



## 8<sup>th</sup> Asian Ombudsman Association Conference

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

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# Presentation

Plenary Session II

"The role of the Ombudsman in safeguarding Civil Rights"

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April 26-29, 2004

Seoul, Korea





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# CONTENTS

The Role of the Ombudsman in Safeguarding Civil Rights	..... 1
	Mr. Imtiaz Ahmad Sahibzada, President of AOA and Wafaqi Mohtasib(Ombudsman) of Pakistan
Reinforce Administrative Supervision and Guarantee Legitimate Civil Rights	..... 41
	Mr. Chen Changzhi, Vice-Minister of Supervision of P. R. China
The Roles of the Ombudsman in Protecting Citizens Rights	..... 51
	Mr. Cho, Han-You Standing Ombudsman, Korea
The Ombudsmans Mandate in Relation to the Nations, the European Union and in Global Relation	..... 65
	Prof. Barnabás Lenkovics, Parliamentary Commissioner for Civil Rights Hungary
THE ROLE OF OMBUDSMAN IN SAFEGUARDING CIVIL RIGHTS	..... 83
	MR. JUSTICE SALEEM AKHTAR FEDERAL TAX OMBUDSMAN, PAKISTAN
THE ROLE OF OMBUDSMAN IN SECURING THE CIVIL RIGHTS	..... 95
	Mr. Khobreh-Vali Deputy of General Inspection Organization, Iran
The Role of the Ombudsman in safeguarding Civil Rights	..... 105
	Mr. Justice Ripusudan Dayal, Lokayukt, Madhya Pradesh, India

THE ROLE OF THE OMBUDSMAN IN SAFEGUARDING CIVIL RIGHTS	..... 121
	Mr. MALIK SIKANDAR KHAN OMBUDSMAN FOR THE PROVINCE OF BALOCHISTAN PAKISTAN
The Role of the Central Organization for Control and Auditing (COCA) in Safeguarding the Civil Rights	..... 161
	Dr. Abdullah Abdullah Al-Sanafi President of COCA, Sanaa, Republic of Yemen
HUMAN RIGHTS IN INDEPENDENT UZBEKISTAN	..... 169
	Prof. Akmal Saidov Director, National Human Rights Center of the Republic of Uzbekistan

# **The Role of the Ombudsman in Safeguarding Civil Rights**

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Mr. Imtiaz Ahmad Sahibzada,  
President of AOA and  
Wafaqi Mohtasib(Ombudsman) of Pakistan

## **The Role of the Ombudsman in Safeguarding Civil Rights**

**Mr. Imtiaz Ahmad Sahibzada,  
President of AOA and  
Wafaqi Mohtasib(Ombudsman) of Pakistan**

### Introduction

The subject of the topic i.e. the role of the Ombudsman in safeguarding civil rights is best approached from a country – specific perspective. Before this can be attempted in the case of Pakistan, however it is necessary to set the context in which the term “civil rights” is used. This in turn cannot be addressed without reference to “human rights” as it is these that in the traditional definition of the term comprise “civil” and “political” rights. Included amongst these, inter alia, are: the right to life, liberty and security; the right not to be discriminated against on the basis of race, colour, sex, language, religion, social class or political opinion; the right to vote, freedom of thought, speech and freedom to express; the right to be free from arbitrary invasion of privacy, family or home; and legal rights such as the right to due process of law and the presumption of innocence until proven guilty. Some of these are also termed ‘fundamental rights’ enshrined in constitutions of many countries.

2. There is a wide area of over-lap between these terms in so far as ‘rights’ listed under each is concerned. While there is a substantial commonality in how these are seen and interpreted in different countries, there are, understandably, differences too. These are determined by the stage of political, legal and administrative development that a country finds itself in at a particular period of its history and, of course, of its political and socio-economic milieu. It is this milieu that determines the basic law or constitution and it is the Constitution, in turn, which gives shape to and enshrines, not only the human or fundamental rights that are sought to be protected in the process of governance, but also the essential features of the governance of each country and the basic institutional

infrastructure for the purpose. That is, the structure and functioning of the Legislature, Executive and the Judiciary and the related institutions, among which the Institution of the Ombudsman, variously styled, structured and designated, takes pride of place.

3. The institution of the Ombudsman worldwide can functionally be divided basically into two categories. Those which are by and large exclusively concerned with protecting individual citizens against abuse and mal-administration by public authorities and those whose primary focus is often on the more fundamental human rights / civil rights problems. Where the Ombudsman's primary focus of responsibility and mandate is the investigation of complaints against public administration, the promotion and safeguarding of human or fundamental rights or civil rights as such is left to other institutions, primarily the judicial system of the country.

4. Although the traditional view of 'human rights', 'civil rights' and 'fundamental rights' is generally accepted, what was not so universally acclaimed but is now coming to the forefront is the right to 'good governance' as an important constituent element of 'civil rights'. Good governance has a number of equally important aspects from the standpoint of the functioning of the political, executive, judicial and administrative institutions, structures and processes. However, taking 'good governance' as a 'civil right' and acknowledging the centrality of good administration for its realization, the role of the Ombudsman in safeguarding and promoting it, becomes apparent.

5. Before this is attempted in respect of the Ombudsman in Pakistan, it would be appropriate to set the context by an over-view of the Republic, the political structure of the Federation, the Judiciary, the distribution of legislative powers between the Federation and the Provinces, the administrative structure of the Federal Government, followed by a somewhat more detailed discussion of the establishment of the Office of the Ombudsman, its powers and functions and finally an evaluation of the functioning of the Office since its inception with particular reference to the outgoing calendar year i.e. 2003.

### The Republic and its Territories

6. According to the Constitution, 1973, Pakistan is a Federal Republic known as the Islamic Republic of Pakistan. Its territories comprise the Provinces of the Punjab, Sindh, North-West Frontier and Balochistan; the Islamabad Capital Territory (ICT) or the Federal Capital; the Federally Administered Tribal Areas (FATA); and such states and territories as are, or may be, included in Pakistan, whether by accession or otherwise.<sup>1</sup> Each of the Provinces, for purposes of territorial administration and Local Government, is divided into a number of Districts of varying sizes and population not necessarily connected with the over all size of the Province in terms of area or population. The Punjab has 34 Districts, Sindh has 16, NWFP 24 and Balochistan 22.<sup>2</sup>

### Population

7. The latest census of 1998 shows that Pakistan has a population of 132,352,279 with the following distribution; Punjab: 73,621,290; Sindh: 30,439,893; NWFP: 17,743,645; Balochistan: 6,565,885; FATA: 3,176,331; and Islamabad Capital Territory: 805,235.<sup>3</sup>

### The Political Structure of the Federation

8. The essential components of the political structure of the Federation are the President; the Majlis-e-Shoora (Parliament) consisting of the National Assembly and the Senate; the Attorney General; the Chief Election Commissioner; and a Cabinet of Ministers with a Prime Minister at its head.

9. The President, who is the head of the State, is elected by members of an Electoral College consisting of Members of both Houses of Parliament and Members of the Provincial Assemblies.<sup>4</sup> He holds office for a term of five years.<sup>5</sup> This mode of election has, on critical occasions in the political circumstances of the country, been dispensed with in favour of a resort to a National Referendum under the provisions of a specific Article of the Constitution.<sup>6</sup> The Executive authority of the Federation vests in the President and is exercised by him directly, or through officers subordinate to him, in accordance with the Constitution.<sup>7</sup>

10. The National Assembly is elected for a term of five years on the basis of universal adult suffrage through a direct and free vote.<sup>8</sup> Each Province, FATA and ICT have been divided for the purpose into a number of single-member territorial constituencies on the basis of population.

11. The number of Seats in the National Assembly have been fixed at 357 of which the General Seats are 272, the Seats reserved for Women are 60 and the Seats reserved for Technocrats are 25. The distribution of these over the Provinces, FATA and the Federal Capital are contained in the table below-<sup>9</sup>

Province/Area	Number of General Seats	Seats reserved for Women	Seats reserved for Technocrats	Total Seats
NWFP	35	8	3	46
FATA	12	-	-	12
Federal Capital	2	-	-	2
Punjab	148	35	15	198
Sindh	61	14	6	81
Balochistan	14	3	1	18
<b>Total</b>	<b>272</b>	<b>60</b>	<b>25</b>	<b>357</b>

12. The Senate consists of 87 seats of which 14 are elected from each Province by the Members of each Provincial Assembly; 8 are elected from FATA by the Members of the National Assembly from the Federally Administered Tribal Areas; 3 are elected from the Federal Capital; and 5 are elected by the Members of each Provincial Assembly to represent Ulema, Technocrats and other professionals. The election to the seats allocated to each Province is held in accordance with the system of proportional representation by means of the single transferable vote.<sup>10</sup>

13. The Cabinet of Ministers, with the Prime Minister at its head, aids and advises the President in the exercise of his functions.<sup>11</sup> The Prime Minister is appointed by the President from amongst Members of the National Assembly who commands the confidence of the majority of the Members of the National Assembly.<sup>12</sup> The Federal

Ministers are appointed from amongst the Members of both Houses of the Parliament by the President on the advice of the Prime Minister.<sup>13</sup>

#### The Judiciary

14. The judicial structure of Pakistan consists of a Supreme Court at the Federal level, a High Court for each Province<sup>14</sup> and the Court of the District and Sessions Judge for each District. There are a number of Additional District and Sessions Judges in each District complemented by a number of Courts of the subordinate judiciary and Judicial Magistrates at the Tehsil level.

15. At the Federal level there is also a Federal Shariat Court for the hearing of cases relating to the Shari'a – the Islamic Religious Code.

#### Distribution of Legislative powers between the Federation and the Provinces

16. Legislative powers between the Federation and the Provinces have been distributed on the basis of two lists– the Federal Legislative List and the Concurrent List. The Federation has exclusive power to make laws with respect to any matter in the Federal Legislative List while both the Federation and the Provinces have powers to make laws with respect to any matter in the Concurrent Legislative List. The Provinces have been entrusted with the residuary powers to make laws with respect to any matter not enumerated in either the Federal Legislative List or the Concurrent Legislative List. For Areas not included in any Province these residuary powers rest with the Federation.<sup>15</sup>

#### Federally Administered Tribal Areas

17. The Federally Administered Tribal Areas include the Tribal Areas adjoining the Districts of Peshawar, Kohat, Bannu and Dera Ismail Khan of the North-West Frontier Province and the Political Agencies of Bajaur, Orakzai, Mohmand, Khyber, Kurram, North Waziristan and South Waziristan.<sup>16</sup>

18. A Political Agency is the name of the geographic unit into which FATA is divided for purposes of Administration. Each of these Agencies is administered by an

officer called the Political Agent who is directly responsible to the Governor of the NWFP for its good governance. Only a few of the laws operative in the rest of Pakistan have been extended to the Tribal Areas. The tribes inhabiting these areas administer themselves, as it were, in accordance with the customs prevailing in each Agency from times immemorial under the supervision of the Political Agent.

19. As its name implies, the FATA is Federally administered. The Executive authority of the Federation extends to it through the Governor of the North-West Frontier Province. No act of the Parliament applies to any of the Tribal Areas of FATA unless the Governor, with the approval of the President, so directs.<sup>17</sup> Neither the Supreme Court nor the High Court exercise any jurisdiction in relation to a Tribal Area unless Parliament by law otherwise provides.<sup>18</sup>

#### Administrative Structure of the Federal Government

20. The Federal Government is, for administrative purposes, structured on the basis of 'Divisions. A Division is a self-contained administrative unit responsible for the conduct of business of the Federal Government in a distinct and specified sphere and declared as such by the Federal Government.<sup>19</sup>

21. These Divisions have a number of 'Attached Departments' linked to them. An Attached Department means a Department which has a direct relation with a Division and has been declared as such by the Federal Government.<sup>20</sup> A Division or group of Divisions constitute a Ministry.<sup>21</sup> In addition to these there are a number of Autonomous and Semi Autonomous organizations in the public sector. These, in accordance with the subject dealt with are administered by Boards of Directors on which the subject-specific Ministry is represented through the Secretary or Additional Secretary of the Ministry or Division.

22. Each Ministry is headed by a Federal Minister-in-Charge of the Ministry.<sup>22</sup> The Administrative head of a Division or a Ministry is a permanent Civil Servant who is called a Secretary or Acting Secretary to the Government of Pakistan. Where there is no Secretary, the Additional Secretary or Joint Secretary is placed in charge.<sup>23</sup> The Secretary, being the official head of the Division or Ministry, is responsible for its efficient

administration, discipline, the proper conduct of business assigned to it and for the due execution of sanctioned policy.<sup>24</sup>

23. There are presently twenty-six Ministries in the Government of Pakistan and thirty-five Divisions.<sup>25</sup>

24. The Cabinet Secretary heads the Cabinet Division and is, invariably, the senior most Civil Servant. He is responsible, inter alia, for the processing of all Summaries meant for consideration by the Federal Cabinet and for the authentication and issue of minutes of Cabinet meetings. Being the senior most Civil Servant he is the Convener of the Secretaries Committee which meets periodically to consider matters of policy on which the collective advice of the Secretaries is required.

### **The Wafaqi Mohtasib**

#### Establishment, Powers and Functions

##### Establishment of Office

25. In 1983 the Office of the Wafaqi Mohtasib, the meaning of which is 'Federal Ombudsman' was established through a Presidential Order<sup>26</sup> as the subject falls within the purview of the Federal Legislative List.<sup>27</sup> Although not specifically mentioned under any article of the Constitution of the Islamic Republic of Pakistan, 1973, the institution of the Wafaqi Mohtasib now has Constitutional protection in as much as the Order under which it was established, has been protected<sup>28</sup> under the Constitution and can only be amended in the manner provided for amendment of the Constitution.<sup>29</sup>

##### Objectives

26. The Order in question provides for the Mohtasib to diagnose, investigate, and rectify any injustice done to a person through mal-administration.<sup>30</sup> 'Mal-administration' is defined as—

"(i) a decision, process, recommendation, act of omission or commission which (a) is contrary to law, rules or regulations or is a departure from established practice or

procedure, unless it is *bona fide* and for valid reasons; or (b) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory; or (c) is based on irrelevant grounds; or (d) involves the exercise of powers or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favouritism, nepotism and administrative excesses; and (ii) neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities.<sup>31</sup>

### Appointment and Removal

27. The Mohtasib is appointed by the President for a four year term.<sup>32</sup> He is independent of the Executive and all executive authorities throughout Pakistan are required to act in aid of him.<sup>33</sup> To ensure his impartiality he is prohibited from holding of any office of profit in the service of Pakistan before the expiration of two years after his term of office nor is he eligible for election as a member of Parliament or a Provincial Assembly or any local body or for taking part in any political activity until a period of two years after his term of office has expired.<sup>34</sup> Further more as a measure to support his independence the Mohtasib can be removed from office only by the President on the ground of misconduct or of being incapable of properly performing the duties of his office by reasons of physical or mental incapacity. The Mohtasib however can in this regard, if he deems fit, refute any charges and request an open public evidentiary hearing before the Supreme Judicial Council.<sup>35</sup>

### Definition of Agency

28. The Mohtasib may undertake an investigation into any allegation of mal-administration on the part of any Agency or its Officers or Employees on a complaint by any aggrieved person or on a reference by the President, the National Assembly or on a motion of the Supreme Court or a High Court. He can also initiate an investigation of his own motion.<sup>36</sup> By an Agency is meant—

“a Ministry, Division, Department, Commission or office of the Federal Government or statutory corporation or other institution established or controlled by the Federal Government but does not include the Supreme Court, the Supreme Judicial Council, the Federal Shariat Court or a High Court.”<sup>37</sup>

### Restrictions on Investigative Powers

29. However certain restrictions have been imposed on the investigative powers of the Mohtasib. He does not have any jurisdiction to investigate or inquire into any matters which—

“(a) are *sub-judice* before a court of competent jurisdiction or tribunal or board in Pakistan on the date of the receipt of a complaint, reference or motion by him; or (b) relate to external affairs of Pakistan or the relations or dealing of Pakistan with any foreign state or government; or (c) relate to, or are connected with the defence of Pakistan or any part thereof, the military, naval and air forces of Pakistan, or the matters covered by the laws relating to those forces.”<sup>38</sup>

### Ouster of Jurisdiction

30. The President is empowered to exclude specified matters, public functionaries or any Agency from the operation and purview of all or any of the provisions of the Establishment of the Office of the Wafaqi Mohtasib (Ombudsman) Order, 1983.<sup>39</sup> As a consequence the Federally Administered Tribal Areas or any matter relating thereto, or connected directly with them, was excluded from the purview of all the provisions of the Order.<sup>40</sup>

### Undertaking of Studies

31. For carrying out the objectives of his Office, and in particular for ascertaining the root causes of corrupt practices and injustice, the Mohtasib can arrange for studies to be made or research to be conducted and may recommend appropriate steps for their eradication.<sup>41</sup>

### Findings and Recommendations

32. If the Mohtasib, during the course of an investigation into a case, is of the opinion that the matter considered amounts to mal-administration, he is required to communicate his findings to the Agency concerned—

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

question; (d) to take disciplinary action against any public servant of any Agency under the relevant law applicable to him; (e) to dispose of the matter or case within a specified time; (f) to take action on his findings and recommendations to improve the working and efficiency of the Agency within a specified time; or (g) to take any other step specified by the Mohtasib.<sup>42</sup>

#### Defiance of Recommendations

33. The Agency on its part is required to inform the Mohtasib about the action taken on his recommendations or the reasons for not complying with them.<sup>43</sup> If, however, the Agency does not comply with the recommendations of the Mohtasib and nor gives reasons to his satisfaction for non-compliance, the lapse is to be treated as 'defiance of recommendations',<sup>44</sup> in which case the Mohtasib may refer the matter to the President who may, in his discretion, direct the Agency to implement the recommendation.<sup>45</sup> The Mohtasib also has powers to recommend the taking of appropriate corrective or disciplinary action or both against any person found guilty of mal-administration. In such cases the Agency is required to inform the Mohtasib within thirty days of the receipt of the reference of the action taken. If no information in this regard is received, the matter can be brought to the notice of the President for such action as he may deem fit.<sup>46</sup>

#### Informal Resolution of Grievances

34. The Mohtasib is also empowered to—<sup>47</sup>

"...informally conciliate, amicably resolve, stipulate, settle or ameliorate any grievance without written memorandum and without the necessity of docketing any complaint or issuing any official notice."

#### Representation to the President

35. Any person aggrieved by a decision or order of the Mohtasib may, within thirty days of the decision or order, make a representation to the President, who may pass order thereon as he may deem fit.<sup>48</sup>

### Bar of Jurisdiction

36. No court or other authority has jurisdiction to question the validity of any action taken by the Ombudsman or to grant an injunction or stay against any proceedings before him.<sup>49</sup> However, the writ jurisdiction of the High Courts under Article 199 of the Constitution has been occasionally invoked.

### Powers of the Mohtasib

37. The Mohtasib has, for the purposes of the functioning of his office, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 in respect of the following matters—

“(a) summoning and enforcing the attendance of any person and examining him on oath; (b) compelling the production of documents; (c) receiving evidence on affidavits; and (d) issuing commission for the examination of witness.”<sup>50</sup>

38. Similarly he, or any member of his staff authorized in this behalf, has the powers to enter and search any premises for the purpose of making any inspection or investigation into the subject matter of any complaint before him.<sup>51</sup> He has also been empowered with the same powers as the Supreme Court to punish any person for contempt who—

“(a) abuses, interferes with, impedes, imperils, or obstructs the process of the Mohtasib in any way or disobeys any order of the Mohtasib; (b) scandalizes the Mohtasib or otherwise does anything which tends to bring the Mohtasib, his staff or nominees or any person authorized by the Mohtasib in relation to his office, into hatred, ridicule or contempt; (c) does anything which tends to prejudice the determination of a matter pending before the Mohtasib; or (d) does any other thing which, by any other law, constitutes contempt of court.”

### Appointment of Staff

39. With regard to the appointment of his staff, Mohtasib has the powers to appoint advisers, consultant, fellows, bailiffs, interns, commissioners and experts or ministerial staff to assist him in the discharge of his duties<sup>52</sup> and fix their remuneration.<sup>53</sup> This of

course is subject to the provisions of the budget for the office which is approved by the National Assembly as part of the Budget of Pakistan. The Budget of the Mohtasib's Secretariat for the current financial year, i.e. 2003-2004 (July – June) is Rs. 87.5 million or US\$ 1.51 million at the current conversion rate.

40. The Mohtasib, the employees officers and all other staff of the office are deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860.<sup>54</sup>

#### Establishment of Regional Offices

41. For the convenience of the public, Regional Offices of the Ombudsman's Secretariat have been established at each Provincial Headquarter i.e. Lahore, Karachi, Peshawar and Quetta for the Provinces of Punjab, Sindh, NWFP and Balochistan respectively. Furthermore offices have also been established in some of the other major towns i.e. Sukkur (Sindh), Multan, Faisalabad (Punjab) and Dera Ismail Khan (NWFP).

#### Time-frame of Disposal of Cases

42. The process of complaints to the Wafaqi Mohtasib involves no cost as such to the complainant and the disposal of cases is fairly expeditious. The position in respect of the calendar year 2003 is tabulated below:

Time Taken in Disposal of Cases

Period	Year 2003
Within days	0%
Within 3 months:	2%
Within 4 months:	8%
Within 5 months:	16%
Within 6 months:	20%
Within One year	54%
More than One Year	-

#### Implementation of Recommendations

43. The implementation of the recommendations in each case, if not represented against, is required to be undertaken within the specific period indicated in the findings

and recommendations of each case. While most of these get to be implemented within the indicated time-frame, some remain un-attended to by the Agencies until 'implementation petitions' are put in by the concerned complainants with the Secretariat and consequential pressure for implementation is exercised on the Agencies.

