



8th Asian Ombudsman Association Conference

- The Ombudsman and the Strengthening of Civil Rights in Asia -

Presentation

Plenary Session I

"The Government-Citizen Relationship:
What do citizens expect from the government?
What do citizens expect of the Ombudsman?"

April 26-29, 2004

Seoul, Korea





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**The Government/Citizen Relationship:
What do citizens expect from the government?
What do citizens expect of the Ombudsman?**

Mr. Clare Lewis, Q.C.
Ombudsman of Ontario, Canada and
President, International Ombudsman Institute

**The Government/Citizen Relationship:
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What do citizens expect of the Ombudsman?**

**Mr. Clare Lewis, Q.C.
Ombudsman of Ontario, Canada and
President, International Ombudsman Institute**

Fairness, justice, transparency, public accountability and assurance of free and fair elections are, together with the essential provision of security, the fundamental expectations citizens have of democratic governments. As set out in the Communiqué of the International Ombudsman Institute in the year 2000, the Ombudsman in democratic countries supports the realization of these citizen expectations of government through its "rôle in [providing] a mechanism which can balance the fundamental requirements that government must be able to govern but with appropriate accountability."

In his address to the year 2000 VIIth World Conference of the International Ombudsman Institute in South Africa, former IOI President Dr. Marten Oosting said:

"Government is not an end in itself. It derives its *raison d'être* from its task of serving the interests of its citizens and the institutions of their society and it derives its legality from the way in which it does so. ... In a nutshell: the government rules in order that it may serve. ... Thus, the Ombudsman's task is defined from the vantage point of individual members of the public, to whom the ombudsman offers protection against the government."

The theme of this Plenary Session: "The Government-Citizen Relationship: What do citizens expect from the government? What do citizens expect of the Ombudsman?" is congruent with the choice of conference theme for the VIIIth World Conference of the

IOI to be held in Quebec City, Canada, in September of this year. That theme is: "Balancing the Obligations of Citizenship with the Recognition of Individual Rights and Responsibilities: The Rôle of the Ombudsman." Clearly, since we met in world congress in Durban in 2000, these themes must now take into account the impact on the government-citizen relationship in democratic societies of the events of September 11, 2001, government responses to them and their effect on the rôle of the citizen-ombudsman relationship.

I wish to emphasize that some of what I speak of today, I also addressed in September 2003 at the Annual Conference of the United States Ombudsman Association in Honolulu, Hawaii. I believe that part of that address is appropriate to the theme of this Conference and Plenary Session.

The events of September 11, 2001 drove a stake through the security, confidence and vigilant commitment to fairness of democratic societies worldwide. In the legal profession, of which I am a member, there is an aphorism to the effect that "hard cases make bad law." To no lesser degree do exigent and diffuse, uncertain threats to our very sense of security make possible dangerous, far-reaching government responses which are capable of undermining our basic concepts and values of democratic good governance and its fundamental fairness. As evidenced in Indonesia and more recently in Madrid, none of our countries is exempt from these threats and consequent government response.

Since the end of the Cold War, we have seen internationally an unleashing of both democratic impulse and anarchic terror. These movements had been largely suppressed through the strict control by the two opposing superpowers of their spheres of influence and the overriding, dire threat of mutual nuclear destruction. In our current age of only one true superpower, the ground is fertile for both the beneficent rise of democratic states and the calamitous rise of terror in what may yet prove to be a very long conflict, indeed.

And even if so, what is the relevance of these musings to you and to the themes of this Conference and of this Plenary Session? The author Hannah Arendt said, essentially,

that the only requirement for bad people to succeed is for good people to do nothing. People committed to ombudsman principles and practices are good people, with the inclination and capacity to do something of value in times such as these. We Ombudsman cannot act as policy-makers or legislators, but we can be a constant voice for government restraint and fairness in dealing with the public in difficult times. This voice can be particularly forceful from those of you who exercise human rights protection as part of your mandate. For the public-sector ombudsman, generally, the challenge is always in finding and maintaining the balance and now is a critically important time for us to be seen and heard to do so as we stand between our governments and our citizens.

As governments retrench in the face of such threats, as their commitment to serving broad social need gives way to the enhanced and even primary need to provide safety and security, we must remember that all threats are not external and the fondest wish of the Osama Bin Ladens of the world will be realized if our governments become more like those which spawned them. Our public-sector ombudsman offices can, to a limited degree, resist this potential by means of our public insistence on fairness in all administrative actions of those public servants and public programs within our jurisdiction. The danger is that when governments do respond to threat with vigour and perhaps insensitivity to traditional rights, so too may public servants mimic that toughness and become less committed to basic principles of fairness in the performance of their normal administrative duties. While we may have to maintain our demand for fairness with constrained budgets and jurisdictions, the better for governments to spend on and attend to security, our cause is right and just and we should be prepared to champion our basic ombudsman values, which are, after all, those of our societies.

A positive impact of the end of the Cold War is the emergence of democratic governments, however tentatively, in Eastern Europe, Latin America, Asia, Africa and the Pacific micro-states. As constitutions and supporting legislation are created for these nascent democracies, there is frequent recourse to public-sector ombudsman models as being a critical means of supporting and ensuring the transition to full democratic good governance. Frequently, the models include human rights protection as a necessary

ombudsman responsibility in such states. Further, in some cases, the ombudsman rôle includes an anti-corruption mandate. Indeed, the recently achieved and perhaps fragile interim Iraqi Constitution, while granting full freedom of speech and religion, gender equality and human rights also, importantly, provides for the establishment of an Ombudsman as one means of supporting and promoting the transition to civil society on behalf of Iraqi citizens. That Ombudsman will be within a National Human Rights Commission that meets the Paris Principles.

We in the public-sector ombudsman fold have much to be proud of in our contribution to this worldwide development. As President of the International Ombudsman Institute, I am well placed to state with confidence that the longstanding, proved international experience of the mission, values and actual on-the-ground daily work on behalf of the public of our public-sector ombudsman in mature democracies has been a beacon to these societies in transition to democracy. Our public-sector ombudsman contribution to the public interest is recognized and valued and cannot be diminished or denied. We represent the core value of democracy, the obligation of government to afford all citizens not only security but justice, fairness and, when appropriate, correction of error and provision of redress.

But what of the essential, daily expectations of citizens of their governments and of their Ombudsman? I believe that citizens of representative democracies expect their governments to have and apply clear, publicly available fairness standards for decision-making by governmental organizations and, further, that those citizens expect that their ombudsman assert this need and, in the language of the Mission Statement for my office, "work to ensure fair and accountable government service" to the public.

To that end, my office has have developed and provided to all sectors of our government, for their consideration, a formal set of Fairness Standards for Decision-Making against which I will assess the conduct of the government organization and decision-maker when I review individual and systemic complaints. You will find these Fairness Standards on the CD-ROM which will be distributed to you, along with our

recent Annual Report, our Mission and Values and our annual Business Plan, as well as our Vision document through to the end of my term in January 2005.

To give legitimacy to those Fairness Standards and to meet public expectation, they were crafted through broad public and government consultation and in the context of Canadian law regarding administrative decision-making. Further, we apply these Fairness Standards to decision-making by me and my staff as well as by government. We have developed our own set of Values by which we are guided in our interaction with our own staff, the public and the government. Our stated actual Values, which are intended to frame all the work of our office and which inform our Fairness Standards are:

- Fairness, defined as treating everyone in a reasonable, equitable and impartial manner.
- Accountability, defined as providing quality service, taking responsibility, evaluating and improving through innovation.
- Integrity, defined as demonstrating transparency, honest and ethical practice.
- Respect, defined as understanding individual difference, and valuing diversity.

There are many types of decisions and whether any given Fairness Standard will apply will depend on the nature of the decision, the decision-maker and the priorities and interests involved. The Fairness Standards state that anyone who may be personally affected by a decision by government or by me is entitled to expect and receive certain basic information, notices, reasons, means of appeal and so on. The Standards also set out distinct obligations of the government organization in its decision-making. These Standards are set out in the hard copy of this address and also on the CD-ROM referred to. They require no further elaboration at this time other than for me to emphasize the importance my office places upon them when assessing the validity of a complaint.

Those who may be affected should be given adequate notice of:

- the fact that a decision will be made;
- why a decision is necessary;

- how the decision will affect him or her;
- what information will be considered in the decision-making process;
- what criteria, rules, procedures, policies or requirements will be applied in the decision-making process;
- the amount of time the decision-making process is expected to take;
- information against him or her interest before the decision is made;
- the decision;
- reasons that adequately explain how and why the decision was made;
- any appeal and/or objection that can be made with respect to the decision; and
- any time limits to the appeal and/or objection that can be made with respect to the decision.

Further, the Fairness Standards state that in its decision-making process, the government organization should:

- reach the decision objectively, with due respect for relevant information and without bias;
- require and use only that information that is relevant to the decision;
- apply any relevant criteria, rules, policies, procedures or requirements consistently;
- justify and explain any inconsistency in the application of the criteria, rules, policies, procedures or requirements;
- provide anyone personally affected by the decision with an opportunity to respond to information against his or her interest before the decision is made;
- treat all persons fairly;
- make the decision in a timely fashion;
- explain any delay and accept responsibility for any unnecessary delay that it has caused and for dealing with any adverse consequences of the delay; and
- write all notices, decisions and other relevant documents clearly; and in a courteous, sensitive manner that is respectful of the persons to whom it is addressed.

I respectfully provide and commend these interrelated documents found on our CD-ROM to you as perhaps being of some application in your jurisdictions. Further, if you review our Vision document and Business Planning process, you will see that we have felt these efforts to be necessary in meeting what we believe our citizens expect of me as their Ombudsman.

However, it must be noted that citizen expectation of government and of the Ombudsman will not be met if the public are not broadly aware of the service of the Ombudsman and the important rôle we play in addressing and resolving individual complaints about government service, as well as our ongoing work in perceiving and addressing systemic failings in government administration. Citizens have a right to expect government to be frank and forthright about the function and availability of Ombudsman service on an ongoing basis and to expect that government will resource our offices sufficiently for us, with efficient and effective use of those resources, to fulfil our mandate appropriately. That funding should permit the Ombudsman to undertake a meaningful public education program through advertisements, community outreach, workshops and other means to inform the public of their right of access to this important, free and confidential public service. When it comes to citizens' rights to redress from government, an uninformed citizenry is a denied and vulnerable citizenry.

You will see some of our public advertising, subway posters and public service television announcements on our CD-ROM. Further, we have, in the past two years, undertaken an ambitious Community Education Program by redirecting some of our existing staff and financial resources. This Program is primarily directed at associations of social service providers with whom we connect for the purpose of informing them of our rôle and availability and providing them with presentations to their clients by me or by my program staff. We conduct seminars on both our function and process and provide workshops and toolkits on Effective Complaining. Our approach is proving to be an excellent multi-pronged means of reaching our target, the very many, often marginalized,

members of the public who depend on the agencies represented by the associations with which we interact.

By undertaking this initiative, we have attempted to meet citizen expectation of an effective and inexpensive means of seeking redress for maladministration of which they might otherwise have remained unaware. This program enables us to provide information and service to often vulnerable and marginalized groups, such as the poor, the disabled, the elderly, the ill, the immigrant and minority communities. On request, I would be delighted to send to any interested delegate here more complete information on this highly efficient and useful program.

It must be conceded, however, that if we ombudsman succeed in raising citizen awareness of our function and service, we will not only increase complaint numbers but also raise citizen expectation of our value. We then become responsible for finding means to justify that expectation. It is my respectful view that today no public-sector ombudsman office can expect sufficient resources to consider and investigate fully each complaint received. The challenge is to interpret one's constitutionally or statutorily granted jurisdiction creatively, so that a broader public can be served better in general by us and, therefore, by our governments.

I do not believe that we can be most effective, relevant and useful in meeting citizen expectations, nor that we can best ensure a successful Ombudsman experience, by adhering to a status quo, investigation of complaint-by-complaint-in-isolation approach, nor do I accept a view which holds that the public-sector ombudsman using a most liberal jurisdiction interpretation may properly use complaint trends to challenge the fundamental policies of democratically elected governments.

Daniel Jacoby, former Ombudsman of Quebec and former Secretary of the IOI, commented in his 2001 address before the 7th Conference of African Ombudsman and Médiateurs as follows:

“Actually, the ombudsman is an institution that can adapt easily to changes. It is a mechanism for ‘soft justice,’ which is both highly informal and accessible to all citizens. It is an institution capable of flexibility and multidisciplinary, able to stay at the leading edge of progress.”

In attempting to be adaptable and flexible in meeting citizen expectation of my office and thereby assist the public in realizing their expectations of government, I am guided by considering early Canadian ombudsman jurisprudence. In particular, I rely on the 1984 decision of the Supreme Court of Canada in B.C. Development v. B.C. Ombudsman to find a purposive approach to meeting citizen need and expectation through achieving the ombudsman’s substantive goal of ensuring fairness and elimination of error and abuse in the administration of government policy.

The B.C. Ombudsman case set a national and, if I may presume, international standard for the exercise of Ombudsman authority. The Court stated that while the Ombudsman is a statutory creation, “any analysis of the proper investigatory rôle the Ombudsman is to fulfil must be animated by an awareness of [the] broad remedial purpose for which the office has traditionally been created.” Further, the Court said that “the general legislative framework creates the possibility of dialogue between governmental authorities and the Ombudsman ... facilitate(s) legislative oversight of the workings of various government departments and other subordinate bodies; and ... allow(s) the Ombudsman to marshal public opinion behind appropriate causes.” The Court noted with approval that because the Ombudsman often operates informally, Ombudsman investigations do not impede the normal processes of government. Finally, the Court stated that Ombudsman legislation “represents the paradigm of remedial legislation. It should, therefore, receive a broad purposive interpretation consistent with the unique rôle the Ombudsman is intended to fulfil.”

I believe that while we are limited as creatures of constitution or statute, nonetheless the essence of the ombudsman concept is that it is intended to be remedial

and its processes to be flexible. Within that basic intention can be found the inherent authority and scope for creative action that, along with necessary business planning, can result in effectively meeting real public expectation of our achieving appropriate and timely redress for government maladministration.

I suggest that Ombudsman monitoring of implementation of government undertakings in response to earlier ombudsman recommendations, monitoring of evolving government policies and their impacts, and monitoring of complaint trends, all in conjunction with targeted complaint resolution, offer the best means of wholly meeting public expectation, fulfilling our responsibilities efficiently and maintaining essential relevance both to the public and to governments.

If we are to be effective in meeting citizen expectation, we must be able to resolve or dispose of most matters quickly and informally so that we can choose those cases worthy of full investigation and conduct those investigations expeditiously. It is necessary to be sparing in our deployment of investigative resources. Protracted and often unfocussed and ineffective investigation can be the result of our undertaking more investigations than we can rationally handle. A lengthy investigation ending in dismissal of the complaint will be seen as without value by the complainant unless the complexity of the matter justified the time taken. Too rarely is the time taken the result of the inherent needs or value of the case and it may be the result of overburden in caseload. While careful investigation planning is necessary for a proper, timely result, taking on more cases for full investigation than we can investigate properly will confound the most careful investigative planning.

Therefore, we must seek better understanding of our powers and better means of using them or we risk foundering, becoming ineffective and irrelevant to both the government and the public. Just as is a judge or a referee, we are entitled to be wrong. But if we dismiss too many valid complaints, we will be seen as mere enablers of the bad practices of our public service. If we support too many invalid complaints, we will be seen by our legislators and public servants as incompetent, or partisan or fools.

We must sharpen our focus and reduce our wasteful workloads to permit necessary, important investigations to be conducted well and with expedition. We must quickly resolve or jettison the unjustified and trifling and attend in depth to cases selected as important in themselves or reflective of a systemic problem. Our staff must share a corporate view that while all complainants are to be treated with respect, courtesy and understanding, nonetheless, all complaints are not created equal. We should reduce the number of cases afforded full investigation, attempting to select those in which there is some possibility, if not probability, of determining and recommending correction of as yet unresolved error, unfairness or malfeasance.

However, it is not sufficient to our mandate to conduct fewer, if better, investigations. We must consider other means of being of value. Again, I assert that the most promising means is to be found in the monitoring of complaint trends, government implementation of previous recommendations and government policies and programs and their impacts. These will signal areas of needed concentration and may give rise to better deployment of resources. Monitoring will then give rise to opportunity for own motion investigations of important systemic issues.

Again referring to B.C. Ombudsman, the Court said, "In the modern state ... democratic action is possible only through the instrumentality of bureaucratic organization; yet bureaucratic power – if it is not properly controlled – is itself destructive of democracy and its values...the growth of a distant, impersonal, professional structure of government has tended to dehumanize interaction between citizens and those who serve them." The Court further quoted with approval the statement of H.R. Wade in Administrative Law, 5th edit. Explaining the special rôle the ombudsman has come to fill, he wrote:

"But there is a large residue of grievances which fit into none of the regular moulds, but are nonetheless real. A humane system of government must provide some way of assuaging them, both for the

sake of justice and because accumulating discontent is a serious clog on administrative efficiency in a democratic country.... What every form of government needs is some regular and smooth-running mechanisms for feeding back the reactions of its disgruntled customers, after impartial assessments, and for correcting what may have gone wrong."

It is my certain opinion that the ombudsman is a formidable support of democratic good governance through enabling our governments to address citizen grievance in a transparent and positive manner which could and would not otherwise occur. In doing so, government is better able to meet public expectation of government provision of justice, fairness and accountability on an ongoing basis. In effectively and efficiently facilitating such assurance, we meet public expectation of us.

Some of you here as members of the Asian Ombudsman Association also have within your jurisdiction a human rights protection or anti-corruption mandate or both. If so, your citizens have a much greater expectation of their ombudsman than do those in countries where the ombudsman lack such authority. I opened with a statement from Dr. Marten Oosting. In closing, I quote from his 1994 article in the Bulletin of the Netherlands Jurists' Committee on Human Rights as follows:

"The need for governments to respect the fundamental rights and freedoms of individuals is indistinguishable and overriding. In countries where they are threatened, both the office of the ombudsman and the judiciary have to work hard to ensure that respect for these rights and freedoms is observed by the authorities. There will be no opportunity to make or meet higher-level demands, however much they may be required. Only when respect for fundamental human rights, particularly the traditional freedoms, is sufficiently guaranteed, will there be an opportunity to consider the requirements of proper administration as well."

I have been honoured to meet and learn from our associates internationally, from Africa, to Australasia and Pacific, to Europe, to North America to Latin America and the Caribbean and to Asia. I have experienced the professionalism of ombudsman in mature democracies and the dedication and drive of our colleagues in democracies in transition, such as those in Eastern Europe and Central Asia. We are members of an honourable, valuable and expanding profession. We have reason to take pride and be stalwart in our commitment to meeting the expectations of our citizens worldwide in ensuring democratic good governance in the public interest. It is my privilege to be with you and of you.

Clare Lewis, Q.C.

Ombudsman of Ontario (Canada)

President, International Ombudsman Institute

March 15, 2004

The Relationship between a Government and Its Citizens

Mr. Kim, Kwang-Jin
Standing Ombudsman, Korea

The Relationship between a Government and Its Citizens

Mr. Kim, Kwang-Jin
Standing Ombudsman, Korea

I . Introduction

Honorary President of A.O.A. and President of I.O.I.,
Distinguished Foreign Ombudsman Delegates,
Distinguished guests from home and abroad,
Ladies and gentlemen!

It's a great honor and a privilege for me to have this opportunity to speak on the "Relationship between government and citizens" at the 8th Conference of the Asian Ombudsman Association. And it is all the more meaningful because this year marks the 10th anniversary of the foundation of the Ombudsman of Korea.

Around the globe, relationships between national governments and citizens of those nations are evolving into equal partnerships, and as a result, civic participation and cooperation in policy-making and public administrative processes are increasingly becoming a matter of public interest.

Today, it is critical that government agencies address these changes. Just as the public now views government differently, a government's perception of its citizens must change as well.

The changing relationship between governments and citizens not only presents a significant issue for ombudsmen, it calls on them to take on a new role.

Thus, I believe we must take a closer look at the evolving relationship between governments and citizens, examine the changing expectations of citizens, and think about appropriate responses governments and ombudsman take. These are essential tasks for ombudsmen, who serve to protect the rights of citizens.

II. Changes in the Relationship

The relationship between government and citizens may vary from one country to another depending on political, economic, social and cultural differences. Nevertheless, in most nations, the relationship has transformed from one of ruler-servant to one of manager-customer, and recently, to a more or less equal partnership. In short, it has evolved from governance-obedience to an equal relationship that requires mutual participation and collaboration.

I. The Cause of the Change

There could be various reasons for the relationship transformation; however, the following are the three major ones.

First, democracy is a political structure in which ordinary citizens have sovereignty. As such, reflecting the voices of citizens in public policies and administrative processes is unarguably the fundamental of democracy. However, in a representative democracy, typical of modern democracy, the sovereign rights of ordinary people have been limited to elections, and this has inhibited citizens from adequately voicing their opinions in policy-making and public administrative processes. This requires improvements within the system, and the former style of democracy has, therefore, shifted to participatory democracy to better incorporate the demands and opinions of ordinary people in the policy-establishing and public administrative processes through citizen participation and cooperation. Citizens are no longer mere objects of government administration; rather, they are assuming the role of active cooperative participants in the public administration.

Second, it was once believed that citizens had to submit to the authority of public administration. Since public administration worked for the public interest, it was felt that administrative decisions took precedence over the needs and desires of the public. However, today's governments, no longer have the clout to unilaterally give orders or impose obligations, and are more ready to listen to ordinary people, explain their intentions and seek cooperation. In addition, with the emergence of civic groups, people's coalitions and public interest groups, there is a growing understanding that working for the public interest is not the sole responsibility of a national government.

Third, as industrialization advanced and urbanization progressed in the 20th century, the

need for a more specialized and technical public administrative system increased. This led to the development of "administrative state." The administrative state phenomenon in turn triggered professional bureaucracies, which placed excessive power in the hands of government employees. This also hampered smooth communication between governments and the people, and, as a result, popular opinion and citizen demands were not heard as they should have been. The lack of communication only intensified the conflicts between the two, and thus, the goals of public administration could not be fulfilled as intended. It was clear that the participation of ordinary citizens was important in order to address these conflicts, and since then, public participation has pursued mutual cooperation and mutual execution of administrative processes.

