boundaries are not fixed but the aim of the Association is to bring together Ombudsman whose constitutional environment has the sufficient similarities to make understandable collegiatedly coordinating a meaningful and shared experience.

4. Meeting of the Asian Ombudsman will generally be held annually and the Ombudsman of the host country will serve as Chairman.

5. Besides members of the Asian Ombudsman Association, observers, that is to say, persons interested in Ombudsman or like function, may be invited.

6. A member shall be a person, who is titled Ombudsman, parliamentary commissioner, minister of supervision, commissioner for administrative complaints, or with other designation who has been appointed or elected according to the constitution or law of the country concerned and whose role includes the following characteristics:

(1) To investigate grievance of any people or body of person concerning any decision or any act done or omitted by any administrative authority over which jurisdiction exists; and.

(2) To make recommendations to authorities under the jurisdiction.

7. Other guidelines and instructions may be suggested by the delegates of the Asian Ombudsman Conference.

The way forward was shown as follows:

1. The participants to the First Association Ombudsman agree to form an Asian Ombudsman Association. However, if for any reason any participant will not like to continue, he may inform accordingly.

2. A Preparatory Committee of 3 to 5 members is formed to work out the details and by laws of the Asian Ombudsman Association. The Ombudsman of Pakistan shall be the Chairman and Convenor of the Preparatory Committee. There shall be a Secretary from amongst members of the Preparatory Committee. The Secretary shall prepare a draft to be circulated to all members of the Preparatory Committee for endorsement before submitting it to the members for acceptance.

After the delegates expressed their views, Mr. So of Hong Kong rounded up the discussion by saying that the delegates had overwhelmingly endorsed the formation of the association, based on the guidelines presented. The Asian Ombudsman Association was accordingly formed.

To draw up details and bylaws, a Preparatory Committee was constituted consisting of Ombudsman of Pakistan, China, Korea, Sri Lanka, Hong Kong and Iran. Ombudsman of Pakistan, Justice Salam, was elected as Convenor/Chairman.

In the closing session, the delegates from Korea, Macao, Azad Jammu and Kashmir offered to host the next conference of the Asian Ombudsman Association. The delegate from Korea stated that the occasion will correspond with the national day celebration of the Republic of Korea. It was, therefore, decided to accept the offer of Korea. Delegate from Macao said that then the next conference in 1998 should be held in his country. The offer was accepted.

So from the history of the formation of the Asian Ombudsman Association, it will be clear that the meeting of the Asian Ombudsman Association will generally be held annually and the Ombudsman of the host country will serve as Chairman and according to the decision of the conference, the offer of Korea for holding the conference in 1997 was accepted. The Chief Ombudsman of Korea, Mr. Choi Jong-Baik has held the second session, the Second Asian Conference from 25th to 26th of March 1997 and he is the Chairman. He will continue to hold and enjoy the office and exercise authority and perform duties appertaining to the office of the Chairman / President of the Asian Ombudsman Association.

Three drafts, namely one by the Ombudsman of Pakistan incorporating the views of Hong Kong and Sri Lanka, the other one by the Chief Ombudsman of Korea and the third by the Ombudsman of Iran were taken up in an informal meeting presiding all by the Chief Ombudsman of Korea in which Dr. Chung-Hyun Ro, the President of the Korean Institute of Public Administration and other members of the Korean delegation, as well as Justice Salam, Ombudsman of Pakistan, Mr. Vail-O-Lah Khobreh, Vice-President of the General Incorporated Organization of Iran and Mr. Andrew So, the Ombudsman of Hong Kong participated and various points were highlighted for enabling the Preparatory Committee to finalize the bylaws.

The Preparatory Committee discussed the matter and realized that a founding member of the Association and of the Preparatory Committee, that is to say, Vice

Minister of Supervision of China was not present, nor his views were available. Besides, the points arising out of the three drafts and those highlighted in the informal meeting required detailed discussion and deliberation for formulation of the bylaws. It was therefore decided that the formulation of the bylaws be taken up after discussion and decision by all the members of the Preparatory Committee and the draft be circulated to the founding members of the Association for their approval and adoption.

For the time being, the Association will continue to function under its original name of Asian Ombudsman Association with the same aims and objectives as decided in the first conference held in Islamabad, Pakistan.

In the end, ladies and gentlemen, I must say that our new Chairman/President, the Chief Ombudsman of Korea has made excellent arrangements for holding this conference and we are, I hope I express our feelings all rightly, all very grateful to him. I am sure that he would continue to devote his time and energy to carry on the aims and objectives of the Asian Ombudsman Association as beautifully during his tenure. I wish his success. Three cheers for the Chairman/ President, the Chief Ombudsman of Korea.