## Evaluation of the Functioning of Ombudsman's Office in Pakistan

### Wafaqi Mohtasib or Federal Ombudsman

44. An evaluation of the functioning of the Office of the Federal Ombudsman can be undertaken in a variety of contexts. Here, however, the framework of analysis adopted is focused essentially on (i) the nature and extent of redress of individual grievances against mal-administration of the Agencies of the Federal Government; (ii) contribution to the evolution of Administrative Law through interpretation of laws, rules and regulations in the context of recording findings and recommendations in complaints of individuals against mal-administration; (iii) specific directions to Agencies for change of laws and amendments in rules and regulations to meet the needs of equity and justice; and (iv) specific recommendations to the Agencies for changes in administrative structure, procedures and mode of performance of functions to keep pace with the requirements of a fast changing administrative environment. These recommendations are invariably the outcome of subject and organization-specific studies.

45. In so far as (i) is concerned the office of the Federal Ombudsman has achieved a remarkable success. The total number of complaints received since inception and till 31<sup>st</sup> December 2003 were 793,165 of which 428,234 (54%) were disposed of after initial examination on account of – (i) no mal-administration being involved; being 'Service' matters and excluded from the jurisdictional purview of the Ombudsman; being anonymous/pseudonymous; being 'sub-judice' and, therefore, beyond jurisdiction. Of the balance 364,931 (46%) relief was provided to 277,231 (79%) whereas 72,602 or 21% were rejected bringing the total disposal to 349,833 (96%). The carry over of pending cases from the calendar year 2003 is 15,617 or 1.96% of the total (793,165).

46. The analysis of the data in respect of complaints brought forward, instituted, disposed of and carried over for the calendar year 2003 is as follows:

Brought forward	Institution	Disposal	Carry over
22,219	25,761	32,363	15,617

This shows an excess of disposal over the institution and therefore a reduction in the carry over to the next calendar year.

47. The volume of receipt of complaints during the calendar year 2003 has decreased by 22.83% over the year 2001 indicating a positive trend of greater observance of the law, rules and regulations by the public sector agencies of the federal government.

Year	Receipts	Decrease	Percentage
2001	33385	-	-
2002	31613	1811	5%
2003	25761	5556	22.83%

48. The cases disposed of on the basis of the nature of their alleged mal-administration for the entire period are tabulated below--

Mal-Administration involved	Number	Percentage
Delay	71,048	20%
Inattention	38,166	11%
Neglect	12,458	4%
Inefficiency	6,221	2%
Bias	78,823	23%
Action Contrary to Law	9,417	3%
Corrupt Motives	3,189	1%
Administrative excess	13,859	4%
Discrimination	6,380	2%
Arbitrary Decisions	78,307	22%

Other causes	31,965	9%
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49. The cost to the public exchequer for each decided case since the inception of the Office works out to Rs. 1,061 or US\$ 18.36 at the current conversion rate.

50. As to item (iv) of the analytical framework, again a number of studies have been undertaken and recommendations relating to structural changes, and modification of procedures, of some public sector organizations have been recommended for adoption. Some of these have been taken up and implemented with consequential improvement being effected in the efficiency of delivery of services. An indicative list of such studies is at Annex-I and II.

51. It will be seen from the above analysis that the forte of the Mohtasib's functioning since inception has been the redress of individual grievances. Although this is as it should be, greater emphasis now needs to be accorded to the other items of the analytical framework if the optimal impact of the Office is to be felt.

52. Since the role of the Ombudsman in Pakistan, as can be seen from the foregoing discussion, is exclusively focused on addressing issues of mal-administration and redress of individual grievances against state agencies in the context of safeguarding the 'civil right' as it were of 'good governance', the role of safeguarding 'fundamental rights' is entrusted to the judiciary of Pakistan.

#### Safeguarding of Fundamental Rights / Civil Rights

53. The fundamental rights of the citizens of Pakistan are contained in Articles 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 of the Constitution of the Islamic Republic of Pakistan. These rights relate to: security of person; safeguards as to arrest and detention; prohibition of slavery, forced labour; protection against retrospective punishment; protection against double punishment and self-incrimination; inviolability of the dignity of man; freedom of movement; freedom of assembly; freedom of association; freedom of trade, business or profession; freedom of speech; freedom to profess religion and to manage religious institutions; safeguard against taxation for purposes of any particular religion; safeguards as to educational institutions in respect of

religion; right to property; protection of property rights; equality of citizens before law; non-discrimination in respect of access to public places; safeguard against discrimination in services; preservation of language, script and culture.

54. The detailed Constitutional provisions in this regard are in Annex-III.

55. In addition to the Fundamental Rights enshrined in the Constitution certain Principles of Policy have also been laid down which "it is the responsibility of each organ and authority of the State, and of each person performing functions on behalf of an organ or authority of the State, to act in accordance with those Principles in so far as they relate to the functions of the organ or authority".<sup>55</sup>

56. This, however, is dependent upon and subject to the availability of resources.<sup>56</sup> These Principles of Policy are: promotion of the Islamic way of life; promotion of local Government institutions; discouragement of parochial and other similar prejudices; taking steps to ensure full participation of women in all spheres of national life; protection of the family; protection of minorities; promotion of social justice and eradication of social evils; promotion of social and economic well-being of the people; strengthening bonds with the Muslim world and promoting international peace.

57. These Principles of Policy are contained in Articles 29 to 40 of the Constitution of the Islamic Republic of Pakistan (Annex -IV).

58. The principal custodian of the Fundamental Rights of the individual in Pakistan, as already stated, is the Judiciary i.e. the High Courts of the Provinces under Article 199 and the Supreme Court of the Federation, on the appellate side, under Article 185. Article 199 of the Constitution on the subject, inter alia, states:

"199. (1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,—

(a) on the application of any aggrieved party make an order—

(i) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to

- refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or
- (ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or
- (b) on the application of any person, make an order—
- (i) directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or
  - (ii) requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; or
- (c) on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II.
- (2) Subject to the Constitution, the right to move a High Court for the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II shall not be abridged.

.....

(5) In this Article, unless the context otherwise requires,—

“person” includes any body politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or tribunal, other than the Supreme Court, a High Court or a Court or tribunal established under a law relating to the Armed Forces of Pakistan; and  
“prescribed law officer” means—

- (a) in relation to an application affecting the Federal Government or an authority of or under the control of the Federal Government, the Attorney-General, and

- (b) in any other case, the Advocate-General for the Province in which the application is made.”

59. Article 185 of the Constitution, inter alia, states:

185. (1) Subject to this Article, the Supreme Court shall have jurisdiction to hear and determine appeals from judgements, decrees, final orders or sentences of a High Court.

60. In so far as the Executive is concerned, the safeguarding of human rights / civil rights lies within the mandate of the Ministry of Law, Justice and Human Rights. In addition to the efforts of this Ministry, the Human Rights Commission of Pakistan, a non-Government Organization (NGO) with branches in all the Provinces, is a citizens' body which keeps a watch on the human rights / civil rights position in the country and undertakes not only advocacy functions but also focuses attention through its Annual Reports on the state of Human Rights / civil rights in the country in general and of particular lapses on the part of public functionaries and ordinary citizens in this regard. The press is another major institution which promotes and protects Human Rights / civil rights through its investigative reporting and its interaction with the Human Rights Commission of Pakistan.

### Conclusion

61. To summarise it can be stated that in so far as the Ombudsman of Pakistan is concerned the role that he plays in the safeguarding of 'civil rights', is to the extent of protection and promotion of the 'right to good-governance' by protecting individual citizens against abuse and 'mal-administration' by public authorities. The safeguarding of 'civil rights' as such in the traditional sense is essentially a function assigned to the judiciary by the Constitution in the context of 'Fundamental Rights'.

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1 Article-1 of the Constitution of the Islamic Republic of Pakistan, 1973.

2 The Gazette of Pakistan, Election Commission of Pakistan, Notification No.F.10(2)/2002-SMW, dated 26th March 2002, pp 227-230.

3 Population and Housing Census of Pakistan, 1998; Census Bulletin – 1 (Final Results) Table-I; Population Census Organisation, Statistics Division, Government of Pakistan, February, 2002

4 Article 41 (3) *ibid*

5 Article 44 (1) *ibid*

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- 6 Article 48 (6) ibid
  - 7 Article 90 of the Constitution of the Islamic Republic of Pakistan 1973.
  - 8 Article 51 (1) ibid
  - 9 The Gazette of Pakistan, Election Commission of Pakistan, Notification No.F.10 (2)/2002-SMW, dated 26th March 2002, page 219.
  - 10 Article 59 of the Constitution of the Islamic Republic of Pakistan.
  - 11 Article 91 ibid
  - 12 Article 91 (2) ibid
  - 13 Article 92 (1) ibid
  - 14 Article 175 ibid
  - 15 Article 142 ibid
  - 16 Article 246 (c) ibid
  - 17 Article 247 (3) ibid
  - 18 Article 247 (7) ibid
  - 19 Rule 2 (6) of The Rules of Business, 1973.
  - 20 Rule 2 (ii) ibid
  - 21 Rule 2 (xiv) ibid
  - 22 Rule 2 (xiii) ibid
  - 23 Rule 2 (xviii) ibid
  - 24 Rule 4 (2) ibid
  - 25 Schedule 1 ibid
  - 26 Establishment of the Office of the Wafaqi Mohtasib (Ombudsman) Order, 1983, President's Order No. 1 of 1983.
  - 27 Fourth Schedule, Federal Legislative List, Part-I, item-13 of the Constitution of the Islamic Republic of Pakistan, 1973.
  - 28 Article 270-A ibid
  - 29 Article 270-A (6), ibid, read with entry number 5 of the Seventh Schedule, thereof.
  - 30 Preamble of the Establishment of the Office of the Wafaqi Mohtasib (Ombudsman) Order, 1983, President's Order No. 1 of 1983.
  - 31 Article 2 (2) ibid
  - 32 Article 4 ibid
  - 33 Article 3 (3) ibid
  - 34 Article 5 ibid
  - 35 Article 6 ibid
  - 36 Article 9 (1) ibid
  - 37 Article 2 (1) ibid
  - 38 Article 9 ibid
  - 39 Article 31 ibid
  - 40 Notification No.57/104(15)/ML-IB/CMLA dated 13th August, 1984.
  - 41 Article (9) (3) ibid
  - 42 Article 11 (1) ibid
  - 43 Article 11 (3) ibid
  - 44 Article 11 (5) ibid
  - 45 Article 12 (1) ibid
  - 46 Article 13 ibid
  - 47 Article 33 ibid
  - 48 Article 32 ibid
  - 49 Article 29 ibid
  - 50 Article 14 ibid
  - 51 Article 15 ibid
  - 52 Article 20 ibid
  - 53 Article 26 ibid
  - 54 Article 27 ibid
  - 55 Article 29 (1) ibid
  - 56 Article 29 (2) ibid

### Indicative List of Specific Directions to Agencies for Change of Laws, Amendments in Rules and Regulations

1. It was recommended to the University Grants Commission to have their law amended so as to include a substantive provision for grant of equivalence to certificate/diplomas/degrees granted by various Institutions at home and abroad.
2. The Government of Pakistan in Ministries of Education, Health and Railways was advised to procure affiliation of their respective technical training institutes, which had been established through notifications/ resolutions with recognized Universities/Boards so as to give legitimacy to degrees/diplomas/certificates being awarded by them to their graduates. The Government was also advised not to create such institutes in future without first arranging their affiliation with degree/diploma awarding Universities/ Boards.
3. In respect of pension matters following recommendations for change of rules/law were made to the Finance Division:-
  - Unmarried daughters of deceased pensioners should continue to get family pension even after attaining the age of 21 years or till they are married.
  - Unmarried sister of a deceased pensioner without any other legal heir should continue to receive family pension of the deceased even after age of 21 years provided that she is still unmarried.
  - A second Medical Board for the purposes of commutation of pension should be done away with.
  - Widow of a pensioner should not be refused commutation of pension only because her deceased husband had not been able to sign Commutation Application before his death.
4. Pakistan Mineral Development Corporation was advised to amend their Corporation rule through which they had acquired powers to deduct from the pension of a retired officer of the Corporation an amount equal to the allowance/pension granted to him by the Benevolent Fund Organization as the latter was a grant under a Federal law.
5. Finance Division was advised not to limit the choice of the members of General Provident Fund to exercise their options for keeping an interest bearing or non-interest bearing account.
6. It was recommended to the Quaid-I-Azam University to allow at least two chances to the students of M.Sc./M.Phil., to qualify in the failed semesters before declaring them as having finally failed in the respective programs.
7. Recommendation to the Federal Government to amend the Services Tribunal Act so as to provide jurisdiction over the employees (about 0.7 million) of Public Sector Corporations to facilitate the resolution of grievances relating to their service like the other employees of the Federal Government. The amendment has been carried out.

## Indicative List of Research Studies Carried Out

- |    |  |      |
|----|--|------|
| 1. | Housing Problems in Islamabad  | 1984 |
| 2. | Report on Enhancing Efficiency and Responsiveness of the Functioning of the Government Organizations- Control Mechanism and Interaction with the Public  | 1984 |
| 3. | National Savings Organization - Special Report   | 1987 |
| 4. | Report on Serious Accident to R C-73 up Rail Car   | 1994 |
| 5. | Report on Banks/DFIs Loan scam since 1985  | 1994 |
| 6. | Reports of the Task Force constituted to carry out studies on the functioning of the following organizations and recommend measures to help provide satisfactory services to the public and check instances of mal-administration. | 1999 |
|    | i. WAPDA & KESC  |      |
|    | ii. House Building Finance Corporation   |      |
|    | iii. Pakistan Telecommunication Company Limited  |      |
|    | iv. Office of the Auditor General of Pakistan  |      |
|    | v. Ministry of Railways  |      |
|    | vi. Sui Northern Gas Pipelines Limited   |      |
|    | vii. Sui Southern Gas Pipelines Limited  |      |
|    | viii. State Life Insurance Corporation   |      |
|    | ix. Ministry of Housing & Works (Estate Office)  |      |
| 7. | WAPDA (Report of the Joint Diagnostic Committee of Wafaqi Mohtasib's Secretariat and Wapda on Billing, Detection Billing and Internal Grievance Redress Systems)   | 2003 |

## CONSTITUTION OF PAKISTAN

### PART II

#### CHAPTER I. – FUNDAMENTAL RIGHTS

8. (1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.

Laws inconsistent with or in derogation of Fundamental Rights to be void.

(2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.

(3) The provisions of this Article shall not apply to—

(a) any law relating to members of the Armed Forces, or of the police or of such other forces as are charged with the maintenance of public order, for the purpose of ensuring the proper discharge of their duties or the maintenance of discipline among them; or

<sup>1</sup>[(b) any of the—

(i) laws specified in the First Schedule as in force immediately before the commencing day or as amended by any of the laws specified in that Schedule;

(ii) other laws specified in Part I of the First Schedule;]

and no such law nor any provision thereof shall be void on the ground that such law or provision is inconsistent with, or repugnant to, any provision of this Chapter.

(4) Notwithstanding anything contained in paragraph (b) of clause (3), within a period of two years from the commencing day, the

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<sup>1</sup> Subs. By the Constitution (Fourth Amdt.) Act, 1975 (71 of 1975), s.2, for paragraph (b) (w.e.f. the 21<sup>st</sup> November, 1985), which was previously amended by Act 33 of 1974, s.3 (w.e.f. 4<sup>th</sup> May, 1974).

appropriate Legislature shall bring the laws specified in <sup>2</sup>[Part II of the First Schedule] into conformity with the rights conferred by this Chapter:

Provided that the appropriate Legislature may by resolution extend the said period of two years by a period not exceeding six months.

*Explanation.*— If in respect of any law <sup>3</sup> [Malis-e-Shoora (Parliament)] is the appropriate Legislature, such resolution shall be a resolution of the National Assembly.

(5) The rights conferred by this Chapter shall not be suspended except as expressly provided by the Constitution.

9. No person shall be deprived of life or liberty save in accordance with law.

Security of person.

10. (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

Safeguards as to arrest and detention.

(2) Every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the nearest magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall be made except to deal with persons acting in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof, or external affairs of Pakistan, or public order, or the maintenance of supplies or services, and no such law shall authorize the detention of a person for a period exceeding <sup>4</sup>(three months) unless the appropriate Review Board has, after affording him an opportunity of being heard in person, reviewed his case and reported, before the expiration of the said period, that there is, in its

2 Subs. By the Constitution (Fourth Amdt.) Act, 1975 (71 of 1975), s.2, for "the First Schedule, not being a law which relates to, or is connected with, economic reforms."

3 See footnote 3 on page 5, *supra*.

4 Subs. By the Constitution (Third Amdt.) Act, 1975 (22 of 1975), s.2, for "one month" (w.e.f. the 13<sup>th</sup> February, 1975).

opinion, sufficient cause for such detention, and, if the detention is continued after the said period of <sup>5</sup>(three months), unless the appropriate Review Board has reviewed his case and reported, before the expiration of each period of three months, that there is, in its opinion, sufficient cause for such detention.

*Explanation I.*— In this Article, “the appropriate Review Board” means,—

- (i) in the case of a person detained under a Federal law, a Board appointed by the Chief Justice of Pakistan and consisting of a Chairman and two other persons, each of whom is or has been a Judge of the Supreme Court or a High Court; and
- (ii) in the case of person detained under a Provincial law, a Board appointed by the Chief Justice of the High Court concerned and consisting of a Chairman and two other persons, each of whom is or has been a Judge of a High Court.

*Explanation II.*— The opinion of a Review Board shall be expressed in terms of the views of the majority of its members.

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, <sup>5</sup>[within fifteen days] from such detention, communicate to such person the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order:

Provided that the authority making any such order may refuse to disclose facts which such authority considers it to be against the public interest to disclose.

(6) The authority making the order shall furnish to the appropriate Review Board all documents relevant to the case unless a certificate, signed by a Secretary to the Government concerned to the effect that it is not in the public interest to furnish any documents, is produced.

(7) Within a period of twenty-four months commencing on the day of his first detention in pursuance of an order made under a law providing for preventive detention, no person shall be detained in

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5 Subs. By the Constitution (Third Amdt.) Act, 1975 (22 of 1975), s.2 for “as soon as may be, but not later than one week” (w.e.f. the 13<sup>th</sup> February, 1975).

pursuance of any such order for more than a total period of eight months in the case of a person detained for acting in a manner prejudicial to public order and twelve months in any other case:

Provided that this clause shall not apply to any person who is employed by, or works for, or acts on instructions receive from, the enemy<sup>6</sup> [, or who is acting or attempting to act in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof or who commits or attempts to commit any act which amounts to an anti-national activity as defined in a Federal law or is a member of any association which has for its objects, or which indulges in, any such anti-national activity].

(8) The appropriate Review Board shall determine the place of detention of the person detained and fix a reasonable subsistence allowance for his family.

(9) Nothing in this Article shall apply to any person who for the time being is an enemy alien.

11. (1) Slavery is non-existent and forbidden and no law shall permit or facilitate its introduction into Pakistan in any form.

Slavery, forced labour, etc., prohibited.

(2) All forms of forced labour and traffic in human beings are prohibited.

(3) No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment.

(4) Nothing in this Article shall be deemed to affect compulsory service-

(a) by any person undergoing punishment for an offence against any law; or

(b) required by any law for public purpose:

Provided that no compulsory service shall be of a cruel nature or incompatible with human dignity.

12. (1) No law shall authorize the punishment of a person-

Protection against retrospective punishment.

(a) for an act or omission that was not punishable by law at the time of the act or omission; or

6 Added by the Constitution (Third Amdt.) Act, 1975 (22 of 1975), s.2.

- (b) for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.

(2) Nothing in clause(1) or in Article 270 shall apply to any law making acts of abrogation or subversion of a Constitution in force in Pakistan at any time since the twenty-third day of March, one thousand nine hundred and fifty-six, an offence.

13. No person—

- (a) shall be prosecuted or punished for the same offence more than once; or
- (b) shall, when accused of an offence, be compelled to be a witness against himself.

Protection against double punishment and self-incrimination.

14. (1) The dignity of man and, subject to law, the privacy of home, shall be inviolable.

Inviolability of dignity of man, etc.

(2) No person shall be subjected to torture for the purpose of extracting evidence.

15. Every citizen shall have the right to remain in, and, subject to any reasonable restriction imposed by law in the public interest, enter and move freely throughout Pakistan and to reside and settle in any part thereof.

Freedom of movement, etc.

16. Every citizen shall have the right to assemble peacefully and without arms, subject to any reasonable restrictions imposed by law in the interest of public order.

Freedom of assembly.

17. (1) Every citizen shall have the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of <sup>7</sup>[sovereignty or integrity of Pakistan, public order or morality].

Freedom of association.

<sup>8</sup>[(2) Every citizen, not being in the service of Pakistan, shall have the right to form or be a member of a political party, subject to any reasonable restrictions imposed by law in the interest of the sovereignty or integrity of Pakistan and such law shall provide that where the Federal Government declares that any political party has been formed or is operating in a manner prejudicial to the sovereignty or integrity of

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7 Subs. By the Constitution (Fourth Amdt.) Act, 1975 (71 of 1975), s.3, for "morality or public order" (w.e.f. the 21<sup>st</sup> November, 1975).

8 Subs. By the Constitution (First Amdt.) Act, 1974 (33 of 1974), s.4, for cl. (2) (w.e.f. the 4<sup>th</sup> May, 1974).