2. Desirable Future Directions of the Relationship

In order for the mutually beneficial results to take root, the public should awaken to its new role as a proactive element, while the government renews its obligation to render services to citizens. In other words, it's important for people to perceive themselves as an essential part of government affairs, taking an active part in the process. Moreover, the government needs to acknowledge the limits of its role. Only then can the two participate and collaborate equally to jointly establish a government affairs administration system that meets to the needs of the people.

Building such a system requires a mutual effort by the government and citizens. If a government depends solely on a few officials with expertise in public administration to make decisions, while excluding the opinions of citizens, it will never be able to develop a true democracy. On the other hand, respecting only the voices of the public and disregarding the professional opinions of government officials has an equally negative impact on civic rights and public interest. Therefore, the ideal approach is to strike a balance between the professional opinions and the voice of the people, without tilting in favor of either of them. The people should present their opinions through active participation, and government experts can survey and analyze public opinion. In that way, a sound balance can be attained between the two. In other words, the government and citizens should work jointly, sustaining a balance between them. In retrospect, however, we see that the role of the public has often been overlooked. As such, reinforcing and enhancing the status of citizens should be a priority if we are to reach that balance. Nonetheless, I acknowledge that it is impossible for citizens to take part in all policy-making and administrative processes, given the intricate nature of today's society. Therefore, a government and its people should each make an adequate amount of

compromise so that they share the role as partners.

III. Citizens' Expectations for and Responses to Governments

As I mentioned earlier, the relationship between governments and citizens has evolved into a partnership that requires mutual involvement and collaboration, which has, in turn, created public expectation for a greater say in policy-making and public administrative processes and more participation and cooperation from governments.

1. Institutionalizing Public Participation and Cooperation

First, the public anticipates a wider opening in the doorway to participation in policy-making and public administration processes. To make this possible, institutionalized efforts are necessary to expand the participation of ordinary citizens, which has been mostly a formality until now. Specifically, the involvement of citizens in the political process has taken place in a limited way, as representatives of civic groups or as non-governmental experts. But, as we move forward, the government needs to recognize the people as an equal partner and make institutional efforts to broaden opportunities for public participation in the political process. This means that citizens should be able to present their opinions in all policy and administrative processes, from formulation to implementation. These opinions refer not only to ideas, but also justifications for policies or public administration that can contribute to the enhancement of public trust. To facilitate such activities, systems that allow diverse opportunities for public participation and cooperation must be established. They include conducting periodic public opinion polls on government policies, implementing a popular vote system or citizens' initiative, posting advance notice of administrative changes, promoting the participation of the "self-governing resident committees" in political process, setting up a suggestion hotline so citizens can propose ideas, and institutionalizing a litigation system dedicated to defending the public interest.

2. Securing Transparency in Policy-Making and Administrative Processes

The public wants transparency in all political processes concerning policies and administration. Therefore we need to establish a system that can secure and expand transparency in public administration. This means publicizing all administrative processes. The disclosure of administrative information is a precondition to greater public participation in political process, and there must be easy, convenient access to

administrative information. Moreover, governments should proactively release information, rather than waiting passively for the public to request its disclosure. Active public involvement in political processes will only happen when people have the information they need. Specifically, in 1996 the Korean government instituted the "Act on Disclosure of Information by Public Agency." However, until now the act has not been fully effective because much information is still subject to non-disclosure. Therefore further improvements need to be made to ease regulations such as the criteria for designating information as restricted.

3. Providing a System to Facilitate Public Participation

Citizens want quick and easy participation in the political process: one that doesn't require much time or money. The government thus should enact institutional changes to that end. Electronic media such as the Internet are tools that can fulfill those needs. The Internet provides virtual space in which the public can easily access government administrative information for little time or money, and they can also express their opinions by taking part in online policy-related discussion or policy-making processes.

4. Promoting the Participation of Civic Groups

People expect their voices to be heard accurately, and they want their feedback to be reflected in political decisions. Public participation includes individual efforts as well as the participation of civic groups.

Here I'd like to briefly discuss the latter in the context of government-citizens relationship. The participation and cooperation of civic groups serve to encourage ordinary citizens to get involved in political processes between governments and the public. Individual citizens are under the impression that their personal ideas don't carry much weight in governmental policies and administration and that it is extremely difficult to work mutually as an individual. That's why they need nongovernmental organizations to gather opinions and present them to governments, and to make collaborative efforts with governments on their behalf. Governments, on the other hand, also have difficulty in reviewing the ideas of individual citizens and collaborating with them in the political process, and thus, need those groups to be the 'voice of the people' and to encourage public participation through open discussion. In this respect, the government should seek to facilitate civic groups by supporting their activities and strengthening its cooperative relationship with them.

5. Establishing a Public Opinion Promoting Agency

Citizens not only expect to voice their opinions, they also want them reflected and incorporated into policy-making and public administrative decisions. Thus, governments must set up an internal agency that will ensure that opinions gathered from public participation are properly reflected in government policies and administrative processes. If public wishes are not incorporated into policies, citizens will become skeptical about the benefits of participating, and may be unwilling to continue their efforts. How the government reflects gathered public opinions is essential, not how those opinions are gathered. Therefore, governments must establish an internal public opinion promotion agency that can carry out this role.

IV. Citizens' Expectations for and Responses to Ombudsmen

So far, I have discussed citizens' expectation for and responses to governments led by changes in the government-citizen relationship. Now I'd like to move on to their expectations for and responses to ombudsmen in particular, with some examples of Korea.

1. As a Public-Opinion Gathering Agency

People expect ombudsman organizations to act as public-opinion gathering agencies. Today's public has more opportunities to collaborate in policymaking and administrative processes than before, and consequently, to be heard. Often, however, the public takes a passive role in the political process, meaning that ombudsmen assess the needs of minority groups or the small towns that receive little attention. Therefore, ombudsmen must actively gather information through civil complaints or on-site investigations, and relay it to the government. To this end, The Ombudsman of Korea is conducting a Civil Affairs Counseling Tour, seeking complaints from the disadvantaged, offering individual counseling and helping residents in remote areas by expanding the number of regional investigators to 275.

2. As a Public Opinion Reflecting Agency

Citizens want an ombudsman organization to function as a bridge that links their voices with government policies and public administration. But citizen involvement is futile if there is no agency to work with related government offices to ensure that public opinion is reflected properly in policy-formulating decisions. The public want ombudsmen like us to take that role. This includes assessing the voices and needs of the people and

relaying that information and collaborating with government offices to incorporate them into government policies and administrative processes. To meet those needs, the functions of an ombudsman must be expanded and a formal organization established. To this end, the Ombudsman of Korea is seeking to identify and resolve any unreasonable systems through civil complaints and to address the issues of the systems through workshops with investigating officers from each of the government agencies.

3. As a Mediator Between Government and People

One of the functions of the ombudsman is to resolve conflicts between a nation's government and its citizens: to point out unlawful or unreasonable administration decisions to government and the public and at the same time to inform the public of valid, lawful and reasonable decisions that will increase public trust in government. Therefore, it is critical for ombudsmen to take a neutral position between the two factions, and consider the opinions from both equally in order to provide accurate and fair judgments on administrative decisions.

4. Enhancement of Ombudsman Transparency

The public expects ombudsmen to function in a transparent manner. Every procedure executed by an ombudsman should be clear and open to the people. The public wants to know whether ombudsmen have adequately considered public opinion and whether the people's needs are accurately reflected in government policies and administrative processes. A citizen who has filed a civil complaint with an ombudsman wants to know whether it is being processed properly and how much progress is being made. That is a perfectly understandable desire, and these questions need to be answered to enhance public trust in the ombudsman system. Proactive disclosure of information is a fundamental part of promoting public involvement. Above all, it should be accessible. The Ombudsman of Korea, for instance, releases information to the public upon written request and anyone can easily find out the status of various processes through the telephone or the Internet.

5. Stronger Ties with Civic Groups

It is important that ombudsmen and civic organizations maintain close relationships to ensure the assessment and relay of public opinion to the government and that the information is incorporated into administrative decisions. Civic groups and ombudsmen are similar in that they both mediate between governments and the public, both represent ordinary citizens and both promote citizen involvement in the political process.

Therefore ombudsmen need to strengthen their ties with civic groups through periodic meetings in which they share information to accurately assess what the public wants. Joint efforts may also be necessary to ensure that the needs of citizens are addressed in policy-making and administrative processes. The Ombudsman of Korea held a meeting with various civic groups on December 16, 2003 addressed the fair processing of civil complaints. In addition, a workshop was held on October 30, 2003, to hear citizens' proposals. Through these moves the organization has endeavored to create stronger collaboration between nongovernmental public interest groups.

V. Conclusion

Distinguished guests!

As I have mentioned, the relationship between governments and citizens is evolving into a partnership underpinned by mutual participation and cooperation in policy-making and administrative processes.

Governments and ombudsman groups need to take a different approach in responding to the public, and this means governments should set aside their attitudes of the past, and acknowledge people as their essential partners. Governments and citizens must respect one another's opinions and make collaborative efforts to create a balance.

To do so, governments must establish institutions that require public participation and cooperation. Instituting such systems will not only increase people's trust in government but also instill a sense of unity.

Also, citizens are urging ombudsmen to act as mediators between governments and themselves, and this is triggering a significant expansion of the function of today's ombudsman groups. Such groups are expected to serve as agencies that gather and reflect public opinions as well as to perform existing functions such as monitoring administrative decisions and defending citizens' rights. Therefore we need to redouble our efforts and dedicate ourselves to meet the expectations of the people.

In closing, let me express my hope that this gathering today will help us move forward toward the advancement of ombudsman systems in Asia.

Thank you very much for your attention.

**The Government-Citizen Relationship:
What do citizens expect from the government?
What do citizens expect of the ombudsman?**

Dr. Cheong U,
Commissioner Against Corruption,
Macao SAR, China

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Footprints marked by Macao on the way to a better government

1. The Reunification of Macao

The reunification marked a significant boundary between the past and the present of Macao. Considerable transformations have been developing ever since. Amongst others they include the attitude of the government in providing public service and the expectation of the citizens towards the government as well as the ombudsman. These are discussed below in respect of the observations collected before and after reunification.

2. Citizens' expectations from the government before Reunification

2.1 Language barrier

Macao adopts the continental legal system where administration is defined by the laws and regulations, which were originally written in Portuguese. The translation of laws and regulations began in the nineties. However, most people in Macao did not understand Portuguese. Likewise, most Portuguese officers did not understand Chinese. An enormous gap had thus emerged. Translation played an important role in the communication between the citizens and the government. On the other hand, translation is an indirect and time-consuming method in communication. This had crooked the bridge to the understanding of the government and the citizens.

2.2 A passive audience of the government's policies

The Chinese are traditionally passive receivers of government policies and

requirements. We have an ancient idiom that preaches, “Keep away from the government in your life time and stay away from hell after death.” Therefore apart from some unavoidable situations such as applying for certain licenses, citizens rarely came into direct contact with the government. As the citizens considered the procedures too complicated, they would strictly follow every requirement specified by the government without asking why things had to be done in that way. On the contrary some citizens might try to “by pass” the “complicated” procedures by improper approaches such as backdoor activities or even briberies.

2.3 Helplessness towards maladministration

Citizens suffering from maladministration would complain among themselves rather than voice out their opinions. The language barrier and the traditional passiveness of the Chinese hindered the normal communication between the government and the citizens. Therefore, most citizens did not expect the government would adjust its procedures to meet citizens’ expectations. Even if it did it would have taken too long before anything would be accomplished. Therefore, maladministration had little chance to be rectified.

2.4 Limited expectations for the government

As the citizens lacked confidence in the government, even though there were departments or institutions specially delegated to handle citizens’ complaints and opinions, citizens seldom used their services. As a result of the citizens’ passiveness the government also became inactive in introducing reforms. Citizens therefore levied much hope on the establishment of the new government.

3. Citizens’ expectation from the government after Reunification

3.1 A deeper sense of belonging

Under the “Macao people governing Macao” principle, most citizens have a deeper sense of belonging to Macao. They feel the need to express their own thoughts and ideas towards government policies and administration in order to improve Macao as a whole. Complaints and opinions brought forward either directly to the government, or through other public media are frequently heard of and observed.

3.2 The awareness of their own rights

Citizens are more actively involved in trying to understand their rights and duties. In the frequent contacts with the government, the citizens will question government acts in respect of the following aspects:

3.2.1 Legality

Nowadays almost all the laws and regulations prevailing in Macao are written in Portuguese and Chinese. This together with the active legal promotion of the government, citizens' legal knowledge is improving. So is their capability in monitoring government acts. They expect the government to function in accordance with the law. When citizens come across government decisions that they consider unfair or unjust, they will be more active in questioning the legality of such decisions.

3.2.2 Fairness, justice and transparency

In addition to legality, the citizens also expect the government to enforce the law in a fair, just and transparent way. Whenever administrative discretion is involved in law enforcement, they hope the government is consistent in the same situations. They need the government to clarify their administrative procedures.

3.2.3 Efficiency

An untimely justice is not justice at all. Citizens expect the government to enhance their efficiency so that they need not spend too much time going through various departments to get things done.

4. How does the government respond to citizens' expectations?

4.1 A government for the citizens

The Macao Special Administrative Region was founded on a multi-cultural basis. Much emphasis has been put on the balanced development of all the peoples. The government commits itself to accommodating the well being of the citizens. The interests and benefits of the citizens from different cultures will not be neglected or treated with a double standard.

4.2 A self-improving government

A government stands itself in a ready mode to serve. Abundant resources have

also been invested to educating the public servants of different levels in different service fields. These training programs and plans, conducted locally or aboard, are also aiming at improving the quality of the public service. Various administrative reforms are continuously introduced to the government. Many government departments have set up systems to address citizens' complaints and opinions.

4.3 New policies in response to citizens' needs

The government strives to simplify and systemize administrative procedures to provide citizens with an easy access to the service they need. An e-government is steadily establishing. Most public services have also set out their standard processing time in their performance pledge. In addition, many departments or offices have collaborated to introduce the one-stop-shop services to minimize inconvenience caused when citizens apply for a certain public service.

5. The ombudsman as the lubricant between the citizens and the government

5.1 Ever increasing expectations of the citizens

Although the new government has strived with its best efforts to achieve perfection, there are times and incidences where not every request of the citizens is thoroughly addressed. Following the increase of citizens' legal knowledge and their active involvement in the administrative procedures, their expectations of the government are continually rising. They expect the government to be more efficient, more informative, and more active in simplifying the administrative procedures.

5.2 Conflicts as a result of frequent contacts

When the citizens are more actively involved in government procedures and their expectations are increasing, misunderstandings unavoidably emerge even though the government is eagerly committed to refining the public service. In such cases, citizens' confidence in the government will be lowered and may even regard government explanations as mere excuses. When the departmental complaint handling system is not able to resolve their problems, they will try different approaches to express their complaints or opinions.

5.3 The lubricant between the citizens and the government

No matter how hard the government works there is still room for improvement. The intervention of an independent third party acting as a “safety guard” of people’s rights will be feasible to release such grievances.

6. What do people expect from the Ombudsman?

According to the Organizational Law of the CCAC¹ (The Commission Against Corruption), CCAC functions independently and is accountable to the Chief Executive. The citizens expect the CCAC to safeguard their rights in the following manners:

6.1 Amends the past and prevents the forthcoming

The citizens not only expect the CCAC to correct the government’s mistakes in their individual cases, they also expect the CCAC will prevent the government from committing the same mistakes again. In the course of dealing with individual complaints the CCAC is at the same time expected to come up with structural solutions to guide the government to a balance procedure.

6.2 A reliable safety guard

As mentioned in 5.2, not all the complainants are satisfactorily answered. Some complainants might doubt the credibility of the answers given because the departmental complaint handling system is still within the administrative department itself. Therefore they expect the CCAC to answer their complaints in an objective and fair attitude. On the other hand, there are some citizens who do not choose the departmental complaint handling system because they want to conceal their identity from the department concerned. In other occasions, informers do not want to be labeled as troublemakers or treated unfairly when they need further service from the department concerned. These complainants and informers expect the CCAC will help them pursue the evidence and provide a persuasive response. Should there be any faults found they expect the CCAC to rectify them.

6.3 Efficient problem solving

The law has vested the CCAC with comprehensive investigation measures, formal and informal means to supervise the legitimacy of government acts and protect

¹ The CCAC performs the functions of the independent ombudsman in Macao. The term “CCAC” and “ombudsman” will be interchangeably used in this paper.

citizens' rights. The citizens therefore expect the CCAC's to intervene efficiently in resolving their problems and to answer their questions promptly.

6.4 A public teacher

There are times when citizens misinterpret the law and unjustly accuse the government department and their public servants. Still many are occasions when conflicts are the mere results of misunderstandings. The ombudsman is also designated to educate the public of their rights and duties, helping the citizens to understand their own rights and hoping to constrain corruption in the long run.

7. How CCAC answers citizens' expectations

We are going to explain how the CCAC answers citizens' expectation through the demonstration of cases and structural research underneath:

7.1 The professional and continuing education course case~ an efficient cure

A higher education institute offered an evening course for professional and continuing education. According to the applicable legal requirement the course was meant to be finished within one year. After careful consideration a citizen decided to spend one year's time to finish the course without quitting his job.

Nonetheless the citizen discovered that the school had rescheduled the course to last for one and a half years. He was informed of such a significant alteration by a mere statement printed on the application form of the course. The sudden shift in course duration would adversely affect his work and planning. The citizen was worried that once he had applied for the course he would have great difficulty in adjusting his steps with the school's unpredictable decisions. Consequently he directed his complaint to the CCAC.

After considerable investigation, CCAC discovered that the school has concluded such an alteration for the sake of the students. According to the original lesson plan too many required lessons were packed within the one-year course duration. Students often had to attend classes late at night to finish all the required lessons within the stated one-year time. The school therefore decided to extend the course duration to one and a half years without increasing the actual number of lessons for the purpose of reducing students' burden.

Although the said alteration was initiated for the well being of the students, the hasty decision had omitted essential legal procedures. Such a legitimate deviation had not only irritated the potential students' expectations but also shaken their confidence in the school. They are worried that the school will introduce other non-procedural measures in the future.

To get things settled before the commencement of the course the CCAC has adopted an informal approach to inform the department by a phone call of their illegality in such alteration. In response to CCAC's intervention, the school had left the original one-year course duration intact. The complainant was able to take the course as previously scheduled without going through the traditional step-by-step complaints procedures that would have taken months to accomplish.

7.2 The public service recruitment case~ equality of chances

Public service recruitment especially that of the civil service usually requires the candidates to possess some knowledge of the due administrative procedures. When enrolling for a certain public employment, a citizen found that some required laws and regulations promulgated in the eighties were stated only in Portuguese. Even the recruiting department did not have the Chinese version of those laws and regulations. The non-Portuguese speaking citizen could not understand the contents of those laws and regulations. As a result his chances of being accepted would be adversely influenced.

As the department did not require the candidates to know Portuguese at all, the citizen thought that it was unfair to include into the examination laws and regulations that did not have Chinese version. He hence directed his complaint to the CCAC.

To ensure a fair competition among the candidates, although it is currently impossible to promulgate an official Chinese version of the foresaid laws and regulations immediately, the government department concerned should at least provide candidates with a temporary Chinese text for reference. Only then would the non-Portuguese speaking candidates be able to grasp a fundamental knowledge of the required laws and regulations.

The CCAC stated the situation to the Public Administrative and Civil Service Bureau and the Legal Affairs Bureau to look into the situations. The concerned departments have already uploaded the Chinese texts of those required laws and regulations to the official website of the government. The Public Administrative and Civil Service Bureau has also published guidelines requiring all public departments or offices that wish to recruit public servants to provide candidates with Chinese reference text of the required laws and regulations in order that every candidate enjoys a fair competition.

7.3 The market stalls drawing lot~ administrative transparency

In Macao stalls in the markets are leased to the public by means of open lot. The office in charge however did not allow the applicants to witness the drawing procedure. Some applicants considered this manner as a lack of administrative transparency. Applicants would not give their opinions directly to the department concerned because they worry that those who complain might end up with unfavorable side effects in the draw or in their further requests made to the same department. Consequently they decided to direct their complaints to the CCAC.

Investigation showed that the department concerned had its reason in not allowing the presence of the applicants in the drawing procedure. The space of the drawing spot was too small to accommodate the large number of applicants all at the same time. As a result, the department prohibited the presence of the applicants. To ensure fairness and openness of the procedure the department invited several socially respected people to supervise the draw. Nevertheless the law of Macao also provides that the applicants have the right to supervise the complete flow of the draw. Therefore even if the actual situation does not allow the presence of all the applicants the department should explain to them the constraint of the draw.

As a result of the intervention of the CCAC, the department has made necessary explanation to the applicants and allowed the first few early comers to be present at the draw.

7.4 The government purchase case~ a structural review

Among complaints addressed to the CCAC, there are cases that are not targeted towards the conduct of an individual department or public servant. Contrarily they are dissatisfied with the way that many different government departments or offices handle the same problem. Sometimes they even question the entire structure of the administrative system. The operations of the government purchase, for instance, are often the focus of discussion.

In the case of government purchase, certain government offices had a tendency of limiting themselves to a few companies for price quotation. Citizens readily jumped into the conclusion that these departments were performing concealed transactions.

The CCAC found that some departments have such a tendency because, based on their experience, there are only a handful of reputable companies with pleasant transaction history in terms of honesty and prompt delivery. Therefore whenever a similar government purchase was lobbied these companies were frequently invited to the bid.

The problem was, these departments seldom had a clear record to support their choice nor had they ever furnished any decent analytical report of the performance history of these companies. The above practice might easily lead people into thinking that the departments are performing concealed transactions.

In some cases, the CCAC discovered that some departments might quote directly from the product catalog of a certain brand for the bid specifications just for the sake of convenience. No wonder the bidding company with products of the quoted brand would have better odds of getting the bid.

The above explained the reasons why a great number of departments had been questioned of their fairness, justice, and transparency in government purchases.