Motion to fix the venue for the next conference

by Mr. Choi, Jong-Baik

From now on, I will preside the session, the remaining part of the session. Thank you very much, Convenor Justice Abdul Salam, for the excellent report I would like to reconfirm that the venue of the next conference for 1998, Macao. If there is no objection, let us give a big hand to the delegates from Macao for the successful next conference. Thank you very much. This concludes the Asian Ombudsman Association Meeting.

Closing Remarks by Mr. Choi, Jong-Baik

Dr. Marten Oosting, President of International Ombudsman Institute, delegates, and distinguished guests. I would like to take this opportunity to thank you for the successful closing of the Second Asian Ombudsman Conference. It seems that the time we had the heated discussion on the subject of general functions of

ombudsman in modern public administration just flew by. This conference was specially meaningful that it laid the foundation of Asian Ombudsman Association. Now, we have the forum where all the ombudsmen of Asia can gather together and discuss the development of Ombudsmen institution in Asian region. I would like to also thank you for giving me the honor of assuming the office of Chairman of Asian Ombudsman Association and I will try my utmost best to fulfill my duty so the Association can do its functions in full. We greeted each other just a few days ago, but I am sorry to say its time to part again. I hope your stay in Korea has been nothing but pleasant and I promise I will do better next time you come back to Korea. I wish you all safe journey back home and hope to see you all again in Macao at the Third Asian Ombudsman Conference. Thank you.

V. Field Trip

A. Overview

B. Schedule

C. The List of Participants

D. Field Trip to Industrial & Historic Sites

A. Overview

Forty Conference participants from 16 countries and 18 of their Korean counterparts visited Pohang Iron & Steel Company March 27. The following day, they toured historic sites in Kyongju, an old capital from Korea's past. The field trip provided an opportunity for participants to develop friendly relations while viewing Korea's economic growth and experiencing its culture firsthand. Based on feedback received during and following the field trip, participants were pleasantly surprised by what they saw.

B. Schedule

〈Thursday, March 27, 1997〉

- 08 : 50~09 : 40 Hotel Lotte ⇔ Kimpo Airport.
- ~10 : 30 Boarding Procedure & Boarding.
- 10 : 30~11 : 30 Kimpo Airport ⇔ Pohang Airport.
- 11 : 30~12 : 30 Pohang Airport ⇔ Hotel for lunch.
- 12 : 30~14 : 00 Lunch.
- 14 : 00~14 : 30 Hotel ⇔ Pohang Iron & Steel Company(POSCO)
- 14 : 30~16 : 00 Visiting POSCO.
- 16 : 00~17 : 00 POSCO ⇔ Kyōngju Chosun Hotel
- 17 : 00~18 : 00 Rooming
- 18 : 00~20 : 00 Reception.

〈Friday, March 28, 1997〉

- 10 : 00~12 : 30 Morning Tour(Pulkuksa Temple, Silla Folk Handicraft Village.)
- 12 : 30~14 : 00 Lunch
- 14 : 00~16 : 30 Afternoon Tour(Museum, Punhwangsa Temple, Anapji Pond)
- 16 : 30~18 : 30 Kyōngju ⇔ Pohang Airport
- 18 : 30~19 : 30 Pohang Airport ⇔ Kimpo Airport
- 19 : 30~20 : 40 Kimpo Airport ⇔ Hotel Lotte

C. The List of Participants

Country	Name	Country	Name
Canada	Dr. Daniel Jacoby		Mr. Mohamed Ramli Sutan
Chinese Taipei	Dr. Louis R. Chao	Malaysia	Ms. Hajah Rugayah Abdullah
	Mr. Chung-Chuan Chai		Mr. Haji Mislan Bin Karmani
	Mr. Meng-Ling Chen	Netherlands	Dr. Marten Oosting
Hong Kong	Ms. Marie Wen	Pakistan	Mr. Abdul S. Salam
	Mr. Kam Hung Li		Mr. R. M. Khurshid Khan
Ms. Candy Chan	Mr. Salahuddine Mirza		
India	Justice H. H. Kantharia		Mr. Tarique Laghari
Mrs. N. H. Kantharia	Mrs. Marium Salam		
Indonesia	Mr. Alwis Azizat Murad	Mrs. Ayesha Mirza	
Iran	Mr. Vali Khobreh	Mrs. Razia Oaiser	
	Mr. Jalal Ghamous	Philippines	Mr. Francisco Villa
Israel	Mrs. Miriam Ben-Porat	Mrs. Lilia Villa	
	Mr. Avigdor Ravid	Sri Lanka	Prof. Betram Bastiampillai
	Mrs. Mirella Bamberger	Thailand	Dr. Prasit Damrongchai
Jordan	Mr. Abed Ali Shakanbeh		Mr. Wanlop Yutidhammadamrong
Macao	Mr. Luis Manuel G.M. Freitas	Mrs. Vantanee Damrongchai	
	Mr. Lino Jose Riberio	Vietnam	Mr. Thanh Ta Huu
	Dr. Ka Hung Shuen		Mr. Hoe Nguyen Anh
	Mr. Andre Folque Terreira		Mr. Loc Nguyen Huu