Pakistan, the Federal Government shall, within fifteen days of such declaration, refer the matter to the Supreme Court whose decision on such reference shall be final.

(3) Every political party shall account for the source of its funds in accordance with law.]

18. Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:

Freedom of trade, business or profession.

Provided that nothing in this Article shall prevent—

- (a) the regulation of any trade or profession by a licensing system; or
- (b) the regulation of trade, commerce or industry in the interest of free competition therein; or
- (c) the carrying on, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial, of other persons.

19. Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, or <sup>9</sup>[commission of] or incitement to an offence.

Freedom of speech, etc.

20. Subject to law, public order and morality,—

- (a) every citizen shall have the right to profess, practise and propagate his religion; and
- (b) every religious denomination and every sect thereof shall have the right to establish, maintain and manage its religious institutions.

Freedom to profess religion and to manage religious institutions.

21. No person shall be compelled to pay any special tax the proceeds of which are to be spent on the propagation or maintenance of any religion other than his own.

Safeguard against taxation for purposes of any particular religion.

<sup>9</sup> Subs. By the Constitution (Fourth Amdt.) Act, 1975 (71 of 1975), s. 4, for "defamation" (w.e.f. the 21<sup>st</sup> November, 1975).

22. (1) No person attending any educational institution shall be required to receive religious instruction, or take part in any religious ceremony, or attend religious worship, if such instruction, ceremony or worship relates to a religion other than his own.

Safeguards as to educational institutions in respect of religion, etc.

(2) In respect of any religious institution, there shall be no discrimination against any community in the granting of exemption or concession in relation to taxation.

(3) Subject to law,

(a) no religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any educational institution maintained wholly by that community or denomination; and

(b) no citizen shall be denied admission to any educational institution receiving aid from public revenues on the ground only of race, religion, caste or place of birth.

(4) Nothing in this Article shall prevent any public authority from making provision for the advancement of any socially or educationally backward class of citizens.

23. Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.

Provision as to property.

24. (1) No person shall be deprived of his property save in accordance with law.

Protection of property rights.

(2) No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefore and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.

(3) Nothing in this Article shall affect the validity of—

(a) any law permitting the compulsory acquisition or taking possession of any property for preventing danger to life, property or public health; or

- (b) any law permitting the taking over of any property which has been acquired by, or come into the possession of, any person by any unfair means, or in any manner, contrary to law; or
- (c) any law relating to the acquisition, administration or disposal of any property which is or is deemed to be enemy property or evacuee property under any law (not being property which has ceased to be evacuee property under any law); or
- (d) any law providing for the taking over of the management of any property by the State for a limited period, either in the public interest or in order to secure the proper management of the property, or for the benefit of its owner; or
- (e) any law providing for the acquisition of any class of property for the purpose of-
  - (i) providing education and medical aid to all or any specified class of citizens; or
  - (ii) providing housing and public facilities and services such as roads, water supply, sewerage, gas and electric power to all or any specified class of citizens; or
  - (iii) providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves; or
- (f) any existing law or any law made in pursuance of Article 253

(4) The adequacy or otherwise of any compensation provided for by any such law as is referred to in this Article, or determined in pursuance thereof, shall not be called in question in any court.

Equality of citizens.

25. (1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex alone.

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

26. (1) In respect of access to places of public entertainment or resort, not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth.

Non-discrimination in respect of access to public places.

(2) Nothing in clause (1) shall prevent the State from making any special provision for women and children.

27. (1) No citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only of race, religion, caste, sex, residence or place of birth:

Safeguard against discrimination in services.

Providing that, for a period not exceeding <sup>10</sup>[forty] years from the commencing day, posts may be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan:

Provided further that, in the interest of the said service, specified posts or services may be reserved for members of either sex if such posts or services entail the performance of duties and functions which cannot be adequately performed by members of the other sex.

(2) Nothing in clause (1) shall prevent any Provincial Government, or any local or other authority in a Province, from prescribing, in relation to any post or class of service under that Government or authority, conditions as to residence in the Province, for a period not exceeding three years, prior to appointment under that Government or authority.

28. Subject to Article 251 any section of citizens having a distinct language, script or culture shall have the right to preserve and promote the same and subject to law, establish institutions for that purpose.

Preservation of language, script and culture.

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<sup>10</sup> Substituted and shall be deemed always to have been so substituted by the Constitution (Sixteenth Amendment) Act, 1999 (7 of 1999), s.2, for "twenty", which was previously subs. By P.O. No. 14 of 1985, Art. 2 and Sch., for "ten".

## CONSTITUTION OF PAKISTAN

### PART II

#### CHAPTER 2. – PRINCIPLES OF POLICY

29. (1) The Principles set out in this Chapter shall be known as the Principles of Policy, and it is the responsibility of each organ and authority of the State, and of each person performing functions on behalf of an organ or authority of the State, to act in accordance with those Principles in so far as they relate to the functions of the organ or authority.

Principles of Policy.

(2) In so far as the observance of any particular Principle of Policy may be dependent upon resources being available for the purpose, the Principle shall be regarded as being subject to the availability of resources.

(3) In respect of each year, the President in relation to the affairs of the Federation, and the Governor of each Province in relation to the affairs of his Province, shall cause Principles of Policy to be prepared and laid before the National Assembly or, as the case may be, the Provincial Assembly, a report on the observance and implementation of the Principles of Policy, and provision shall be made in the rules of procedure of the National Assembly or, as the case may be, the Provincial Assembly, for discussion on such report.

30. (1) The responsibility of deciding whether any action of an organ or authority of the State, or of a person performing functions on behalf of an organ or authority of the State, is in accordance with the Principles of Policy is that of the organ or authority of the State, or of the person, concerned.

Responsibility with respect to Principles of Policy.

(2) The validity of an action or of a law shall not be called in question on the ground that it is not in accordance with the Principles of Policy, and no action shall lie against the State, any organ or authority of the State or any person on such ground.

31. (1) Steps shall be taken to enable the Muslims of Pakistan, individually and collectively, to order their lives in accordance with the fundamental principles and basic concepts of Islam and to provide facilities whereby they may be enabled to understand the meaning of life according to the Holy Quran and Sunnah.

Islamic way of life.

(2) The State shall endeavour, as respects the Muslims of Pakistan,–

- (a) to make the teaching of the Holy Quran and Islamiat compulsory, to encourage and facilitate the learning of Arabic language and to secure correct and exact printing and publishing of the Holy Quran;
  - (b) to promote unity and the observance of the Islamic moral standards; and
  - (c) to secure the proper organization of *Zakat*,<sup>11</sup> [*usher,*] *auqaf* and mosques.
32. The State shall encourage local Government institutions composed of elected representatives of the areas concerned and in such institutions special representation will be given to peasants, workers and women.
33. The State shall discourage parochial, racial, tribal sectarian and provincial prejudices among the citizens.
34. Steps shall be taken to ensure full participation of women in all spheres of national life.
35. The State shall protect the marriage, the family, the mother and the child.
36. The State shall safeguard the legitimate rights and interest of minorities, including their due representation in the Federal and Provincial services.
37. The State shall—
- (a) promote, with special care, the educational and economic interests of backward classes or areas;
  - (b) remove illiteracy and provide free and compulsory secondary education within minimum possible period;
  - (c) make technical and professional education generally available and higher education equally accessible to all on the basis of merit;
  - (d) ensure inexpensive and expeditious justice;
- Promotion of local Government institutions.
- Parochial and other similar prejudices to be discouraged.
- Full participation of women in national life.
- Protection of family, etc.
- Protection of minorities.
- Promotion of social justice and eradication of social evils.

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11 Ins. By P.O. No. 14 of 1985, Art. 2 and Sch.

- (e) make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment;
- (f) enable the people of different areas, through education, training, agricultural and industrial development and other methods, to participate fully in all forms of national activities, including employment in the service of Pakistan;
- (g) prevent prostitution, gambling and taking of injurious drugs, printing, publication, circulation and display of obscene literature and advertisements;
- (h) prevent the consumption of alcoholic liquor otherwise than for medicinal and, in the case of non-Muslims, religious purposes; and
- (i) decentralize the Government administration so as to facilitate expeditious disposal of its business to meet the convenience and requirements of the public.

38. The State shall—

- (a) secure the well-being of the people, irrespective of sex, caste, creed or race, by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants;
- (b) provide for all citizens, within the available resources of the country, facilities for work and adequate livelihood with reasonable rest and leisure;
- (c) provide for all persons employed in the service of Pakistan or otherwise, social security by compulsory social insurance or other means;
- (d) provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment;

Promotion of social and economic well-being of the people.

- (e) reduce disparity in the income and earnings of individuals, including persons in the various classes of the service of Pakistan; and
- (f) eliminate *riba* as early as possible.

39. The State shall enable people from all parts of Pakistan to participate in the Armed Forces of Pakistan.

Participation of  
people in Armed  
Forces.

40. The State shall endeavour to preserve and strengthen fraternal relations among Muslim countries based on Islamic unity, support the common interests of the peoples of Asia, Africa and Latin America, promote international peace and security, foster goodwill and friendly relations among all nations and encourage the settlement of international disputes by peaceful means.

Strengthening bonds  
with Muslim world  
and promoting  
international peace.

199. (1) Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,—

Jurisdiction of  
High Court.

- (a) on the application of any aggrieved party make an order—
  - (i) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or
  - (ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or
- (b) on the application of any person, make an order—
  - (i) directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or
  - (ii) requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; or
- (c) on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II.

(2) Subject to the Constitution, the right to move a High Court for the enforcement of any of the Fundamental Rights conferred by Chapter I of Part II shall not be abridged.

<sup>12</sup>[(3) An order shall not be made under clause (1) on application made by or in relation to a person who is a member of the Armed Forces of Pakistan, or who is for the time being subject to any law relating to any of those Forces, in respect of his terms and conditions of service, in respect of any matter arising out of his service, or in respect of any action taken in relation to him as a member of the Armed Forces of Pakistan or as a person subject to such law].

<sup>13</sup>\* \* \* \* \*

(4) Where—

(a) an application is made to a High Court for an order under paragraph (a) or paragraph (c) of clause (1), and

(b) the making of an interim order would have the effect of prejudicing or interfering with the carrying out of a public work or of otherwise being harmful to public interest <sup>14</sup> [or State property] or of impeding the assessment or collection of public revenues, the Court shall not make an interim order unless the prescribed law officer has been given notice of the application and he or any person authorised by him in that behalf has had an opportunity of being heard and the Court, for reasons to be recorded in writing, is satisfied that the interim order—

(i) would not have such effect as aforesaid; or

(ii) would have the effect of suspending an order or proceeding which on the face of the record is without jurisdiction.

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12 Subs. By the Constitution (First Amdt.) Act, 1974 (33 of 1974), s.9 for cl. (3) (w.e.f. the 4<sup>th</sup> May, 1974)

13 Cls. (3A), (3B) and (3C) omitted by P.O. No. 14 of 1985, Art. 2 and Sch., which was previously amended by various enactments.

14 Ins. *Ibidi.*

<sup>15</sup>[(4A) An interim order made by a High Court on an application made to it to question the validity or legal effect of any order made, proceeding taken or act done by any authority or person, which has been made, taken or done or purports to have been made, taken or done under any law which is specified in Part I of the First Schedule or relates to, or is connected with [State property or] assessment or collection of public revenues shall cease to have effect on the expiration of a period of [six months] following the day on which it is made, unless the case is finally decided, or the interim order is withdrawn, by the Court earlier].

<sup>16</sup>[(4B) Every case in which, on an application under clause (1), the High Court has made an interim order shall be disposed of by the High Court on merits within six months from the day on which it is made, unless the High Court is prevented from doing so for sufficient cause to be recorded.]

(5) In this Article, unless the context otherwise requires,—

“person” includes any body politic or corporate, any authority of or under the control of the Federal Government or of a Provincial Government, and any Court or tribunal, other than the Supreme Court, a High Court or a Court or tribunal established under a law relating to the Armed Forces of Pakistan; and “prescribed law officer” means—

- (a) in relation to an application affecting the Federal Government or an authority of or under the control of the Federal Government, the Attorney-General, and
- (b) in any other case, the Advocate-General for the Province in which the application is made.

15 Cl. (4A) ins. By the Constitution (Fourth Amdt.) Act, 1975 (71 of 1975), s. 8 (w.e.f. the 21<sup>st</sup> November, 1975).

16 Ins. By P.O. No. 14 of 1985, Art. 2 and Sch.,

## **Reinforce Administrative Supervision and Guarantee Legitimate Civil Rights**

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Mr. Chen Changzhi,  
Vice-Minister of Supervision of P. R. China

**Reinforce Administrative Supervision and  
Guarantee Legitimate Civil Rights**

**Mr. Chen Changzhi,  
Vice-Minister of Supervision of P. R. China**

Your Excellency Mr. Chairman,  
Honored Delegates,  
Ladies and gentlemen,

First of all, please allow me to take this opportunity to express my sincere gratitude and appreciation to the Ombudsman Office of Korea and the Korean Government for all the hospitality in hosting the 8th AOA Conference in the beautiful city of Seoul. And my thanks also go to the organizers of this Conference for their valuable efforts in preparing and providing us with this platform to exchange views and experiences.

Building a clean government and safeguarding the civil rights is a common task of all countries in the world.<sup>7</sup>The Chinese government has, for a long time, taken it as a key link in the process of socialist political civilization, especially since the application of policies of reform and opening-up to the outside world. Guided by Deng Xiaoping Theory and the principles of putting people first and government for the people, the Chinese government has made unprecedented achievements in this field. The continuous development and improvement of civil rights has become an important indicator of the comprehensive progress of Chinese society. The Chinese supervisory organs throughout the country have played a significant role in preventing the abuse of the administrative powers, promoting law-based administration and safeguarding the legitimate civil rights while performing their duties granted by the Constitution and the law. Now I would like

to elaborate on certain major measures we have taken as follows:

(1) Handle timely with complaints, accusations, exposures and appeals made by citizens. The Chinese supervisory organs throughout the country work hard to safeguard these civil rights, which are not only the fundamental rights granted by the Constitution to the Chinese citizens, but also an important channel for the citizens to supervise the exercise of administrative powers. To do a good job in this regard constitutes an integrated part of the overall strategic plan of administrative supervision. In this effect, reporting centers in all supervisory organs at and above county level have been set up, while at the lower level, there are specific full time or part time officials who are performing the same duties. All the problems disclosed by citizens are handled in accordance with law and the rules of discipline as long as they are proved to be true. At present, the supervisory organs and other relevant departments have formed a comprehensive and efficient mechanism to deal with complaints, accusations, exposures and appeals made by citizens, including the system of face-to-face meeting between leading cadres and citizens, the system of giving feedback to the complainants, the responsibility system of dealing with complaints, the system of handling appeals, etc. In order to build an adequate whistle-blowing environment and unblock the channels of reporting, the Chinese supervisory organs firmly support, encourage and protect the citizens who make complaints, accusations, exposures and appeals, investigate and punish strictly those who retaliate against the whistle-blowers and those who fabricate or distort facts for the purpose of libel or frame-up. In 2003, the Ministry of Supervision as well as the supervisory organs throughout the country have received 1.47 million letters, visits and calls concerning complaints, accusations, exposures and appeals, among which more than 220 thousand have proved to be true through preliminary investigations, more than 70 thousand have been investigated and handled. In consequence, the legitimate civil rights of citizens, which are to supervise, criticize and make complaints, accusations, exposures and appeals

against administrative organs and their employees, have been safeguarded in a down-to-earth manner.

(2) Resolutely investigate and deal with corruption cases which harm the legitimate rights and interests of citizens. The Chinese supervisory organs at various levels take it as an important instrument to protect the civil rights. In recent years, we have put emphasis on the investigation of the following cases: cases of corruption and bribery; wasting and sinking public money and property; and fraud and dereliction of duties. In 2003, more than 8 thousand public servants violated the criminal law that seriously harmed the public interests and civil rights and were transferred to the judicial organs for further punishment. Through the investigation of all these cases, the legitimate rights and interests of the state and citizens have been defended. In the future, for the sake of safeguarding the vital interests of the state and citizens, the Chinese supervisory organs, while paying special attention to investigating the cases of breaking laws or regulations committed by the leading cadres at or above the county level, will pay equal attention to dealing with those grass-roots officials who seek personal gains by abusing their powers.

(3) Push hard forward with the rectification of administrative malpractices. Law-enforcement inspection, efficiency inspection and rectification of administrative malpractices are basic moves initiated by the Chinese supervisory organs in this concern, so as to promote and ensure the smooth implementation of laws, regulations and government orders and decisions. In recent years, the Chinese supervisory organs have centered their inspection activities on the problems concerning the vital interests of citizens. First is to inspect the performance of duties of the administrative organs and their employees in order to promote the administration based on law and government for the people. Second is to rectify and regulate the market order, especially the order of land and construction markets, as well as to carry out an exclusive inspection of the use of

treasury bonds in cooperation with others relevant departments. Third is to participate actively in the special inspection of production safety and the investigation of serious accidents. Fourth is to make special inspection of the working style of certain departments with regard to certain protruding problems. In 2003, more than 4 thousand administrative reporting centers throughout the country have received more than 230 thousand complaints concerning the administrative efficiency, among which 190 thousand have been handled. The Chinese supervisory organs have solved problems that damaged the interests of citizens, caused by the bureaucratism, the formalism and the dereliction of duties. In particular, we have concentrated on rectifying the malpractices that discretionarily aggravated burden on farmers. In 2003, the financial burden on farmers has been reduced by 60 billion yuan RMB. In addition, the supervisory organs also carried out special inspection of the malpractices existing in the field of education, medicine purchasing and distribution as well as medical services, and the special inspection of the illegal collection of fees, fines and illegal establishment of checkpoints on highways. In 2003, more than 600 million yuan RMB of unauthorized fees collected by the educational institutions have been returned to the students and the financial burden on students' families has been reduced by 1.7 billion yuan RMB. Through the application of the centralized tendering system of purchasing medicines, the unreasonably high prices of some medicines have been decreased. In 2003, the total sum of medicines purchased through centralized tendering system reached 40 billion yuan. In last year, more than 400 items of fees concerning automobiles and more than 400 tollgates on the roads have been annulled. Consequently, the problems of laxity and unfairness in the course of law enforcement have been efficiently solved and the interests of citizens protected. In accordance with the changing circumstances in the administrative law enforcement, the supervisory organs make more efforts to rectify the administrative malpractices arising from the expropriation of farmland, the demolition of urban residential buildings, the renovation, transformation, reorganization and declaration of bankruptcy of enterprises

and the unhealthy conducts of docking or default on wages of rural workers.

(4) Push hard forward with the practice of making public the village affairs, factory affairs and government work in accordance with the requirements of central government. This practice has been raised since 1990's and at present, the practice of making public government work, while being standardized in towns, has extended to all the counties and about 70% cities. The public institutions dealing with the vital interests of citizens have also carried out the practice of making public their work. More than 250 thousand state-owned enterprises and some non-public sector enterprises have adopted the same practices as well. The system of making public village affairs has been widely established throughout the country. Up to date, more than 90% villages have created bulletins on village affairs and founded the system of congress of villagers or meetings of their representatives. More than 85% villages have set up rules of self-governance by villagers and the code of conducts. Thus, the realization of civil rights of getting informed of political affairs has greatly facilitated the effective supervision by the general public over government work and the self-protection of their legitimate interests and rights.

(5) Push hard forward with the reform of personnel management system. The Chinese government has attached great importance to the expansion of democracy and the respect of civil rights in the course of reform of personnel management system, so as to guarantee the political civil rights to participate in the state affairs in accordance with law. In recent years, in conformity with the principles of openness, equality, competition and excellence, the Chinese government has established a comprehensive range of systems in the personnel management such as democratic nomination, democratic evaluation, multi-candidate examination and making public before the appointment. As a result, the civil rights of being informed of, participating in, selecting and supervising the personnel management have been effectively ensured. The channels of democratic supervision have

been increased, encouraging citizens to participate in the selection of leading cadres. The supervisory organs continue to oversee all the aspects of selection and appointment of leading cadres, investigate the conducts of bending law for personal gains and engaging in fraud and strive to place the power of selecting and using people under the oversight of citizens. Recently, we have been exploring the systems of resignation and tenure of leading cadres and carrying out some pilot projects, which will further stimulate citizens to participate in the personnel management, inspire their enthusiasm and creativity and better guarantee their political rights.

(6) Push hard forward with the reform of administrative examination and approval system. Excessive items to be examined or approved are not only disadvantageous to the development of the Chinese socialist market economy but also harm the improvement of the market economic system, and are likely to damage the democracy and breed corruption. In the recent two years, according to the strategic plan of central government, the Chinese supervisory organs have made great efforts to promote the reform of administrative examination and approval system. The central government departments have already annulled or adjusted 1300 items of administrative examination and approval, and planned to further handle it this year. This reform has also been carried out smoothly in the local governments. The Law on Administrative Licenses will come into force on July 1, 2004. As prescribed by this law, the matters that can be effectively regulated by the market competition mechanism should be done so; those that are difficult to be regulated by the market competition mechanism should be subject to the self-discipline management of trade organizations or intermediary institutions. In conformity with the principles of efficiency, simplicity and rapidity, the Law on Administrative Licenses regulates a range of procedures for examination and approval concerning administrative licenses, controls tighter the power exercised by the administrative organs in setting down and implementing administrative licenses, which, in turn, will further advance the

improvement of socialist market economic system and guarantee the economic, cultural and social rights of citizens.