Although the CCAC has discovered many similar but independent issues in the government purchase procedure, it would not be suitable to handle these issues one by one with each of the government departments. Thus, the CCAC has decided to establish a structural research in order to study and examine the complete government purchase system. The research findings concluded that the

existing laws and regulations are outdated and the stated procedures are not clear enough to meet the changing environment. A report was presented to the government suggesting refinements to the system through legal revision. A guideline was also introduced to all government departments to help them build up a fair, just and transparent system before the revision of the law.

7.5 Recruiting requirement~ self-activated procedure

The CCAC once found in a newspaper that a government department was recruiting a senior officer. According to the current laws and regulations, the minimum standard level of education required of a senior officer is a bachelor's degree. The department concerned however has raised the minimum requirement to a master's degree without valid reason. This would have deprived many potential qualified candidates of their right to apply for the position.

In fact, the current law does not allow the department concerned to change the recruitment criteria even though it does not prohibit the department from selecting a qualified candidate with a higher education level. The CCAC thus initiated to remind the department concerned who in turn has revised its recruiting advertisement immediately.

7.6 As a help to the government department

Bilateral communications and collaborations between the government and the ombudsman are regarded as a priority concern of the CCAC. Timely corrections of maladministration and uniform legal interpretation among different government departments are achieved via various means such as phone calls, correspondences or meetings. When the CCAC issues suggestions on legal revision, we will collect and analyze the opinions of the departments concerned when necessary. To minimize cases like citizens' misinterpretation of the law and/or unjust accusation against the departments or their public servants, the CCAC also commits itself to educating the public to understand the actual situations.

8. Conclusion

The CCAC has taken the aforementioned measures to answer the various expectations of the citizens. Apart from correcting the department's faults, we also strive to improve or assist in the rationalization and upgrading of the public service offered. We treat the citizens' expectations of us with no less intensity than that from the government for we do not always play the role as a judge, but stand on the front line to serve the citizens. We have no other choice but to keep refining ourselves in pursuit of excellency.

Government-Citizen Relationship:
What do Citizens expect from the Government?
What do the Citizens expect of the Ombudsman?

Mr. Ranjit. B. Ranaraja.
Ombudsman, Parliamentary Commissioner for
Administration, Srilanka

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Introduction.

A Government is a political entity voted into office by society consisting of citizens, to fulfil a mandate. Article 21(3) of the Universal Declaration of Human Rights (1948) states, "the will of the people shall be the basis of the authority of government, this will, shall be expressed in periodic and genuine elections, which shall be by universal suffrage and shall be held by secret vote or by equivalent free voting procedures." In this sense, society is like a ship, the direction of movement for achieving its goals being steered by a steering device called government. Government has also been defined as a bundle of activities, which is backed by formal authority and coercive powers to ensure the implementation of duly constituted policies. Governance on the other hand refers to activities backed by a shared vision and goals, which may or may not derive from legal and formally prescribed responsibilities. Thus the act of steering by a government to take a society in a particular direction is its governance. Governance generally incorporates certain characteristics, for example, the participation of the citizen in the decision making process at various levels, such as electing representatives to the central government as well as local bodies. Since it is impossible to accommodate the wishes of each and every citizen, the majority decision is acted on with the necessary safeguards for the protection of the minority decision. The average citizen however plays a very limited role in the development of and implementation of government policy.

Governance.

Governance encompasses authority and power and is closely related with politics, economics and law of a given society. Usually, government is carried out through the machinery of public administration, by elected public servants called politicians and selected public servants called officials, both working together. Public administration is the instrument through which the citizens get their expectations fulfilled. The leadership to carry out those expectations is given by politicians.

The World Bank has defined "governance" as the use of political authority and exercise of control in a society in relation to the management of its resources for social and economic development. The Government is only a caretaker of the country's resources. The public officers have specific functions to perform in relation to their duties. To facilitate the performance of those duties, the State entrusts every public officer with resources to implement the government's political programme. The powers vested in public officials are not absolute or unfettered and should be used only for the public benefit and not for improper purposes. The resources so entrusted should be used diligently and for the purposes for which they were intended.

"Governance" also means transparency, that is, decision-making power of the public servants should not be exercised behind closed doors but should be open and subject to scrutiny. Similarly, the public officials should be made accountable for their actions where they are adverse to the interests of the citizenry. The public officials have an obligation to offer a satisfactory answer to those who have a right to determine the contents of the decision and demand such explanation. Public officials are often vested with wide discretionary powers in taking decisions. When they act unfairly and does something they should not do or fails to do something, which they should do when exercising their discretion, the citizen is placed at a disadvantage.

Fundamental or Human Rights.

By the expression "Fundamental or Human Rights" is meant the equal and inalienable rights of all members of the human family. These rights include, the right to freedom of thought, conscience and religion, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the right to the equal protection of the law and the right not to be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth. The list is not exhaustive. These are rights, which a man/woman possesses as a creature of nature. These are rights which, all civil governments have a duty to preserve as they determine other rights. Article 29(2) of the Declaration of Human Rights states; "In the exercise of his/her rights and freedoms, everyone shall be subject only to such limitations as are determined by law, solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

Many countries have included these rights in their Constitutions for the benefit of their citizens. The Constitution is a contract with the citizen, which enables him/her to successfully resist the political power vested in the State, seeking enforcement through courts and other tribunals.

Directive Principles.

In addition to the fundamental and human rights, the Constitutions of many countries have incorporated directive principles of State policy, which form the basis of the modern welfare State, since the State itself exists as a means for the welfare of the society, undertaking the development of human personality. These directive principles, include the undertaking by the State to ensure the realization by all citizens an adequate standard of living for themselves and their families, adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities, the complete eradication of illiteracy and the assurance

to all persons of the rights to universal and equal access to education at all levels, the elimination of economic and social privilege and disparity and the exploitation of man/woman by man/woman or the State. The directive principles are meant to guide the governments when enacting legislation and in administering the country to give full effect to the fundamental or human rights and ensure social and political stability and the economic development of the State, essential for the well-being of its citizens. These directives however are not enforceable in a court of law.

Rule of Law.

In 1885 Professor A.V.Dicey, in his work "The Law and the Constitution" analysed the expression "Rule of Law" in a manner which gave it a three-fold meaning, (1) the supremacy of regular law as opposed to the wide or arbitrary discretionary power of the executive, (2) the equal subjection of all, the governors and the governed alike, to the ordinary law of the land administered by the ordinary courts and (3) that the rights of individuals, as defined by the courts, are a source of law of the Constitution and not derived from it." This expression of the rule of law has since undergone great changes.

The absence of arbitrary power is the first essential of the rule of law. In a system governed by the rule of law, discretion when conferred on the public official must be confined within clearly defined limits. The law assumes that discretion will be exercised bona fide and not dishonestly, arbitrarily or capriciously. When it is so exercised it is no exercise at all. The rule of law from this point of view means that decisions should be made by the application of known principles and rules, and in general, such decisions should be predictable and the citizen should know where s/he stands. If the decision is taken without any principle or without any rules, it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. Where there is arbitrariness and unreasonableness, there is a denial of the rule of law.

The citizen aggrieved by a decision taken by a public officer in breach of the rule of law has recourse to several remedies, such as the ordinary courts, specially established

administrative courts or through ventilation of grievances in Parliament. Each one of these remedies had its own deficiencies such as the need to establish illegality of the decision, delay, expense and the need to obtain the assistance of a politician. It is in this background, that the South-East Asian conference of jurists, in January 1966, at their meeting in Colombo declared "that a Parliamentary Commissioner for Administration or Ombudsman provides an informal and prompt means of drawing attention to the grievances of citizens in their dealings with the administration, of securing redress of such grievances by the weapons of publicity, persuasion, and recommendation and generally ensuring the highest standards of efficient and fair administration."

Maladministration and Injustice.

The Ombudsman is primarily concerned with injustices committed and maladministration by public officers. Injustice means wider than legally redressable damage. It includes hardship and a sense of grievance, which should not have happened. Maladministration has been defined as, bias, unfair discrimination, harshness, legal error, procedural error, misleading a member of the public as to his/her rights, failing to notify him/her properly of his/her rights, general high handedness, using powers for a wrong purpose, failing to consider relevant matters, taking irrelevant matters into account, negligence, failing to reply correspondence and unreasonable delay in attending to any matter. The Ombudsman does not restrict his/her inquiry to the legality of a decision but also its reasonableness and administrative fairness.

Unreasonableness.

The term "unreasonableness" has been expounded by Lord Greene M.R. as follows; "It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretion often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. S/He must call his/her own attention to the matters which

s/he is bound to consider. S/He must exclude from his/her consideration matters, which are irrelevant to what s/he has to consider. If s/he does not obey those rules, s/he may truly be said, and is often said, to be acting "unreasonably." Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority... In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these run into one another." Therefore it is now settled that review for unreasonableness is not restricted to situations in which a public authority purports to make a decision, which is not in accordance with the terms of the powers conferred on it. Even if a decision on the face of it falls within the letter of those powers, it can still be successfully challenged if it is shown to be unreasonable in the relevant sense.

Fairness and Duty to give Reasons.

Fairness in public administration means that those entrusted with the power to make discretionary decisions must exercise that power rationally and justly. In other words, they must be in a position to explain its exercise if called upon to do so. Principles of natural justice require any administrative authority to give reasons for findings on disputed matters. By providing reasons the decision-maker indicates to the citizen the facts that influenced the decision and the material on which the decision is based. Such a disclosure ensures the transparency and integrity of the decision making process. Disclosure ensures that decisions are not made on an ad-hoc basis. Public confidence in the administration decision making process is enhanced by the decision-maker providing reasons supporting a decision. The duty to provide reasons acts as a check on the abuse of power and ensures public accountability. The duty to give reasons for decisions is likely to improve the quality of the decision-making. It would also go a long way to satisfy the citizens' desire for just and fair treatment and enable them to decide whether the decisions should be challenged. The need to support a decision with reasons would also help concentrate the decision-maker's mind on the right questions and demonstrate to the party affected that the issues have been conscientiously addressed in arriving at the final decision.

Conclusion.

The task of the Ombudsman is to act impartially in safeguarding the rights of the citizen and the public officer when inquiring into complaints made to him/her. S/he has to treat both parties with due respect. The initial reaction of a public officer is to deny improper use of discretion vested in him/her and to view the intervention of the Ombudsman as an intrusion into his/her territory. In the absence of enforcement powers, the Ombudsman has to use all powers of persuasion to make the public officer see reason, when the citizen has successfully established she has suffered an injustice or a violation of fundamental right at the hands of the public officer. However, where persuasion fails, the Ombudsman should not hesitate make a determination on the public officer's lapses and grant the citizen relief by way of an appropriate recommendation. By doing so, the Ombudsman will not only ensure that the Citizen will have confidence in the government and the machinery of public administration but also contribute towards good governance.

**ESTABLISHMENT AND ACTIVITIES
OF THE FIRST OMBUDSMAN INSTITUTE
IN AZERBAIJAN**

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**ESTABLISHMENT AND ACTIVITIES OF THE FIRST
OMBUDSMAN INSTITUTE IN AZERBAIJAN**

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It is my honor to participate at this significant event - the VIII Asian Ombudsman Association Conference to learn rich experience of the Ombudsmen in the region and share with you some outcomes of the first year of my activities in the position of Commissioner for Human Rights of the Republic of Azerbaijan.

General information: Azerbaijan is one of the new independent countries that regained sovereignty in 1991, after collapse of the Soviet Union.

On May 28, 2003 it was celebrated the 85th Anniversary of the first Azerbaijan Democratic Republic, that was in force only 20 months and then Azerbaijan has been forced to join to the Soviet Union.

The hard transition period in the country is aggravated seriously by the long-term Armenian aggression with mass violation of the civil population Human Rights.

Starting from 1988 ethnic cleansing policy had been conducted and more than 250 thousand Azerbaijanis were forcefully withdrawn from the neighbouring Armenia.

After adoption by the Supreme Soviet of Armenia the illegal Resolution on joining the Nagorny Karabakh Autonomous Oblast of Azerbaijan to Armenia, Armenian troops started occupation of Azerbaijani lands. As a result of this aggression 20% of Azerbaijani lands have been occupied; thousands of people were killed; about 1 million of Azeris turned into refugees and IDPs; hundreds of settlements, villages and towns, education and health facilities, historical monuments have been destroyed.

On the night of February 25 to 26, 1992 when the Khojali massacre, 613 people, including 106 women, 63 children and 70 old people were killed, 1275 peaceful citizens were taken as hostages. As a result of this genocide act, some families were fully annihilated; civil population was slaughtered with unprecedented ruthlessness; hostages became a subject to cruel tortures.

According to the provisions of the international law, genocide is included into the group of crimes against peace and security of mankind as one of the most gravest international crimes alongside with occupation, crimes against humanity, war crimes, and international terrorism. Legal basis for the crime of genocide has been determined by the Convention "On prevention and punishment of the crime of genocide" adopted by the Resolution of the UN General Assembly numbered 260 (III) from December 9, 1948. As it is prescribed by the Convention, genocide is an act committed with a purpose to fully or partly annihilate any national, ethnic, religious, or racial group. All the actions forming the act of genocide described in this document have been applied by Armenian chauvinists against Azerbaijanis.

It lasts for years that the terrorist policy of Armenian nationalists has been conducted in front of eyes of the world community. Nevertheless, according to the principles of UN and OSCE, viability of borders of all states should be respected, and violation of territorial integrity and sovereignty is inadmissible. Despite the fact that the UN Security Council adopted four Resolutions on unconditional liberation of the occupied territories of Azerbaijan, Armenia refuses to implement them. So, mass violation of the basic Human Rights of one million refugees and IDPs are still continued.

In spite of difficulties, since 1996 Azerbaijan is a country of significant economic, social and legal reforms that were initiated by the former President Heydar Aliyev and are being continued successfully by the newly elected on 15 October 2003 by the great majority (76%) of voters President Ilham Aliyev.

According to the statistics for the last 8 years, Azerbaijan is one of the leaders among the CIS countries. For this period traceable increasing of the following indexes was reached: gross domestic product - 90%, budget income - 3,9 times, total sum of the investment in fixed capital - 6,5 times, real income of the population - 3 times, average

wage – 6 times and degree of inflation – 1-2% per year. Legislative acts, which provide development of private sector in the country were adopted.

The implementation of the economic-social policy of social oriented market economy which was founded by the National Leader of Azerbaijan people, former President Heydar Aliyev, focused on prosperity of the population, is being continued successfully now.

Great reforms were realized in the field of democratization, Human Rights promotion and protection.

The First Constitution of the independent Azerbaijan Republic was adopted in 1995. According to the article 7 of the Constitution, Azerbaijan shall be a democratic, secular, unitary Republic; the 12 article declare that the supreme aim of the state shall be to ensure human and civil rights and freedoms.

The new laws on protection of Human Rights and Freedoms have been adopted and realized during last years. Azerbaijan successfully integrates into the European and World Community. It is a member of the UN (since 1992), also of the Council of Europe (since 2001). Azerbaijan joined and ratified more than 220 Conventions, including European Convention on Human Rights, Convention on Elimination of all Forms Discrimination against women (CEDAW), Convention on the Rights of Child (CRC), Convention against Torture and other. The process of adaptation of the National legislation to the International and European standards is being developed.

Changes to the Country's Constitution have been provided by the Referendum in August, 2002.

These changes are relating also with creation of the Ombudsman Institute in Azerbaijan Republic.

Foundations of the activities of Ombudsman in Azerbaijan. On December 28, 2001 the Constitutional Law on the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan was adopted by the Country Parliament (Milli Mejlis). The first Ombudsman was elected on July 2, 2002 by 111 votes (from 112 possible) of the members of the Parliament of the Republic of Azerbaijan from among three candidates, nominated by the country President.

Ombudsman Institute have been set up to restore the Human Rights and Freedoms enshrined in the Constitution of the Republic of Azerbaijan and in the international treaties to which the Republic of Azerbaijan is a party, violated by governmental and municipal bodies and officials of the Republic of Azerbaijan.

The Office of the Ombudsman is composed of three Departments: on Restoration of Human Rights, on Legal education, scientific-analytical, information and international relations issues, Department for the Control on Examination of applications' investigation, a Secretariat and other subsidiary groups.

The series of trainings have been organized for the hired staff to prepare them to work with complaints and implement their duties in an effective manner.

From October 28, 2002 Ombudsman began to receive the applications and to investigate the complaints.

A complaint may be lodged by country citizens, foreigners and stateless persons, as well as legal entities, also by a third person or a non-governmental organization (NGO), but not by the governmental bodies.

Complaints addressed by imprisoned persons shall be delivered to Commissioner within 24 hours, without any censorship.

Investigation procedure: For investigation the circumstances indicated in a complaint on violation of Human Rights, the Commissioner shall receive observation as to that complaint from the body or official complained of. Within 10 days the observations shall be submitted to the Commissioner.

While investigating the circumstances indicated in a complaint, the Commissioner shall have the following rights:

to have access, without hindrance and prior notification, to any governmental and municipal body, military units, penitentiary institutes, detention centers; to meet and interview in private persons held in penitentiary institutes and detention centers; to obtain the documents confirming the lawfulness of their detention;

to receive necessary information, documents and materials, within 10 days, from any governmental, municipal body and officials;

to obtain court orders (judgments) in force concerning criminal, civil and administrative cases, as well as cases, the proceedings in respect of which were terminated;

during investigation of a complaint, to receive written explanations from officials;

to give fact-finding tasks to relevant bodies; such a task may not be given to a body or an official whose decision or act (omission) is being complained of;

to charge relevant government bodies and organizations with a task of preparing an expert opinion;

to be received without delay by heads and other officials of government and municipal bodies, commanders of military units, by officials of penitentiary institutes and detention centers;

with consent of the person whose human rights have been violated, the Commissioner may carry out investigations on his (or her) own initiative in cases of special public importance, or in cases where the interests of persons which are not capable to vindicate their rights themselves are affected;

where, during an investigation, any violations other than those mentioned in the complaint are revealed, the Commissioner shall carry out relevant investigation provided that this is within his or her competence;

if not, the Commissioner refer the materials to relevant government body;

complaints shall be investigated during 30 days. If additional investigation or materials are required, this term may be extended to more 30 days. With consent of an applicant, if it is necessary to conduct additional investigation, this term may be re-prolonged.

Results of investigation: The Commissioner shall, within 5 days, submit written information to an applicant of the measures taken in respect of his complaint, and results of the investigation,

if as a result of an investigation the Commissioner find a violation of the rights and freedoms of an applicant, he may take the following measures:

to demand from the governmental or municipal body, whose decision or act (omission) violated the human rights and freedoms, to remedy those violations. The

appropriate bodies and officials shall, within ten days, submit to the Commissioner written information of the measures taken in respect of those violations. Where such information is not submitted or the appropriate body fails to comply with the demands of the Commissioner, the latter may apply to the superior authorities;

in case where certain conduct appears to be a criminal offence, to apply to relevant bodies;

apply to the subjects entitled to file additional cassation complaints;

to submit proposals to relevant bodies on instituting disciplinary proceedings against the officials whose decision or act (omission) violated human rights and freedoms;

to inform mass media of the results of the investigation conducted in respect of human rights violation;

in cases, where violations of human rights take on special public importance, if the means available at the disposal of the Commissioner are not sufficient for remedying those violations, to apply to the President of the Republic of Azerbaijan, or to hold a speech before the Milli Mejlis of the Republic of Azerbaijan;

to apply to a court of justice with a view to the protection of the rights and freedoms violated by decision or act (omission) of a government or municipal body, or an official;

to apply to the Constitutional Court of the Republic of Azerbaijan in cases where the rights and freedoms of a person are violated by legislative acts in force.

Activities: In July 2003, with the support of the UN Development Program in 3 regions of the country – Guba (for 6 districts), Sheki (for 6 districts) and Jalilabad (for 9 districts) Ombudsman's Regional Centers were established. During this period the Regional Centers worked with more than 500 applicants.

On December 29, 2003 Ombudsman presented the first annual Report to the President of the Republic of Azerbaijan also to the Milli Mejlis (Parliament).

From October 28, 2002 to December 29, 2003, 4500 applications were received by Ombudsman, 93,5 % out of which consisted of complaints. 32,7% of these complaints concerned violation of civil and political rights including the right to apply, right to liberty, right to secure life, right to protection of honor and dignity, right of detained,

arrested and accused persons, and 67,3 % of them concerned the violation of the economic and social rights, including labor right, property right, social welfare right, right to housing, right to free entrepreneurship and other.

In conformity with the requirements of the legislation 53,6% of the complaints referred were rejected. In these cases reasons of the refusal of the complaints were explained and applicants were responded with appropriate legal advises by submitting of the substantiated written reply.

According to the Law, the Commissioner shall not investigate the complaint if it is beyond of his competence, or it is being examined within court proceedings, or the application is anonymous. Other grounds for refusing is if the resubmitted petition does not contain any new information, facts and evidence. Except that, a complaint may be lodged with the Commissioner within a period of one year from the date when an alleged violation of rights of the applicant occurred or he became aware of that violation.

46,4% of the complaints referred to the Ombudsman were accepted for investigation. 45,5 % of these complaints concerned the violation of the civil and political rights, 54,5 % economic and social rights. 28,9 % of these complaints were satisfied and the violated rights and liberties were restored.

During the examination of the complaints 2112 interrogations and inquiries were sent to different state organizations and institutes, which were appropriately examined and responded, sending written explanations. Regular meetings were organized with various groups of population in different country regions.

While investigating the complaints Ombudsman sent the recommendations, tasks and propositions to appropriate agencies, demanded from state and local authorities requiring the restoration of the human rights, violated by government and municipal bodies and officials, also sent cases before to the Plenum of the Supreme Court according to the additional cassation proceedings.

The Ombudsman discussed cooperation perspectives with the authorities for the solution of problems concerning protection of human rights and held joint seminars, discussions and consultations.

At the same time, it were made consequent propositions to the appropriate authorities with the aim of improving of the efficiency of protection of human rights.

Ombudsman Institute activities have been realized in close collaboration with the governmental, non-governmental organizations, both local and International, with civil society and mass media.

From the first days Special Decree on implementation of the Constitutional Law on the Commissioner for Human Rights of the Republic of Azerbaijan had been adopted and the corresponding changes were made in other National Laws and Regulations.

Special orders have been adopted by Minister of Justice and Minister of the Internal Affairs in accordance with the Constitutional Law on the Commissioner for Human Rights to regulate the rules of collaboration with the Ombudsman Institute.