D. Field Trip to Industrial & Historic Sites

1. Pohang Iron & Steel Company(POSCO)

POSCO is the second largest steel producer in the world with 24.3million tons of crude steel production in 1996. The company employs about 19,800 people and manufactures a diverse array of steel products, including hot rolled and cold rolled products, plates, wire rods, silicon steel sheets, and stainless steel products at its two steelworks in Pohang and Kwangyang.

In 1996, POSCO recorded net sales of 8.4 trillion won(US\$ 10.0 billion) and net profit after tax of 624 billion won(US\$ 739 million, 7.4% of total sales) on a non-consolidated basis, Its total assets as of December 31, 1996 was 1.43trillion won(US\$ 17.0 billion) and total stockholders' equity amounted to 6.7trillion won(US\$ 7.9 billion), also on a non-consolidated basis.

Since its establishment in 1968, POSCO has continuously pursued facilities expansion. When the construction of the No.5 Blast Furnace in Kwangyang Works is completed in late 1998, POSCO's crude steel production will climb to 28 million tons, which will allow POSCO to jump into the top position of the world steel industry.

POSCO has announced the Vision 2005, in which its strategic goals for the forthcoming century are outlined. In the Vision 2005, POSCO stated that it will strengthen its competitive edge by further focusing on its four main businesses which include : Steel, Engineering & Construction, Energy, and Other businesses for future growth Including information & Telecommunications.

POSCO is actively pursuing overseas joint ventures including a mini mill in Indonesia, a pellet plant in Brazil, an HBI plant in Venezuela, and several steel processing plants in China and Vietnam. In 2005, POSCO will be a truly globalized company with over 50 overseas steel production and sales bases.

2. Kyōngju

■ **Outline of the City** : Kyōngju was the capital of the Silla Dynasty for a thousand years, and you can find ancestors' heritages everywhere in the city. In the relics of Buddhist culture, we find the artistic creativity and scientific lifestyle of Silla people. We can read the longing of Silla people for the life Buddhist heaven by way of magnificent tombs.

■ **Pulkuksa Temple** : Proven in designation of Pulkuksa Temple as world cultural heritages by UNESCO, the millenium of Silla cultures shows its glory and splendor even after another millenium has passed away.

In the premise of Pulkuksa Temple, the essence of Unified Shilla Kingdom's cultural heritages such as Tabotap Pagoda, Sökgatap Pagoda, Chöngun-kyo(Blue Cloud Bridge) and Baekun-kyo(White Cloud Bridge) reaching to Chahamun Gate, and Yönhwa-kyo(Lotus Bridge) and Chilbo-kyo(Seven Treasures' Bridge) show the artistic supremacy of Shilla people. They are designated as National Treasures.

■ **Silla Folk Handicraft Village** : Shilla Folk Handicraft Village was established in 1986 to preserve and develop traditional artistry of Shilla artisans. Traditional handicrafts such as metalic wares, woodcafts, and ceramic wares are made anew in this village.

■ **Kyöngju National Museum** : Kyöngju Mational Museum is a treasure box of Shilla culture. The museum contains 80,000 pieces of precious relics. Among them, 2,500 items are always on exhibit. Divine Bell of King Söngdök has beautiful ringing sound as well as its beautiful shape with delicate relief. Because of its mysterious sound, the bell is called Emile Bell. According to a legend, it is said a baby was devoted to god as sacrifice, and the baby's cry for its mom rings out emile, emile ...

The bell is recognized as one of the best bronze bells in the world.

■ **Punhwangsa Temple** : Punhwangsa Temple, over the fence of Hwangyongsa Temple, had been a home of many great monks of Shilla such as Wonhyo, Chajang. Inside the old temple site a well called Samyongpyöñhjong remains intact after more than a millenium, and it is still in use.

■ **Anapji Pond** : Royal garden Anapji, next to the Shilla's main palace Panwolsöng, was built by King Munmu in his 14th year of reign(AD 674). The king unified the three kingdoms, and the glory of this unification was reflected in this garden. Artificial lake and pavillions were built, and flowers and birds were raised in the garden.