(7) Establish a system of inviting special supervisors. Personages such as members of democratic parties and respected persons of society are invited by the Chinese supervisory organs at various levels to serve as special supervisors and participate in the supervision work. Based on their own jobs, the special supervisors play a role of democratic oversight, consultation and communication. They take part in the administrative supervision, reflect public opinions and integrate the democratic oversight exercised by citizens with the administrative supervision, so as to guarantee the legitimate rights and interests of citizens.

Ladies and gentlemen, the Chinese government has done a lot in order to build a clean government and to guarantee the civil rights. What it has done is highly accepted and appreciated by the general public. In 2003, the Ministry of Supervision made a survey by questionnaires in 10 provinces, autonomous regions and municipalities directly under the state council chosen through random sample. The result of this survey proves that 76.5% participants are satisfied with the achievements obtained in the field of building a clean government and fighting against corruption. At the same time, we are also aware of the fact that we still have a long way to go in this field, because there are still conditions and soil likely to breed corruption in the course of economic transition. The phenomenon of corruption is still serious in some areas and certain problems that damage the interests of citizens are still difficult to be eradicated in a short term. The Chinese government has taken the solution of these outstanding problems as one important part in building a clean government. The Chinese supervisory organs will further enhance their efforts to strive for the building of a clean and impartial government and guarantee the civil rights.

**Thank you.**

## **The Roles of the Ombudsman in Protecting Citizens Rights**

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Mr. Cho, Han-You  
Standing Ombudsman, Korea

## **The Roles of the Ombudsman in Protecting Citizens' Rights**

**Mr. Cho, Han-You**  
**Standing Ombudsman, Korea**

### **I . Introduction**

An ombudsman, usually appointed by parliament, is a system for protecting citizens' basic rights by conducting investigations and urging corrective actions when a citizen who has suffered from unlawful treatment by government officials or unfair administrative actions appeals for help. In other words, the ombudsman is viewed as a part of legislative control, which is non-administrative and heteronomous, as the system seeks to promote the maintenance and development of democratic administration by checking administrative power and preventing such powers from the invasion of citizens' rights.

Although the ombudsman systems that have been introduced to various countries are based on the ombudsman of Northern Europe or the classical ombudsman, some of its components have been modified to suit the particular environment of each country. For instance, in the United Kingdom, complaints are not received directly from citizens; they are accepted through members of Parliament, and the results of investigations are also reported to members of Parliament.

In addition, as the ombudsman system entered use in many countries throughout the world, an administration ombudsman was created as a result of intentional policy or actual need. In this setup, an administrative institution plays the ombudsman role by directly hearing complaints raised by citizens, investigating and judging the lawfulness and/or fairness of administrative activities, and, based on its judgment, persuading relevant authorities or reporting the actual

circumstances to citizens. A main feature is that the ombudsman is not necessarily positioned independently outside the administration. The emergence of the administration ombudsman suggests that the focus of ombudsmen is shifting from administrative control to the remedy of rights.

This shift has led to the development of ombudsman systems different from the classical ombudsman. Some examples are specialty ombudsmen such as the Offices of the Consumer Ombudsman in Sweden, the Health Service Ombudsman and the Police Complaints Authority in the U.K., the Parliamentary Ombudsman for the Armed Forces in Germany and the university ombudsman in the United States. Further, the ombudsman system has moved beyond the public sector, and migrated to the private sector as well.

It is clear that the ombudsman system has developed and changed, adapting to unique environmental factors and areas of focus in each country. In light of this, the ombudsman must be understood as a flexible, rather than fixed, concept, which can be adapted to the needs of a country, political system, society and culture. Nevertheless, the aforementioned administration ombudsman or specialty ombudsman shares the same origin as the parliamentary ombudsman or the general ombudsman in the sense that its primary purpose, in principle, is to protect citizens' rights. Therefore, the classical concept of the ombudsman and its general characteristics must first be reviewed. Only then can the status of the specialty ombudsman or its relationship with the general ombudsman be discussed. Therefore, I'd like to review "The Roles of Ombudsmen in Protecting Citizens' Rights" and the types of ombudsmen and their characteristics. ]

## **II. Types of Ombudsmen and their Features**

### **1. Classical Ombudsman**

The classical definition of the ombudsman is that of remedying infringed rights by enabling an

ombudsman appointed by parliament to quickly investigate, consult and correct unlawful and unfair administrative actions when such actions by an administration violate the rights and interests of citizens. The classical ombudsman usually has the following features:

(1) First of all, the ombudsman is a public servant appointed by parliament and does not belong to the administration. Since parliament is responsible for appointing the ombudsman, he must report his duties to parliament. Yearbooks published regularly by the ombudsman are submitted to parliament.

(2) Once appointed by parliament, however, the ombudsman is positioned as politically neutral to parliament, as a fair and neutral investigator. Therefore, it is desirable to define and guarantee the post and status of an ombudsman in the Constitution. The general practice is to appoint the ombudsman through cooperation among several political parties.

(3) The ombudsman supplements the three main powers of a nation and is not provided with a strong enough power to replace them. Therefore, the ombudsman does not have the power to revoke an administrative action like a court of justice can do. In addition, he does not have direct control over a court or an administration. In other words, the ombudsman's main authority is making an adjustment and recommending changes through the investigation and deliberation of facts. His effective weapon is a report to parliament or an announcement in the press.

(4) In an ordinary remedy procedure, a lawsuit or an appeal by the stakeholder or person in question is required. In the case of the ombudsman, however, an investigation can be opened without a filing; for instance, it can be based only on a newspaper report. This is again a key feature of the ombudsman system.

(5) In addition, the strength of the ombudsman system as a means of remediation is that its handling method is direct, informal, quick and economical. From the perspective of remedying the rights of citizens, this may be considered the ombudsman system's greatest asset.

## **2. Administration Ombudsman**

Within the framework of damage remediation, which seeks to correct administrative action following citizens' complaints, this arrangement bestows the clear advantage of ensuring that an ombudsman's actions reflect the needs of citizens. If the remedy of rights and damage is limited to a passive approach, occasions may arise when the unlawful/unfair administrative action is not corrected and when citizens who suffered are deserted and do not receive any remedy.

To avoid this, the notion of a proactive remedy should be supported. Also, efforts should be made to proactively identify the complaints and predicaments of citizens. In addition, a policy that seeks a comprehensive solution to citizens' complaints needs to be adopted.

The administration ombudsman is based on the concept of proactive remediation. As described above, for an administrative institution to serve in the ombudsman's role, the administrative ombudsman listens to citizens' complaints, then investigates and judges the lawfulness/fairness of administrative activities. Based on its judgment, the ombudsman persuades relevant authorities or reports the actual circumstances to the public.

## **3. Specialty Ombudsman**

In a few countries in Northern Europe, both specialty ombudsman and classical ombudsman systems have been used lately. Some examples include a consumer ombudsman, a press ombudsman, a health service ombudsman and an ombudsman for the armed forces. The consumer ombudsman in particular has developed quite remarkably. It was established and operating in Sweden in 1971, Norway in 1973 and Denmark in 1975.

The government appoints the consumer ombudsman to monitor market activities, ensure

compliance with the Unfair Contract Terms Act and take other measures to proactively protect consumers.

The consumer ombudsman is markedly different from the classical ombudsman as well as the administration ombudsman. First of all, it is appointed by the government. Moreover, it differs from the classical ombudsman in that it works against enterprises and aims to protect consumers. In addition, the consumer ombudsman is far more empowered than a general ombudsman; although he handles most incidents through negotiation, compulsory rights are exercised in more than a few instances. In addition, he may commence prosecution for criminal charges and propose legislative reform.

The emergence of the consumer ombudsman has created a big stir concerning the ombudsman's presence. In fact, it is in the consumer protection realm that interest in ombudsmen has risen sharply. While the response to the general ombudsman is split between supporters and critics, this new kind of ombudsman is generating a largely positive response.

The specialty ombudsman was introduced to address new kinds of disputes not suitable to the existing dispute resolution systems, to address anticipated conflicts and to lessen citizens' resistance to new policies. Some specialty ombudsmen have features of the original ombudsman, while some don't. For instance, they are sometimes appointed by parliament or require parliamentary approval, but in other cases the government or a relevant cabinet minister makes the appointment without parliament's involvement.

Meanwhile, one area that has achieved some of the greatest progress in the 1980's and 1990's is the private sector, where the ombudsman concept has been newly extended, either voluntarily or based on legal grounds. The ombudsman system became an influential force in commercial and industrial sectors to protect consumers. It often provides the only opportunity for a third party to effectively resolve problems encountered by consumers in industrial and commercial areas that provide services that are as vital as administrative services. Some commercial fields where the ombudsman may be applied are financing, insurance, lending, savings, accounting services and legal services. Like the general ombudsman, the corporate ombudsman is not

empowered with a legal right to collect information from a third party, or with the authority to obtain evidence by summoning witnesses under oath to formal hearings. However, both are on the same track in the sense that they all try in principle, to protect the rights and interests of citizens, who are also consumers.

### **III. Roles of Ombudsman**

The ombudsman system has evolved from the recognition that parliament, representing people in a modern society whose governments' functions are more numerous and expansive than ever, needs to monitor the performance of public servants in addition to using traditional administrative remedies to adequately protect citizens' rights and interests. In this context, the ombudsman performs the following functions and roles:

(1) The ombudsman performs an administrative controlling function in the sense that he judges the adequacy and lawfulness of an administrative action through a legal interpretation of the action. In other words, he settles disputes by correcting and preventing discretionary administrative actions through legal interpretation. In addition, he promotes efficiency by providing criteria for dealing with administrative matters.

(2) The ombudsman plays the role of social safeguard. For instance, he provides citizens the opportunity to request a fair investigation, at relatively low cost, of the fairness or lawfulness of an action taken by an administrative institution. He also clarifies accountability and helps the administration carry out its duties by clarifying the administration's interpretation of laws and procedures and offering other guidelines. The presence of an ombudsman solidifies the principle of "rule of law" in an administration and encourages public servants to take administrative actions with great care, always aware that an ombudsman may evaluate them.

(3) The ombudsman effectively performs a dispute settlement function. In an ordinary administrative remedy procedure, a lawsuit or appeal by a concerned party or stakeholder is

required. However, an ombudsman can open an investigation by virtue of his position, even if no formal complaint has been filed. Moreover, an incident can be handled directly through an informal procedure, at no cost. In this context, the ombudsman performs an effective dispute settlement function.

(4) In addition, the ombudsman serves to improve relations between citizens and the government. It is no exaggeration to say that governments are deeply involved in the daily lives of citizens and nothing is irrelevant to an administration today. On the contrary, citizens do not have easy access to government, and even when they do, it is generally not on equal terms. For such reasons, a unilateral relationship between a weak individual and a gigantic government usually develops. From the citizen's perspective, the ombudsman eases this unequal relationship, improves a relationship involving difficult accessibility, provides citizens with information on the administration and reduces the number of problems citizens have with the administration. From the administration's perspective, the ombudsman promotes and helps to humanize the administration.

(5) Functions or roles that should be added to the ombudsman's position are those of intercession, arbitration and mediation, to address the limitations of the judicial remedy system that stem from the limitations of law. A law is a minimum norm to maintain social order. Therefore, the domain of the law is fundamentally limited by nature. No matter how great the law is, there always exists a dead spot that cannot really be addressed by the law. The relationship between the administration and citizens is like that between ruler and subject, with the law related to administrative actions serving as intermediary. However, the innate limitations of the law may cause conflicts that cannot be resolved by the two parties involved. Due to the incomplete nature or absence of the law governing them, in many instances, a third-party institution needs to mediate or arbitrate the conflicts. As described, the ombudsman can perform an arbitration and mediation role in areas where the administration and citizens cannot independently resolve their differences.

(6) In addition, the ombudsman needs to increase the transparency and openness of an administration. Compared to the past, administrations are moving toward greater transparency nowadays. The desire for an administration that is more open to the public may be viewed as a yearning for administrative democracy. In a few countries today, a special ombudsman system focused on information disclosure has been introduced. As shown by this example, an ombudsman must make public those areas of a "closed" administration that have been criticized and fulfill the citizens' "right to know."

(7) The ombudsman also needs to work on improving unreasonable laws and systems. Until now, nations have carried out administrative functions with their administrative institutions positioned as superior to individuals. Citizens were not allowed to participate in administration in advance, and it seemed acceptable for the individual to be at the complete mercy of the institutions. The legality of an administrative action has long been viewed as the responsibility of the institution; a follow-up review, when required, was considered an adequate measure in guaranteeing the rights of citizens. However, such a post-remedy review occurs only after the rights and interests of citizens have been violated. Therefore it is flawed, for one cannot expect that remedying a violated right is equal to a situation where citizens' rights or interests were never violated in the first place. As the scope of administrations continues to expand, the flaws of the post-remedy system are becoming ever more apparent.

Therefore, the ombudsman needs to show interest in, and fulfill its role in improving such post-remedy systems as well as taking a preventative, proactive approach to improving laws and systems that are unreasonable or cause citizens inconvenience or burden.

#### **IV. Next Steps**

The ombudsman system is a means of remedying infringed rights and interests that enables a government or parliament-appointed ombudsman to take quick corrective actions when the rights and/or interests of citizens have been violated by wrongful administrative actions. For this system to provide effective remediation, the following requirements must be met:

(1) The ombudsman must be assured of independence in performing his duty. Rigorous independence and political neutrality of the ombudsman is an essential element in retaining the authority of an ombudsman who articulates wisdom. Because the ombudsman's decision is not legally binding and functions only as a recommendation, the office of ombudsman should be stipulated in the Constitution to assure its authority, and with it the execution of its recommendations. In addition, the ombudsman should be provided immunity, and not held accountable for decisions made while in office. The immunity clause is a fundamental factor in securing the independence of the ombudsman and weighs heavily in elevating his authority. Therefore, the immunity of the ombudsman needs to be clearly stipulated in the Constitution or the law to foster an environment where the ombudsman's recommendation is naturally accepted.

(2) In addition, the ombudsman should be authorized with official investigative rights. For the ombudsman to achieve his objective - the remedy of citizens' rights - he should have a right to personally select an area of grievance that will have a large impact or that requires legislative amendment as a key initiative, and investigate and deal with it proactively rather than taking a passive approach to complaints. The official investigative right of the ombudsman is driven by the ombudsman's doctrine, which aims to protect citizens' rights by acting aggressively to resolve their problems.

(3) To ensure that an ombudsman's recommendations are executed, the ombudsman should be given the authority to make an annual report to the leader of parliament or other administration on the operational status of his office. Whether in a presidential or a parliamentary cabinet system, recognition of the ombudsman's right to make an annual report to these institutions will serve as substantial and powerful support for the ombudsman. In particular, if parliament, an essential intermediary, is not enlisted as a supporter, the ombudsman system may exist in name only and its integrity may be doubted. Therefore, the ombudsman's report to parliament is essential.

(4) In addition, the ombudsman should have expertise. Since the ombudsman convinces and issues recommendations to the administration based on its social authority, the administration easily accepts the recommendations.

However, in light of the growing complexity and diversity of the administrative environment, the moral authority of the ombudsman may not be sufficient for persuasion. Therefore, it is inevitable that the ombudsman possesses specialized skills for investigative duties. Furthermore, for a civil petitioner seeking an ombudsman's help, the most important thing is an adequate and fair investigation of his complaints. In handling complaints, the ombudsman must actively listen to the opinions of civil petitioners and relevant administrative authorities and improve the objectivity and fairness of the investigation through rigorous fact-finding efforts on points of contention.

The modern administration is faced with requests from the public for a better quality of life, better education, better health services and better protection of social values. As such, the role of the modern ombudsman is expanding in line with the ever-widening roles of modern administrations. The enlarged role of ombudsmen is resulting in the spread of the ombudsman system to the private sector in addition to the public sector.

The emergence of specialty ombudsmen in special sectors or the private sector is creating a huge ripple effect on the existing forms of ombudsmen. Their emergence may result in the degradation of the general ombudsman's status to an obsolete institution that only handles agendas shunned by the newly emerged specialty ombudsmen. In fact, in Austria and Canada, where specialty ombudsmen have been set up, it has become increasingly challenging to secure budgets and human resources for general ombudsmen's activities.

Moreover, general ombudsmen have found it difficult to earn respect for their recommendations; in fact they were nearly ignored. In light of these trends, the positioning of a specialty ombudsman is a critical and troublesome issue. However, since the specialty ombudsman also aims, in principle, to protect the rights and interests of citizens, it should be positioned and further developed in a direction that creates harmony and mutual cooperation with the general

ombudsman. In addition, in order to effectively remedy citizens' rights and interests in areas where the public and private sectors converge, an organic cooperative system of ombudsmen who have jurisdiction over relevant areas needs to be established.

(5) As the relationship between citizens and the government evolves to an equal relationship driven by the participation and cooperation of citizens, the ombudsman is asked to play an intermediary role between citizens and government.

In the past, citizens were positioned as objects of an administration. However, as democracy expands today, citizens are no longer positioned merely as objects of an administration. Their role as subjects who actively participate in the administrative process is increasingly stressed, as citizens seek to convey their opinions to the government and have them reflected in the administration.

It is very difficult, however, for each individual to deliver his or her opinion directly to the government and have it cooperate by incorporating it into the administration. Citizens need an institution that plays an intermediary role between themselves and the government by accurately delivering their opinions to the government and having them reflected by the administration.

Although such a role is partly played by citizens groups in the private sector, the ombudsman is newly sought out to play an intermediary role between citizens and the government in the public sector. Therefore, while enhancing its relationship with citizen groups, the ombudsman should understand the opinions of citizens to deliver them to the government as an intermediary between citizens and the government and play a role in reflecting their opinions to the administration.

The ombudsman is not simply an administrative institution that handles complaints. It is a system that is run by society. Therefore, without the voluntary participation and cooperation of members of society, the ombudsman cannot perform his functions effectively. Accordingly, citizens and ombudsmen should fulfill their roles as cooperative partners in facilitating policy execution as well as monitoring administration.

# **The Ombudsmans Mandate in Relation to the Nations, the European Union and in Global Relation**

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Prof. Barnabás Lenkovics,  
Parliamentary Commissioner for Civil Rights  
Hungary

## **The Ombudsman's Mandate in Relation to the Nations, the European Union and in Global Relation**

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**H**ungary celebrated the millennium of the foundation of the state in the year 2000. The Hungarian state was then 1000 years old while the institution of the parliamentary commissioner for civil rights was 6 years of age. What was the reason of the creation of this new institution in the Hungarian constitutional system, what scope of duties does it perform, what emphases does its activity have in the present, and what future does it look forward to in the perspective of the EU membership of Hungary?

I. 1. Human rights, that were formulated as a reaction to two World Wars and the totalitarian dictatorships of the 20<sup>th</sup> century appear in today's national legal systems as fundamental constitutional rights. These rights are dissolved into faculties (civic rights)—that are strengthened by guarantees of material and procedural law—through acts that are in accordance with the new value-system of human rights and the requirements of constitutionalism. Thus, all the organs of a state are obliged to ensure, protect and enforce these fundamental rights through faculties (civic rights).

However, even the best functioning democracies with the longest traditions had to face that this obligation can not be totally fulfilled by every organ of the state. This is why the democratic structure of the constitutional state—defined by the classical paradigm of separation of powers in the age of the enlightenment—had to be amended during the 20<sup>th</sup> century even in those western states where the universal development trend of human rights was not distorted by the temporal domination of totalitarian ideas. In order to eliminate the defects of the self test mechanisms of the state power, to amend constitutional guarantees, to strengthen the control of the parliament over the

administration, the institution of a parliamentary commissioner, the Ombudsman—independent of the administration and the jurisdiction—has proved to be an effective solution in western democracies. ]

In Hungary, which is a state that returned to the rule of law after a totalitarian political system, the important reason of the establishment of such a complementary institution for the enforcement of human and constitutional rights was not only an adaptation to the universal development trend of human rights, but it also served the increased need to guarantee the protection of the reborn rule of law and democratic system. From this perspective, the young institution of the Ombudsman in a young constitutional state carries an increased importance because of the social imbalances and political habits inherited from the past socialist system.

The domination of human rights and constitutional requirements—which we have gained back as the fruit of freedom—is primarily controlled by the Constitutional Court. For this reason, the positivist definition is not exactly accurate, namely that an act or other regulation is valid if the organ vested with legislative powers created and proclaimed it in a due process. An act—beyond these formal requirements—is only valid if it is materially constitutional as well, and lives up the standards of human rights and fundamental freedoms. It is to be mentioned here that Central-European constitutions that were born during the great transition pay an increased attention to the compliance with the values of the international system of human rights, and to their role in the formation of the national legal system. According to this and in terms of our accession to the EU we take the leading cases of the European Court of Human Rights into consideration during our activity on the field of the protection of human rights; in some of our proposals we referred to such judgements. Inasmuch as this starts to be a general international practice, a uniform human rights practice (unwritten law) is on the way of development among organizations for the protection of human rights all over the world.

If we consider the Constitutional Court as the guardian of the constitutionality of legislation, the Ombudsmen in the rule of law system are to be regarded as the custodians of the constitutionality of the enforcement of law. In this sense, the transmission of the decisions of the Constitutional Court into practice and their practical enforcement are among the main goals of our activity. (According to this,

in more and more proposals—besides the references to laws—we emphasize the frameworks, values and principles set down in the decisions of the Constitutional Court.) Naturally, the Constitutional Court itself refers to the judgements of other constitutional and human right courts, and thus the interpretation and domination of basic rights becomes more uniform in European and global relation as well.