The work on restoration of the violated Human Rights was organized in close collaboration with the Ministry of Justice in the field of execution of court judgments, learning conditions in prisons and places on the detention, also violation of rights of the convicted people.

Big changes are taking place in the penitentiary system in the country from the point of view of maintenance, food and medical services, human rights promotion and protection. The new buildings for detention places are being built in the frames of the European standards in Baku and other cities.

At the same time the conditions have to be improved in a lot of regions with old detention places that are functioning from the Soviet period.

The Ombudsman visited more than 50 times different prisons and detention facilities, verified documents approving the legality of the detention and checked the detention conditions. With the purpose of continuation of the works undertaken for improving of the living conditions in prisons and detention facilities Ombudsman presented her recommendations to the Ministry of Justice on the following issues: to take measures for pardoning of prisoners based on the principle of the individuality of punishment and of the offender, to raise awareness on the human rights issues among prisoners, to organize their psychological rehabilitation; to determine joint monitoring rules of the prisons, to improve conditions for children living with detained mothers in prisons; to attract highly qualified professionals in this field (psychologists and nurses); to detain persons who reached age of 18 and have not already served their terms in special detention facilities

with appropriate conditions; to build covered sport halls in prisons and to provide them with sportswear, to organize specialized medical control in prisons and detention facilities, etc.

During the current year 159 prisoners and their families referred to the Ombudsman with applications for pardoning. Complaints addressed by persons held in penitentiary institutes or detention places were delivered to Ombudsman within 24 hours without being subjected to any control or censorship.

It were presented to the specialized Commission the recommendations for pardoning of 124 persons and as a result 33 persons were released by an act of amnesty or pardoning.

More than 50 times Ombudsman visited detention facilities of the polis departments, reception wards for adults, detention facilities for administratively detained persons. She verified documents approving the legality of their detention, at the same time she checked their detention conditions. Any cases of torture, degrading treatment or punishment were not observed during these visits. Besides, she presented the recommendations to the Ministry of Internal Affairs on the measures to be taken to put an end to any shortcoming noticed. Several polis officers held responsible for shortcomings and they were administratively punished or dismissed from their position.

Ombudsman, proposed working out of a National Plan of Action on protection of human rights with participation of the state agencies, scientific institutes, non-governmental organizations and the public at large which would provide a monitoring of the level of implementation of human rights and liberties by the officials.

A workshop was held with participation of the judges of the Constitutional Court and the courts of other three instances and it was brought to the attention of the participants that big part of the complaints concerned unfair decisions rendered by the courts and judges, respect of the equality of parties in the proceedings, partiality, acts incompatible with judge's dignity. She urged to take serious measures to put an end to such situations, when the human rights are violated relating to red tape, loss or delayed delivery of documents in courts as well as delays in the execution of court decisions.

Taking into account cases indicated in admitted complaints, Ombudsman initiated her proposals to include amendments and changes to the relevant legislative acts concerning the issuing of identity card or national passport of a Citizen of the Republic of Azerbaijan by the Embassies (or consulate offices) located outside of the Republic of Azerbaijan, particularly in CIS countries.

Considering education development and conduction of necessary reforms in educational system as one of key priorities in ensuring the right of free education for all ages, proposals on reviewing the draft "Law on Education" and acceleration the process of its adoption were prepared and presented to the Country Parliament.

It was proposed to develop the selection principles of new specialists by enterprises and attained their consent in providing with employment to those who are graduated from vocational, secondary, professional and high schools.

The proposals were applied to the Ministry of Education also for conducting the legal educational work on Human Rights among employees of educational sector.

In connection with Ratification of the European Social Charter it was proposed to join to some additional Articles of the charter for more effective protection of the social rights of citizens.

The decree of the President of the Republic of Azerbaijan Ilham Aliyev dated November 24, 2003 "On Measures to speed up the social and economic development in the Republic of Azerbaijan" was studied with the population of different country regions for awareness and mobilization of the local resources and communities for active participation in implementation of plans of the economic and social development of country regions. Round table discussions have been organized on social rights, and importance of joining to the European Social Charter. Numerous events were organized in the country rural districts for awareness of rural population on their Human Rights.

In the field of rational solution of problems of refugees and IDPs and protection of their rights, it has been proposed to the State Committee on Refugees and IDPs issues, regional executive authorities and the employers to involve refugees and IDPs into labor

activities as well as to draft and fulfill action plan by relevant public authorities in order to encourage them to get into small size entrepreneurship, income generation entities.

The problems of migrants, refugees and IDPs in Azerbaijan have been discussed together with UNHCR, public and non-governmental organizations and joint events have been organized.

Special attention was paid to the protection of rights and freedoms of the most vulnerable people – women, children, elderly people, refugees and IDPs, disabled persons, families with low income who do need more care. Vast educational work on human rights protection is being carried out for them. Ombudsman cooperates closely with the resource Center for elderly people, regularly visits the Ministry of Labor and Social Protection facilities for aged and disabled persons to examine their living conditions, needs and problems.

In order to ensure the protection of labor rights of disabled persons, proposals were summarized and sent to the Ministry of Economic Development. These proposals were reflected in the Decree of the President of the Republic of Azerbaijan dated September 26, 2003 on “Rules of debts payments as a social compensation by privatized or State enterprises given in private management.”

Ombudsman has also presented the following proposals: to create equal opportunities in ensuring economic, social, cultural, civil and political rights of disabled persons; restore their social status; eliminate their dependence on others; to use in rational manner the labor rights of disabled persons; to create them conditions for using public transport; to build specially designed places for entry and exit of wheelchairs on the streets, in buildings, and education premises; to liquidate any limitations imposed on their lives and activities.

The proposals were presented to the Public institutes to prepare a new mechanism in order to organize properly the social protection of orphans and children deprived from parental custody and to solve this problem. It has been also applied to the courts of relevant instance to restore the violated property rights of children in the cases of divorce of their parents.

Several events were organized in cooperation with the Ministry of Education and the UN Children Fund (UNICEF) in the field of protection of children's rights.

Taking into account that UN announced the year of 2004 as "The Year of Family" and aiming to solve problem on creation of family protection system and organize rationally the work in this field, it was proposed to increase assistance to the socially vulnerable families in the framework of the poverty reduction program; to help in the development of economic status of vulnerable families by the way of credit and preparation of business-plans; to organize the legal and informational support for the formation and development of families' entrepreneurship; to analyze the current legislation in relation to the violence in family and to prepare the efficient proposals; to set up a national legislation for the prevention of human trafficking; to study the international regulations on protection of family rights and improve the national legislation in this field.

Taking into consideration the issues reflected in complaints from cities and rural districts, aiming to ensure by rational and effective means of the property, labor, free entrepreneurship and other rights defined by Constitution for those citizens, it was proposed to take measures for elimination of the bureaucracy in governance of public institutes; to select and employ new personnel skilled with new vision in the framework of the comprehensive State economic program in the field of economic and social development of rural areas; to carry out measures (loans, taxes, subsidies etc.) in the field of expansion and improving of the infrastructure.

Summarizing the complaints of citizens on social-economic situation and their rights violated in this field, Ombudsman applied to the relevant public authorities with the corresponding proposals.

In order to defend the rights of citizens to live in a safe environment, Ombudsman visited to the natural disaster places. These proposals on some urgent measures were taken into consideration by the Deputy Prime Minister, Chief of the State Commission on Emergencies, Ministers of Economic Development, Ecology and Natural Resources, Labor and Social Protection of Population and the Minister of Health. Property, free

entrepreneurship, health, education and other rights of victims of the natural disaster were restored.

In order to protect the rights of military servants, Ombudsman visited several times the military units, inspected the living conditions of militaries, the situation in hospitals, mentioned positive changes in this field, at the same time she expressed her remarks and recommendations on some shortcomings.

In order to eliminate challenges indicated in the complaints coming from military servants and their family members, as well as retired or reserved officers, it has been proposed to extend financial assistance for the military servants who build individual living houses, to provide accommodation for those who has no shelter, etc.

Proposals of Ombudsman on the State registration of legal entities given to the relevant public bodies were taken into account during the adoption of the corresponding law by the Milli Mejlis.

These proposals have been worked out in collaboration with members of Parliament, public, organizations, NGOs, OSCE representatives and also by the Council of independent experts at the Ombudsman Institute.

Research and analytical work: The comparative analysis was carried out between national legislation and international treaties, to which the Republic of Azerbaijan is a party, proposals have been prepared concerning the adherence to some Conventions. The activities of the Ombudsman Institute were analyzed and for the purpose of its improving the proposals have been prepared for relevant amendments to the Constitutional Law on the "Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan" and some other legislation acts.

Taking into account different aspects of the human rights, special reports were prepared on "Protection of the rights of refugees and internally displaced persons", "Protection of the rights of the convicted persons", "Protection of the rights of military servants".

Legal education of population: Just from the beginning of the activities Ombudsman organized a series of educational events – workshops, round table discussions etc. in the regions of Azerbaijan on “The Role of Ombudsman in protection and restoration of human rights”. Chiefs of local executive power, municipal authorities, judges, high-ranking officials of the police and prosecutors participated at these events. Legal educational work on Human Rights has been performed also in the rural districts, refugee camps and secondary schools, facilities for elderly and disabled persons.

For the first time, English-Russian-Azerbaijani Law Dictionary has been prepared and published. Also a lot of booklets and leaflets were published on the topics: “How to apply to the Ombudsman”, “Your fundamental rights and freedoms”, “How to apply to the European Court on Human Rights” and etc.

Booklets and leaflets on protection of human rights and legal literature were distributed in the peoples communities in the cities and rural districts.

The specialized library mainly with the literature on human rights has been created at the Ombudsman Institute.

The Council of Independent Experts: In order to make this cooperation more effective the Council of Independent Experts at the Ombudsman Institute has been established in collaboration with NGOs. Alongside with state bodies, non-governmental organizations were also represented in this Council. The activities of the Council are directed to ensuring of human rights status and situation in the country, as well as analysis of international conventions, preparation of proposals for the improving of legislation and organizing of other events.

Collaboration with mass-media: The effective cooperation has been established with journalists for better informing and public awareness about the activities of Ombudsman on Human Rights promotion and protection.

Several competitions have been organized between journalists devoted to the "Protection of Human Rights". Winners, whose articles were most attractive were awarded.

More than 700 articles and information were published in mass media, press conferences and were organized about the activities of Ombudsman.

International activities: The 1st Baku International Conference of Ombudsman devoted to the "Role of Ombudsman in a State ruled by law" was organized on June 9-13, 2003 with support of the European Union and 2nd International Round Table of Ombudsmen - on November 20-21, 2003 with support of the UNDP.

Ombudsman participated with presentations at the 59th session of UN High Commissioner on Human Right in Geneva, Switzerland on April 13-18, 2003, also at the 47th session of UN Commission on Woman status devoted to the violence against women in New-York on March, 3-14, 2003.

Ombudsman and staff members of the office participated at more than 40 international conferences and seminars devoted to the protection of human rights, woman rights, child rights, rights of national minorities, ecological rights and other that have taken place in USA, Great Britain, Norway, Poland, Russia, Sweden, Switzerland, France, Italy, Germany, Slovakia, Denmark, Austria, Kyrgyzstan, Georgia and other countries.

Close cooperation and contacts were created with various international organizations inside and outside the country, including UNDP, UNICEF, UNHCR, OSCE and Council of Europe as well as the Embassies of different countries accredited in Azerbaijan.

We are honored to join as a member to the International Ombudsman Institute, as well as to European Ombudsman Institute and now the Asian Ombudsman Association.

The activities of Ombudsman in the field of Human Rights protection have been awarded with International Peace Prize of the United Cultural Convention of the American Biographical Institute (2003).

So, during the first year of its activities the Ombudsman Institute was dealing not only with resolving of the individual problems of those who lodged the complaint to Ombudsman, but also tried to contribute and to make changes in the implementation of the basic Human Rights, sending general proposals on improving the national legislation in this field, also acting as intermediary between people and the state, combating the mal-administration, supporting democracy and application of the rule of Law.

At the same time only first steps are being made by Azerbaijan Ombudsman in promotion, protection and restoration of human rights also in prevention of their violation. And collaboration with the experienced Ombudspersons and their specialized organisations has crucial role in improving of the work of this newly created Institute.

In conclusion, I would like to thank once more the organizers of this significant Conference for the opportunity to join you in discussions of the activities of the Ombudsmen in promotion and protection of Human Rights in the countries of Asian region.

Thank you for your attention.

The features of functioning of the Ombudsman Office in post soviet country

Mr. Tursunbay Bakir uulu,
Ombudsman (Akyikatchy) of the Kyrgyz
Republic

**The features of functioning of the Ombudsman Office
in post soviet country**

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Ombudsman (Akyikatchy) of the Kyrgyz Republic**

The human rights have today a universal importance. In their demonstrations they became the indices of governments civilizations and the standards of citizens well-being, the source of solving important social and personal problems. The perfection of national system of protection human rights and freedoms becomes the main task of any government, keeping to democratic beginnings.

Everyone understands that between the avowal of these values and their real exultation lies the long way of struggle. After all, the human rights, frequently, are not realized even under favorable conditions: there is violation of human rights and freedoms even in the countries with developed democracy. Thereby, our young government has to take practical steps forward to satisfy the highest remedial and humanitarian standards. That is why, from the idea to establish in Kyrgyzstan the Office of the Representative of human rights in National program "Human rights on 2002-2010" moved fastly to its realization.

If in the second part of 90-th of the 20 century in Kyrgyzstan only narrow circle of politicians and jurists knew about existing of remedial institute under the name "ombudsman", but at the beginning of the new millenium not only the political society "otstrovka of democracy" began to talk about it but the lawyers, remedials and journalists too. And with the discussion in Legislative Assembly of Jogorky Kenesh of the Kyrgyz Republic two years the bouquet from the suggested left and right wings society of numerous law drafts the news about the future national Ombudsman became the property of street politicians

In the October of 2002, after the two month as the national law about the Ombudsman has came into existence, with the help of UNDP was made the sociological

examination "Kyrgyz citizens about the Ombudsman". The examination showed a low level of knowledge of people about the meaning "ombudsman". So, only 23% of asked people in republic (18% - northern regions and 29% - in southern regions) knew about this appointment, 24% recollect (accordingly 21% and 26%), that heard something but couldn't remember details and 53% never heard (accordingly 61% and 45%) about the "ombudsman". From the point of view of national groups about the Ombudsman heard 25% of Kyrgyz, 17% of Russian, 19% Uzbek; remembered but without details 26% and 18% and 25% accordingly; never heard: 49% and 65% and 56%.

The situation with society informing about the Ombudsman was changed after the official nomination candidature for this appointment and with slopping in SMI in the connection of this information on the base of the last achievements in polytechnology. The results of election of the first Ombudsman, his adjuration at the joint sitting Legislative Assembly and the sitting of the national representatives of Jogorky Kenesh of the Kyrgyz Republic were introduced to republic society with help of newspapers, radio and television in friendly or malevolent tone (it depends on their owners or political bias).

After the elections the polyhedral activity of Ombudsman (or "Akyikatchy" – the kyrgyz synonym of the Swede word means "truthfighter" or "adjusting the truth", but the more good meaning is "adilitchi" – "the fighter for the truth", but it was abolished by the author because of the program of the national television) is viewing in SMI on the principles of opening, availability and objectivity.

The number of addressed citizens and guests of republic 2003 to central and regional Ombudsman (Akyikatchy) offices says the fact that about this institute is known in all corners of the mountain country. But it doesn't say that everyone imagine clearly the activity and authority of Ombudsman.

The international association of lawyers made the meaning "Ombudsman" as "service foreseen by Constitution or by the act of legislature and headed by independence public official of high rank, which is responsible for legislature, receives the complaints from people on government organizations, employees, employer or acts to his meaning and has the right to make an investigation, to recommend the actions and to give reports. In 1713 in Scotland was first used the expression "Ombudsman" meant the person acting in the quality of interest expresser of the other person or his defender

When the Scandinavian Ombudsman institute began to spread in the counties of "classic democracies", in these counties existed old mechanisms, permitted citizens to control activities of government administration. These "three whales" – are the judicial review, the parliament control and public control, and independence mass media inclusive. In some way it is the interior control of the administrative organizations. There exists the form of the control as reviewing activities of the organizations of the Public Prosecutors. But, with close considering, all these traditional instruments were not enough effective, they didn't permit citizen to feel himself in full protection from administrative despotism.

It was also promote with help of constant growing of government penetration into all spheres of society live, expansion of administrative activities of government, the growth of government regulation, that it comes to derogation of the legislature role and consolidation of the administrative apparatus positions. As the result of these processes the citizen felt himself more defenseless before powerful government machine, and less able to resist it.

The citizen, whose rights are violated and ignored, even if he has an opportunity he doesn't begin difficult, long and expensive fight with administrative armada of the government. Lack of knowledge of laws and devout fear before law-enforcement and judicial organizations means that the most of the citizens firmly and desperately suffer from rough violations of their rights and freedoms from the side of the government organizations of authorities and officials.

The effectiveness is not high of the parliament control in the form of deputies inquiries and parliament commissions, and the judicial process seems so long, expensive and difficult. "Independent" SMI in the real life get into the more dependence from the government organizations and from the representatives of official class, then their "offended with authority" readers. And we must say about the interior control of administrative organizations. In any interior-searching check we can see the slogan at first: "esprit de corps is first of all!" or "to wash one's linen in public!".

Thus, the need in Ombudsman Office appears when it becomes clear that at this stage of developing existing institutions are not able to solve their main tasks with respect to government administration and appears the need of the secondary protection of human

rights against the administrative despotism. It called to realize the idea to add existing system of human rights guarantee with the new element, which became the Ombudsman Office.

On the other hand, the idea of establishment Ombudsman Office in postauthoritarian and posttotalitarian governments appears in more unfavorable conditions – in almost fully absence or in weak development other mechanisms of control. Independence court is absent, the knowledge of parliament is too low of hypertrophied role of the executive power, the mass media is under the serious pressing of the government, the government apparatus differs of high venality of the public control. In this case, the Ombudsman stays “alone” in the frame of the system, and that is why he has to assume incredible functions in normal case.

In the world practice are known three functional models of Ombudsman Office, which differs from his position in state-legal system, in order of his appointment, in subordination (accountability) this or that branch of authority or absence of it, with the value of authority and etc. these three models are following:

1. **Executive Ombudsman.** He is the organ of executive power, appointed by government or president, he is under controlled. It is a rear variant which is existed in France (Mediator) and is appointed by Council of Ministers. Such organizations acts in some states of the USA.
2. **Independence Ombudsman.** He represents peculiar and independent branch of power, the level of which is corresponded to the level of legislature, executive and judicial authorities. At that he may be appointed by president or by parliament, but after the appointment he doesn't obey to appointed him organ. Such module of Ombudsman is existed in Portugal (Provedor of Justice), Namibia and Netherlands.
3. **Parliament Ombudsman.** He represents the legislative branch of power, appointed (elected) by the parliament and he is under controlled. He stands as parliament organ, but possesses with large powers, giving him a certain independence from the parliament.

The main task of the classical Ombudsman is the control of administration activities, and its officials (in contrast to other two models where the control is spread as on executive as legislative powers).

In the most countries (Kyrgyzstan is not excepted) where the Ombudsman Office exists it belongs to parliament model. It is a normal, because as in a history the Ombudsman –is the baby of the parliament. He appeared as the organ of parliament control under the administration, as a result of parliament struggle (i.e. representatives of nation) for human rights and freedom, declared by constitution, but flout by executive power. The parliament model is more restricted not only from the point of history view but from the point of modern context view, because the main violations of human rights have the place in the correlation with executive organizations of government power. Only officials are guilty in the most of the violations of human rights and freedoms.

The most important element of the Ombudsman legal status is the value of his authority. Even if the jurisdiction of the Ombudsman has the line of common features in different spheres but the sphere of its expansion differs. It determines with national traditions and ruling-executive peculiarities of government. Usually Ombudsman has the common jurisdiction over the large circle of government organizations. In one countries this line can be widen and include the judges, law machinery and army, but in other – one or more pointed structures is exclude specially. Depending on the value of authority ombudsmen can be divided into several groups:

ombudsmen, realize their authority in the way of government organizations, belonging to different branches of power;

ombudsmen, whose sphere of control include just organs of executive power;

ombudsmen, whose authorities spread not only on government organs but on non-government structures (probably Kyrgyz institute of Akyikatchy belongs to this rear group).

Ombudsman Office as government organization, represents an important level of developing of Kyrgyz government where the protection human rights and freedoms is meant and formulated as the condition of government development. Balance of the work of Ombudsman (Akyikatchy) of the Kyrgyz Republic in 2003 says that this remedial

institute in the Kyrgyz Republic was accepted and takes the development on the principals of availability, opening, independence and indifference toward politics.

With the next few years it will have the complex of actions for strengthening government remedial organization on the central and regional levels, that to make its legal construction, organizational and material and technical basis in connection with reality in the sphere of protection human rights and freedoms. The Ombudsman (Akyikatchy) Office of the Kyrgyz Republic calls not only to supply in workmanlike manner existing mechanism but to be one of the central links of the government extrajudicial remedial system.

It is very important, that active institute in Kyrgyzstan on human rights in the frame of its competence, on the one hand, solves problems of protection human rights and freedoms, and on the other hand – influences on the forming of legal sphere which limits organizations' abilities of government power, first of all its executive branch, and its officials to violent human rights. It is actual that the activities of the Ombudsman in Kyrgyzstan make the judicial and remedial organizations directly to take the international standards of rights and, first of all, pacts and conventions about human rights and freedoms, to which our country was jointed.

The big importance presents the role of Ombudsman Office in the changing of the treatment of the government organizations and officials to person who demands the protection his rights and interests from the government

The partners' treatment of the society and authority, the developing institutions of civic society are indispensable condition of the civilized solving of political, economical and social conflicts. It is impossible without it firm and effective development of the country in the democratic way and its authority in the world.

The Ombudsman's report, which was represented to deputies of the Legislative Assemble and to the Committee of the national representatives of the Jogorky Kenesh of the Kyrgyz Republic, was the first national document of such kind. It was represented to the parliament of the republic and included the information about the state of human rights and freedoms in the country for 2003 year, about the actions which were taken in the frame of his constitution authorities for the control of the observance human rights and freedoms in the Kyrgyz Republic, restoration of violent human rights and freedoms,

their warning and the perfection of the national legislation, the development of the education and cooperation, including international, in the sphere human rights and freedoms.