VI. Appendix

A. Three Draft Versions of Bylaws

B. The Staff of the Ombudsman of Korea

A. Three Draft Versions of Bylaws

〈KOREA DRAFT〉

Statute of the Asian Ombudsman Association

Article 1 (Title)

This Association shall be referred to as the Asian Ombudsman Association (hereinafter "the Association")

Article 2 (Purposes)

The purpose of the Association is to carry out the following :

- a. strengthen ombudsman activities and the growth of ombudsmanship in the Asian region ;
- b. exchange experiences and information to enhance and specialize the duties of ombudsmen and cooperate internationally in other ombudsman-related functions ;
- c. research and examine areas related to developing and promoting ombudsmanship;
- d. sponsor training and educational programmes of ombudsman institutions in the region.
- e. scholarships, fellowships, grants and other types of financial support to individuals for ombudsman-related study ; .
- f. plan, arrange and supervise periodic ombudsman conference of Asian countries ; and
- g. carry out other matters related to developing ombudsmanship in the Asian region.

Article 3 (Membership)

1. Members of the Association shall be ombudsmen, institutions, or individuals interested in the activities of ombudsman in the Asian region, and shall be

classified as Full Members, Associate Members, Honorary Life Members and Individual Members.

2. **Full Members** : Full Member shall be a person holding the office of Ombudsman, Parliamentary Commissioner, Minister of Supervision, Commission for Administrative Complaints or other title the holder of which has been appointed or elected according to the Constitution or Laws of a country to carry out functions with the following characteristics ;

- a. investigate grievances of any person or body against administrative decisions or recommendations made, or acts done or omitted by any officer, employee, member or committee of members of any organization over which jurisdiction exists ;
- b. are established by the Constitution or law ; and
- c. are remain independently and politically neutral in carrying out their duties.

3. **Associate Members** : Associate Member shall be individual or institutions that carry out the affairs referred to in paragraph 2.a hereof and/or other related affairs.

4. **Honorary Life Members** : The Board of Directors (hereafter "the Board") may confer Honorary Life Membership on person who have made outstanding contribution to the Ombudsman ethos or functions.

5. **Individual Members** : The Board of Directors may grant Individual Membership to any individual who has shown and interest in the ombudsman concept through writings, research or other related activity

Article 4 (Granting and Withdrawing Membership)

1. The Board shall decide on the membership of any persons or agencies recommended by one or more Full Members. In case of dispute or objection to the decision of the Board, the applicant shall have right of appeal to the General Assembly.

2. Any persons or agencies may withdraw from the Association at any time by submitting written notification to the General Assembly 90 days in advance.

3. The membership of any person or agency that falls under one or more of the conditions enumerated in the following items shall be withdrawn subject to the approval of at least 2/3 of the Full Members in a General Assembly when at least half of the Full Members present :

- a. one who violates the Statute of the Association or a resolution of a General Meeting ;
- b. one who fails to perform assigned duties or preforms acts that impairs the honor of the Association ;
- c. one who ceases to meet membership qualification requirements enumerated in Article 3 ; and
- d. one who, due to unavoidable circumstances, is unable to exercise membership rights and duties.

Article 5 (Rights and Duties of Members)

1. Members shall foster the purposes of the Association and abide by this Statute and resolutions of the General Assembly.

2. Members shall pay membership fees or bear other expenses necessary to operation the Association. The Board may, however, resolve to reduce or exempt Associate Members from the requirement to pay membership and other fees.

3. Full Members may be elected as The President, Vice-President, Directors or Auditor(hereinafter "officers") and may present, speak, and vote at the General Assembly.

4. Associate, Honorary Life, Individual members may present reports and speak at the General Assembly.

Article 6 (General Assembly)

1. General Assembly shall consist of the Full Members and be classified as either regular or extraordinary.

2. A regular General Assembly shall be convened once every two years, with extraordinary General Assembly being held at the request of at least one fifth of

Full Members or at the request of the Board. The General Assembly shall be convened by providing members a written notice of the proposed agenda at least 30 days prior to the scheduled Assmby.

3. A General Assembly shall decide the following matters ;

- a. amending the Statute of the Association ;
- b. electing the officers of the Association ;
- c. assessing requests for and withdrawal of membership
- d. approving budgests and settlement of accounts ;
- e. approving reports of the Board and the Auditors, and
- f. other matters for deliberation referred to it by one-fifth or more of the Full Members or by the Board.

4. Decisions of a General Assembly shall be made with at least half of all Full Members attending and by an affirmative vote of at least half of the Full Members present at the time of the decisions, except as otherwise provided in this Statute.

5. Full Members have one vote each in decisions of a General Assembly, with a limit of two votes by Full Members from any one country.

Article 7 (President and Vice-Presidents)

1. The General Assembly shall elect a President and two Vice- Presidents.

2. The term of office for the President and the Vice-President shall be two years, and they shall be eligible for reelection.