The enforcement of human rights is naturally a continuous, primary and unconditional obligation of every authority and public service provider. The Ombudsman steps up only if the suspicion of the abuse of powers rises based on an examination commenced upon complaint or *ex officio*. Given that he does not have an imperative power, the Ombudsman can propose or initiate the prevention of said abuse of powers. The professional argument referring to basic values, which is always supported by the international truthfulness of human freedom rights and their power that shapes history, has an exceptional importance. In addition to the above, the willingness to help, the intention to cooperate with the addressed organization is also of a great importance, knowing that constitutionality raises new and higher quality standards against the attitudes of the power and the routine of the administration.

The common goal, to make it simple, is—among others—the humanistic state and good administration and citizen friendly public service. In the Charter of Fundamental Rights of the European Union (article 41) it is phrased as the citizens' right to good administration. This means that the Charter ensures that every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union; as well as the right to appeal. This right includes the right of every person to be heard, before any individual measure which would affect him or her adversely is taken and the right of every person to have access to his or her file. It was the European Ombudsman who made efforts in order that the regulation of the Charter have real effect and a uniform measure be set for the administration when he managed to implement *The European Code of Good Administrative Behaviour* on the basis of the experience of his practice. This example can be especially authoritative and impulsive for the new member states and simultaneously gives an idea of one of the important European perspectives of the national Ombudsmen institutions.

Good administration can only be reached by common efforts. Therefore, the Ombudsman and the administration accept the necessity of mutual cooperation on "both sides". According to our experience it can be stated that the success of the enforcement of constitutional requirements was the fullest in the fields where cooperation has been developed. It can be generally stated that in Hungary the acceptance of the proposals of the Ombudsmen and the cooperation in order to fulfill their requirements has been strengthened.

The recent and inspiring proof of that is that in some cases a leader of an institution or an administrative body, or a public service provider, in order to prevent possible complaints, requests the proposal of the Ombudsman on constitutional requirements before the inauguration of a planned measure. The wide range of this phenomenon naturally means new challenges and new tasks for the Ombudsman; nevertheless we are prepared for that.

I. 2. Allow me to say a few words about one of the unfavorable factors of our situation in Hungary, although this is a worldwide problem which was already discussed on an international level. It is the role of the multiplying special commissioners and "Ombudsman-like institutions". Last year at a conference somebody said that in some countries there is practically an "Ombudsman mania". Although this "popularity" is honorific because it directly proves the success and the usefulness of the institution, there are some dangers inherent in it.

In the Hungarian constitutional system a commissioner with general competence functions with a deputy commissioner and two special commissioners who deal with data protection and ethnical minorities. Recently it has become a government practice that for some special tasks (e.g. for the promotion of equal treatment in the society) the government authorizes commissioners. Even more frequently ministerial commissioners are or are to be authorized to monitor certain special topics like education, environmental protection, youth and children, moreover, the enforcement of the interests of children with disadvantageous background, etc. So, on the higher levels of the administration so called "Ombudsman" civil servants are or planned to be employed.

These commissioners, on the one hand, deal with cases that have been examined and monitored with regard to basic rights by the Ombudsman and, on the other hand, they are civil servants functioning inside the executive branch, thus the monitoring competence of the parliamentary commissioners extends to them. However, as a consequence of the larger budget of a ministry the paradox situation may arise that a ministerial commissioner might have greater publicity than a constitutional institution, i.e. the parliamentary commissioner. The consequence of this is the reduced amount of complaints received by the parliamentary commissioner, the confused knowledge in the citizens' mind in connection with the function of the Ombudsman. Naturally, these phenomena may endanger the constitutional status of the Ombudsman.

According to the Hungarian Constitution the Parliament elects an Ombudsman in order to investigate or to have investigated any abuses of constitutional rights he has become aware of and to initiate general or particular measures for the redress thereof.

The parliamentary commissioner—although he receives his mandate from the Parliament—is independent even of the Parliament; his measures are initiated only on the basis of the Constitution, the human rights' conventions and the national laws. The impartiality and independence of the parliamentary commissioner is also served by the regulation of the act that the holding of some offices (e.g. member of the government) in four years before his/her election excludes the possibility of being elected. Independence is also guaranteed by the fact that the Ombudsman is elected for six years which differs from the four year term of the Parliament. The severe regulations of the conflict of interest also strengthen independence and impartiality, e.g. the mandate of the Ombudsman shall be incompatible with any other state, local government, social or political office or mandate, or beyond the tasks resulting from his sphere of authority, the Ombudsman may not pursue any political activity, he may not make any political declarations.

I. 3. There is a question which differs from the problem of the special so called "commissioners" who are limited to a very narrow competence: it is a current Hungarian non-governmental initiative that intends to enact the institution of the parliamentary commissioner for the rights of the next generations. According to

this idea, the function of the new commissioner would be to articulate, represent and enforce those requirements that serve the interests of the next generation. This is an exceptionally difficult problem which has a number of branches. Presently we can only deal with the question from the aspect of the necessity of such a new commissioner: is it possible to integrate the representation of the interests of the next generation into the present structure?

The important public decisions, acts, also the Constitution itself, *prima facie* come into existence as the result of different interests of the society in a democratic country. Namely, every layer of society has its current interests that become social norms through the institutions of popular representation.

The root of the problem is: who constitute the community of a state? Only those who are able to enforce their interests effectively or those too who are not able to do that for some reasons? Whose interests should be taken into consideration? Only the interests of the privileged who have the means to shape *volonté public* or those citizens' interests as well who do not have the opportunity to do that? Democracy means the acceptance of the latter answer. In a democracy those poor, weak and disabled who are unable to enforce their interests are also inside the fortification of the Constitution. Every Ombudsman is obliged to protect their rights and interest.

To proceed along this logic, the unborn ones are the most defenceless when their interests have to be enforced in important social processes. It can be stated that our democracy is not complete until there are persons who are defenceless against the arbitrary decisions of the ones with better ability to enforce their interests. Moreover, our democracy can not be complete until our descendants' interests are violated because of our decisions.

This sequence of ideas leads to the thought that a democratic constitution prevails satisfactorily only if it serves under its jurisdiction the joint and at the same time more complete interest of the community—living and yet unborn ones as well. The constitutional institutions play their part properly if they enforce this requirement. The institution of the Ombudsman contains the realization that the traditional elements of power—such as the Parliament and the Government—are often inferior to the will of the governing economic and political elite. Therefore, it is necessary to have such

constitutional institutions that are independent of everything and everyone, i.e. only the Constitution rules them. The Constitution which—as we believe—protects our descendants already today define the frames of their future life as well.

Taking all these into account, there is no doubt that the Ombudsman's institution by virtue of its gist and the inner logic of its birth serves the interests of all future generations by serving the value and spirit of fundamental freedoms and human rights. The protection of the rights of the future generation does not change, and it will not be more effective if a new institution becomes established. Every Ombudsman is at the same time the Ombudsman for the future generations, otherwise (s)he can not be called an Ombudsman.

Therefore, it is more important that the legal and financial scopes of the present Ombudsman institutions be adequate with the help of which the Ombudsman can step up more efficiently and successfully in cases affecting the future generations, such as the protection of the environment or sustainable development. This is exactly one of the greatest tasks and the widest perspective of the Ombudsman institutions in the future in every country.

**II.** The revolution of human dignity abolished the privileges of birth in the mid-19<sup>th</sup> century in Europe and laid down every person's general, equal and absolute legal capacity, individual freedom, the equality before the law, the freedom of private property and contracting as constitutional principles. The freedom of individuals involved the freedom of thought, the freedom of conscience, the freedom of the press and the right to freely express one's opinion. The right of assembly involved the freedom of establishing associations, trade unions and political parties as well as the self-organizing of civil society. The freedom of property involved the right to individual and joint enterprise, and the freedom of competition.

The abstract ideals, the fundamental and the declared rights are always fairer and purer than their practical realizations. The privileges of birth were replaced at the beginning of the formation of civic society by the privileges of wealth which arose from the inherited or the newly earned financial discrepancies. As a result, civic society also

split at the moment of its birth, and besides the demand for freedom, the demand for equality or at least for equal opportunity arose.

From the end of the 19<sup>th</sup> century the first wave of civil liberties was followed by the so called second wave of social rights. With the acceptance of the social rights, the European states tried to prevent the radicalism of scientific socialism and wanted to comply with the recommendations of the *Rerum novarum* encyclical letter of POPE LEO XIII.

The intervention and operation of the state has become more extensive, the number of state obligations for the good of its citizens increased in the social field, i.e. in the scope of health, welfare, cultural, educational then—by necessity—economic matters. The paternalist state looks after every citizen to a growing extent, but in return it bought its citizens' and was ready to obtain total power over the whole society in the form of so called corporative, national socialist fascistic or communist dictatorship.

The 20<sup>th</sup> century—especially in Europe—was filled with the horrors of totalitarian dictatorships which neglected fundamental freedoms and human rights, and annihilated tens of millions of human lives. These horrors had such an effect on mankind that it dawned on the real weight and importance of human rights and fundamental freedoms. The third wave of legislation and protection of human rights started with the Universal Declaration of Human Rights of the UN in 1948 which extended to all parts the world trying to find balance among civil and political liberties, economic, social and cultural rights, and the self-organization of civic society as well as the organizational tasks of the state, rather than its powers. The Charter of Fundamental Rights of the European Union, proclaimed in Nice, fit in this universal tendency as one of the latest document on this subject. The Charter declares the EU citizens' political, economic, social and civic rights in six chapters. These rights are based upon the rights and freedoms declared in the Convention for the Protection of Human Rights and Fundamental Freedoms and the common constitutional traditions of the member states. The Charter already reflects the unity and balance of "freedom, justice and solidarity".

The statistical facts of the Ombudsman's practice reflect this system of rights. For instance the ten constitutional rights most frequently affected by improprieties were as follows: 1. rule of law, legal certainty, sovereignty of the people (33,9%), 2. right to

property (11,3%), 3. right to legal remedy (10,7%), 4. right to the highest level of physical and mental health, right to a healthy environment (9,5%), 5. right to life and to human dignity (6,5%), 6. right to social security (4,6%), 7. right to petition or complaints (3,1%), 8. discrimination (2,8%), 9. right to issue decrees by local representative bodies (2,7%), 10. right of the children and their parents (2,8%). It is visible that the first and second generations of human rights both appear in the Hungarian Ombudsman's practice.

II. 1. It is our steady belief that in Hungary the fundamental institutions of the constitutional state operate adequately and the authorities have respect for the constitutional rights during their proceedings. A deliberate injury of the constitutional rights has not occurred, and the majority of the constitutional improprieties arose because of negligence or the lack of organization and these were promptly remedied as a result of the Ombudsman's observation and/or recommendation. There were no flagrant cases of the attitude or negligence of authorities which could have threatened or violated the basis of the constitutional state.

In most of the examined cases the authorities have violated the right to legal certainty, which is a part of constitutionality and the right to fair proceedings, which originated from the right to legal certainty. One of the possible reasons for this phenomenon is that the cases of the authorities became more complex, therefore, they can hardly be followed by citizens. Moreover, the complexity of the cases might make the procedures chaotic which can affect those citizens' possibility to exercise their rights who are less familiar with legal problems.

At this point, in connection with the first generation of human rights, attention can be directed at two phenomena, partly new but already existing worldwide, which signify some correction and developmental perspective in the future compared to the classic approach and practice.

a) The first generation of human rights is generally separated from the second generation upon the criterion that in the first case the passivity of the state is typical, the forbearance of intervention in the private sphere and in the freedom of persons are its peculiarities. In the second case it is rather the activity of the state that can be marked, the

active participation of the state in the interest of the emergence of economic and social rights by the help of creating a system of institutions and setting up sufficient conditions. There is a phenomenon in connection with the development of political systems: in the interest of the protection of political rights the active participation of the state appears, first in a narrow circle, e.g. the state finance of political parties as constitutional political institutions. } Examples for such practices taking place within the framework of the development of the protection of fundamental rights can be found in the experiences of our Office.

{ The observance of the law and the assurance of legality and lawfulness are fundamental requirements of the procedures of authorities. But the requirement of "constitutional administration" signifies more than the mere observance of legality. This is only the *sine qua non* condition of a constitutional administration. The principle of fair procedure of the authorities developed and adopted by the parliamentary commissioners' practice aims precisely at the expression of that surplus constitutional value which is the concomitant of constitutional implementation. The function and operation of the authorities not only have to be lawful, but also efficient, suitable, just, humane, i.e. they have to respect human dignity in the particular case. }

In connection with these cases the following thesis was formulated as a general directive: "The obligation of the state to respect and protect fundamental rights—such as the right to non-discrimination—concerning citizens' fundamental rights does not mean the forbearance of their violation, but includes that the state has to provide the adequate conditions for the emergence of these rights. The protection of fundamental rights includes the obligation to ensure the personal and organizational conditions which are necessary for the emergence of fundamental rights."

Therefore, the obligation of activity on behalf of the state has become wider in connection with the first generation of human rights, which appears principally as the obligation to ensure the democratic rule of law and operation of public services and public administration.

β) There is another remarkable factor in the field of civil and political rights that has to be mentioned. It is the unlimited character of some rights when the formal respect of them may become a threat on other freedoms and human rights. In our days the independence of the judicial branch is sometimes more endangered by the media than the Parliament or the government. The media can find a case, hear the trial, pass a judgement, find somebody guilty or not, while the police have not even started the investigation or there has not been any court trial as yet. Therefore, the media—and this is a worldwide phenomenon—might be a larger threat on the independence of judges and Ombudsmen than constitutional institutions like the parliament and the government, which function as checks and balances in the traditional system of the separation of powers. From another aspect, it is accurate to state that the most fundamental human rights might be more threatened by the media than by the constitutional institutions—it is enough to refer to the reality shows watched by millions in Hungary too. The Ombudsman has no direct competence to investigate the TV programmes, which prohibition bases on the freedom of the media. Despite the problem that in these shows the participants are not considered as being personalities or legal entities any more, but as legal objects. The most dangerous and sad aspect of this phenomenon is that the participants are used to destroy their own personality, dignity and legal subjectivity publicly, as subjects to the TV programmes by neglecting the respect for human dignity, personality and self-determination.

Consequently, the necessity of limiting certain rights has been brought up in the scope of some freedom rights, however, it is important to emphasize that the limitation and control should be used only in order to protect more efficiently other unalienable human rights of human beings of a personality, representing human value themselves.

[ II. 2. The second generation of human rights—the economic and social rights— on the whole are to be considered as unalienable from mankind as the civil and political rights by the reason of the necessity of subsistence. Existential security is the most elemental demand of citizens—even before the establishment of any state. The encyclical letter of the Pope, *Rerum novarum* has also pointed out that: “man precedes the State, and possesses, prior to the formation of any State, the right of providing for the substance of his body”. ]

Nevertheless, it is indispensable that the states guarantee and protect all these rights in their whole without any selection. The history of the last half century of communism is an expressive example of the social, economic and moral depression that has been caused by the confusion of rights. By the ignorance of civil and political rights, the economic and social rights became important and exclusively respected in a way that the most important of them, right to property—which is the precondition of individual autonomy and safety—was technically annulled.

The violation of the right to property caused serious social wounds that can not be easily healed. Obviously, the aim and sense of every work is to raise the material goods for the worker and for his/her family, and to own these goods as a private property. The employee's labour and diligence is offered to the employer with the aim to gain the means necessary to sustain life. The employee, by finishing a work acquires the right for a wage and the right to make use of that wage as (s)he likes. So, if an employee by cutting costs spares an amount and invests it for example into a real estate in order to ensure and defend its value, this property is the wage in another form and thus the employee has the right to deal with that property just as with the wage of the work. The ignorance and violent denial of this fact contributed to the dissolution and weakening of the families, the general shrinkage of economic sources, the formation of a general and equal poverty and defencelessness throughout the society.

It has been proven that it was the precondition of the social and economic transition to end this lack of equilibrium—which had developed from the denial of the right to private property and from the absolute domination of the social care of the state. This took place in Hungary with the modification of the constitution in 1989 which declared the right to private property but in the meantime declared the principle of proportional contribution to public revenues.

Based on the experience of the Ombudsman, it can be stated that it is not possible to repair all the discrepancies of several decades in an instant, and this situation faces us with special challenges even today.

The Ombudsman's main duty is to make citizens understand that instead of the accustomed economic and social rights approach—that was transformed into a civic right (faculty) approach—they have to acquire a new kind of attitude; an attitude where right

does not necessarily mean a 'patrimony' or a state aid, but a framework of fundamental rights and a sensitive equilibrium of constitutional rights and obligations. In a market economy everybody has to manage his/her own prosperity and subsistence; the constitutional institutions ensure the frameworks and—on rare occasions—the correction mechanisms.

On the other hand, this approach must not mean that the protection of citizens who have fallen out of the network of their well accustomed civic rights and who sense only the disadvantages of market economy ("the losers") should be weakened by the reference to fundamental rights. Therefore, the Ombudsman has to make efforts in order that these fundamental right frameworks and correctional mechanisms be filled by the legislation and the government with as much favorable content as possible; in other words the Ombudsman has to protect the economic and social rights, but not as civic rights that are drawn from a collectivist approach, but as fundamental constitutional rights that are in accordance with other rights of the catalog of human rights.

Consequently, the Ombudsman has to consider the other parts of the constitutional infringements, i.e. when an authority does not ensure the appropriate degree of a human right. The character of the social and economic rights assumes a definable minimum level that has to be fulfilled. This level depends on the economic capacity of a state and the redistribution of goods by the state; and that is why sometimes it is not easy to determine the standards that have to be sufficed and the higher requirements that should be achieved above the minimum standards. According to our standpoint the notion of these constitutional rights contains expectable standards from an authority in a given situation. If it fails to achieve this standard level, it causes an abuse of constitutional rights. Therefore, it is always necessary to compare the rights and the possibilities, and to initiate the required corrections in accordance with the changes of economic and social development.

The application of the right to housing is a good example. According to the Constitution citizens of the Republic of Hungary have the right to social security, and the Republic of Hungary shall provide support for those in need through a wide range of social measures. Because of the climate of the country, a home with heating facilities is a basic condition of the protection of life. The constitution—with the above mentioned

formulations—recognizes the right to existential security as a fundamental constitutional right. The problem of housing affects the society in the widest scope. Depending on the social situation of a complainant, the problem is different and requires a different solution. The Ombudsman has always paid a focused attention to the groups of the society which have weaker ability to enforce their interest or totally lack this ability. Therefore, the Ombudsman declared that the evictions executed in wintertime directly endanger the life of citizens, thus it is contrary to the Constitution.

The right to social security contains the guarantee of a minimum standard of living provided by the state through social allocations. In order to ensure the citizens' right to allocations which are necessary for subsistence the state is obliged to establish, maintain and operate the social security system and the system of social institutions. During the establishment of the system of the rights to allocations that are necessary for subsistence, it is a basic constitutional requirement to protect human life and dignity. In compliance with this obligation, the state shall provide the support for the basic conditions of subsistence, thus for a temporal lodgement in order to prevent the direct danger on human life in the case of homelessness.

The accession of Hungary to the EU carries an opportunity that the means of the state may be widened in the field of filling the frameworks of these rights. The Community's funds will not only offer an opportunity for that, but they will also define a kind of obligation for the new member states; even the preamble of the Treaty establishing the European Community deals with this question thoroughly. The aims of the member states are *inter alia* to ensure the economic and social progress of their countries by common action, to make efforts for the constant improvement of the living and working conditions of their peoples, to guarantee steady expansion, balanced trade and fair competition, to strengthen the unity of their economies, and to ensure their harmonious development by reducing the differences existing between the various regions and the backwardness of the less-favoured regions. It would be lucky and useful, if we could consider said theories as fundamental theories not only to the European Union but also beyond its borders, those of a "World Union".

For this reason, the recommendations and initiatives of the national Ombudsmen are motivated by the aim that the government and every competent authority should widen the extent of the basic theories and requirements according to the economic potential of the country.

The Ombudsman's mandate in this social situation, which is still in "transition" from the past, the present to the future, is to contribute—by his own means and by his practice motivating the enforcement of fundamental rights—to the emergence and harmony of these two main forces: individual effort and support from the community, i.e. freedom and security respectively. This is the international obligation of every national ombudsman.

The Hungarian ombudsman has been a member of the European Ombudsman Institution (EOI) with voting rights, which Institution includes all European national Ombudsmen and member of the International Ombudsman Institute (IOI), since its first election in 1995. The institutions of Ombudsmen are as coloured as many countries there are. Moreover, there are only a few similarities among the institutions of Ombudsmen worldwide, among which the ombudsmen can be made up in groups. The Ombudsmen share their experience regularly in the framework of these international institutions. This sharing can be kept continuous by using the Internet and distributing printed material, while personal relations can be ensured by annual and ad-hoc meetings and round-tables. The international co-operation is not easy because of the differences in the organisation, competency and the working methodology of the Ombudsmen, though the main activity aim is similar: promotion of the human rights and basic freedoms in the UN and the European Union.

{Neither the organisation of the rule of law administration, nor the interpretation and enrichment of the human rights is a completed task yet, both are rather worldwide processes in national, European and global structures, which have only started by now, at least from a historical point of view.

On top of that, we are facing serious problems resulting from the international terrorism. The spread of terrorism has strengthened the claim of the society for more security and the right of the society to public security, nevertheless; the fulfilment of said

claim results necessarily in weakening the individual freedoms and it may provoke the state's response in the form of claiming more power. As it seems, while as Rousseau described, people abandoned their natural liberty for social liberty; nowadays people need to abandon their individual security for the security of the society. The main problem remains to find the balance in abandoning liberty for proper increase of security.