With the big difference in names, the meaning "ombudsman" is collective, and the institute is a special work, which is not like the others government and public organizations. The starting point that to understand the meaning of this institute we may call that it is established in the way of additional mechanism of the control for the administration activity, when the traditional instruments are not enough for it. It doesn't, in no way, change the last, but it adds them and plays subsidizing role with respect to them.

In the most countries the Ombudsman is appointed by parliament for specified time (the process and time can differ: from several to 7 years). In Kyrgyzstan, for example, Ombudsman is appointed for 5 years. The national legislation have the norms, which strengthen definite requirements, which demand much of Ombudsman, they are differ in different counties but, as a rule, they belong to professional and personal qualities (a high respect, moral qualities), the age of the person. Usually, the law sets up the incompatibility of the Ombudsman post with other public posts, with politic and commercial activities (pgh. 7 act 6 the Law "The Ombudsman (Akyikatchy) of the Kyrgyz Republic" forbids him to be in the trade union).

"The Ombudsman role – is to protect human rights from the violations, from the excessive use of power, mistakes, carelessness, unjust solving and bad management, that to perfect the public administration and make the government actions more opening, but the government and officials – more responsible to society". It is the meaning of the institute in the materials of the International Ombudsman Office. There used the meaning "bad management" that is usually translated as "dissatisfied work of the administration".

The common features of the Ombudsman Office:

1. The Ombudsman Office is the important addition of the remedial mechanism acting in government. Its addition is natural result of democratization of the society.
2. the main task of the Ombudsman activity – is the protection of human rights, which concretizes his position as an element of secure system of law and order, in

- the big meaning, which exists with the parliament, judicial, administrative and others forms of the control and supervision (pgh. 2 p. 40 of the Constitution of the Kyrgyz Republic, act 1 and Law 3).
3. the Ombudsman's appointment belongs to high appointments of the government (pgh. 2 p. 40 Constitution of the Kyrgyz Republic and acts 6, Law 15).
 4. The important feature of the Ombudsman Office – is his independence, in the most counties he appointed by parliament and represents his reports in this organ (acts 6 and Law 11).
 5. The main function of the Ombudsman is to control the activities for executive and other government organizations. This control is external and extraordinary, in some way. It is realized on the Ombudsman initiative or by complaints of the citizens (p. 2, 8, 10 and Law 12).
 6. In some cases Ombudsman tries a case not only from the point of view law and administrative actions, but, it is very important, especially for the countries where this control is realized in the frame of administrative court system, can try fully the government organization activities and their officials and to decide about the humanity, justice and advisability of their actions.
 7. The Ombudsman Office has a rear quality – on the one hand it has the ability to modify from different social-political conditions of the country, and on the other hand – not to modify its main qualities and maintenance.
 8. The Ombudsman control actions direct, first of all, at realization human rights and correction of the violations in functioning of government administration. He achieves it using the arsenal specific only for him things – the methods of persuasion, critic, and publicity. He hasn't administrative, imperative authorities. The existence of the Office directs at development and perfection off-center methods of influence on administration behavior.
 9. The main point of this control form is its easy and understanding for citizens way of activity, connecting with immediate access of nation to the Ombudsman and confirmed with the principle of free of charge for giving services (p. 11 and 12 act Law 10). The citizen sees in Ombudsman independence, appointed person, who is not connected with the relations of official or other subordination with

administrative organizations, which violent his rights. He is a person who provides connection between the citizen and government organization and he takes the side of the citizen's interests (p.2 p. 40 Constitution of the Kyrgyz Republic, p. 1. p.1 p. 5, p.1p.6 and p.1 p.10 Law).

In spite of the presence judicial, administrative and public prosecutors methods of secure rights and freedoms – today in our country human rights are often violated and numerated methods are nit effective enough, because they are not accent on the protection human rights of the citizen. That is why the problem appears not only for perfection of using methods, but the creation of the new instruments guarantecing and protecting human rights.

In this context the initiative to establish in Kyrgyz Republic the Ombudsman Office was timely. It was seemed that this office having deep historical backgrounds and successfully approved in many countries of the world, could be one of the important elements of national protection human rights and freedoms system.

However, precursors of realization of this idea was the decree of the President of the Kyrgyz Republic A. Akaev "About the establishment the Commission on human rights in the President of the Kyrgyz Republic", signed in July 1997. The chairman of the Commission and its personal staff, where were included prominent government and public officials (deputies from the two chambers of the Jogorky Kenesh of the Kyrgyz Republic, leaders of politic parties, including representatives of the opposition, government officials, representatives of NGO, scientists, lawyers and journalists), was proved by the President of the Kyrgyz Republic in May 1998.

After the elaboration and proving the agenda of activity, in June 1998 the Commission started its work. It was the first of the specialized government organizations, which was established on the base of "Paris principles" referring to the status of the national organizations for assistance and protection human rights purely with the aim to protect human rights in Kyrgyz Republic.

The human rights Commission in the President of the Kyrgyz Republic considered addressed complaint of citizens to the head of the government and to the Commission with the questions of observance human rights. Notable, that into the Commission's work didn't interfere the head of the government and his administration,

while it was called the Commission in the President, that provided it relative independence in action to consider complaints and applications.

Nevertheless, because of the lack adequate finance, that deprived it the ability to have its own staff and room, it couldn't sanguineously realize its activity. Nevertheless, in 1999 the Chairman of the Commission on human rights in the President of the Kyrgyz Republic made his report "About the position of human rights and freedoms in Kyrgyz Republic in 1998" to the head of the government A. Akaev and on the judgement of the republic society (the shorten variant was published in the government newspaper "The Word of Kyrgyzstan"), and its Russian and English versions to the constant members of OSCE in Vienna (Austria).

The next logical step in democratization of the society should be the establishment independence in all spheres Ombudsman Office, meant for the action as an addition to existing instruments legal protection and one more additional guarantee of stable course for the democratic reform in society.

The important meaning in this aspect had the National program "Human rights on 2002-2010", affirmed by the President Decree of the Kyrgyz Republic from January 2 2002. With help of this program, in the aim of strengthening the effectiveness of the national system of the extrajudicial protection human rights and freedoms, was affirmed once more the earlier taken international obligation by Kyrgyzstan to establish Ombudsman Office with help of taken the Law "About the Representative on human rights of the Kyrgyz Republic".

In 2001 the President of the Kyrgyz Republic brings for consideration to Jogorky Kenesh of the Kyrgyz Republic the draft "About the Representative on human rights (Ombudsman) in the Kyrgyz Republic". At the same time the legislative body of the country were represented two other independence projects initializing by the deputies of the Legislative Assembly of Jogorky Kenesh of the Kyrgyz Republic O. Tekebaev and T. Bakir uulu. Unfortunately, at that stage none of the projects wasn't accepted while for the base of the first reading was taken "presidential" variant of the draft.

The 24th of June 2002 the Legislative Assembly of Jogorky Kenesh of the Kyrgyz Republic returned to considering the question about accepting the law about the Ombudsman. At that time were considered 4 drafts which brought by the President of the

Kyrgyz Republic, by deputy group "the Kyrgyzstan Regions" T. Bakir uulu in the head, and the chairman of the Legislative Assembly committee of Jogorky Kenesh of the Kyrgyz Republic on human rights O. Malivanay and the deputy of the same chamber B. Gogaev. It should be noted that the difference between the drafts concluded in the process of bringing up and election, time and value of authority, demands to candidates on the post of the Ombudsman (age, education, possession of the government language) and the number of deputies of the Ombudsman.

At the end, after the tense debate 25 of June 2002 the draft was accepted developed by deputy group "Kyrgyzstan Regions". In the 1st of July 2002 the President of the Kyrgyz Republic signed this law and in the 2nd August 2002 after the publication in the official newspaper "Erkin-Too" this law came into existence.

In the connection with the point 2 article 17 of the Law of the Kyrgyz Republic "About the Ombudsman (Akyikatchy) of the Kyrgyz Republic" the elections of the first Ombudsman must take place not later than one month till the end of the year, when this law came into existence. The President of the Kyrgyz Republic brought the candidature ex-minister of international affairs of the country M. Imanaliev, the deputies groups and political parties were brought the candidatures of the ex-deputy G. Kazakbaev, the leader of the Remedial movement of Kyrgyzstan T. Akunov, the deputies of the Legislative Assembly D. Sadyrbaev, A. Mambetalieva and T. Bakir uulu, and in the quality of self-nomination the leader of the independence farmers Association A. Bazarkulov. The election took place in the 21 of November 2002. In the first tour of voting was chosen T. Bakir uulu with the 36 votes "for".

In December 13 2002 the first Ombudsman of the Kyrgyz Republic at common deputy session of Legislative Assembly and the Commission of the national representatives of Jogorky Kenesh of the Kyrgyz Republic with the presence of members of the Government and the Administration of the President of the Kyrgyz Republic, managers of international and non-government organizations, and representatives of SMI, in the ceremonial atmosphere took the oath. Thereby, he officially jointed his activities. Till the taking the oath he, in accordance with p. 6 article 6 Law "About the Ombudsman (akyikatchy) of the Kyrgyz Republic", took off the authority of the deputy of the Legislative Assembly of Jogorky Kenesh of the Kyrgyz Republic, the leader of the

Progress-Democratic party “Erkin Kyrgyzstan” (ErK) and the vice-president of the society “Turk-Ata”.

It should be noted that in spite of the deputies of Jogorky Kenesh and the President of the country, the active support of international organizations, first of all, UN and OSCE, at the different stages of juridical evolution of national law about the Ombudsman and speeding the process of election of the first Ombudsman of the Kyrgyz Republic.

Today the normative legal base foreseeing realization of the Law of the Kyrgyz Republic “About the Ombudsman (Akyikatchy) of the Kyrgyz Republic” are the changes and additions in following normative legal acts:

In accordance with “Paris principles” (Human Rights Resolution Commission UN #1992 on March 3 1994) our country in order strengthen now in new reduction of the Kyrgyz Republic Constitution accepted on the referendum on February 2 2003 after the strengthening legal text about setting up the appointment Ombudsman (Akyikatchy) of the Kyrgyz Republic. “The control for observation human rights and freedoms in the Kyrgyz Republic, - says p.2 art. 40 Constitution, - lay on the Ombudsman (Akyikatchy) of the Kyrgyz Republic. Law “About the Ombudsman (Akyikatchy) of the Kyrgyz Republic” regulates the order of election authority of the Ombudsman (Akyikatchy) and the order of their realization.

The 21 of April 2003 the Legislative Assembly of Jogorky Kenesh of the Kyrgyz Republic added the Criminal code art. 146-1: “Prevention in any form from realization authority of the Ombudsman (Akyikatchy) of the Kyrgyz Republic, provided with the Law of the Kyrgyz Republic “About the Ombudsman (Akyikatchy) of the Kyrgyz Republic”, - punished by fine at the rate of 200 minimum month salaries”.

Deputies added the codex of the Kyrgyz Republic about the administrative responsibility at the same day: art. 61-1: “the independent interference in the Ombudsman (Akyikatchy) of the Kyrgyz Republic activity in accordance with his realization of control for observation constitutional human rights and freedoms – implies the punishment by administrative fine on citizens – from 3 to 5, on officials from 10 to 30 at the rate of minimum month salaries”.

The article 23 of Criminal-executive code of the Kyrgyz Republic was added with point considering the right of the Ombudsman (Akyikatchy) of the Kyrgyz Republic to visit without special permission the buildings carrying out the punishment.

The Law of the Kyrgyz Republic "About the order and conditions keeping persons under the arrest, arrested under the suspicion and accusation in committing a crime" was added art. 17-1: "Without a special permission to visit the places which keep under the arrest suspected and accused people in committing the crime have the right only the President of the Kyrgyz Republic, Toroga of Jogorky Kenesh of the Kyrgyz Republic, Prime Minister of the Kyrgyz Republic, the deputies of Jogorky Kenesh of the Kyrgyz Republic and the Ombudsman (Akyikatchy) of the Kyrgyz Republic".

The accepted Law of the Kyrgyz Republic "About the organizations and institutions of criminal-executive (penitentiary) system" on 12 August 2003 #197 also considers the right of the Ombudsman (akyikatchy) of the Kyrgyz Republic to visit the institutions of criminal-executive system without a special permission.

The accepted law of the Kyrgyz Republic "About the foundations of government guarantee ensuring of gender equality" on 12 March 2003 foresees the consideration of fact about gender discrimination, sexual importunity, pressure, pursuit and other violations of gender equality in addressing to the Ombudsman (Akyikatchy) of the Kyrgyz Republic.

The Law of the Kyrgyz Republic "About the social-politic protection from family violence" on 25 March 2003 takes the Ombudsman (Akyikatchy) of the Kyrgyz Republic to the subjects on intersection and warning the violence in family, to do a social service to victims of violence.

The Structure of the Ombudsman (Akyikatchy) Office accordance to the art. 14 of the Law is determined now. It consists of the central and regional offices (for the more information look enclosure to the report). For the foundation was taken the Polish model which things to be the most progressive in postsocialistic countries, and is one of the best models. Thus till 2002 Kyrgyzstan didn't have the Ombudsman Office that is why the Office staff number is determined not only by coping of other experience, but from the daily wants to make the protection of human rights and freedoms in the country.

The comparative analysis of staff number is better to make in the countries of the late socialistic camp. It was conditioned not only that in countries with developed democracy the ombudsmen have more less finance problems, but that there exists the law and human rights are protected firmly. For example, with the high level of social and remedial protection of the society, Sweden permits itself to have 4 different Ombudsman Offices!

In the Defender Office of human rights in Poland work 237 responsible employees, united in 19 departments. In Russian Federation, beside the federal Ombudsman, where work 260 people and almost in every from 60 subjects of the federation (autonomy and regions) functionate the privet offices of representatives on human rights with their working offices. In Ukraine without counting regional representatives, in the central office work 150 employees.

From the 1st January 2004 the Government and Parliament of Czech and Estonian republics make the additional assignments for staff widening of their ombudsmen in the rate from 17 to 50 per cents. Till this moment Czech Ombudsman had 90 representative employees and Estonia, which population is less according the population of Kyrgyzstan, had 32 persons. In Georgia authorities changed the first decision about the shortening of the employees' number of the National Defender and now want to enlarge them to 50 per cent.

The impartial calculations of the Ombudsman (Akyikatchy) specialists and international experts, were introduced to the Ministry of Finance of the Kyrgyz Republic consist of 136 representative of the Office employees. Starting from severe reality it is possible to minimize this number to 111. But the Ombudsman of the Kyrgyz Republic, as the late parliamentarian, knowing the position of economy and budget things of the republic, on the January 2003 has been asking to accept the number "99

But the Legislative Assembly demands baselessly to accept the number "63". Akyikatchy about the year and half asked the President, the Government and Jogorky Kenesh of the country to limit his activity from despotism to officials and protect his independence approved by the Constitution of the Kyrgyz Republic and the Law (p.1 art.6, p.1 art.12, p.1 art.13, pp.1-2 art.14, pp.2-3 art.16).

If in 2003 the budget was approved on 1/7 part from the askable sum, but in 2004 it was approved on 2/3. The Ombudsman Office in no way doesn't want to become the load for taxpayers. But if our government sincerely aims to be in a "family of world civilized governments" and recognize and realize in practice singed by him international documents than lets remember one of them.

"The national organization must have infrastructure which is needed for stable realization of its activity, in particular, to have an adequate finance,- the Principles affirm according the status of national organizations of assistance and protection human rights (p.2 of these "Paris principles").these organizations were accepted by Resolution of UN General Assembly #48/134 on 20 December 1993. The aim of such finance must be the ability of the organization to keep its own staff and apartment that to be independence from the government and not to serve as the object of ruling in accordance to finance, that could influence on the independence of this organization".

The first in the history of the Kyrgyz Republic the Ombudsman Office was established for doing the help, first of all, unprotected social levels of the population (according to facts of the Nazcomstat – 80% of the population), for the poor citizens of the republic who unable to protect their rights with help of courts. Establishment, strengthening and development of the independent Ombudsman (Akyikatchy) Office is an important and essential contribution to realization of National program "Human rights for 2002-2010". This process expresses a deep introduction into the society of democratic principles and ideas, which are put into national reference points of the society and international resolutions (UN, OSCE and others).

With the establishment of the Ombudsman (Akyikatchy) Office of the Kyrgyz Republic we have the ability estimate the level of regal human protection and the level of the government structure work in observing his rights and freedoms. On the foundation of analysis and communication, complaints and applications we can judge enough about the realization of the national idea – "Kyrgyzstan is the human rights country".

For the last year to the Ombudsman (Akyikatchy) of the Kyrgyz Republic were addressed 14214 people. For the clearness we will give the correlation in per cent form which were accepted for the consideration complaints and applications in the regions of the country: from Bishkek – 24.3%, Osh oblast 19.5%, Chy oblast – 13.5%, Issuk-Kyl

oblast – 11.1%, Batken oblast – 7.3%, Naryn oblast – 7.3%, Talas oblast – 5.4%. Besides, the complaints which were from the CIS countries were 0,5%, and without the addressee – 0,8%.

The addressed citizens 2952 to the Ombudsman (Akyikatchy) Office and his regional offices got the oral consultations, explaining not only their rights, but the better ways and methods for protecting their rights and freedoms. The majors of them were helped to make the right applications and appeals. Those who were addressed to the help of looking for the qualified lawyers got the essential assistance. For those who couldn't get to reception for a long time to the heads of government organizations were made the assistance in the way of sending special appeals of the Ombudsman to those officials.

The Ombudsman took personally 857 of citizens. Despite of them Ombudsman held the meetings with hundreds of people in many medical, penitentiary and other organizations.

284 complaints were rejected while there could be more of them if not the first year of working. Among the received writing appeals have the place such complaints and applications which were rejected in accordance with presence of lacking conscientiousness, unmotivation and the lack of pretensions and the statute of limitation when the violence was discovered. In this group include the complaints and applications the case and conditions of which in the way of consideration didn't find their confirmations when the Ombudsman made the inquiries and accompanying letter in different organizations, i.e. the violence of the rights weren't found. The applications were rejected where the requests didn't belong to Ombudsman (Akyikatchy) of the Kyrgyz Republic competence, but he gave free of charge consultations and recommendations where to address and the better possibilities of transaction.

The analysis of problems to considering the complaints and applications, generally, reflects the character of the difficult processes, which happened in real life. *The main part concern complaints about the activities or inaction of legal and law-enforcement organizations (22,71%), somehow or other connected with questions about civic rights (the property right, apartment, inheritance and so on) (17,96%), land right (15,13%), religion freedom (12,8%), political human rights and freedoms (9,35%), economic and house right (8,44%). The letters with questions about the citizenship and*

protection the rights of national minorities are – 3,0%, labor relation – 2,56%, family right and children – 2,55%, social security including pensionary – 2,25%, culture, education and health protection – 1,23%, for illegal actions of fiscal organizations – 1,16%, military and their families rights – 0,56% and user rights – 0,3% of the declarants.

The all writing complaints at the Ombudsman of the Kyrgyz Republic after the analytical elaboration get through the section of letters, complaints and reception of citizens into the Department of investigation the complaints and applications. The applications with urgent forms hand over by the manager of the section at the day of their coming, like in Polish Ombudsman, to Akyikathy from where they get by one or more revisions, or by its notion – to according government organizations. The Head of the Department on complaint direction assigns them to revisions of three administrations. Some complaints are considered during the day, but most of them demand the consideration during a month.

The oral complaints and applications are considered, as a rule, with the sector of free charge legal assistance where the special form is filled. If the declarant is not satisfied with consultation he is suggested to addressed to the Ombudsman with writing application. In the regions the Ombudsman representatives act independently. They consider the complaints, which can be considered and solving on the site. Other complaints they hand to the central office. But, from the Central Office the complaints are handed to regions if they need investigation on the site.

The main task of the Ombudsman (Akyikatcht) in the work with complaints is consist not only that with any methods to protest declares' interests, but impartially and with accordance to acting legislation to take necessary actions to recollect disturbed human rights and freedoms and to define where and how they were disturbed that to recollect them only with the help of law

That is why the work with each complaint is considered till the last result which must be positive from the site of law observance to the interests of each side. It is not accidentally that just 35% of the all complaints were solved in favour of declares. It means that others were about the conflicts of interests.

We would like to make some concrete examples:

1) in the letter to Ombudsman (Akyikatchy) the inhabitant of the Tashkumyr city **G. Hasanov** wrote that for the last years he waited tolerably his salary, which was backpyied in the system of joint-stock company "Naryn HPS". But his wife was ill. She needed urgent operation and than he demanded his salary for the first time (according to the book-keeping certificate of Management energy-department and communication where G. Hasanov worked for 20 years the rest of deposited salary was 43 112 soms and 68 tyiyn). He was explained that the organization hadn't money. Than he had to addressed to the public prosecutor. The public prosecutor send the suit in Kara-Kul country court. But the suit wasn't considered during 6 mounths by unknowing reasons. Finally, in 14 January 2002 the suit was considered in favour of plaintiff and from the JSC "Naryn HPS" was taken 42 819 soms and 99 tyiyn.

But this court decision was sent to defendant only in 17 April 2002 and wasn't carried out during the whole 2003. The declare addressed to Jalal-Abad country court, to deputies of both chambers of Jogorky Kenesh og the Kyrgyz Republic for several times but the case wasn't considered. At the same time the Kara-Kul subsidiary AKB "Promstroibank", where the copy of the court decision was sent too didn't react at it.

Having got this application and having considered all features of the case the Ombudsman (Akyikatchy) sent the act to Judicial department in the Minister of justice of the KR with the suggestion to take legal acts about the carring out the decision of Kara-Kul country court, taken in 14 January 2002. The answer was amazing – it said that employees lost the receiving order that was sent earlier in AKB «Promstroibank».

With the help of taken methods the act was restored. In the aim of guaranteeing the penalty in accordance to order the part of JSC "Naryn HPS" property was arrested: the automobile Niva # 0261 DK. The officer of the court took measures on realization of arrested property.