3. The President shall represent the Association and convene and preside over General Assemblies.

4. In the event of the vacancy of the President, the Vice-President shall convene a General Assembly and preside over it, and in the event of the vacancy of both the President and the Vice-President, the Sectetary-General convene a General Assembly and preside over it.

5. The President and the Vice-President shall be installed as ex officio directors.

Article 8 (Board of Directors)

1. The Board shall comprise :
 - a. The President ;
 - b. Two Vice-Presidents ;
 - d. The Treasure ; and
 - e. One-third Full Members, to a maximum of ten. In any case, however, there shall be members from at least five countries on the Board with no more than two members from any one country.
2. Directors shall hold office for two year terms, and be eligible for reelection.
3. The President shall chair the Board.
4. The chair shall convene a meeting of the Board once a year. Before convene a meeting, the chair shall notify the Directors of the agenda and related items in writing at least 15 days in advance.
5. The Board of Directors shall deliberate and act on the following matters:
 - a. to propose an amendment to the Statute of the Association;
 - b. granting a membership ;
 - c. budget estimate ;
 - d. membership fees or otrer expenses necessary to operate the Association ;
 - e. matters related to establishing and implementing work plans for accomplishing the purposes of the Association ; and
 - f. matters related to locating, organizing and operating the Association and the Secretariat
6. Decisions of a meeting of the Board shall be made with at least half the directors attending and by affirmative vote of half the directors present.
7. The Treasurer shall direct business affairs related to the finance and accounting of the Association.

Article 9 (Secretariat)

1. A Secretariat shall be established to execute the affairs of the Association.

2. A Secretary-General shall be appointed by and from the Board.
3. The Secretariat shall execute matters decided by the Board at a General Assembly and shall report the results at General Assembly and to the Board.

Article 10 (Auditor)

1. A non-officer of the Association shall be appointed as Auditor to supervise the financial affairs and audit the accounting procedures of the Board and the Secretariat.
2. The Auditor shall be appointed in a General Assembly to serve a single two-year term. Members of the Board may not serve as the Auditor.
3. The Auditor shall report supervision and audits results to general meetings.

Article 11 (Finances)

1. Expenditure by the Association shall be drawn from membership fees, contributions, and other donations.
2. Membership fees shall be determined by the Board and shall be paid in equal shares by each member.
3. Operating expenses of the Association shall be drawn from the following:
 - a. Membership Fees(The Board shall determine the amount each member must contribute. The amount shall be fixed in most cases, however, the Board may make exceptions taking into account economic factors in the home country of the representative members.) ;
 - b. Donations from members' home countries ;
 - c. Assistance money from international organizations or groups ;
 - d. Contributions from individuals or corporations supporting the goals of the Association ; and
 - e. Proceeds from businesses serving the purposes of the Association

Article 12 (Amendments to the Statute)

1. The board of directors or one-fourth or more of full members may propose amendments to the Statute.

2. The amendments proposal to the Statute shall be decided by a majority of all full members attending and by a two-thirds majority of full members present in a General Assembly.

Annex

1. (Enforcement Date) This Statute shall enter into force as of March 26, 1997.

2. (Transitional Measures on Membership) Participants, who are eligible for a membership according to the Article 3. (1)(2) and, of the first Asian Ombudsman Conference, Islamabad, Pakistan or the Second Ombudsman Conference, Seoul Korea shall be automatically granted Full Membership

〈Pakistan Draft〉

Revised statute of Asian ombudsman association

1. Name

The Association shall be called "The Asian Ombudsman Association"

2. Headquarters

The Headquarters of the Association shall be located at Zero Point, Islamabad, Pakistan, However, office shall be established at such place in a country where the annual general meeting of the Association shall be held.

3. Association Seal

Association seal shall be in such form as shall be determined by the Board of Directors and shall have inscribed thereon the name of the Association, the year of its organization

4. Objectives

The Association shall be independent, non-political, democratic and professional, formed for the following objectives :

- (i) To promote the concept of Ombudsmanship and to encourage its development in Asia.
- (ii) To develop professionalism in discharge of the role as Ombudsman.
- (iii) To encourage and support study and research regarding the institution of Ombudsman.
- (iv) To sponsor training and educational programmes for the institutions of Ombudsman in the region.
- (v) To collect, store, disseminate information and research data about the institution of Ombudsman.
- (vi) To facilitate exchange of information and experiences among the Ombudsmen of the region.
- (vii) TO provide scholarships, fellowships, grants and other types of financial support to individuals for study relating to the institution of the Ombudsman.

- (viii) To plan, arrange and supervise periodic Conferences of the Ombudsmen of the Asian countries.
- (ix) To undertake such other matters necessary to further the above objectives of the Association

5. Membership

The association shall comprise of – Voting Members, Associate Members, Honorary Life Members and Individual Members.