Further, the cultural and social difference of the meaning of human rights and basic liberties can be held as the main reasons for terrorism. S.P. Huntington warns in his famous book, that it may come to the "clash of civilisations" in the 21<sup>st</sup> Century. We also heard the frightening prophecy reflecting to this new danger and the horror of the 20<sup>th</sup> Century, that the 21<sup>st</sup> Century will either be the century of love or there won't be 21<sup>st</sup> century at all! Love means in the language of law: being tolerant in respect of human rights not only to other people, minorities or different people, but this "legal love" is also applicable to the different values of different societies. The solution of this problem cannot be to strengthen the differences and to overstress those, but to the contrary to prevent the stress between cultures. This shall mean in the field of human rights, that instead of underlining the differences, we should seek for the similarities in the different cultures and highlight those. We may call them "minimum human rights", which may be acceptable to the dozen bigger civilisations of our earth. Finding these minima is the most urgent and most difficult task of the 21<sup>st</sup> century in order to avoid the clash of civilisations. These minima can be made wider, then, step-by-step, by peaceful instruments. It would be easier to complete this task, if we could agree on said "minima" behind our national borders by applying the greatest possible tolerance. Should these understandings of ideologies, politics or passing or applying law clash, we must seek consent by peaceful co-operation. At this task, the Ombudsman is and remains your man in any country at any time! ]

Thank you for your kind attention and patience.

# **THE ROLE OF OMBUDSMAN IN SAFEGUARDING CIVIL RIGHTS**

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MR. JUSTICE SALEEM AKHTAR  
FEDERAL TAX OMBUDSMAN, PAKISTAN

## THE ROLE OF OMBUDSMAN IN SAFEGUARDING CIVIL RIGHTS

**MR. JUSTICE SALEEM AKHTAR  
FEDERAL TAX OMBUDSMAN, PAKISTAN**

The Institution of Ombudsman in the later half of 20<sup>th</sup> Century has established itself as an independent oversight organization efficaciously providing relief to common man mostly the deprived lot of the society. Its acceptability and popularity can be judged from the fact that today this system finds place in more than hundred countries. The concept of Ombudsman originated from a desire and now a demand to control the Administrators and to provide relief to public against injustices. The main object of the institution is to protect the people against violation of rights, administrative excess, abuse of power, illegal acts, denial of justice, discrimination, unfairness and maladministration.

It is intended to introduce accountability and transparency in the administration thereby creating trust, confidence and certainty. Civilian oversight concept has developed world over. This trend is fast developing in as much as besides Ombudsman appointed by the government private ombudsmen are being inducted to oversee the implementation of agreements amongst private parties. Even international agreements and covenants have introduced Ombudsman to oversee its proper and smooth implementation. He is playing the role of administrative adjudicator. 'There are national, regional and local ombudsmen.

They all have in common. They are democratic institutions based on the recognition of fundamental rights of the individuals and the principles of rule of law'. With the efficacious and effective remedy provided by Ombudsmen, this institution is now well recognized as a part of Administrative law and is providing remedy side by side and complementing the dispensation of justice by the courts. The concept and vision of Ombudsmanship is increasing to cover all spheres of life and the latest being Ombudsman for humanitarian aid with international jurisdiction.

2. It is well settled that the jurisdiction of the Ombudsman extends to maladministration which includes bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude arbitrariness, action contrary to law, malafide, rudeness, refusal to answer reasonable questions, knowingly giving misleading or inadequate advice, corruption, discrimination, neglecting established rules, procedure and practice and failure to mitigate the effects of rigid adherence to the letters of law where it produces manifestly inequitable treatment. Maladministration always results in injustices which should be redressed by the Ombudsman.

3. Having examined the concept and jurisdiction of the Ombudsman it is necessary to elucidate on the term Civil Rights which is the key to the subject at hand. A right is an interest recognized and protected by law.<sup>1</sup> Civil rights are those inherent basic inalienable rights which every person must possess. They are basic rights enforceable by law without which a person can not claim or enjoy equality of status and citizenship. Before the middle of 20<sup>th</sup> Century the political thinkers and intellectuals limited civil rights to the right to own property, enter into and enforce contracts, freedom of worship and to be treated according to law. This treatment of the subject had created discrimination and civil rights were distinguished from political and economic rights. In the wake of democratic principles and the emergence of concept of welfare state in the later half of 20<sup>th</sup> Century the barrier was broken and civil rights embraced political rights and socio-economic rights as well. It included life, liberty, dignity and equality in all spheres and demands of citizen and people to be protected by the legal system impartially, without any discrimination and according to law. It has thus culminated in equal citizenship. The Human Right movement got impetus from the shock humanity suffered due to ravages of world war-II. The evolution of Human rights movement and International Law progressed remarkably and Universal Declaration of Human Rights 1948 was made by the United Nations which laid down a universal standard of human rights to be adopted, followed and implemented by all nations, communities, countries and governments. It eulogized and elaborated with particularity the principles of life, liberty, equality and dignity.<sup>2</sup>

4. At the international level this was the beginning, as soon thereafter International Covenant on Civil and Political Rights 1966 was made. It declared that 'All people have the right of self determination by Virtue of that right they freely determine their political status and freely pursue their social and cultural development'.<sup>3</sup> International Covenant on Economic and Cultural Rights 1966 was adopted by United Nations General Assembly on 16<sup>th</sup> December 1966. It recognized the right to work, wages, to form trade union, to strike, social security, protection and assistance to family, protection from economic and social exploitation, fundamental right to be free from hunger, right to education, to enjoy benefits of scientific progress and its application.<sup>4</sup>

5. It can thus be observed that by the end of 20<sup>th</sup> Century a revolution and sea of change appeared at international level. The Civil Rights expanded with international standard and universal uniformity with obligation on states and governments to adopt and implement them. These Civil Rights came to be known Human Rights and were incorporated in the constitutions and statutes which are justiciable. The rights guaranteed by the Constitution are called Fundamental Rights and any law inconsistent with them is declared void.

6. From the international scene I now come to national scene and Pakistan experience in this field. The Constitution of Islamic Republic of Pakistan resolves the will of the people to guarantee fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, freedom of thought, expression, belief, faith, worship and association subject to law and public morality and secure independence of judiciary.<sup>5</sup>

7. The Constitution affirmed the ineliable right of individuals to enjoy the protection of law and to be treated in accordance with law. In particular it emphasizes positively that no person shall be prevented from or hindered in doing that which is not prohibited by law and no person shall be compelled to do that which the law does not require him to do.<sup>6</sup> It enumerates and guarantees Fundamental Rights with a rider that any law, custom or usage having the force of law, in so far as it is inconsistent with such

right shall be void to the extent of such inconsistency. To illustrate the point out of 20 fundamental rights conferred I will mention only few of them which include security of person, that no person shall be deprived of life or liberty save in accordance with law,<sup>7</sup> safeguard against arrest and detention,<sup>8</sup> protection against forced labour,<sup>9</sup> retrospective punishment<sup>10</sup> and double punishment.<sup>11</sup> The Dignity of man and the privacy of home is inviolable.<sup>12</sup> Freedom of movement,<sup>13</sup> assembly,<sup>14</sup> association,<sup>15</sup> trade business or profession,<sup>16</sup> freedom of speech,<sup>17</sup> protection of property right,<sup>18</sup> equality<sup>19</sup> and protection against discrimination.<sup>20</sup> This is followed by Principles of Policy<sup>21</sup> which though not justiciable complement and support the implementation of fundamental rights.

8. It can thus be observed that the fundamental rights guaranteed by the Constitution of Pakistan and other countries take care of the UN Declarations and Covenants referred above. Now all these rights have been recognized and guaranteed by Constitution and the law. There remains no distinction in earlier civil rights concept and political, social and economic rights of the people which are more in focus than before. The logical corollary is that ways and means are being sought to protect them, enforce them and provide relief against undue and unjust treatment in violation of these civil rights. The Superior Courts in Pakistan, India and South East Asia Region have played important role in developing the concept of public interest litigation and provided relief to the aggrieved particularly the common people in the field of Human Rights, public health, environment, political rights, social justice and forced labour, etc.<sup>21(a)</sup> No doubt there are courts and tribunals to enforce these rights and protect them. But the procedural technicalities, backlogs, over crowding, expenses and proverbial delays in courts have created a negative impact on the people approaching for relief. The Ombudsman system is supplementing the courts and tribunals in dispensation of justice. It can be termed as an alternate dispute resolution system. One of the main object of Ombudsman system is to bring transparency, accountability and justice in the administrative machinery, to bring balance in thought and action and bridge the gap between the people and the administration. The Ombudsmen are competent to entertain and investigate in to the people's complaint of maladministration against the Administrators. In such cases investigation itself creates a positive effect on administrators to respect the law and rights of the people. Furthermore

when recommendations are made besides granting relief, in appropriate cases systemic reform is suggested which if adopted can improve the system.

9. The list of civil rights is so vast and varied that citizen have always interaction with the executive and administrators. They form the first authority to determine the claim for any civil right. It is their action or order by which a person is aggrieved. The remedy from judicial forum comes last. It is thus essential that the approach behaviour, treatment and handling of the case by the administrators should be proper, legal, honest, respectful, without corruption and discrimination adopting the well recognized principles of good governance. One of the objects of Ombudsman is to encourage the development of good governance practices and create confidence in the administration and satisfaction in the governed.

10. Sir Brian Elwood, former President of International Ombudsman Institute remarked:<sup>22</sup>

“In short, I put it to you that both the government and the individual person are the beneficiaries when a credible Ombudsman institution is in operation. The government knows that its bureaucracy can be subject to the independent scrutiny of the Ombudsman at short notice, in relation to any conduct considered to be wrong. The individual person knows that when aggrieved by the administrative conduct of the Government’s bureaucracy, there is an avenue of last resort to have that conduct independently reviewed and if justified, to have recommended a course of action to reasonably remedy the grievance.”

11. The Ombudsman is a symbol of justice, good governance and rule of law. Gavin Drewery points out that “an ombudsman’s office is not merely an instrument of redress, it also serves an important function of quality control.”<sup>23</sup> For bureaucracies, it (ombudsman’s office) is, an additional fail-safe check on their operations to ensure that

any mistakes that have not been spotted are eventually caught and rectified, and it also serves to identify unintentional impacts of otherwise well intentioned procedure.”<sup>24</sup>

12. Now a new trend has developed to appoint ombudsman for departments or services being Specialized Ombudsmen distinguished from Classical Ombudsmen. Such appointments have been made for Revenue, banking, insurance, police, health services, education, army, judiciary and many more. In Pakistan Federal Tax Ombudsman was appointed in the year 2000 to diagnose, investigate redress and rectify any injustice done to a person through maladministration by functionaries administering tax laws.<sup>25</sup> It is well known that administration favours status quo and is averse to reforms. The tax administrators are known to be stubborn in accepting reforms. As Federal Tax Ombudsman during these three years I have come across about 5000 complaints. In a large number of the cases maladministration has been established and besides granting relief disciplinary action and systemic reforms have been recommended and unhealthy practices which were contrary to law have been pinpointed.<sup>26</sup> Majority of the recommendations under strict control have been implemented. But the facts remain that the main hurdle is the mindset of the Tax employees which requires to be reformed, reoriented and refreshed. I have constituted an Advisory Committee to consider and submit report on amendments in tax laws to make it tax payer friendly, to increase the tax net, prepare a tax payers bill of rights as has been adopted in many countries including USA, Code of Conduct of Tax administrators and reform in tax administration to make it transparent, accountable and corruption free. Such reforms will increase credibility, acceptability and cordiality which will help in generating more revenue.

13. Identification of maladministration without providing relief and implementing the recommendation does not serve the purpose of Ombudsman. In many countries the Ombudsman system has been criticized as a toothless and ineffective organization as it has no power of implementation of recommendation. But in certain countries the Ombudsman or Tax ombudsman has the power to implement the recommendation. In USA Tax Payer Advocate Service help taxpayers resolve problems with the Internal

Revenue Service and recommend changes that will prevent the problems.<sup>26(a)</sup> In Taiwan, Republic of China, the Control Yuan 'receive and handle people's complaints, investigate the malfeasance and dereliction of government agencies, propose corrective measures and impeach public servants who break the law, for the purpose of protecting the rights and interests of the people, making social justice prevail and promoting a clean and competent government'.<sup>27</sup> In New Zealand the Ombudsman is expressly empowered to report on any decision which is unreasonable, unjust, based on mistake, or merely wrong.<sup>27(a)</sup> In Pakistan the statute provides that it shall be the duty of the Revenue Division to implement the finding made by the Federal Tax Ombudsman.<sup>28</sup>

14. In order to make the institution of Ombudsman effective it requires to be strengthened particularly in our region where the developing countries are afflicted with poverty, corruption and maladministration in all sectors of life. It is need of the time that this Association may form a Committee to study the lacunas and restrictions imposed on the jurisdiction and power of the Ombudsman creating hurdle in providing relief to people and recommend to the national Governments to take appropriate measures to amend or remove them. I would again request as I did in the Conference at Beijing in 2002 to draft a model Uniform Ombudsman Law to be implemented by all Asian Nations.

15. I thank the Government of South Korea for its hospitality and excellent arrangements made for the Conference.

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**SUMMARY OF  
MR JUSTICE SALEEM AKHTAR  
FEDERAL TAX OMBUDSMAN  
PAKISTAN**

The institution of Ombudsman has gained popularity in the later half of 20<sup>th</sup> Century currently existing in more than 100 countries as an independent civilian oversight organization. They are democratic institutions based on the recognition of fundamental rights of the individuals and rule of law. It deals with grievances of public against injustice caused by maladministration of government functionaries.

2. Civil rights are those inherent basic inalienable rights which every person can possess, assert and enforce by law. Before the middle of 20<sup>th</sup> Century the thinkers had limited civil right to enter and enforce contract, own property, freedom of worship and to be treated according to law. However after World War-II Human Rights concept was developed at international level particularly the principles of life, liberty, equality and dignity. It further developed to include political, social and economic rights. All of them were incorporated in U.N. Charter and Covenants to be adopted, respected and enforced by national governments.

3. The Constitution of Pakistan guarantees fundamental rights inter alia right to life, freedom, equality and independence of judiciary, safeguard against arrest, detention, privacy of home, freedom of movement speech, association trade, business, profession, worship and protection against discrimination.

4. The civil rights including all fundamental rights can be enforced through court but procedural and technical delays and cost create a negative impact. The Ombudsman system is supplementing the court. It is bringing transparency, accountability and justice in the administrative machinery. It is not only an instrument of redress but has been termed to serve "function of quality control" and "additional fail-safe check".

5. A new trend has been developed to appoint specialized Ombudsman. In Pakistan Federal Tax Ombudsman has been appointed to diagnose, investigate, redress and rectify any injustice done to a person through functionaries administering tax laws. During the period three years a large number of complaints have been disposed of recommending systemic reform, relief in individual cases and disciplinary action as well.

6. The institution of Ombudsman needs to be strengthened with power to implement the recommendation not implemented without any reasonable cause.

# **THE ROLE OF OMBUDSMAN IN SECURING THE CIVIL RIGHTS**

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Mr. Khobreh-Vali  
Deputy of General Inspection Organization,  
Iran

In the name of God

## THE ROLE OF OMBUDSMAN IN SECURING THE CIVIL RIGHTS

**Mr. Khobreh-Vali**  
**Deputy of General Inspection Organization, Iran**

(Thinking about issues such as society, government and people and their interrelation, securing social justice, opposition to oppression, enjoyment of humans from equal rights, fostering reason and intelligence and valuing respectable and admirable virtues are amongst the points that has occupied the human mind, throughout the history. Since old times, the ideologists, philosophers and distinguished individuals of human societies have exerted a major part of their endeavors towards finding desirable methods for achieving the said ideals, on the basis of their dear ideologies and values. Doubtless, the main objective of the prophets was also establishment of great values and integrity of the human. In other words, it may be said that in the course of the history, the world has been a battlefield between justice and injustice, oppression and deprivation, chastity and septic behavior, beauty and awkwardness, knowledge and ignorance, honesty and dishonesty, etc.

The reformists and ideologues in various eras have introduced different methods and ways of governance, which have generally been in line with protection and defense of civil rights. In the modern era also election of the governing board by the votes of people, distribution and decentralization of power, separation of powers, determination of the functions and tasks of each organ, creation of numerous entities in the government structure, etc. ought to be accounted for as factors acting towards securing and guaranteeing civil rights. The truth is that while in the past, the task of governments was establishment of security and protecting boundaries and frontiers of the country, adjudication between citizens, collection of taxes and making decisions about war and

peace, now in view of expansion of peoples' communications and development of exchanges at remarkable speed, enhanced production of science, diversification of inventions and discoveries, increased expectations of peoples from governments in the areas of issues related to health and medical treatment, education, suitable environment, preservation of natural resources, social welfare, fair distribution of services, wealth, and opportunities and promotion of the spiritual and material lives of citizens, the role of governments in making political, economic and social decisions and in general in interfering in administration of the State and society has been evolved, radically, and has increased considerably, as compared with the past. On this ground, in order to achieve the aforesaid objectives and provide public services to citizens, the governments require suitable organizations, and efficient, devoted and responsible forces. }

However, as the citizens consistently require that the affairs of their countries be administered in desirable and effective manner towards progress and development, the existence of democratic governments, implementation of the principle of separation of powers and distribution of power among the legislative, the executive and the judicial powers, as well as distribution of authorities amongst members of the governing board and determination of the duties and powers of authorities and statesmen and administrative organs and implementation of decentralization and delegation of powers to lower management and local levels may be found to be insufficient, per se, and may not guarantee observance of all civil rights. To this end, it is absolutely required to establish independent entities for exerting supervision over functions and democracy of governments. Although popular entities such as various NGO's, mass media and exertion of supervision by the legislative power or effective supervision of competent managers over their subordinates may have their own useful effect on protection of civil rights, yet the constructive role of inspection organizations and ombudsmen, owing to the tasks that they are charged with, is very outstanding and considerable; and efforts towards expanding activities and cooperation aimed at these objectives, promises more desirable results : }

Since 1990, the term of GOOD GOVERNANCE has attracted attentions, the main features of which are as follows:

- Protection of human and civil rights;
- Participation and interference of citizens in political matters and in general elections;
- Approval and enforcement of anti-discrimination laws;
- Determination of transparent functions for governmental and public organizations;
- Delegation of powers and allowing decision making in different organizational and local levels;
- Making decisions, officially and declaring them publicly;
- Responsiveness of the authorities as regards decisions taken and manner of implementation of tasks and assignments.

Considering the objective of ombudsman, which is protection of civil rights and promotion of quality, efficiency and soundness of the State administrative system. This existence will direct governments towards making reforms in the affairs and lead them toward creating and promoting good or clean governance. In effect ombudsman is an instrument for protecting and defending civil rights and guaranteeing high values of human in a society.

At the same time, ombudsman is very effective in filling the gap between government and people and may take useful steps in eliminating difficulties, entanglements, shortages and misadministration, by introducing proposals and by its follow ups.

In the Constitution of the Islamic Republic of Iran several principles relate to protection of civil rights, which as examples, we will refer to those mentioned at Principles 2, 6,8,19,20,22,23,24,26,28,29,34,35,36 and 37:

- Dignity of the human and the novel values of humanity and freedom of human, combined with his responsibility vis a vis the God;
- Negation of oppression and submission to it, domination and submission to it and securing fairness and justice;

- Administration of the country by referring to public voting, directly or indirectly through different elections, such as election of the Leader, the President, the Islamic Parliament Representatives, the Members of City Councils, and the like;
- The right of the public to criticize, and to supervise over, the performance of governmental managers;
- Enjoyment by citizens of equal rights of citizenship, aside from their color, rates, language, ethnicity, tribe and clan, etc.;
- Enjoyment by every individual of the nation, whether male or female, of legal protections and all human, political, economic, social and cultural rights;
- Declaration of freedom of belief, freedom of publications and the press;
- Declaration of freedom of parties, societies and political and trade associations, etc.;
- Emphasis on freedom of businesses and enjoyment of social security benefits by all citizens;
- Access to justice by referring to competent courts, using attorneys of their own;
- Declaration of the principles of *nullum crimen sine lege* and presumption of innocence.

The State General Inspection Organization has taken measures, in the light of the supervisory mission that it has under Principle 174 of the Constitution and for the purpose of realization of the objectives of the said law, part of which was referred to above, with the aim of promoting administrative health, in combination with other responsible organs, since the Seventh Session of the Ombudsman in Beijing, which owing to time constraint to the most significant of which I draw attention of the honorable members of the AOA:

1 Codification of the five year policy plan (2003-2008), in which the fundamental objective of the Organization has been defined as follows:

“Comprehensive, powerful and sympathetic supervision over good performance of affairs and proper execution of laws in organs for the purpose of promoting soundness

and efficiency of the State administrative system; preventing offences and crimes from being committed; eliminating grounds of corruption and discrimination; and combating with it for the purpose of increasing spirituality and morals and for providing better services to citizens.”

To achieve this goal, the principal route of movement and the qualitative and quantitative objectives and executive policies thereof have been determined. Certain of these policy programs are as follows:

- Selection of methods and procedures in a manner that would not result in destruction of positive motivations in the organs under inspection;
- Establishment of uniform procedure in inspections and supervisions;
- Promotion of the culture of submitting to supervision in the organs under inspection;
- Providing timely, useful and effective information to people;
- Supporting proper decisions adopted by managers of executive organs;
- Strengthening intra organizational supervisory units, as the arms of the managers;
- Strengthening inspection units and provincial supervision.