2) the checking restricting of JSC "Kyrgyzenergo" and its departments brought them into serious defects in the building system. The material resources were weak, people didn't get their salary for a long time. And no one could explain them the reasons of such situation, they just say about market expenses and mutual debts. The workers and employees of the Issuk-Kul organization of high voltage electric networks OAO "Kyrgyz

national electric network" (NENK) said about it in their collective letter which was got in 9 September 2003.

They said that from the moment of reorganization – from the 1 July 2001 – they couldn't get the salary. Their address to the head of OAO "NENK", to the governor, premier minister, deputies of Jogorky Kenesh of the KR, to SMI didn't give results. The leadership made reference to OAO "NENK" which didn't transfer money. OAO "NENK" in their turn thought the offender was JSC "Vostokelectro", which has a debt to networks about 75 million soms. They have their own reasons – it is nonpayment of users. Thus, the circle locked and there is no exit. But it couldn't continue any more. We have a lot of managers in this sphere. And they must solve these problems themselves, but keeping the constitutional rights of workers.

In this case the Ombudsman (Akyikatchy) has enough reasons for restoring justice and the work for restoring disturbed human rights in the organization is still not finished and it will be continued till the heads don't get the punishment.

We would like to tell when officials try to solve labour problems without court interference. In these cases Ombudsman takes part of mediator.

- 1) **E. Kapustina and N. Puzanova** addressed to the Ombudsman (Akyikatchy) of the Kyrgyz Republic with the problem of untimely estimation in dismissal. During the 5 months they didn't get the final estimation. After the interference of the Ombudsman (Akyikatchy) of the KR the school management #58 gave them the final estimation.
- 2) in the case of **G. Buzurmankulov** after the Ombudsman (Akyikatchy) of the KR interference according to the Labour Code of the KR in accordance his dismissal the Bishkek plating department gave him the whole salary in the rate of 2199 soms.
- 3) **G. Iarkov** addressed with the application in 19 May 2003 in accordance with the backpay from the side of government organization plating department and JSC "BMZ. For the elimination of his disturbed constitutional rights in the sphere of labour in 9 June 2003 the Akyikatchy act was sent to the director of the organization.

With the help of Ombudsman interference the worker' rights were recollect without legal organizations in the way of giving him salary in the sum of 7000 soms his constitutional rights are protected which are described in the art. 29 the Constitution of the Kyrgyz Republic and International Labour Convention #95 accordance the protection of the salary.

4) in Pervomayskii regional military commissariat accordance to the application of N. Isaeva was sent the Act in the fact of her unwarranted dismissal and not giving the salary from the employer. She had worked there 10 days but after the finishing these days without the observance all norms of labour legislation of the Kyrgyz Republic she was dismissed in accordance with reduction of the staff. This action was explained as she had worked a few time that is contradicted to the article 15 of Labour code of the Kyrgyz Republic where described the time of the beginning labour rights and obligations starts with the calendar date where fixed the beginning of labour relations.

Accordance to p. 5 art. 13 of the Constitution "The Kyrgyz Republic guarantees its citizens the protection and patronage in outside". At the same time it affirms that "Foreigners and persons without citizenship use in the Kyrgyz Republic the human rights and freedoms, and have the obligations in the foundation, condition and order described in laws and international agreements of the Kyrgyz Republic" (p.2 art.14).

1) 10 November 2003 the Kyrgyz citizen G. Nabikalova addressed to the Ombudsman with the request to find her daughter Aijamal who was kidnapping by "deaf-mute" person in the Western bus station. The employees of the Lenin ROVD couldn't find her. With the help of Ombudsman actions was found out that the kidnapper wanted to move the girl to Kazakhstan. With help of this information the Ombudsman sent the requests to Ministry of Internal Affairs and the General Office of public prosecutor of the KR and also to the competent authority of the neighbor republic including to the Representative of human rights in the Kazakh Republic B. Baikadamov.

The girl was found in the Taraz city where she had to be adopted. But than she was in the orphan house. Akyikatchy made everything possible that to return her mother. This problem was discussed in the round-table session in abroad and in the press-conference of the Ombudsman. in 9 January 2004 Aijamal accompanied by the ublic prosecutor employees of the republic Kazakhstan was returned to the native land and to

her mother. 2) 29 April 2003 Sh. Shadieva addressed to the Ombudsman with the request to influence on attracting to responsibility SP "Karavan-Tour" and Insuring firm "Aleksandr Kovalev". Her son Akbar in 1997 with help of SP "Karavan-Tour" went to Germany for buying the automobile and didn't come back. The insure sum was 10 000 Douche marks the insure spread on European countries. With the decision of Kant regional court on 30 June 1998 A. Shadiev was admitted as dead.

Sh. Shadieva addressed to Pervomayskii regional court with the suit about reparation of damages and insure and also the collection of moral harm. But she was refused on 28 June 2001 by the judge M. Omorova. In the court the defendants gave the documents about the buying the automobile and making of contract about his insurance A. Shadiev in Germany. In the Interlope information A. Shadiev left the Germany with Klimov and Shestopalov who proved that A. Shadiev arrived to Tambov where they left for each other. But the witness Shestopalov didn't come in to the court and there wasn't the second defender on the suit of IF "Aleksandr Kovalev" and the court decide that it could be solved without them.

After this by appellation Sh. Shadieva the country and Supreme courts decided to keep the decision of Pervomayskii region court without changes. In the moment of addressing to the Ombudsman the whole organizations were passed because the decision of Supreme court of the KR is final and is beyond appeal. The nly hope was in the appearance of new facts and that is why the Ombudsman sent different requests into different organizations.

The Interpole Office in the Kyrgyz Republic answered that they hadn't new information about A. Shadiev. The German Ambassador Extraordinary and plenipotentiary in the KR didn't answered in the request giving the copies of A. Shadieva when he filled them in leaving the Germany. The Kazakh Ambassador Extraordinary and Plenipotentiary in Russian Federation K. Nanaev on the request to ask from the FPS RF for facts of passing the boundary controle a Shadiev in the returning way from the Germany also didn't give the answer. The boundary service of the Kyrgyz Republic on the request in FPS of Russia about the passing A Shadiev the boundary control on the returning way from the Germany didn't answer.

After the getting the answer from the Custom-house department that from the information the services of the republics Belarus and Kazakhstan A Shadiev didn't cross the

boundaries of these states in the time of returning back from Germany. It was the new fact and the Ombudsman employees helped to prepare the new suit into the Pervomayskii regional court in the way of reconsideration of the decision in the case of A. Shadiev with the reason of new facts. The suit was accepted. The judge M. Davletbaeva in 27 January 2004 in the fact that SP "Karavan-Tour" was registered as TA "Karavan Travel" and IF "Aleksandr Kovalev" didn't get the court notification the considering of the suit postponed on 10 February.

In the facts of rough, demonstrative appearances of neglected by law, human rights the Ombudsman (Akyikatchy) sent to the managers of certain organizations the acts of elimination appeared violations and recollection of their rights. In 2003 in different organizations were sent 139 of such acts. 58 of them were about the violence in the sphere of civic rights, about the problems of labour offences, housing legislation, social security, 44 – are connected with the violation of criminal, criminal-procedural and criminal-executive legislation.

The grand total of citizens' complaints and applications for consideration to the Ombudsman (Akyikatchy) in 2003 for decision or action (inaction) of the government organizations, institutions of local governing and their officials show that there is a lot of things to do in the Kyrgyz Republic for the affirmation the norms of legal government in the all spheres of vital activity.

The Ombudsman (Akyikatchy) of the Kyrgyz Republic activity is directed at strengthening of human rights and freedoms in the Kyrgyz Republic.

The leading in Kyrgyzstan judicial reform foresees the realization in the new legislation of human rights and freedoms, security and legal protection. The modern legal basis of our country widens and renews very fast. Cardinals and qualities changes in the government system demand legal regulation, which doesn't permit the long delays. The new reduction of the Constitution strengthens the splash of the legal activity in Kyrgyzstan.

In against this background the problem of compliances of active legislature can get the special topicality. The success of its solving is depended on not only efforts of parliament and government on modernization of existing legal basis, but on the

implementation of international norms. In accordance with the new redaction of Constitution of the Kyrgyz Republic: "Entered in accepted legal rule into the strength of international agreements and contracts, where the Kyrgyz Republic is the participant, and accepted principles and norms of international right are the main part of the legislature of the Kyrgyz Republic." (pgh. 3 art.12).

The Ombudsman (Akyikatchy) of the Kyrgyz Republic in stead of his international colleges hasn't the right of the legal initiative even in the new reduction of the Constitution. But it wasn't the problem that the problem of the law imperfection troubles him. In accordance with pgh. 4 art. 3 of the Law "About the Ombudsman (Akyikatchy) of the Kyrgyz Republic" one of the Ombudsman aims is the assistance of leading legislature of the Kyrgyz Republic about the human rights and freedoms in accordance with the Constitution of the Kyrgyz Republic by international standards in this sphere.

Making the analysis of legislature as international as national, we came to the conclusion that the legislative basis of Kyrgyzstan in the sphere of protection human rights and freedoms is enough for realizing legal activity. We would like to notice that de-jure of state legal norm are good and successful but de-facto are not so good.

The arising by the Ombudsman of the KR one of the first questions connecting with violation of human rights and freedoms was the question about the registration. That is why he began to consider this problem from the active norm legal right of government organization and local government. As known, the start for these actions were the facts about violations of human rights and freedoms by employees of law machinery of the republic and capital, especially after the aksyiskih meetings in 17 March 2002.

Ombudsman (Akyikatchy) learning the act #285-a of the city administration of Bishkek of 23 May 1998 "the rules of time registration of citizens who live in Bishkek", noticed that the points 8, 9, 10 are able for the articles 175, 177, 178 which lost their power in October 1998 in the Code about administrative violence. Thus, Ombudsman sent his act to the mayor of Bishkek about the considering these acts according with the Code about administrative responsibility. That to solve this problem he had to sent this letter twice.

The continuing analysis of national legislature shows that in the Law "About internal migration article 9 is contradicted to article 10. If the first considers that every

citizen must register on the place of his living, but the second considers that the citizen of the KR has right to live in Kyrgyzstan without registration and this fact can't be the basis for violation human rights and freedoms.

The question about the registration considers the human rights and freedoms in the Code about administrative responsibility of the KR. The article 348 considers the administrative fine for living without passport and registration, and the art. 387 considers the administrative fine for taking people without registration or passport. But the articles 11 and 88 of Labour Code of the KR forbid the discrimination in taking for work in accordance with part 1 art. 88 of the Code.

Article 6 of the Law "About internal migration" accepts "limitation of human rights of the KR for freedom moving, choice of place for living in the KR with condition of the Law".

Thus, Ombudsman (Akyikatchy) of the Kyrgyz Republic sent the letter to Jogorky Kenesh of the KR. So, the deputy of the Legislative Assembly of Jogorky Kenesh of the KR A. Beknozarov supported the Ombudsman initiative and made the project of the Law of the KR "About including changes into the Code about administrative responsibility", where the administrative responsibility is excluded for living and accepting on the work without passport and registration. When the Committee on court legal questions accepted this project, it was included into the timetable of the Legislative Assembly of Jogorky Kenesh of the KR for consideration. But it wasn't accepted immediately.

In accordance of accepting the new reduction of the Constitution of the Kyrgyz Republic in February 2003 Jogorky Kenesh of the KR had to include some changes in to the selection legislature. The Central electing commission of the KR made a new project of Code about election of the KR. Ombudsman (Akyikatchy) decided to make the investigation of this project. Ombudsman suggested to include such terms as representative, person empowered to act, deliberative vote, deciding vote, reasoned vote, ballot. But in the code was suggested to include just the representative rights and Ombudsman suggested to include and the obligations.

Remarkable fact was suggested by Ombudsman (Akyikatchy) to include into the project "The position of National society in conscientious regulation", which was made

by the judicial department of the Prime Minister Office of the Kyrgyz Republic. But the Ombudsman things that the main tasks must be:

- "working and realization of concrete actions, for government ruling reform, providing the moving to democratic, civic society, legal government;
- the definition short and long time tasks of anticorruption policy, working of priorities of strengthening norm legal base for questions of fight with corruption, deepening of international cooperation with the questions of fight with corruption;
- working and realization of methods for arising quality of the government ruling;
- including into the legislature of the KR stable methods of attracting to the responsibility officials, who made the violation of legislative norms, that include to responsibility government employees of all spheres;
- accepting of methods for making legislature of the KR in accordance with general principles of international norms on observation human rights and freedoms;
- making the open regulated system executive and local government that provide the trust from citizens to the institutional activity and local authority;
- connection with government organizations for proving court reform for providing independent, open court reform;
- making methods for legalization of shadow economy with help of strong tax policy;
- the excluding of interference of government organs of local authority into the economic activity of the subject.

There is no doubts that Kyrgyzstan reached a big progress in the sphere of legal reforms for the short time. For the strengthening existence of legal laws very important that they – these laws and legal norms, were working carefully. It is important to help the deputies of the Parliament, employees of the Ministers, Government. And the Ombudsman made following:

1. Point 3 art. 18 of the Law of the KR "About on the fly searching activity" foresees that solving the problems of on the fly searching organs can use working apartments during their investigation.
2. according to the point 3 art. 15 of the Constitution of the KR: everybody is equal before the law and no one can be discriminated and rights mustn't be violenced.

But Ombudsman (Akyikaychy) attracted the attention of the deputies Jogorky Kenesh that Criminal procedure Code of the KR hasn't the base about imprisonment before the trial.

3. According to the point 1 art. 110 of Criminal procedure Code of the KR that the arrest can be with the resolution of investigator, prosecutor. But according to the point 3 art. 9 of International pact accused person has the rights for court trial.

The Legislature demands careful learning because there exists some contradictions of norm acts which limit constitutional human rights and freedoms.

- The rising of the role mass media that to inform society about the realization government anticorruption policy.
- the providing of court organs of international instruments to protect human rights and freedoms. The including into the legislature methods for official responsibility who violence international norms
- it is very important to high the court qualification.

Ombudsman considered the new laws "About the order of Jogorky Kenesh of the KR". He suggested some important additions according the Ombudsman activity that Ombudsman could to address to Kogorky Kenesh of the KR as to the subject of legal initiative and other norms of legal acts about human rights and freedoms.

Secretariat of Inter-Parliamentary Assembly of the government participants of the CIS made the project of the law "About the status of Representative for human rights".

The Ombudsman made some including.

Ombudsman sent his suggestions to the project of the Law of the KR and asked them to send him some copies about laws.

The President of the Kyrgyz Republic on 24 February 2003 RP #41 in the aim of acting legislature according to the human rights of the KR in accordance with the Law of the KR "About new reduction of the Constitution of the KR accepted on 2 February 2003 sent to the Parliament and Government of the KR that to include some changes and additional of normal legal acts. They look in the short form such as (look the following).

Proposals of the Ombudsman (Akyikatchy) of the Kyrgyz Republic on

bringing active legal in accordance with the Constitution of the Kyrgyz Republic and norms of international right.

Criminal Codex of the Kyrgyz Republic

1) proposal. The article 7 of Criminal Codex of the Kyrgyz Republic adds to the point of the following content: "Nobody can have the responsibility for actions, which at the moment of their realization were not accepted as offence. If after the realization of the offence the responsibility for it is removed or soften the new law is accepted". Foundation. The point 10 art. 85 of the Constitution of the Kyrgyz Republic foresees that the Law determines or aggravates the responsibility of the person, hasn't retroactive effect. Nobody can carry the responsibility for actions, which haven't been accepted as offences. If after the realization of the offence the responsibility for it is removed or softens than the new law is accepted.

2) Proposal. The 3 part art. 39 of the Criminal Codex of the Kyrgyz Republic is added with the indention of the next content: "Nobody can be deprived of the freedom because he can't realize any agreement obligation".

Foundation. The article 11 of international pact about civic and political rights foresees that nobody cab be deprived of the freedom because he can't realize any agreement obligation".

3)Proposal. The Criminal Codex of the Kyrgyz Republic is added with the article 345-1, foreseeing the responsibility for preventing of advocate activity, interference into advocate activity, appearance of disrespect to advocate activity, insulting and slander to his address, violence or encroachment on his life, wealth and property.

Foundation. The article 85 of the Constitution of the Kyrgyz Republic foresees that legal procedure is realized in the condition of controversy and equal rights of both sides.

4) Proposal. The article 261 of the Criminal Codex of the Kyrgyz Republic has the following content: "Organization or keeping nest for prostitution and the procuration with help of publishing in SML..." look the text.

Foundation. The point 2 art. 39 of the Constitution of the Kyrgyz Republic foresees that government guarantees to everyone the protection from illegal interference in his private and social life, encroachment on his honour, violation of secret typing and telephone talks.

5) Proposal. The 2 part art. 325 of Criminal Codex of the Kyrgyz Republic has the following content: "The same action which connects with using violence, harassment, torture and humiliating actions".

Foundation. The point 1 art. 18 of the Constitution of the Kyrgyz Republic foresees that limitations according to physical and moral personal immunity are permitted according to the law the court sentence as the punishment for offence. No one can be accepted for tortures, humiliating actions".

Criminal procedure Code of the Kyrgyz Republic

1) Proposal. Criminal procedure Code of the Kyrgyz Republic is added with the article foreseeing that everyone has the right in considering of any presented him criminal accusation in accordance with full equality being judged without unjustified delay. Foundation. Subparagraph c) p.3 art.14 of international pact about civic and political rights foresees that everyone has the right in considering of any presented him accusation in accordance with full equality being judged without unjustified delay.

2) Proposal. The first proposal; part 2 art. 44 of Criminal procedure Code of the Kyrgyz Republic is added with the words: "relatives and legal representatives.

Foundation. The point 12 art. 85 of the Constitution of the Kyrgyz Republic foresees that every arrested or accused person has the right to use the help of the lawyer from the moment of detention, arrested or giving an accusation.

3) Proposal. In the Criminal procedure Code of the KR include the norm of the next content: "the citizen of the Kyrgyz Republic can't be given to other government". Foundation. The point 4 art. 13 of the Constitution of the Kyrgyz Republic foresees that citizen of the Kyrgyz Republic can't be given to other government.

4) Proposal. The point 2 part 5 art. 377 of the Criminal procedure Code of the Kyrgyz Republic foresees that Supreme court of the KR for considering complaints organizes the staff from 3 judges of Supreme court of the Kyrgyz Republic.

Foundation. Point 5 art. 14 of international pact about civic and political rights foresees that a person who was judged could have the right to appeal in Supreme court.

5) Proposal. Part 2 art. 378 of Criminal procedure Code of the Kyrgyz Republic must be in accordance with international pact about civic and political rights. Foundation. Subparagraph d) p. 3 art. 14 of international pact about civic and political rights foresees that everyone has the right to be judged in his appearance and to protect himself with help of defender.

6) Proposal. Art. 132 of Criminal procedure Code of the Kyrgyz Republic must be added the following content: "about the right to appeal suspended criminal case, to appeal the arrested property, expert investigation.

Foundation. Points 1 and 2 art. 38 of the Constitution of the Kyrgyz Republic foresees that the Kyrgyz Republic guarantees the judge protection of all human rights and freedoms which are described in the Constitution of the Kyrgyz Republic.

7) Proposal. To add the art. 214 of Criminal procedure Code of the Kyrgyz Republic with the status that during the composition of the resolution about the attraction in the quality of accused must be done concrete references to facts and materials of the case for every fact, analysis.

Foundation. Points 1, 2 art. 89 of the Constitution of the Kyrgyz Republic foresees that the burden of proof the guilty on criminal and administrative cases are concerned on accused and the facts which were getting out of the law are not accepted.

8) Proposal. Articles 14 and 119 of Criminal procedure Code of the KR contradict to pgr. 2 art. 19 of the Constitution of the KR "Nobody can be deprived from property excepting the conditions of the Codex.

Foundation. Point 2 art. 19 of the Constitution of the KR foresees that the property is untouchable. Nobody can be deprived from the property except the court decision.

9) Proposal. Part 2 art. 155 of the Criminal procedure Code of the KR must be written in the following: “unfounded refuse in the accepting the applications or the information about the crime can be appealed to the prosecutor, Ombudsman (Akyikatchy or to the court, with the help of articles 131, 132”.

Foundation. Point 2 art. 40 of the Constitution of the KR foresees that the control for observation the human rights and freedoms in the Kyrgyz Republic is duty of the Ombudsman (Akyikatchy) of the Kyrgyz Republic.

Point 3 art. 40 of the Constitution of the KR foresees that the way of election, duty of the Ombudsman (Akyikatchy) of the KR and the way of their realization are established by law.

10) Proposal. Part 1 art. 131 of the Criminal procedure Code of the KR has the following content: “The complaints on the action and decisions of the investigator are applied to the public prosecutor, who observes the execution of the laws during the investigation, to the Ombudsman (Akyikatchy) of the Kyrgyz Republic who control the observation human rights and freedoms or to the court.

Part 2 art. 131 of the Criminal procedure Code of the KR is added with the second indention: “Ombudsman (Akyikatchy) considers and solved the complaints in accordance with the law about the Ombudsman (Akyikatchy)”.

Foundation. Point 2 art. 40 of the Constitution of the KR foresees that the control for observation human rights and freedoms in the Kyrgyz Republic is laid on the Ombudsman (Akyikatchy) of the Kyrgyz Republic.

Point 3 art. 40 of the Constitution of the KR foresees that the way of election, authority of the Ombudsman (Akyikatchy) of the Kyrgyz Republic and the way of their realization are predicted by law.

11) Proposal. Art. 5 of the Criminal procedure Code of the KR after the term “prosecutor” is added “Ombudsman (Akyikatchy) of the Kyrgyz Republic”.

“Ombudsman (Akyikatchy) of the KR – is official person who makes the control for observation constitutional human rights and freedoms in the Kyrgyz Republic and in the other territories for the interests of citizens of the Kyrgyz Republic.

Foundation. Points 2 and 3 art. 40 of the Constitution of the KR.

12) Proposal. Part 1 art. 25 of the Criminal procedure Code of the KR has the following Content: "The actions and decisions of the inquiry organ, investigator, prosecutor and the court may be appealed in the way of Codex rules, and with help of the Ombudsman (Akyikatchy) of the KR in the sphere of his competence".

Foundation. Points 2 and 3 art. 40 of the Constitution of the KR.