Voting Members:

Voting Member shall be a person holding the office of Ombudsman, parliamentary Commissioner, Minister of Supervision, Commissioner for Administrative Complaints or by any other designation who has been appointed or elected according to the constitution or law of the country and whose role includes the following characteristics:

- (i) to investigate the grievance of any person or body of persons concerning any decision or recommendation made or any act committed or omitted by any administrative authority over which the jurisdiction exists ;
- (ii) to make recommendations to authorities under the jurisdiction ;
- (iii) to discharge functions, independent of the organizations over which jurisdiction is held; and
- (iv) to report to the Head of State, Government or the Legislature the results of activities or on any matter arising from an investigation.

Associate Members:

Persons or Agencies interested in or involved in Ombudsman like activities who do not qualify as voting members, for example universities, hospitals, prisons, press etc.

Honorary Life Members:

Honorary Life Membership may be appointed by the Board of Directors from persons who have made outstanding contribution to the Ombudsman ethos or functions.

Individual Members:

The Association may allow any individual to be a member who has shown

interest through writings, research or otherwise in the concept of Ombudsman and whose Membership will advance the objectives of the Association.

Acceptance :

The Board of Directors shall decide about the membership. in case of dispute or objection to the decision of the Board of Directors, the applicant shall have the right of appeal to the General Assembly.

Rights and Obligations :

All members shall have the right to request the Board of Directors in regard to any matter relating to the Association or any of its body.

The Associate, Honorary, and Individual members may participate but not vote in the General Assembly.

All members are entitled to and obliged to do every thing in their power to promote the aims of the Association and to observe its statutes and resolutions.

Cancellation :

The General Assembly shall be entitled to cancel the Membership when a member has :

- (i) violated the statutes of the Association; or
- (ii) damaged its reputation ; or
- (iii) not fulfilled the conditions set down for membership ; or
- (iv) not cleared the membership dues after receiving three written notices.

Withdrawal :

Any Member may withdraw from the Association at any time by notifying 90 days in advance.

Observers :

Persons interested in Ombudsmanship or similar functions being performed by other bodies may be invited as Observers.

6. General Assembly

The General Assembly shall consist of the voting members.

The General Assembly shall be called once a year by the President. An extraordinary General Assembly shall be convened by the President or a Vice-

President when important decisions have to be made or when at least one fifth of the voting members so request and submit a written agenda; in the latter case, within one month. The General Assembly may not meet in the year when the IOI Conference is held.

The General Assembly shall be deonvened by sending written notices at least 30 days prior to the schedule and communicating the proposed agenda to the members.

The General Assembly shall have the right:

- (i) to elect the members of the Board of Directors and two auditors ;
- (ii) to fix membership dues ;
- (iii) to pass amendment in statute and basic organizational issue ;
- (iv) to confer special honours on deserving persons ;
- (v) to approve reports of the Board of Directors and the auditors ;

The General Assembly shall be decribed to have a quorum when at least half of the voting members are present, All resolutions of the General Assembly shall require a simple majority of the voting members present. However, for adopting a resolution on matters contained in items(iii) above, a two third majority of the voting members present shall be necessary.

The General Assembly shall be chaired by the President or in his absence by a Vice-President. In case of the election of the President or the entire Board of Directors, the senior most member present in office shall preside.

7. Board of Directors

The Board of Directors shall consist of :

- (i) The President ;
- (ii) The Vice-President ;
- (iii) The Secretary ;
- (iv) The Treasurer ; and
- (v) one third of the voting members, subject to a maximum of 10

The Board of Directors shall be elected by the General Assembly, for a term of three years, but shall remain in office until the new Board of Directors has been elected. The Board of Directors shall be entitled to co-opt members.

Resolutions by the Board of Directors shall be adopted by majority vote, In the

event of a tie, the President shall cast the deciding vote.

Directors shall not receive any remuneration for their services, but by resolution of the Board, expenses may be allowed for their attendance at annual or special meetings of the Board.

Any Director who ceases to represent the office of the Ombudsman shall cease to be a member of the Board of Directors.

Responsibilities :

All matters in furtherance of the objectives of the Association including financial, not reserved for the General Assembly as set out in para 6(i) to(v) shall be dealt with by the Board of Directors,

The President shall represent the Association, convene meetings of the Board of Directors, and act as Chairman of meetings.

If the President is absent or otherwise prevented, he shall be represented by the Vice-President. The President shall be authorised to sign together with the treasurer all financial matters.

8. Secretariat

The Secretariat shall consist of the President, the Vice-President, the Secretary and the Treasurer and shall carry on all functions entrusted by the Board of Directors.