The most significant measures and projects that ought to be implemented in the course of a five-year period are as follows:

- Encouraging citizens and interested groups to establish people's societies and non-governmental organizations; developing existing institutions and using their abilities towards enhancement of supervision, with the aim of promoting healthy administrative system;
- Creating cooperation between unions, federations, various councils, and trade, scientific and specialized associations in supervision and inspection processes;
- Providing public education by offering more publications, holding seminars and gatherings; presenting various radio and TV programs and through participation of the organization's authorities in general and administrative assemblies;
- Carrying out a plan for self-disclosure by executive organs authorities for their participation in supervision and for creating mutual confidence between the ombudsmen and the said organs;

- Standardization of supervision and inspection operations and processes;
- Specifying and codifying inspection specialized indices and supervision by every sector and executive organ;
- Designing and implementing information management system;
- Promoting the level of communication and information technologies.

2. Establishing a special commission for studying approvals of the Board of Ministers and centers entrusted with the power of adopting resolutions, bylaws, circulars and executive guidelines; and ascertaining their conformity with the laws enacted by the Parliament. In case of inconsistency of the said approvals with the laws, the Inspection Organization, having prepared a well-documented and well-reasoned report, will apply to the Administrative Justice Tribunal for abolishing the said approvals. Amongst the measures taken in this respect, reference may be made to the preparation of reports on price rises in flour, bread, airplane ticket, post services tariff and electricity utility. As these price rises ran counter to the provisions of the State Third Development Plan, the Full Justice Administrative Tribunal in a plenary session (consisting of about 40 judges), found the Ombudsmen's report as warranted and held that the approvals concerning price rises were abrogated. This measure by the Organization was in line with its function regarding supervision over execution of laws and protecting citizens' rights. Applications for abolishing other regulations such as Regulations on Establishment of Non- Governmental Banks; and Transfer of Governmental Insurance Companies' Equity Interest to the Private Sector have also been submitted, considering that the said approvals were in conflict with the statutes adopted by the Legislature.

3. Other measures include pathology of organs and different issues related to making inspection and supervision, to which end scientific and specialized congresses comprising university professors and executives of various organs and colleagues have been formed for discussing and reviewing the matter. The results of these pathologies have been sent to respective organs, together with required proposals for

elimination of problems and for compensating shortages and remedying the defects. Reports on the status of culture and harvest of tea, wheat, and production of cotton and their imports into the country and on situations of textile industry and factories are amongst the activities of this section.

4. The Leader of the Islamic Republic of Iran has declared the year of 2004 to be the Year of Provision of Services by Governmental and Public Organs to the People, and has urged all of the said organs to exert and increase their efforts towards this end. In order to supervise over provision of services by the organs to the citizens, this Organization has given assignment to all of its respective units to study manner of providing public services and to make the organs being inspected sensitive to this need. Having performed the required scientific studies, the Organization has also prepared the Plan for Evaluating Manner of Provision of Services by the Organs to the Citizens. This plan deals with issues such as satisfaction of clients from the organs; quality and speed of provision of services; treatment and conduct of civil servants with the persons referring to them; knowledge of the employees of their assigned duties; manner of communication of managers with clients and solving their problems; manner of supplying information; expectations of the organs employees from clients; and manner of consideration of the clients' complaints about the organs, etc. During the 1<sup>st</sup> Phase, 18 organs were selected; 37,000 questionnaires were distributed; required data were collected and 133 checklists were completed. Then, after having compiled and analyzed the said information, the complete report thereof will be provided to the respective organs, together with the proposals required for promoting the level of provision of public services to the citizens.

5. Holding two exhibitions in Tehran and ten exhibitions in large cities constitutes one of the other measures taken, which has been aimed at enhancing efficiency and proper execution of laws in governmental and public organs and at securing and guaranteeing citizens' rights and providing better services to them. These exhibitions had as their objective making facilitation of cooperation and coordination between the

Organization and executive organs; strengthening and expanding the culture of submitting to supervision; promoting observation of law and making the authorities, managers and experts acquainted with subjective and organizational points of strength and advantages, as well as shortages and defects. In these exhibitions, a booth has been allocated to each ministry and organization, where its points of strength, major activities, shortages and defects and samples of the reports of the Organization about the said entity are demonstrated in the form of pictures and art works. The latest exhibition in the Capital City was visited by 2,700 managers and authorities, including a number of ministers, Parliaments representatives, heads of different organizations, deputies, directors and senior experts. The opinion pole taken from the managers showed that they considered the exhibitions as positive and as good steps in making reforms in the affairs and in promoting a healthy administrative system, in spite of the unpleasant facts that they were putting on display.

6. Setting up inspection units in several provinces of the country; establishing a web site; receiving complaints and notifications from citizens by a round the clock telephone service and taking immediate action about them are amongst the activities of the Organization in the last two years.

At the end and in order to sum up, I wish to inform the honorable Members of the Asian Ombudsman Association that by presenting numerous reports on the status of different organs and various events as well as offering appropriate proposals, the State General Inspection Organization in Iran has succeeded in attracting the public confidence, and at the same time, making administrative organs of the country more sensitive about their tasks and missions and in requiring performance of their legal responsibilities from them.

## **The Role of the Ombudsman in safeguarding Civil Rights**

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Mr. Justice Ripusudan Dayal,  
Lokayukti, Madhya Pradesh, India

## **The Role of the Ombudsman in safeguarding Civil Rights**

**Mr. Justice Ripusudan Dayal,  
Lokayukt, Madhya Pradesh,  
India**

Distinguished Ombudsman delegates from all over Asia.

I am deeply honoured to have this opportunity to speak about 'The Role of the Ombudsman in safeguarding Civil Rights' before this august gathering.

Grievances have existed in every social order and every social order provided a mechanism considered suitable for their redressal. After the Second World War, government and public administration have undergone a tremendous change. The state functions have become multi-dimensional and complex, while democratic expectations are touching new heights. The modern State, whatever be its form and political commitment, pursues the goal of welfare of its people. There has seen enormous growth in responsibilities of the State covering almost all aspects of the individual's economic, social, political and cultural life, necessitating the devolution of enormous power on the officials in many matters which immediately affect the daily life of the ordinary citizens. To cope up with the ever-growing responsibilities of the State to the citizens, extensive discretionary powers have been conferred upon the government officials and its agencies. It is now well recognized that wherever power and discretion combine, there is always the possibility of their abuse. The greater the degree of discretion granted to one who holds some power, the more likely will be the incidence of the mistakes and less likely that the mistakes will be discovered. The expansion of the governmental activities and delegation of power and discretion to government officials touching almost all walks of citizen's life, have brought citizens into much closer contact with the government and its agencies today than at any previous time. Greater contacts and greater expectations of

the people from the Government have given rise to the grievances of the citizens against the functioning of the Government. Sometimes the grievances are genuine and sometimes due to misunderstanding. If a large number of people genuinely believe that on account of incompetent or corrupt officials or their practices, their civil rights are being neglected, that would clearly undermine the ability of the government to govern. Therefore, everyone has an interest in a mechanism for redressal of the people's grievances, which would improve the quality of governance practices and help in combating corruption. Some of the governments have set up an office within their own departments to redress the grievances of the citizens. But it is in the nature of things that some of the grievances, particularly serious ones, would remain unredressed by the departmental office. Such an office may not enjoy faith and confidence of the people because of the general perception that the officials of the department would view things merely on the basis of the records maintained in the department, would not go deep into the matter and would take decisions with some psychological bias in favour of departmental policies and decisions.

[ The courts also help in redressal of grievances. But they are expensive with cumbersome procedures. Most of the countries follow adversarial legal system and do not carry out investigations. They proceed on the basis of the facts presented before them. Court proceedings are not appropriate for complaints about official actions that may be administratively defective and about which they do not have precise and complete knowledge on facts.

Political avenues, though may redress the grievances to some extent, yet are not the best means for their redressal. The public men are too busy to deal with individual complaints. Often, political affiliation influences their stance.

The Institution of Ombudsman is an effective mechanism for handling the grievances arising out of administrative malfunctioning on account of negligence or undue delay or impropriety or unreasonable or unjust or oppressive procedure. The Ombudsman is regarded as the watch-dog over administrative system in order that

people's rights are protected. The establishment of such an Institution would undoubtedly create a sense of confidence amongst the people that their grievances would be impartially and fairly looked into. >

### INDIAN SCENE

During the years of the Second World War, the scarcity conditions all over the country, the system of control introduced to regulate the supply and sale of the essential commodities and the attention of the administration diverted solely to the war efforts provided ample scope for corruption of all types. After the War was over and India attained Independence in the year 1947, the ambitious schemes of nation building ushered the country into an unprecedented era of public spending, which provided tremendous scope for graft and corruption. At the same time, greater mass consciousness and democratic urges of the people would not allow the skeletons to stink in the cupboard but would demand full inquiries as to how and by whom reprehensive acts were done. Erosion of public confidence in administration aroused a sort of cynicism in the public that while the government was against corruption, it was not against corrupt persons if the latter had the requisite amount of power, influence and higher level protection. This gave rise to a sincere desire to improve the standard of Indian administration by providing an Institution where people could freely register their grievances against the malfunctioning of the administrative apparatus. The Government of India appointed a high power Administrative Reforms Commission under the Chairmanship of Shri Morarji Desai, who later became the Prime Minister of India, for considering the problems of redressal of citizens' grievances. The Commission was convinced that the 'Ombudsman' type of Institution was needed not only for removing the sense of injustice from the minds of the adversely affected citizens, but also for ensuring public confidence in the efficiency of the administrative machinery. Thereafter, the Lokpal and Lokayukt Bill, 1968 was introduced in the Parliament on 9<sup>th</sup> May 1968. The Bill was passed by the Lok Sabha on 20<sup>th</sup> August 1969 and transmitted to the Rajya Sabha on 13<sup>th</sup> May 1970, but lapsed due to the dissolution of the Fourth Lok Sabha. Thereafter 7 more times the Lokpal Bill was introduced, the latest being the Lokpal Bill 2001 introduced on the 14<sup>th</sup> August 2001, but

none matured into an Act. As such, there is no Ombudsman type Institution in India at the Central level.

Steps were also taken by some of the States and one Union Territory to have an Ombudsman type Institution. At present, India consists of 28 States and 07 Union Territories. 15 States, namely, Andhra Pradesh, Assam, Bihar, Chhatisgarh, Gujrat, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Orissa, Punjab, Rajasthan, Uttaranchal, Uttar Pradesh and one Union Territory, namely, Delhi have Ombudsman type of Institution. In India Ombudsman is known as Lokayukt in all the States and the Union Territory of Delhi except in Orissa, where he is designated as Lokpal.

In 7 States and the Union Territory of Delhi, the office of the Lokayukt has been perceived mainly as the corruption fighting Agency and the grievance redressal role of the Ombudsman, though important, has not been given adequate emphasis, as the Lokayukt has the jurisdiction to inquire into the complaints involving an 'allegation' only and not into complaints involving a grievance that the complainant sustained injustice or undue hardship in consequence of mal-administration. Only in 08 States, namely, Assam, Bihar, Karnataka, Kerala, Maharashtra, Orissa, Uttaranchal and Uttar Pradesh, the Lokayukt has the jurisdiction to inquire into the complaints arising out of a grievance in consequence of mal-administration. 'Allegation' means under the Indian context an affirmation that the public servant (i) has abused his position as such to obtain any gain or favour to himself or to any other person or to cause undue harm to any person; (ii) was actuated in the discharge of his functions as such public servant by improper or corrupt motives; (iii) is guilty of corruption; (iv) is in possession of pecuniary resources or property disproportionate to his known sources of income and such pecuniary resources or property are held by the public servant personally or by any member of his family or by some other person on his behalf. Thus, in 'allegation' an element of guilt is involved, whereas a grievance from mal-administration may arise because of inefficiency, tardiness, delay, red tape, outmoded rules and procedures, which may not involve any corrupt motive. Thus in most of the cases an inquiry into an allegation would be in the nature of

pre-trial inquiry into the cases of corruption. Undoubtedly, bureaucratic and administrative corruption will cause the citizens' rights to be neglected and spoil their acquired rights. Corruption causes a political and social order to become ugly and unpleasant, and rots the system of governance and erodes integrity of public service. Thus, even in the States and the Union Territory where jurisdiction of the Lokayukt is confined to complaints involving an 'allegation' only, functioning of the Lokayukt would help in protecting civil rights of the citizens by improving the administration. But that would be done in an indirect manner. A direct approach would be to bring within the jurisdiction of the Lokayukt the complaints involving grievances arising out of mal-administration. It would not be out of place to mention that even in respect of the complaints arising out of allegations, in some of the cases, the complainants get relief, where the concerned public servant while abusing his official position, has caused undue hardship or injustice to the complainant.

### **The Madhya Pradesh Experience**

The Lokayukt Organization in Madhya Pradesh came into existence in February 1982 after the Madhya Pradesh Lokayukt and Up-Lokayukt Act, 1981 was enacted by the State Legislature and received the assent of the President of India on 16th September 1981. Only such a person is eligible to be appointed as Lokayukt, who has been a Judge of the Supreme Court of India or Chief Justice or Judge of any High Court in India. In Madhya Pradesh, Lokayukt has always been either a Judge of the Supreme Court or Chief Justice of any High Court in India. Besides, one or more persons can be appointed as Up-Lokayukt. The eligibility to be appointed as Up-Lokayukt is that the person should or should have been a Judge of any High Court in India or should have held the office of Secretary to the Government of India or should have held any other post under the Central or State Government carrying a scale of pay which is not less than that of an Additional Secretary to the Government of India. The Up-Lokayukt has always been a former Judge of the High Court of Madhya Pradesh. The power to make appointment under the Act vests in the Governor. Lokayukt is to be appointed by the Governor after consultation with the Chief Justice of the High Court of Madhya Pradesh and Leader of

Opposition in the Legislative Assembly, or if there be no such leader, a person selected in this behalf by Members of the opposition in that House in such manner as the Speaker may direct. Up-Lokayukt is to be appointed after consultation with the Lokayukt, or where a sitting Judge of a High Court is to be appointed, also after consultation with the Chief Justice of that High Court in which he is working. Thus, appointment of the Lokayukt and Up-Lokayukt is made in accordance with the statutory provisions to ensure that the persons appointed may discharge their duties independently and impartially. In order to further ensure impartiality and independence, section 5 of the Act stipulates a fixed tenure of six years for the Lokayukt and the Up-Lokayukt and prohibits reappointment after the expiry of the term. The Lokayukt cannot be removed from his office except by an order of the Governor passed after an address by the Madhya Pradesh Legislative Assembly supported by a majority of the total membership of the Legislative Assembly and by a majority of not less than two thirds of the members thereof present and voting has been presented to the Governor in the same session for such removal on the ground of proved misbehavior or incapacity. The procedure for the presentation of an address and for the investigation and proof of the misbehavior and incapacity of the Lokayukt is the same as provided in the Judges (Inquiry) Act, 1968 in relation to the removal of a Judge. Proceedings before the Lokayukt or the Up-Lokayukt are deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the Indian Penal Act, 1860. The Lokayukt or the Up-Lokayukt is deemed to be court within the meaning of the Contempt of Courts Act, 1971. If, after inquiry into the allegations, the Lokayukt or Up-Lokayukt is satisfied that any such allegation is established, he communicates in writing his findings and recommendation along with the relevant documents, materials and other evidence to the competent authority and the competent authority is required to intimate within three months of the date of the receipt of the report to the Lokayukt or the Up-Lokayukt, as the case may be, the action taken or proposed to be taken on the basis of the report. If the Lokayukt or the Up-Lokayukt is satisfied with the action taken or proposed to be taken on his recommendation, he closes the case under information to the complainant, the public servant and the competent authority concerned. In any other case, if he considers that the case so deserves, he may make a special report upon the case to the Governor and also inform the complainant concerned. The Lokayukt and the Up-

Lokayukt also present annually a consolidated report on the performance of their functions to the Governor. The Governor causes a copy of the Annual Report or the Special Report together with an explanatory memorandum to be laid before the State Legislative Assembly. The Lokayukt may also make suggestions to the State Government in respect of any practice or procedure coming to his notice which in his opinion affords an opportunity for corruption or mal-administration.

The Lokayukt has the jurisdiction to inquire into complaints against all categories of public servants including the Chief Minister, but excluding the Speaker, Deputy Speaker, a member of Legislative Assembly and Judicial officers. The complaint should be accompanied by an affidavit and a deposit of Rs.25/- . However, if the complaint is not against the Chief Minister, Minister, Secretary or Additional Secretary, neither the filing of the affidavit nor the deposit is necessary. The Up-Lokayukt does not have the jurisdiction to inquire into the allegations made against the Chief Minister, Minister, Secretary and Additional Secretary. In respect of complaints made against the other public servants, the Lokayukt and the Up-Lokayukt both have the jurisdiction to make an inquiry. The Lokayukt may order an inquiry suo-motu also. However, the Lokayukt and the Up-Lokayukt cannot make inquiry into any complaint, if the subject matter of the complaint is more than 5 years old. They cannot also inquire into any case which is the subject matter of an inquiry under the Public Servants Enquiries Act, 1950 or where the matter has been referred for inquiry under the Commission of Enquiries Act, 1952.

The Secretary, Deputy Secretary, three Legal Advisors, one Deputy Legal Advisor and other supporting staff assist the Lokayukt and the Up-Lokayukt in making inquiries. Main work of investigation is done with the help of the Legal Advisors and the Deputy Legal Advisor who are judicial officers of high rank belonging to the judicial service of the State of Madhya Pradesh taken on deputation. Since control over the members of the judicial service in India exclusively vests in the concerned High Court, Judicial officers have the reputation of acting independently and impartially without being influenced by any extraneous consideration. This further helps the organization in warding off any apprehension that could otherwise arise that the officers would not be

able to work independently in the organization due to fear that they might face some evil consequences on being reverted to their parent department. The Lokayukt Organization is also authorised in case of need to utilise the services of any other officer or investigating agency of the State or the Central Government, with the concurrence of that Government and also of any other person or agency. Furthermore, there are seven Divisional Committees located at seven Divisional Headquarters in Madhya Pradesh to inquire into complaints referred to them by the Lokayukt or the Up-Lokayukt. Each committee consists of three members, out of whom one is either a retired judicial officer not below the rank of class I officer or a retired Executive Officer having experience of court's working not below the class I officer of the State Government. To assist the Lokayukt and the Up-Lokayukt in conducting inquiries of technical nature, the Lokayukt Organization has a Technical Cell headed by a Chief Engineer under whom there are three Executive Engineers, one each from Water Resources Department, Public Works Department and Public Health Engineering Department. Besides, there are six Assistant Engineers and four Technical Assistants in the Technical Cell.

One very significant feature of the Lokayukt Organization in the State of Madhya Pradesh is that the Lokayukt exercises superintendence over the investigations conducted by the Madhya Pradesh Special Police Establishment, which has been constituted under the Madhya Pradesh Special Police Establishment Act, 1947 to investigate the offences under the Prevention of Corruption Act, 1988 and some other offences which adversely affect the administration. This Establishment is a highly specialized agency having high reputation for efficiency and fairness, and is immune from political and bureaucratic influence. The Lokayukt may also issue general directions for regulating practice and procedure for investigation to be adopted by the Establishment. The Establishment is headed by Director General who is in the rank of Additional Director General of Police, Madhya Pradesh. At the headquarter, he is assisted by one Inspector General of Police, two Deputy Inspector General of Police, one Superintendent of Police, one Deputy Director Prosecution and one Station House Officer of the Police Station of the Special Police Establishment. In the field, there are seven Divisional Offices each of which is headed by one Superintendent of Police. The Special Police Establishment has been

provided with a further staff of 26 Deputy Superintendents of Police, 7 Special Public Prosecutors, 41 Inspectors, 6 Sub-Inspectors, 26 Head Constables, 98 Constables, 11 Court Mohairs and 14 Constable Drivers, besides other supporting staff. The fact that the Lokayukt supervises the investigation by this Establishment has insulated the Establishment from any criticism which is generally associated with a Police Organization that the working of the Organization might be affected by some political or bureaucratic influence.

### **Conclusion**

Statutory provisions making elaborate provisions with respect to the eligibility of appointment of the Lokayukt and the Up-Lokayukt, the manner of their appointment, the fixed term of their tenure, conditions of their service, and the laying of their reports before the State Legislative Assembly are designed to ensure the independent and impartial functioning of the Lokayukt and the Up-Lokayukt. During the last more than 20 years of its existence, this Organization has dealt with complaints nearing about one lakh. The Organization has received 306 complaints against the Chief Minister and the Ministers. After inquiry, recommendations were sent in 21 cases to the state Government for taking action. On the recommendations, action was taken by the State Government within the time limit. Accordingly, some Ministers had to lose their job and the portfolios of some were changed. Sanction for prosecution was also granted in some cases. In the last five years 1071 criminal cases have been registered for investigation by the Special Police Establishment. A total sum of Rs.81,85,43,658/- has been seized in the raids conducted on government officials in cases of disproportionate assets. Out of the above-mentioned registered cases, 97 cases are against Class-I officers and 263 are against Class-II officers. The recommendations for prosecution of 13 Indian Administrative Service officers have also been made by the Organization. Even then, the Organization needs to be strengthened having regard to the following factors:

- (i) There is a feeling amongst the Lokayuktas in different States of India that the Lokayuktas should receive constitutional status to assure more independence to

them. On a request made in pursuance of a resolution passed by the 6<sup>th</sup> Conference of All India Lokayuktas and Up-Lokayuktas to the National Commission to review the Constitution to consider the question of conferment of constitutional status on the Lokayuktas and the Up-Lokayuktas, the National Commission has recommended that the Constitution should contain a provision obliging the States to establish the institution of Lokayukt in their respective jurisdiction in accordance with the legislation by an appropriate legislature. Accordingly, Constitution may be amended providing a basic framework for the establishment of the institution of the Lokayukt in all the States. The basic framework may provide financial autonomy to the Lokayukts which is at present lacking. It may also provide that the Lokayukt Organization shall have its own staff even of higher categories and even when officers have to be posted to the Lokayukt Organization from the other Organizations, that should not be without the concurrence of the Lokayukt. At present, the staff of higher category is posted to the Lokayukt Organization with the concurrence of the Lokayukt, but there is no constitutional or statutory sanction to guarantee this.