13) Proposal. Article 122 of the Criminal procedure Code of the KR has the following content: "The participants of the criminal investigation, Ombudsman (Akyikatchy) of the KR, and other citizens, organizations..." follow the text.

Foundation. Points 2 and 3 art. 40 of the Constitution of the KR.

14) Proposal. Article 126 of the Criminal procedure Code of the KR has the following Content: "In accordance with the article 25 of the Codex about actions of the employees of the inquiry organ, investigator, prosecutor, court may be appealed in accordance the Codex rules of the participants of the process, by the Ombudsman (Akyikatchy) of the KR in the sphere of his competence and ..." follow the text.

Foundation. Points 2 and 3 art. 40 of the Constitution of the KR.

15) Proposal. Part 1 art. 127 of the Criminal procedure Code of the KR has the following content: "The complaints are giving in the organ or to the official, who makes the investigation on criminal cases, who has the law authority to consider the complaints and take the decisions and to the Ombudsman (Akyikatchy) of the KR".

Foundation. Points 2 and 3 srt. 40 of the Constitution of the KR.

16) Proposal. Part 1 art. 128 of the Criminal procedure Code of the KR has the following content: "The administration must give the complaints to the investigator, prosecutor, court and to the Ombudsman (Akyikatchy) of the KR from the citizens who were arrested on suspicion of murder".

Foundation. Points 2 and 3 of the Constitution of the KR.

Point 7 art. 10 of the Law of the KR "About the Ombudsman (Akyikatchy) of the KR".

17) Proposal. Part 2 art. 128 of the Criminal procedure Code of the KR has the following content: "The complaints from the people under the arrest must be giving to the prosecutor and Ombudsman (Akyikatchy) of the KR".

Foundation. Points 2 and 3 art. 40 of the Constitution of the KR.

Criminal executive Code of the Kyrgyz Republic

- 1) Proposal. Part 1 art. 9 of the Criminal executive Code of the KR has the following Content: "All accused has the respect, the discrimination on race, color of the skin, sex, language, religion and other persuasions, national and social origin are not accepted".

Foundation. Point 3 art. 15 of the Constitution of the KR foresees that everybody is equal in the KR before the law and court. No one could be in discrimination.

- 2) Proposal. Part 4 art. 9 of the Criminal executive Code of the KR has the following content: "The accused people are the citizens who haven't diplomatic and counsel knowledge in this government". Parts 4 and 5 simile with parts 5 and 6.

Foundation. Point 1 art. 16 of the Constitution of the KR foresees that in the KR the main human rights and freedoms are guaranteed in accordance with general principles and international norms and international agreements.

- 3) Proposal. Article 12 of the Criminal executive Code of the KR add with the following content: "in the case of death, serious illness of the accused or in the case of his transference in to building for physiologic ill people the head of the organization must tell about it to the wife or husband, or his relatives".

Foundation. Point 1 art. 16 of the Constitution of the KR foresees that in the KR the main human rights and freedoms are guaranteed in accordance with general principles, international norms and international agreements.

- 4) Proposal. Part 2 art. 45 of the Criminal executive Code of the KR is added with the following content: "Every accused has the right to inform his family about his transference in to other building".

Foundation. Point 1 art. 16 of the Constitution of the KR foresees that in the KR the main human rights and freedoms are guaranteed in accordance with general principles, international norms and international agreements.

- 5) Proposal. Part 1 art. 58 of the Criminal executive Code of the KR has the following content: "the employees can use physical strength in the way to protect

themselves or in the case of prison breaking. Using the strength employees must stay in the distance of necessary protection and must tell about it to their head”.

Foundation. Indention 2 p. 2 art. 16 of the Constitution of the KR foresees that everyone has the right to protect his life and wealth from unlawful encroachment.

6) Proposal. Article 70 of the Criminal executive Code of the KR has the following content: “in the case of sudden mutilation or professional illness accused gets the compensation described in the legislature of the KR”.

Foundation. Point 13 art. 85 of the Constitution of the KR foresees that the offering rights are protected by the law. Government makes the access to the justice and give the compensation for harm.

7) Proposal. The last suggestion part 1 art. 89 of the Criminal executive Code of the KR must be changed for the suggestion of the following content: “the accused can’t be punished if he is not informed about the action, which means his guilty and if he doesn’t get the right to protect himself, and no one accused can’t be punished twice for one and the same crime”.

Foundation. Point 8 art. 85 of the Constitution of the KR foresees that no one can’t be punished for one and the same crime twice.

8) Proposal. Part 1 art. 9 of the Criminal executive Code of the KR must be added with the following content: “All accused have right to participate in the cultural and educational activities, directed at personal development”.

Foundation. Point 3 art. 36 of the Constitution of the KR foresees that citizens have right to access to the cultural valuables, to the knowledge of science and art.

9) Proposal. Article 11 of the Criminal executive Code of the KR must be added with the part 12 of the following content: “there mustn’t be any discrimination on the race, skin color, sex, language, religion, national and social origin and other things”.

Foundation. Point 3 art. 15 of the Constitution of the KR foresees that everyone in the KR is equal before the law and judge. Nobody can have the discrimination on race, skin color, sex, language, national and social origin, religion and other things.

Civil Code of the Kyrgyz Republic

- 1) Proposal. Indention 2 p. 3 art. 1 of the Civil Code of the KR has the following content: "The foreigners and persons without citizenship can use human rights and freedoms in the KR and have the obligations described in laws and international agreements of KR.

Foundation. Point 2 art. 14 of the Constitution of the KR foresees that the foreigners and persons without citizenship use the human rights and freedoms in and obligations described in the laws and international agreements of the KR.

- 2) Proposal in the pgr. 1 art. 20 of the Civil Code of the KR the word "Citizen" must be changed for "Everyone".

Foundation. Point 5 art. 16 of the Constitution of the KR foresees that everyone has the right on secret typing, telephone talking and other messages. The limitation is used in accordance with the law.

- 3) Proposal. Article 222 of the Civil Code of the KR must be added with the point 7 of the following content: "The amortization for government needs in some cases which described in laws can be made in condition of prior and valuable property". Foundation. Point 3 art. 19 of the Constitution of the KR foresees that amortization for government needs in some cases which described in the law can be made in condition of prior and valuable property.

- 4) Proposal. Indention 2 p. 3 art. 222 of the Civil Code of the KR has the following content: "the using the property mustn't make the damage to the rights, freedoms interests of others, society interests, land, nature and natural resources".

Foundation. Point 7 art. 16 of the Constitution of the KR foresees that everyone has the right to use his property, intellectual and artistic abilities. The use of property mustn't make the damage to the rights, freedoms, others' interests, society interests, land, nature and natural resources.

Civil procedure Code of the Kyrgyz Republic

1) Proposal. Point 3 art. 14 of the Civil procedure Code of the KR has the following content: "nonfulfillment or prevention of execution the court acts and interference into the court activity make the responsibility described by law".

Foundation. Point 2 art. 86 of the Constitution of the KR foresees that nonfulfillment or prevention of execution court acts and interference into court activity make the responsibility described by law.

Code about Administrative responsibility of the Kyrgyz Republic

1) proposal. Article 384 of the Code of the KR about the administrative responsibility exclude because it contradicts to p. 8 art. 16 of the Constitution of the KR. Foundation. Point 8 art. 16 of the Constitution of the KR foresees that everyone has the rights to move freely, to choose the place of living in the territory of the KR. The citizen of the has the right to leave the KR freely and to return. The limitation of these rights are accepted according with the law.

2) Proposal. Article 392 of the Code of the KR about the administrative responsibility has the following content: "Offences described by law about the organization mass meeting, street moving and demonstrations without information of organs executive authorities or organs of local government has ..." follow the text.

Foundation. Point 14 art. 16 of the Constitution of the KR foresees that citizens of the KR have the right to make peaceful meetings, street moving in condition of informing executive organs and organs of local government.

**The Government/Citizen Relationship:
What do citizens expect from the government?
What do citizens expect of the Ombudsman?**

Mr. Ali Nawaz Bohio
Acting Ombudsman Sindh, Karachi Pakistan

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**Mr. Ali Nawaz Bohio
Acting Ombudsman Sindh, Karachi
Pakistan**

Mr. Chairman, Excellencies, distinguished delegates, ladies and gentlemen.

I deem it a privilege and an honor to address this august gathering on the occasion of the 8th Asian Ombudsman Association's Conference being held in the beautiful city of Seoul. I feel that the opportunity, which has thus arisen, makes my feelings on the occasion even more sublime as the year 2004 marks the 10th Anniversary of the inception of the institution of the Ombudsman of Korea. At the outset, therefore, I congratulate you Mr. Chairman and all your distinguished colleagues, with all sincerity and with fraternal good wishes. I am sanguine that the deliberations of this Conference will not only be fruitful, but shall also lead to meaningful and productive outcome of the dialogue.

2. Mr. Chairman, The Institution of Ombudsman has been established by several nations of the world to act as a guardian of the rights of the people. As is suggested by the literal meaning of the word "Ombudsman", this institution functions as the "Representative" or "Agent" of the people to keep watch over administrative abuses and arbitrary treatment of citizens by civil servants. The institution of Ombudsman has a greater role to play in an environment where bureaucratic machinery increasingly tends to encroach on the rights of the citizens.

3. Humanity is endowed by Nature with some inalienable fundamental rights. With the progress of civilization, mankind has evinced its sensitivity to its natural rights. Reflecting mankind's yearning for the enjoyment of civil rights, the Charter of the United Nations states that one of the purposes of the UN is to promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, gender,

language or religion. The Universal Declaration of Human Rights adopted by the General Assembly in 1948 can be viewed as a Magna Carta for the entire world. This quest of humanity for the protection of civil rights on the international scale makes the purpose of the institution of Ombudsman all the more important in the modern-day world.

4. Mr. Chairman, the institution of Ombudsman can go a long way in preservation of citizens' civil rights. There is a need to further empower and broaden the scope of this institution to increase its effectiveness in acting as a bulwark against any tendency of government functionaries to encroach upon people's civil rights. Despite its limitations, this institution has helped in redressal of the grievances of hundreds of thousands of people over the years, and has protected them from police excesses and brutalities and unjust actions of other state officials. It has, thus, proved to be a powerful check on unbridled use of administrative authority.

Government-Citizen Relationship

5. Mr. Chairman at the outset may I say a few words about the basic concept of the government-citizen relationship from which the basic covenant of the State derives its 'raison d'être'. The Govt which comes into being as a result of social contract is, therefore, accountable and answerable to the citizens. Inherently all powers vested in the people and governments derive their authority to govern and manage the affairs of the people from the covenant thus agreed mutually. In any nation-state, the citizens institute a government to administer their affairs. In other words, all power is originally inherent in and subsequently derived from the people, so all the officers of the government are their trustees and serving executives are at all times accountable to them.

6. The government-citizen relationship can also best be understood from the fact that a government is essentially a national association acting on the consensus based principles of society and working for the rights of the people. Hence the prime duty of a government is to work for the interest of its citizens. Moreover, the government consciously strive to consolidate the society, maintain its cohesion and avoid discontent and disorder so that people could live in peace harmony and happiness. Thus the Government, has an obligation towards the citizens to ensure that the latter enjoy equal protection under the law, exercise equal opportunity to avail all privileges as citizens of the State and to participate in nation building. Hence, citizens expect from their governments to furnish guarantees of freedom, justice and equality. This engenders the need for the setting up of

a moderating and rectifying institution of Ombudsman so as to balance the rights of individuals vis-a-vis the needs of the society.

A. EXPECTATIONS OF THE CITIZENS FROM THE GOVERNMENT

7. Ladies & gentlemen, as we all know the civil society be it in Asia or elsewhere has been witnessing an on-going evolution of gigantic proportions in recent times. The advent of the 21st century has heralded the dawn of a new era for mankind in almost all fields of social activity. The citizens of Asiatic countries, like their counter-parts in other continents, live in an age of rising expectations. Broadly speaking, their expectations and their hopes and aspirations vis-à-vis the Government can be grouped together in the following major categories:-

THE QUEST FOR ECONOMIC SUSTENANCE AND FOR BETTER LIVING STANDARDS

8. Humanity at large has been in a state of perpetual quest for three basic needs, namely food, shelter and clothing. With the passage of every century the demand for these three essential needs has been acquiring ever increasing dimensions - both qualitatively and quantitatively. This is happening not merely because of the ever-growing population and rising demands but also on account of progress of civilizations and the rise of modernism and sophistication in collective life coupled with increasing level of mass awakening.

RULE OF LAW AND GOOD GOVERNANCE

9. Security of life and property is, for self-evident reasons, the most legitimate and the most realistic expectation of the citizens from the Government, irrespective of the political complexion or the constitutional and structural form of the administrative machinery, which varies from State to State. A government, which cannot enforce and maintain law & order has no moral and legal right to exist. The basis of every theory of social contract (in Ancient as well as in Modern Political Thought) stipulates an emphatic affirmation of a solemn pledge given to the individual by the State that life, liberty, honour, dignity, and the sanctity of the individuals' right to lawful ownership of legally inherited and/or acquired movable and immoveable property shall be fully protected. The guarantees inherent in the Covenant of the State entered between the citizens and the

government are pre-supposed to pave the way for the social emancipation of the citizens, strengthening of the moral fabric of the society and, above all spiritual enlightenment of the citizenry.

10. EDUCATION

Next to adequate provisions for food, shelter and clothing, citizens demand facilities for Education. Both elementary and higher education have now become indispensable to every civil society. Nations are judged today foremost by (a) the percentage of literacy in a given country and (b) the quality of education that country imparts to its' people.

Furtherance of education is the particularly declared objective of almost every developing country today. Investment in Human Resource Development (HRD) means growth in Gross Domestic Product (GDP), Gross National Product (GNP), per capita income and, in fact, in the achievement of essential growth in all major indicators of individual well-being and collective national prosperity.

Mr. Chairman, may I mention that in developing countries like Pakistan it is primarily due to lack of education that we are faced with the problems of religious extremism, parochialism and sectarianism. The Governments at the federal, provincial and local levels are making strenuous efforts for the speedy growth of educational opportunities.

The founder of Pakistan, Quaid-e-Azam Muhammad Ali Jinnah said in one of his speeches, delivered soon after the inception of the country in 1947, that "education is to nations what foundation is to buildings."

In modern terminology the terms Rule of law and good governance are deemed to be co-existent. Just as every right envisages a corresponding duty, likewise the contract between the State & the citizen confers certain inalienable fundamental rights on the citizens. Some of these are summarized as follows:-

- ⇒ Safeguards as to arrest and detention.
- ⇒ Prohibition of slavery, bonded labour, child labour, sexual abuse, and other social evils.
- ⇒ Protection against double jeopardy, retrospective punishment.

- ⇒ Protection against double punishment and self-incrimination.
- ⇒ Inviolability of the dignity of the individual.
- ⇒ Freedom of movement.
- ⇒ Freedom of assembly for legitimate purposes.
- ⇒ Freedom of association for legitimate purposes.
- ⇒ Freedom of trade, business or profession.
- ⇒ Freedom of expression.
- ⇒ Freedom to profess religion and to manage religious institutions.
- ⇒ Safeguards against forced taxation for purposes of any sect, caste or creed.
- ⇒ Safeguards of the sanctity of educational institutions.
- ⇒ Protection of property rights.
- ⇒ Equality of citizens.
- ⇒ Non-discrimination in respect of access to public places.
- ⇒ Safeguard against discrimination in services/employment.
- ⇒ Preservation of language, script, culture, literary heritage, etc, and most important of all
- ⇒ Free and un-fettered access to justice.

12. HEALTH-CARE

Provision of adequate medical care and attention-both preventive and curative-are matters of vital concern to the health of the nations.

Citizens have legitimate and fully justified expectations from the government that the latter shall fulfill its duty to establish and develop the requisite infra-structure throughout the length and breadth of the country for setting up reasonably proportionate number of hospitals, clinics, basic healthcare units, rural health centers, stationary and mobile inoculation and vaccination units, etc.

13. POPULATION CONTROL AND COMBATING HIV-AIDS

In recent years there has been great awakening among the global population and the concerned international organizations including the United Nations, World Health Organization (WHO) and other world bodies and for combating two menaces threatening the well-being of mankind. Firstly, there has been mounting pressure on the world bodies and the governments to check demographic explosion threatening the well-being of mankind at the grass-root level particularly in the developing world, where un-checked population growth has been impeding economic development in a disastrous manner and this realization has led, specially in the last quarter of the previous century to adoption of Family Planning programme amongst the U.N. member-states under the aegis of a specialist body, UNFPA (United National Family Planning Association) headed by an Under-Secretary General (reporting directly to the U.N. Secretary General). This forum is indeed aware that while in some Asiatic countries, such as Iran & Bangladesh, the population control programmes have been reasonably successful, elsewhere in many parts of this continent a lot remains to be done. Citizens of the backward countries expect their respective Governments to rise to the occasion in a befitting manner.

The second menace, in the field of healthcare, which also presently confronts the mankind in a potentially hazardous manner, is the fatal disease of AIDS-HIV. It is a matter of satisfaction that international bodies including the United Nations and World Health Organization are running special Anti-AIDS programme on an emergency basis. The governments of several Asiatic countries, as well as those in other continents, are making concerted efforts to minimize the threat that HIV-AIDS poses to the health of the citizens.

SOME OTHER IMPORTANT AND LEGITIMATE EXPECTATIONS OF CITIZENS

FROM THE GOVERNMENT.

14. Citizens pay taxes and various kind of duties, levies, charges (direct & indirect), maintenance & development surcharges and additional surcharges of various sorts, utility bills, etc with the sole and basic expectations that a variety of their collective demands relating to the upkeep, maintenance and development of the infrastructure of the State including various kind of services such as Railways, Posts & Telegraphs, Telecommunications, Energy, Gas, Oil & Petroleum Products information and internet networks, etc., etc.

15. We may specially enlist in this list the citizen's demand for adoption of anti-pollution measures for keeping not only the land but also air-space and water free from contamination. Improvements of overall environment have, in today's world, become universally acknowledged responsibility of the government.

16. So far as general steps for the provision of food, cloth, health, education and health are concerned they are no doubt very vital issues for the population in Pakistan and particularly for the rural hinter-land which constitutes almost 70% of the total area of the country. But the fact remains that lack of resources is a major obstacle in overcoming the short-comings rampant in this regard. The government is no doubt striving hard in the direction of poverty alleviation but much more shall hopefully be done in an incremental manner as and when the resource position of the government registers improvement.

17. If a democratic Government is to run successfully it is not the abstractions like "Legislature" and "executive" that make it a success, it is the legion of Government employees-devoted groups of men and women sharing a common purpose-that make it a success. The concerted activity of these groups may be called 'the administrative process' or simply 'administration'. In view of the complex pattern of modern society and social conditions obtaining today a "Government" cannot remain merely a "Government of laws". It must be to a large extent a Government of men who are vested with powers to implement the laws. And as already stated, the successful operation of the official activities depends upon the extent of the commitment of the functionaries of the government.

The civil service in parliamentary democracy maintains the continuity of administration because of its neutrality in politics. In the language of Political Science, the civil service forms the "permanent executive" as distinguished from Ministers who constitute the

political executive. The political executives come and go, but not the administrative executives. The permanent civil service continues to function, irrespective of the changes in the elected component of the government.

18. The job of the Ombudsman is primarily to deal with the permanent functionaries of the government the hierarchy of which flows in the provinces of Pakistan from the Chief Secretary at the top, down to the

Taluka / Tehsil level. As a result of the promulgation of the Local Government Ordinance 2001, a new structure of the Local Government has come into being in all the provinces of Pakistan, which starts with the District Nazim as the elected head of the District Government and flows down the line to Taluka Nazim heading the Taluka Municipal Administration and the Union Nazim heading the Union Council at the gross root level. The expectations of the citizens from the Ombudsman are articulated coherently at every level.

B. EXPECTATIONS OF THE CITIZENS FROM THE OMBUDSMAN

19. Mr. Chairman, Ladies and Gentlemen, it is manifestly clear that exactly what the citizens expect from the Ombudsman is to put in a capsulated form of redressal of their grievances. The grievance basically arise due to mal-administration for which I shall now start with the legal parlance based on its definition provided in the Establishment of the Office of Ombudsman for the Province of Sindh Act, 1991 as follows:-

Mal-administration includes:

- i) a decision, process, recommendation, act of omission or commission which :-
 - a) is contrary to the 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 neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities.

The Ombudsman has been assigned the responsibility to diagnose, investigate, redress and rectify any injustice done to a person through mal-administration, as such the expectations of the citizens from the Ombudsman will naturally revolve within the ambit of definition of mal-administration described above.

20. Broadly speaking mitigation of civic evils like negligence to perform public duty, being inattentive to the legitimate needs of the citizens, causing delay in implementing decisions of the legislature and the judgments of the judiciary, general display of incompetence, inefficiency, resort to corruption in the discharge of public duties fall in the orbit of the legitimate expectations of the citizens from the Ombudsman. The wide spectrum of the governmental activity within which major public grievances fall have been delineated in the foregoing paragraphs. Apart from the major points, I may by a way of elaboration affirm that security of life and property is, for self-evident reasons, the most legitimate and the most realistic expectation of the citizens from the Government, irrespective of its political complexion or the constitutional and structural format of the administrative machinery. When the expectations of the citizens from the government falling in the above mentioned categories are not fulfilled then it means governments functionaries have failed to deliver the goods. Obviously the role of the Ombudsman acquires paramount importance at such juncture to intervene for safeguarding the interests/ rights of citizens vis-a-vis, the Government.

21. As a custodian of their rights the citizens expect the Ombudsman to ensure that justice is not only meted out to all citizens without distinction but also ensure that they are saved from the clutches of administrative high-handedness. The institution of Ombudsman is expected to act as a check and deterrent against the tendency of the government officials to use their administrative authority disproportionately and to encroach upon the rights of citizens.

Suo Moto Action against wrongs committed in society

22. Finally, the citizens expect that the Ombudsman takes 'suo moto' notice to rectify the state of public institutions specially the providers of basic utilities and the functionaries of public welfare agencies. The rationale of 'Suo-moto' actions arises from the fact that at times citizens are apprehensive of retaliation by government agencies in making complaints of serious nature, particularly against the law enforcing agencies. Secondly, apart from individual cases matters falling within the ambit of collective welfare require action on the direct initiative of the Ombudsman for impacting corrective action.