The two auditors, selected for three years from amongst the voting members, shall be responsible for examining the financial management of the Association and submitting annually a written report on it to the General Assembly, Members of the Board of Directors shall not be auditors.

9. Miscellaneous

In case of difficulties in giving effect to provisions of these bye-laws or interpretation of any clause thereof, the matter would be referred to the President who may decide upon it, or refer it to the Board of Directors, or the General Assembly according to the nature and gravity of the matter. Decision of the President may be reviewed by the Board of Directors and their's by the General Assembly.

— <Iran Draft> —

The Asian ombudsman association Bylaws

SECTION I

Name, Headquarters and Objectives

Article 1. Name

The Association shall be called "Asian Ombudsman Association"

Article 2. Headquarters

The headquarters of the Association shall be in Islamabad, Pakistan,

Article 3. Objectives

The Association shall be independent, non-political, democratic and professional, formed for the following objectives :

- (i) To promote the concept of Ombudsmanship and to encourage its development in Asia
- (ii) To develop professionalism in discharge of the role as Ombudsman.
- (iii) To encourage and support study and research regarding the institution of Ombudsman.
- (iv) To sponsor training and educational programmes for the institutions of Ombudsman in the region
- (v) To Collect, store, disseminate information and research data about the instiution of Ombudsman.

- (vi) To facilitate exchange of information and experiences amongst the Ombudsman of the region
- (vii) To provide scholarships, fellowships, grants and other types of financial support to qualified individuals for study relating to the institution of the Ombudsman.
- (viii) To plan, arrange and supervise periodic Conferences of the Ombudsmen of the Asian countries.
- (ix) To undertake such other matters necessary to further the above objectives of the Association

SECTION II

Membership

Article 4. Membership

The Association shall comprise of Voting Members, Associate Members, Honorary Life Members and Individual Members

Article 5. Voting Members

Voting Member shall be an institution or office of an individual whether titled Ombudsman, Parliamentary Commissioner, Minister of Supervision, Commissioner for Administrative Complaints or by any other designation existing under or who has been appointed or elected according to the constitution or law of the country and who has the following functions.

- (i) to investigate grievance of any person or body of persons concerning any decision or any act committed or omitted by any administrative authority over which the jurisdiction exists;
- (ii) to make recommendations to authorities under the jurisdiction;
- (iii) to discharge functions independent of the organizations over which the jurisdiction is held; and

(iv) to report to the Head of State, Government or the Legislature the results of its activities or on any matter arising from an investigation.

Note : In the event that more than one institution or Ombudsman from each country meets conditions set out hereinabove, there shall be no restrictions on their membership but shall jointly have one vote.

Article 6. Associate Members :

Associate Member shall be an institution or office of an individual who (1) carry out duties referred to in Article 5 above within territories and geographical units within a State or carry out duties referred to in Article 5 above in specific fields; and (2) have contributed to the development of Ombudsmanship.

Article 7. Honorary Life Members :

Honorary Life Membership may be conferred by the Association on persons who have made outstanding contribution to the Ombudsman ethos or functions.

Article 8. Individual Members :

The Association may upon the introduction or approval of the institution or office of the Ombudsman of a country allow any individual applicant from such country to be a member who has shown interest through writings, research or otherwise in the concept of Ombudsman and whose Membership will advance the objectives of the Association.

Article 9. Acceptance :

The General Assembly shall in the case of a Voting Member and the

Board of Directors shall in the case of other types of Members decide about the Membership. In case of dispute or objection to the decision of the Board of Directors, the applicant shall have the right of appeal to the General Assembly, whose decision shall be ratified by consensus of voting members.

Article 10. Rights and Obligations :

All members shall have the right to request the Board of Directors with regard to any matter relating to the Association or any of its body.

The Associate Honorary and Individual Members shall have seats but no votes in the General Assembly.

All members are entitled to and obliged to do every thing in their power to promote the goals of the Association and to observe its status and resolutions

All members are obliged to pay the membership and other dues deemed necessary for meeting the running costs and expenses of the Association.

Article 11. Cancellation :

The General Assembly shall be entitled to cancel the Membership when a member has:

- (i) violated the statutes of the Association; or
- (ii) damaged its reputation ; or
- (iii) acted in opposition to its resolution ; or
- (iv) not fulfilled the conditions set down for membership ; or
- (v) not cleared the membership dues afer receiving three written notices

Article 12. Withdrawal :

Any Member may withdraw from the Association at any time by notifying to do so 90 days in advance.

Article 13. Observes :

The President may, subject to the resolution of the Board of Directors, invite persons interested in Ombudsmanship or similar functions being performed by other bodies as Observes.

SECTION III

General Assembly, Board of Directors

Article 14. General Assembly

The General Assembly shall consist of the voting members. The Honorary President, Associate members, Honorary Life members and Individual members may attend in an advisory capacity

The General Assembly shall be called once a year by the President. An extraordinary General Assembly shall be convened by the President or a 'Vice President' when important decisions have to be made or when at least one fifth of the voting members so request and submit a written agenda and in the latter case, within one month.

The General Assembly shall be convened by sending written notices at least 30 days prior to the schedule and communicating the proposed agenda to the members.

Note: During the course of convention of the General Assembly, the Board of Directors may assign the position of the Honorary Presidency of the General Assembly to a position from the host country which personality shall be ceremonial

Article 15. The General Assembly shall have the right :

- (i) to decide on acceptance of Voting Members
- (ii) to elect the members of the Board of Directors and two auditors ;
- (iii) to fix membership dues ;
- (iv) to pass amendment of by-laws and basic organizational issues;
- (v) to confer special honors on deserving persons ;
- (vi) to approve reports of the Board of Directors and the auditors ;

The General Assembly shall be deemed to have a quorum when at least half of the voting members are present. All resolutions of the General Assembly shall require a simple majority of the voting members present. However for adopting a resolution on matters contained in items (iv) above, a two third majority of the voting members present shall be necessary.

The General Assembly shall be chaired by the President or in his absence by a Vice-President, In case of election of the President or the vice president, the oldest member in office in terms of age present shall preside.

Article 16. Board of Directors :

The Board of Directors shall consist of

- (i) the President ;
- (ii) two Vic-President ; (the first and the second)
- (iii) a secretary ;
- (iv) a treasure ; and
- (v) one third of the voting members, subject to a maximum of 10.

The Board of Directors shall be elected from amongst the voting members for a term of three years, but shall remain in office until the new board of Directors has been elected. The Board of Directors shall be entitled to co-opt members other than the voting members.

Resolutions by the Board of Directors shall be adopted by majority vote, In the event of a tie. the President shall cast the deciding vote.

Directors shall not receive any remuneration for their services, but by resolution of the board, expenses may be allowed for their attendance at annual or special meetings of the Board

Any Director may be removed from office by a majority vote of the General Assembly.

Article 17. Responsibilities :

All matters including financial, not reserved for the General Assembly, shall be dealt with by the Board of Directors.

The President shall represent the Association, convene meetings of the Board of Directors and act as Chairman of meetings.

If the President is absent or otherwise prevented, he shall be represented by the senior (first) Vice-President. The President shall be authorised to sign together with the treasurer all financial matters.

SECTION IV

Secretariat, Auditors and Miscellaneous

Article 18. Secretariat

- a) A secretariat shall be established to execute the affairs of the Association
- b) A Secretary-General shall be appointed by the boate of directors among directors.
- c) Staff of the secretariate shall be appointed from citizens of memnber states on a periodical basis

Article 19. Auditors

The two auditors, selected from amongst the voting members, shall be responsible for examining the financial management of the Association and submitting a written report on it to the General Assembly, Members of the Board of Directors shall not be auditors.

Article 20. Miscellaneous

In case of difficulties in giving effect to provisions of these by-laws or interpretation of any clause thereof, the matter would be referred to the General Assembly, Until holding of the meeting of the General Assembly, the President may take interim measures as deemed fit.

Article 21.

This by-law comprising twenty one Articles and two notes was approved by representatives of the ombudsmen of the following countries :

during the second ASIAN OMBUDSMAN CONFERENCE held on....
to..... March 1997 in Seoul

B. The Staff of the Ombudsman of Korea

Position	Name	Telephone	Fax
Chief Ombudsman	Mr. KANG, WON IL	(822) 313-1271	(822) 313-1272
Ex-Chief Ombudsman	Mr. Choi, Jong-Baik	(822) 536-4343	(822) 536-4345
Ombudsman	Mr. Seok, Soon-Yong	(822) 313-1638	(822) 313-1272
Ombudsman	Mr. Shin, Dae-Kyun	(822) 313-1639	"
Ombudsman	Prof. Lee, Sei-Hoon	(822) 313-1725	"
Ombudsman	Mr. Roh, Kyung-Rae	(822) 313-1726	"
Secretary General	Mr. Choi, Im-Kyu	(822) 313-2572	(822) 313-1272
Director General of the Administrative Bureau	Mr. Nam, Hyeon-Woo	(822) 313-2582	(822) 313-3257
Director General of the Investigation Bureau	Mr. Lee, Soo-Kee	(822) 313-2583	(822) 313-7513
Legal Affairs Officer	Mr. Kwon, Young-Chul	(822) 313-2537	(822) 313-3036

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