While concluding, I wish the deliberations of this Seminar all success.

Mr. Chairman, Ladies and Gentlemen I thank you all for giving me a courteous & patient hearing.

**THE OMBUDSMAN (PUBLIC PROTECTOR),
THE CITIZEN AND GOVERNMENT**

Ms. Adv. Erika Cilliers,
On behalf of Adv. ML Mushwana
Public Protector of the Republic of South Africa

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"Nobody has a more sacred obligation to obey the law than those who make the law"
(Jean Anouilh, *Antigone*, 1942, translated by Lewis Glantière). Experience teaches us however that unless citizens are given the ability to inspect or survey the corridors of power, the lawmakers become a law unto themselves.

Governments in all countries are expected to be guardians of the people and of the interests of the people over whom they govern. It is true, however, that governments which are managed or operated by human beings are as fallible as the human beings that constitute them. Who, then, watches over and controls the actions of these governors? This question has exercised the minds of scholars, politicians and ordinary people from time immemorial.

The institution of the Ombudsman is an attempt to address this question. Whether this is an adequate response to the question can be answered by examining the relationship between the government and the individual citizen.

**THE GOVERNMENT AND THE CITIZEN: THE IMPORTANCE OF
PROTECTION AND CONTROL**

Governments occupy a monopolistic position in every society. They regulate, permit and prohibit. They have the monopoly on the lawful use of force be it by means of the police force or the military in the enforcement of law and order. Where government provides services, they frequently exercise a monopoly as well. Legislation gives them many,

sometimes far-reaching powers and they have a veritable legion of experts at their disposal in their frequently extensive and highly complex bureaucratic organisations. In short, governments are very significant sources of power in every society. Fortunately or unfortunately, modern society cannot function without them.

The individual relates to government in two ways: in the role of citizen and of subject. He/she participates in political processes: free elections being the most prominent of them. Yet the influence that each individual citizen exercises on the development and implementation of government policy is, from this point of view, very limited.

As the subject, the individual is confronted with the implementation of government policy. He is the independent party over whom the monopolistic government holds sway. Generally speaking, he is far less knowledgeable and far less experienced than the government. Government imposes restrictions on him that he has no choice but to observe. In some cases, the individual is dependent on the adequate functioning of government services where he receives benefits or grants. Usually the individual does not have an exit option in dealing with the executive branch of governments. Consequently, the individual frequently feels totally impotent in the face of the bureaucratic might of government administration.

The above description characterises the relationship between the individual and the government. Accordingly, at least viewed from the individual's point of view, it becomes of special importance for the individual to have access to channels through which he can take action when he feels that the government, from its monopolistic position of power, has acted incorrectly towards him. He must be able to rely on organisations that can protect him against improper conduct on the part of government and its officials. Improper conduct can take a number of forms. Fundamental rights and freedoms as specified in a Constitution or Bill of Rights or in any other statutory enactment may be violated. Alternatively, the individual may fall victim to the unintentional but nevertheless prejudicial actions of bureaucracy, or even to the misuse of power on the part of government officials. In all such cases, the government has failed to meet the

standards of quality required of it in its dealings with individual citizens. These standards must be very high given the almost total dependence of the individual on government.

It needs to be stated, however, that it is not only in the interests of the individual that government power must be controlled, but in the interest of government itself. This is so because when the government has failed to meet the standards required of it, the individual loses confidence in it. In a democracy, such government may then either be legislating its downfall or ensuring that it is not returned at the next elections. A government can stay in power in a democracy only if the individual has the assurance that his safety and his other rights are and will continue to be safe-guarded and respected and that the government will behave correctly towards him at all times. The issue in question here are the legitimacy of the government and the willingness of the citizen to accept both the powers vested in government and the way they are used.

Legitimacy is fundamental to every government. It is its working capital and it is on this capital that government can draw in devising and implementing effective policy. However, it must make continual effort to add to this capital by working in a manner that will generate the people's acceptance. If it fails to do so, or does so too late, the very real danger will arise of a total breakdown of confidence. When that happens, governments are replaced by unconstitutional means and, in some cases, even military take-overs or *coup d'etats*.

INTERNAL AND EXTERNAL CONTROLS

To promote and safeguard legitimate government, different forms of supervision and controls are needed. The first guarantee must be contained within the government body itself. His peers and his superiors must monitor the conduct of each civil servant. External supervision and scrutiny are only additional to the internal controls; the former exact a positive preventive influence on the quality of the internal controls in government organisations. The main or principal form of external control in a democracy is that exercised by the legislature on the executive. Experience has shown, though, that

however crucial the role played by the legislature in this respect, the control it exercises is generally inadequate, particularly in cases where one single individual is in need of protection. This is where the other external controls such as, in the Republic of South Africa, the Constitutional Court, the Public Protector and the Human Rights Commission, as the institutions are called, come in. The tasks that each performs are generally speaking complementary and supplementary.

Governments all over the world have forever been searching for more effective remedies against maladministration, hence the establishment of the office of the Ombudsman. The establishment of an Ombudsman office arises out of the realisation that any government in the modern day must be concerned with good order in the society it governs. The Government should constantly be asking itself whether there is any official impropriety or insensitivity in its administration. If the question is answered in the affirmative, it must ask itself how such impropriety or insensitivity can be speedily resolved.

The traditional safeguards that have been used by constitutional governments have been internal review of administrative actions, judicial review and fiscal superintendence in order to address the concerns. Whilst, undoubtedly these standard controls play an important role as a bulwark against administrative excesses, it is a fact that they do not always work at maximum efficiency. They do not effectively provide for remedies against maladministration.

It is also a known fact that citizens have always had the option of litigation to obtain redress for administrative improprieties. Litigation tends to be formal, expensive and dilatory to a point where the ordinary person is deterred from using it to establish or enforce his rights.

It follows, therefore, that the institution of the Ombudsman, in South Africa the Public Protector, as one of the structures responsible for protecting the individual and monitoring the government, has a very important role to play in a democracy. Experience in countries that have established the institution of the Ombudsman has shown that it can

make a real contribution, both in specific cases and in general, toward protecting the individual from wrongful government conduct and thus restoring his confidence in government. The individual frequently feels powerless in the face of a government that neither sees nor hears him. As against this, the Ombudsman is an individual who has a face, who is prepared to listen to their complaints at all times, who takes them seriously, even when he decides not to investigate the complaints or dismisses them as unfounded.

INSTITUTIONAL CRITERIA

The institution of the Ombudsman must, however satisfy certain criteria in order to play its role effectively.

The first and most important criteria are that of independence from the administrative authorities that fall within his jurisdiction. Independence is essential if individuals are to have any confidence in the work of the institution. A number of factors have significance in ensuring independence. Firstly, certain guarantees must be given, ensuring that it cannot be easily abolished. Government should not have it within its powers to easily rid itself of its critics. Entrenchment in the Constitution provides an adequate safeguard and further legislation can be drawn up on this basis. Further, independence is assured if other bodies are not entitled to give the institution direct or indirect instruction with regard to performance of its tasks.

Secondly, the institution exists primarily for the benefit of the individual citizens. It is accordingly essential that each individual should have direct access to it. In many countries, a single official heads the institution and this makes it recognisable to the individual citizen. The Ombudsman is a person with a name and face, as opposed to the faceless bureaucracy.

Thirdly, it is in the interests of independence that those authorities, which are controlled by the institution, should not have any part in appointing or re-appointing him. In many parliamentary democracies, the Ombudsman is appointed by parliament.

Fourthly the budget of the institution should not directly be allocated by the authorities, which the institution monitors. Fifthly, parliament should equip the institution with sufficient powers to carry out his tasks efficiently. Sixthly, the institution must have access to any information it needs, including confidential and possible secret information and must at all times receive the co-operation of the government.

THE INSTITUTION OF THE OMBUDSMAN

A state is not genuinely constitutional by virtue of the fact that it possesses a constitution. It only achieves that quality or status when the constitution acquires a practical significance, in other words, when the principles and rights enshrined in the constitution can be translated into practice. The Constitution of South Africa Act has established a number of institutions in the quest to make the Bill of Rights contained therein real for the ordinary citizen. Constitutional government has in the Ombudsman/Public Protector an important addition to the armoury of mechanisms that are employed to create an image of fair and stable constitutional government.

The Ombudsman as an institution world-wide multiplied in the last 50 years because governments recognised that no matter how well they were disposed towards the rights of people, the instruments of administration which they needed to set up to give effect to policies and programmes could develop a bureaucratic life of their own, which could not always be controlled by the political executive. A bureaucracy was seen to be concerned with systems, procedures and the conversion of policy into administrative programmes, where rules and practices could easily become the end objective rather than service to the community. There were other underlying reasons such as growing respect for human dignity, for the human rights of the individual, for fair and just government, for greater transparency in government administration, and for greater accountability of the political executive to the people who elected them. These factors all had an effect on political parties vying for power in the government process.

Democratic governments saw political advantage in finding some means to make bureaucracy more accountable to the people, and eliminate the political fall out resulting from maladministration at the periphery of government activity. Softening the relationship between the governed and the government, and the creation of fair and just government were seen as important elements in the search for a modern democratic state. Bureaucracy is an essential ingredient of a democratic state but it had to be made responsive to the needs of the people.

Governments of many countries during this period were searching for constitutional devices, which would improve citizen's rights and their ability to enforce accountability in the political and administrative processes. The Ombudsman as an institution appeared as an attractive and available concept at this very time and effectively solved the problem of providing a citizen's protector.

THE PUBLIC PROTECTOR

I wish now to deal more specifically with the office of the Public Protector of the Republic of South Africa. The office was established with the specific task of bolstering the achievement of a free and democratic society.

The Public Protector is independent of government and any political party. He is appointed by parliament in terms of the Constitution. He receives complaints from aggrieved persons against government agencies or officials and has power to investigate, recommend corrective action and issue reports to parliament.

His appointment is enshrined in the Constitution. The Office of the Public Protector can be approached informally without involving any complicated procedures or processes. His services are available at no cost. The sense of utter powerlessness and frustration, which the individual experiences when his rights have been violated and he is forced to face the might of administrative bureaucracy, is, thus, eliminated.

The Public Protector can execute his functions both formally and informally. He has extensive powers to take formal evidence and issue subpoenas. He can investigate maladministration at any level of government. He also possesses extensive powers of search and seizure. The Office of the Public Protector has its own budget, which it controls independently.

South Africa today has a population in excess of 40 million people. This is quite a large population to control. The government administrative machinery has had to grow with the population, creating further administrative complexities. In turn these have led to greater administrative powers, which are widely encompassing. The result is the concomitant growth of administrative misdemeanours, which have been seen to occur with greater regularity, particular in the apartheid era. The inevitable consequence of such a situation is increased public resentment. The relevance of the Public Protector in this context is to boost public confidence in that he is not only a watchdog but also an official they can easily relate to. He must be seen to be an institution that at all times protects the rights of the citizen.

The office of the Public Protector was instituted to ensure that public sector institutions do not, in their functions abuse their powers; guarantee that public servants observe and uphold the constitutional principles and directives and build and sustain, in the public sector, a sense and culture of service, responsibility, discipline and honesty. This call for the creation of a civil services that is human rights conscious and accordingly responsive.

The International Bar Association in 1974 defined the office of Ombudsman as: -

“an office provided for by the constitution or by action of the legislature or parliament and headed by an independent, high level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved person against government agencies, officials and employees or who acts on his own motion, and who has the power to investigate, recommend corrective action, and issue reports.” This definition accurately describes the role of the Public Protector in South Africa.

CONCLUSION

Accepting that governments are a necessary evil, which we cannot do without, it becomes a non-debatable fact that control of public power is not only essential but also crucial to the survival of democracy. Experience both locally and internationally tells us so. The extent to which the Office of the Public Protector and other constitutional control mechanisms will play their role in this regard only time will tell. I have no doubt however, that given the demonstrable collective will of South Africans to succeed, one need not entertain any fears even in this regard.

I thank you.

The Government-Citizen Relationship

Mr. Antonius Sujata
Chief National Ombudsman of Indonesia

The Government – Citizen Relationship

Mr. Antonius Sujata
Chief National Ombudsman of Indonesia

Background of the Establishment of the Ombudsman

The most challenging task, which faced by Indonesia is how to set up the credibility in order to enhance the eagerness of the people to respect and have the commitment to work together with the government. The credibility could be processed and developed over the programs, which could give the prosperity to the interest of the people or to provide proper services for them.

In the context of legal term, it is expected that every law enforcement representative perform their duty by guarantying the accountability, equality before the law and feeling of security to those who eagerly find the real meaning of justice. Initially, justice is what every human being needs therefore it should be provided by police force, prosecutors, lawyers and especially judges.

The society itself has its own role in the process of developing the law enforcement in order to possess justice as they are indeed the part as well as the object of the justice itself. It is often found that people become objects and victims of injustice practices while they in actual should be the component who feel the justice itself.

Although the institution of law enforcement is the one in charge of implementing justice and making justice, nevertheless the society must do the monitoring system. This is to anticipate that members of society, especially those with low income shall not continually be the victim of injustice and that monitoring institution is known under the name of Ombudsman.

Monitoring action should be on the hand of the people because the government's and state's organization are initially based on people's mandate through the election and people's representative institution. The monitoring system by the Ombudsman is the actual monitoring system, in other words it is the monitoring action for obtaining proper services from public sector.

The societies right to monitoring action include monitoring whether the mandate which has been given to the executive power to rule the government and to provide the prosperity, has been implemented properly or not. Without the society's monitoring action, state's organization especially government's organization tends to be repressive and corruptive. As a consequence, the government will loose its credibility and not be able to provide prosperity to its people. It is worth emphasizing that the monitoring system by the people could avoid instability, abuse of power and disintegrity.

The contribution by the people through the monitoring action could make people feel secure and experience justice in every aspect. Establishing a monitoring institution, is not absolutely a difficult program because for some reason it could be organized by a group of people or individual. Nowadays there are in fact numerous monitoring institutions established by Non-governmental Organization. It could also be established by the people's representative or Parliamentary Ombudsman or through the President as the National Ombudsman of Indonesia.

In my point of view in terms of monitoring institution, the problem which we are facing at the moment, is not about how to form the Ombudsman but it is the matter of ensuring the newly established Ombudsman to develop efficiently in a proper way.

The effectiveness of the Ombudsman basically relies on the appreciation of the state's administration to take further measures and to restore the malpractices which could give unpleasant influence to the people. Thus how to make the Ombudsman become effective is the problem which should be put on the table.

In conclusion, I would like to provide answer to the question:

Why is the Ombudsman established?

The Ombudsman is established to:

1. Guard against the abuse of power conducted by those who work in public sector.
2. Assist those exercising public power in performing their jobs efficiently and fairly.
3. Impose accountability on those who are exercising public power.

The establishment of the National Ombudsman (Indonesia's Experience)

Indonesian Ombudsman, as the similar institution in other countries, is an independent monitoring institution by the people. Over the past 30 years in the New Order era, the executives were acting so dominantly in the government, that members of Society are treated as objects rather than subjects. Consequently, instead of performing the monitoring action, the civil community became an element who had been monitored by the Government. Therefore based on that historical context, the founding of the Ombudsman should be supported by these philosophical principles that:

1. *That the public exertion through the participation to do control will guarantee more the executing of the state that is honest, clean, transparent, free of corruption, collusion and nepotism;*
2. *That the exertion of control by the public to the state executing is an implementation of the democratization that needs to be developed and to be applied so that the deviation of authority, competence or a function by Public Administration can be minimized;*
3. *That in executing the state especially in executing of governance gives service and protection to the right of the citizen from the Public Administration including the Judiciary, is an inseparable part from the effort to create the fairness and welfare;*
4. *There is an aspiration in the society to open an independent institution of controlling by the public.¹*

¹ Considerations of the Presidential Decree of The Indonesian Republic Number 44 Year 2000 concerning National Ombudsman Commission

Many expect that through those philosophical principles, the National Ombudsman could assist, create and also develop the comprehensive condition in achieving the suspension of the corruption and nepotism and also to accelerate the protection of the public rights, as members of society deserve social services, justice as well as the need of improved prosperity.

Over the years, the monitoring system on the state's organization, has been conducted by the government itself, through the staffs of the functional inspectors also known as General Inspector and the staffs of the Direct Inspector. This system, as we have observed, is not effective enough because of the fact that instead of being the Inspector, they have been influenced to manipulate beyond their authority. This kind of Inspectors are un-independent but also they are becoming the part of the corruption, conspiracy and nepotism's attitude.

The establishment of the National Ombudsman imply that it is one of the efforts (not the only one), to look out of the malfunction of the monitoring system. It is worth emphasizing that public societies are not part of the daily attitude which act by the government, therefore citizens could not easily be used by those whose in power. In other words they have a right to be served, they have a right to have justice and they have a right over the protection.

Considering those matters, it should be noted that citizen should therefore be exploited to do the monitoring action. Over this matter, one question would raise with the establishment of Ombudsman will be overlapping with the function and the duty of the law enforcement institution which have already existed?

Such overlapping condition is likely to occur because the Ombudsman and the functional inspectors share the same function and duty. However, what the functional inspectors have done so far is not effective at all. Had the civil servants effectively performed their monitoring action, the Ombudsman will not urgently needed. Equally important is to emphasize that there is no such overlapping condition between the function and duty of the Ombudsman and those of court, Attorney General and the police department.

The point of law and reformation is to straighten the awareness that when the people talk about law means they talk implicitly about justice, what has been happen as that law does not mean justice. Law enforcement does not mean straight enforcement²

The wish to enforce the law and the system concerning law in Indonesian has been a lot, but the demand of the law improvement is being more and more, so it can be conclude that the urgent problems we are facing are not concerning system, products, substation, or the law material in the form of laws or law regulation, but there is another problems, the law problem that becomes a demand is about law enforcement Wilhem Lundsted said that law is nothing, and it has a meaning after it is been enforces.

Having background of that basic meaning, Ombudsman Missions cover:

1. *To exert continuously the ease of service that is effective and qualified by government institution to the public*
2. *To help creating and developing a conducive of condition and situation to execute Good Governance that free of Corruption, collusion and nepotism.*
3. *To give priority of service to be more sensitive to public demands and needs, by giving optimal service and by building a good coordination and cooperation with everyone (Government Institution, University, Non Government Organization, experts, practitioners, and organization of professions, etc.).*
4. *To create working environment and situation that full commitment, has a standard integrity and high accountability that gives support for the success of the vision and the mission of Ombudsman based on the basic orientation and ethic code of Ombudsman.*
5. *To implement open management and to give a continue opportunity to all staffs to increase knowledge and professionalism in handling public complaints.*
6. *To extend the existence of Ombudsman to the public in order to participate in increasing the law awareness of the Public Administration, the justice and the Representative Institution, so that all autonomic regions in Indonesian Republic think it is important to build local Ombudsman with the same missions and visions.*

The vision of Ombudsman are:

The National Ombudsman becomes a self-trust worthy Public Institution that give effort in justice, smoothness and accountability in government service, in executing the governance in accordance with the principles of the good governance and an impartial justice based on the law the supremacy and has a

² The Subjects of Thought on Discussion "Crucial Reform for the Development of a More Humane Civil Society in Indonesia in 2001". Held by The Jakarta Post on December 5-6, 2001 in Jakarta

point of justice and also The National Ombudsman as a Public of Institution chosen by Parliament, promoted by the President and regulated in the Constitution and the law of RI, so it gain the public trust, implemented by the people with high integrity and accountability.

The Ombudsman and Good Governance

There are about 60 Universal principles of Ombudsmanship.

The most important of those principles are independent, impartial, fair, credible and confidential. Unlike court judgment, however, Ombudsman recommendation is not legally binding and yet the interest group, or the institutions reported generally want to comply with the Ombudsman recommendations. The motive behind their attitude is their believe gained pragmatically, that the image of the institution, effective their performance, and save them from any allegations or bias. Again, I would like to mention the very basic principles:

The six basic principles of Ombudsman are written below:

1. The Institution is not a part of the state institution that existed. (*Institutional Independence*).
2. The Institution cannot be mixed or cannot get any pressure from anyone (*Functional Independence*).
3. An Ombudsman must be a trustworthy person with a definite time of function (*Personal Independence*).
4. Working procedure is flexible and not very formal.
5. The lawyer is not needed; the victim of maladministration comes directly to the Ombudsman.
6. It is free of charge.

The existence of Ombudsman Institution in the Central (National Ombudsman) or in the Region (Local Ombudsman) is always connected to the principal role in order to execute Good Governance.³

The meaning of the general principles of Good Governance cover:

1. *The Principle of Formal Accuracy*; it means accurate in preparing and appearing a decision of the institution concerned, and to be honest by considering all relevant facts, everyone interest, including the third Parties.
2. *The Principle of Fair Play*; one that appears a neutral decision.
3. *The Principle of Consideration*; means that the decision based on a proper consideration. The consideration supported by correct and relevant facts, it

³ Indroharto, SH, *Usaha Memahami Undang-Undang Tentang Peradilan Tata Usaha Negara*. Pustaka Sinar Harapan, Jakarta, 1991

is not general but concrete.

4. *The Principle of Formal Certainty*; means clear and distinct.
5. *The Principle of the Material Certainty*; means a decision from a public executive based on non-retroactive rule.
6. *The Principle of Trust*; if a decision gives hope or promise, those promise must be obey. The trust can appear by validating the same policy in a long period.
7. *The Principle of Similarity*; the same matter or condition treated equally. That condition must have the same relevancy. It means relevant from all sides of interest that will get attention by the come out of the decision concerned
8. *The Principle of Material Accuracy*; it means a damage that might be appears is not more than the benefit to gain by the existence of a decision of public executive concerned.
9. *The Principle of Equality*; there is equality between the sanction and the law breaking.

Closing Remarks

To conclude my paper may I quote as Sir Brian Elwood said : Good governance therefore needs to have in place, when a citizen is aggrieved, a system for independent, impartial review to scrutinise the manner in which the government has behaved. It is in the interests of the government and the citizen that this be so: for the government it demonstrates a willingness to treat its citizens fairly: for the citizens, it enables them to call the government to account when they feel aggrieved by government action.

Jakarta, 15 March, 2004