- (ii) Though prosecution has been launched under the Prevention of Corruption Act against some high-ups including Ministers and senior bureaucrats, their number is not very large. The reason is that to proceed against high-ups, cooperation is needed from the people who have zero tolerance for corruption and have a genuine zeal to fight against it. There are a few irritants, which inhibit such persons to come forward. One is that section 19 of the Prevention of Corruption Act provides that no court shall take cognizance of an offence punishable under the Act except with the previous sanction of the competent authority specified therein. People believe that this provision is intended to protect the high-ups from prosecution. When a criminal case has been investigated by a specialized agency like the Madhya Pradesh Special Police Establishment and thereafter the prosecution has been approved by the Lokayukt, there seems to be absolutely no justification for a further sanction from an executive authority to permit the court to take cognizance of the case. In some of the cases, sanction has not been

forthcoming from the competent authority even after the lapse of a number of years. In some cases sanction was received after the lapse of a considerable period, resulting in undue delay in launching prosecution. If section 19 is repealed or amended to remove this irritant, more information will be available to warrant investigation against the high-ups.

- (iii) In respect of the cases arising out of demand for bribe, trap is ordinarily laid. While doing so, the complainant offers his own money to the public servant who demanded the bribe. This money remains locked-up for a considerable period due to delay in obtaining sanction and disposal of the case by the court. The complainant feels harassed due to his money being immobilized for a long period. One way to remove such inhibition would be to set up a fund by the Government from which an equivalent amount may be paid to the complainant and to which the money which was initially paid by the complainant be deposited after getting the same from the court on conclusion of the trial. If this is done, more people will cooperate in laying of traps even against high officials also who demand bribe.
- (iv) Cases remain pending in trial courts and appellate courts for several years. Witnesses are required to attend the trial court after the lapse of a considerable period from the date the action has been initiated against the accused. They are often required to attend the court several times due to frequent adjournments. This makes the complainants frustrated and disheartened and weakens the resolve of a large number of people to come forward in the fight against corruption. Otherwise also, delay dilutes the message to the corruption-prone public servants that 'corruption does not pay'. If more courts are added to the judicial system so that cases relating to corruption may get decided normally within six months' time, that would make people come forward to give more cooperation and support to the Lokayukt organization.

- (v) Making a complaint against the high-ups and the influential exposes the complainants to grave personal risk. There is an urgent need to protect the complainants and the witnesses by making law to protect the whistleblowers in order to elicit support and cooperation of more and more people.
  
- (vi) A large number of complaints received by the Lokayukt Organization are rejected at the preliminary stage, not being found to fall within the jurisdiction of the Lokayukt Organization, as the averments made therein do not constitute an 'allegation'. All Lokayukt Organizations should have the jurisdiction to inquire into the 'grievances' arising out of mal-administration along with 'allegations'. Mal-administration is sometimes the cause and sometimes the effect of corruption. If jurisdiction is expanded to encompass the grievances also, the number of applications which are rejected at the preliminary stage would be reduced to a great extent. Many of the complainants would not then be disheartened by the rejection of their complaints at the very threshold.
  
- (vii) Law requires a copy of the Annual Report and also of the Special Report along with an explanatory memorandum to be laid before the Legislative Assembly. This provision is meant to provide an opportunity to the members of the Legislative Assembly to know about the working of the Lokayukt Organization and to debate upon the action taken by the Government on the recommendations made by the Organization. But no time limit for laying of the Report is prescribed. Some times, very long period elapses before a report is laid before the Legislative Assembly. This delay robs the Report of its value to a great extent. If some reasonable period is specified within which it would be incumbent upon the Government to lay the report before the Legislative Assembly, that would contribute to more lively and effective debate by the members. That would also ensure the availability of the report to the press and the public at an early date, urging the public to offer more cooperation in the fight against corruption and malfunctioning of the Government departments.

Lokayukt Organizations are playing a significant role in combating corruption and redressing the grievances arising out of the violation of the civil rights of the people. Their functioning has led to a significant improvement in the working of the administrative departments of the Government, which affect the people in their day to day life. Corruption by the high-ups goes to rot the whole system of governance. Corruption at the lower level affects the people in their daily life. Corruption should be fought with vigour, and zero tolerance should be the principle and the policy. The Ombudsman organizations need be further strengthened so that they may play even greater role in safeguarding civil rights of the people.

# **THE ROLE OF THE OMBUDSMAN IN SAFEGUARDING CIVIL RIGHTS**

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Mr. MALIK SIKANDAR KHAN  
OMBUDSMAN FOR THE PROVINCE OF  
BALOCHISTAN PAKISTAN

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### INSTITUTION OF OMBUDSMAN

The Institution of Ombudsman was initially introduced by Islam and was known as Hasba and Mohtasib. In early days of Islam, the Holy Prophet Muhammad (Peace Be Upon Him), himself acted as Mohtasib and used to sit in Mosque of "**Nabavi**" at Madina for redressal of grievances of people. Islam lays special importance on man accountability, his deeds and acts. It is principle of justice in Islam, that every human being, be he the strongest among the strong or the humblest among the humble is bound according to our faith to render account of each and every moment of his life on the day of judgment. Islam is a Religion of Nature and it is for the whole humanity, which encompasses man's social, moral, political, economic and all other aspects fully and completely. The concept of Ombudsman in Islam is religious, in principles. The study of Islamic pattern of life reveals the fact that basically the formation of such a society is contemplated as should abide by "**Amr Bil-Ma'ruf**" and "**Nahi Anilmunkar**" i.e. Such a society, as enjoins right conduct, and forbids indecency. Both these aspects of the establishment of religion are the basic elements for the formation of pure society and their purpose is complete safeguard of civil rights of citizens, establishment of justice and the advancement of moral values. When seen deeply, it is also a reality that there is no "**Ma'ruf**" better than justice and no "**Munkar**" worst than oppression. Therefore, the purpose of Ma'ruf is the establishment of justice and of "**Munkar**", the eradication of oppression Mr. Lane Edward William, a prominent anthropologist of English and Arabic

languages has given a brief but comprehensive definition of "*Ma'ruf*" and "*Munkar*". He writes about "*Ma'ruf*".

*"Signifying Liberality or bounty when it is with Moderation or with a right or just aim, and sincere or honest advice or council or action, and good fellowship with one's family and with others mankind, and any action or deed of which the goodness is known by reason or by the law"*

**Munkar has been defined as:-**

*"Contrary of Ma'ruf, any action disallowed by sound intellects, or deemed or declared thereby to be bad, evil, hateful, abominable, foul, unseemly, ugly or hideous or pronounced to be so by the law because the mind deliberates respecting the regarding it as such".*

**IMPORTANCE OF INSTITUTION OF OMBUDSMAN.**

(i). The importance of institution of Ombudsman Worldwide is now universally admitted and it is known as an effective device for controlling the bureaucracy, to look-after general morality and eradicate social cruelties. In my opinion in every country no any other institution then the "Ombudsman" is important for establishment of such a society as may provide reward for good deeds and punishment for mis-deeds, it is the only institution of safeguard the civil rights of citizens, to reform society for the welfare of state because this institution is concerned with all acts of mal-administration of the functionaries and all actions declared by sound mind to be bad, evil, hateful in society should be disallowed by functionaries. Thus when functionaries fail to perform their above duty, it will be mal-administration on their part, the Ombudsman has to come forward as redresser of grievances of people.

(ii). There are so many other institutions in our society, which provide social justice to protect civil rights of people and endeavor for reform of society and welfare of state/nation, but their responsibilities and powers are determined and are confined in their circles, whereby this institution is fully independent one and is free to provide social justice un-conditionally.

(iii) **POLITICAL AUTHORITY AND OMBUDSMAN.**

In a democratic state the political bureaucracy on the basis of its slogan, is also entrusted with functions of providing justice to needy and downtrodden public, and to safeguard civil rights, but this institution due to political declivity and acclivity feel great difficulty in achieving the object. Further more according to political atmosphere, after some specific time, complete change occurs in political bureaucracy and sometime it is replaced by quite a new political regime. It is normally observed that the new political bureaucracy completely wash the plannings, strategies and procedure of running the government of out going political bureaucracy, because the successor political bureaucracy feel the way of working of the predecessor, as not profitable for it and normally from the tenure of one government to the other, the time is mostly consumed in mere planning. Therefore, steps towards reform of society according to slogan, stay behind, undone.

(iv) **JUDICIARY AND OMBUDSMAN.**

- a. The judiciary of each country deals only with administration of justice. However legally the judiciary can not make departure from its formal procedure of justice because the judiciary has to strictly interpret the law, rules and regulation, whereby the Ombudsman institution has power to provide justice in informal way, therefore, due to above reason this institution is more important to redress the grievances. Supreme court of a country and High courts of different provinces of a country, though can exercise extra-ordinary constitutional jurisdiction for administration of justice, but that is also limited, because the Higher judicial forums, have to perform duty strictly in accordance with four corners of the legal limitations.
- b. It may further be relevant to mention here that for an ordinary poor man acquiring of justice through extra-ordinary constitutional jurisdiction of the

superior judiciary is very hard and expensive which normally goes beyond his means. On the contrary in the institution of Ombudsman, not a single penny is born by a complainant nor any expensive or ordinary counsel is required even nor for years is required to achieve the justice.

- c. The institution of Ombudsman is empowered to take suo motu action regarding any mal administration which is a very distinguished characteristic of the institution as compared to ordinary courts and through suo motu actions the institution can play a very vital role for reform of society and safeguard of the civil rights of the citizens.
  
- d. The mal administration of state functionaries can be controlled through this institution in a very broad based manner, no other institution can act like this one. In all other related institutions, normally action of mal administration and mal practices is taken against the individuals and all those forums in the consequence of trial/investigation, at the best can award punishment of imprisonment, fine, warning or censure to that individual, whereby this institution after removing the mal administration and mal practices of an individual also can remove its effects in future through directives and suggestions to the individuals, the department or functionaries generally, while exercising suo motu powers.

In short, the importance of this institution can not be explained in this short dissertation / article, it will be enough to say that in all civilized countries the jurists and all other intelligentsia agreed that Ombudsman system meet the need of a most wanted remedial system with no social cost. The personalistic and non-legalistic review of the administrative lapses as the Ombudsman stand for is always needed by the society and it is a very suitable institution to provide justice to the oppressed, needy, downtrodden and under privileged public.

#### 4. **OMBUDSMAN HOW TO ACT.**

A. The post of Ombudsman is a great challenge, one has to work in this institution with missionary spirit and dedication and has to move keeping in view the importance of the

institution with laborious / hard working to achieve the object of reform of society, good governance and redressal of grievances. The Ombudsman is required to work day and night, otherwise he cannot achieve his goals. From the date of taking oath as Ombudsman, I am continuously working in the office till late evening and I have spared the day time for public so that they may not feel any unrest while approaching this sole institution which is known and should known for its cheap, informal, friendly and quick disposal of the grievances. It is also known for its accessibility, democratic disposal, helpful attitude and its grinding influence on the administration. To achieve the objects in its real sense, an Ombudsman during his challenge tenure of ¼ years has to sacrifice his privileges and all other conveniences. This institution is a general check on the bureaucracy, whereby it is the normal conduct/procedure of the bureaucracy from very beginning to use the tactics to compel the institution in a state of composition with it as having been done with all other institutions, and if all self interests are not sacrificed the bureaucracy will be reluctant to implement the recommendations of the institution. When the recommendations are left un-implemented the institution will be of no use. It is human nature, to have the absolute authority, the administrator of any level can not accept, heartily any command from outside. The Ombudsman in every matter points out, the illegal action of an administrator, suggests him to rectify his errors, which is a burden on him, because due to process of Ombudsman his authority is disturbed. I have seen that even ministers, and all other high-ups, taking special care of secretary of a department and other heads of attached departments and deal with them in very humility, because they are worried about their personal affairs, which can only be settled with consent and assistance of administrators. Therefore, the Ombudsman has to give up all his personal desires, during the time when he is holding the post. The Ombudsman should vow that it will be his job, no matter how difficult the condition and harsh the circumstances.

B. It is settled principle that character plays a very vital part in the society, the Ombudsman with self sacrifice also has to keep the office staff also very neat and clean in character and morally very affectionate, so that the institution can be treated as an exemplary office for bureaucracy and general public. Any sort of lacuna will result in ineffectiveness of institution. I am sure that even now there are honest, faithful and dedicated persons in the

state functionaries and general public. If this class is given honour and encouragement the whole society can be rescued from barbarians and the society can be saved from dis-organization.

C. The institution of Ombudsman for the province of Balochistan (Pakistan) was established for the first time on 22<sup>nd</sup> March 2001 and I am the first Ombudsman of Balochistan (Pakistan). After taking oath I formulated some principles regarding good governance, responsibilities/duties of state functionaries, role of common man in reform of society and procedure for eradication of mal practices and mal administration and it was published through a small booklet, copies thereof were delivered to the members of the administration in the province as well as to all other related organizations. I also formulated ten questions in the booklet, for functionaries of the state and general public, answers thereof were given according to injunctions of Quran and Sunnah, with reference to verse of Quran and saying of Holy Prophet Muhammad (PBUH). So that the general public should know, the ideas of the Institution of Ombudsman and state. Functionaries may compare their attitude with settled principles of their obligations, as such attempt was made to give moral education to persons of different walks of life.

The attention of agencies and general public was invited towards their responsibilities in the following manner:-

- (a) *Is it the religious, moral, regional, social and national responsibility of the ruler or any person occupying a place on any level as administrator in power to protect the Bait-ul-Mal (public exchequer) and resources of the Province and spend them appropriately for the development of the people?*
- (b) *Is it not duty of a sensible citizen or group of citizens, of any level, organization or representative of a unit to regard the Bait-ul-Mal (public exchequer) and resources a trust and block the ways to bring it to his own unwarranted use or to the unauthorized use of other?*

- (c) *Have the responsibilities levied under Q.No.1 been discharged befittingly keeping in view the facts discussed in Q.No.1?*
- (d) *If trustee on some assignment in state administration, have the deposits been restored on right place and delivery made to the owners of the deposits with safety?*
- (e) *Certain interested persons offer presents and gifts on the basis of status and post. Are the officials entitled to such presents and gifts as they would have never received had they not held that status or post?*
- (f) *Is it not the duty of every social individual (whether he is a common citizen or administrator and executive) to work hard for reforming the society? Have the responsibilities for the establishment of justice and redress of oppression been fulfilled as social individual or executive?*
- (g) *Is it not the duty of an executive entrusted with the safety of life and property of the people to ensure the security of life, property and honour of the general public?*
- (h) *Is an executive capable to hold his post if the life, property and honour of social individuals and general public are not safe in his presence? And what will be his feelings if his family members or children suffer from excesses on life and property?*
- (j) *Does the morality not make it incumbent upon him to safeguard the life, property and honour of all the people like his own children and family members?*
- (k) *Is it a religious social, and moral duty to uphold the right and truth at all times?*
- (l) *Has the right of the opponent been usurped on the basis of personal malice by taking advantage of status? And has justice been denied due to nepotism?*
- (m) *Is it the purpose and demand of any state position to keep the neck stiff, and traverse the earth high-handedly and not to encourage the aggrieved to come near?*

Introduction of the office of Ombudsman, the aims and objectives of Ombudsman through above book let proved to be very useful. Demand of its translation in English was made which was given honour.

D. While achieving the objective of Good Governance the Ombudsman, has to keep in mind that he must be fully alive of the surroundings and must diagnose the causes, of mal practices because General public and state functionaries if provided guideline, can play a very vital part in maintenance of good governance, where civil rights are fulluy safeguarded, because it is a fact that Administration of justice is not only the responsibility of Ruler or Judge, indeed the entire nation of a country is to participate and this can only be done through the Institution of Ombudsman.

E. **MINIMIZATION OF CORRUPTION & CORRUPT PRACTICES.**

It is observed that the state functionaries are indulged in corruption, and mal administration, with encouragement by selfish and dishonest class of society, because that class for self benefit sometime compel, the functionaries for departure from straight path, which generally affect the society, therefore, the ideas of good governance are to be discussed with different associations of the society. If the education of the reform of society is started through associations of the persons of different walks of life, gradually it will be profitable to the whole of society. In every society, the businessmen, transporters, medicine dealers, doctors, engineers, employees, in short every class of society has its own association, the ombudsman to control mal administration in general, must convey his views suggestions and invite their attention towards their responsibility, and to protect sheer scale of human deprivation in society, while exercising suo motu jurisdiction, he also must do efforts to clean society from every evil and curse like drug addicts, adulterated food sellers, Manufacturers of substandard materials, dealers with mixed, edible stuffs, dishonesty in weight & measures and all kind of discrimination and mal practices and should bring in the knowledge of the rulers, with suggestions through reports.

F. **CONTROL OF POVERTY, THROUGH SOCIAL JUSTICE.**

There is no doubt if resources are distributed justly and fairly, alarming increase in absolute poverty can be controlled. Because the demand of social justice is to give an idea to the administration and general public that all people are equal and have the right of equal treatment, the principles of equity must be conveyed in decision, speeches, and all other possible means of publication.

G. **DISTANCE BETWEEN PEOPLE AND ADMINISTRATION.**

Administrators, are mainly paid by the Government to provide atmosphere of tranquility and peace to the general public and to utilize the abilities of the people of society for the welfare of state. The above objects can only be achieved, when mental environment of mutual consultation is created between bureaucracy and common public. The Ombudsman has to play role to create an atmosphere, in which the bureaucracy and general public both, prepare themselves to help each other. Nearness is needed to know the difficulties of each other, there must be fair and transparent dealing of affairs of Departments, without concealing things. Affairs of Administration should be more open because frank and open procedure would not only help in avoiding delays but will also be a source to repose confidence of public in administration. The Ombudsman may keep in mind that, observances of courtesy and good behavior should characterize actions of public functionaries at all levels so that society as whole may not feel any hesitation to approach the functionaries for their problems.

H. **TO MAKE AGREE THE HEADS OF THE DEPARTMENTS/OFFICERS TO APPLY THEIR OWN MIND TO THE GRIEVANCES OF PEOPLE.**

Heads of the Departments are burdened with heavy duty to maintain writ of administration in the Department and ensure transparent, and fair dealing of affairs. It is observed that some time the head of department follow the summary or draft note prepared from bottom, which is negligence on the part of heads of the Departments. Acting upon

movement of a note from bottom without through check by the head of the department himself creates many complications i.e.

- a) *Facts are not brought on record, properly.*
- b) *The summary of a matter is not narrated in its true prospect.*
- c) *Main grievance is not highlighted.*
- d) *Sometimes due to involvement of lower staff un due complications are created, resultantly matters are not decided justly and properly.*
- e) *Decision on matters is delayed un-necessarily due to confusion in the summary.*

Heads of the departments are required to apply their own minds to the facts of the grievances of public, to avoid delay, and all other negligent acts. The Ombudsman through his suggestion and other action should make efforts to agree the heads of the departments and officers to take personal interest in a matter regarding rights of people so that social justice is promoted.

#### J. IMPROVEMENT OF MORAL VALUES.

It is settled that reform has to be initiated from self-sacrifices, moral values based on equality of human being, promote social justice. The Ombudsman should hack to pieces, the chain of arrogance, being identification of persons, of high status. It is often seen that a person holding an ordinary state position or occupying seat of responsibility, keeps his neck stiff to impress others. He holds himself a different creature from common man with a serious forehead. He is a symbol of superiority complex, keeps himself cut off from the society. All these steps and actions are absolutely artificial which put such person in many difficulties and becomes a victim of tension and fatigue, thus he losses his natural clarity. Unwanted superiority complex makes him cruel, indifferent permanently through which he earns the wrath of both "God" and his creatures. In order to maintain his authoritative position, the hammer of greed always hits his brain and he plans to acquire a unique stuff in life to remain upper hand. For this his brain is always in search of peculiar resources and the discrimination of just and unjust remains valueless for him. He struggles to lead a life-beyond means due to

which he crosses his bounds, becomes a victim of desires and several such diseases as make his life most miserable. It is a fact that "Desires" have no end until death, apparently he rides a good vehicle, resides in good house and wears good clothes but is quite hollow inside, worried and restless. He cannot sleep turns sides even after taking sleeping pills. What is the use of such a life? It amounts to bed of thorns. Above all when such a person quits his state position or loses his pomp, he glances society with hope and dismay but nobody likes to converse with him. He tries to become a symbol of manners but the people remember his past. Thus he remains worried till death. The Ombudsman has to invite the attention of all concerned to the above hateful artificiality in maintaining status to improve moral values.

There is no doubt that a state official or a responsible social individual should pass a highly dignified life in society but only to have a stiffed neck, show of pride and regard the poor and oppressed social individuals as worthless is not the principle. The best principle of dignified life is sacrifice, simplicity, clemency, seriousness and smiling face. Wealth can become a source of satisfaction for daily needs and timely enjoyment but it cannot become a source of dignity and greatness. Pride and sense of greatness shatter the unity of a society. It injures love and unity seriously, which are the causes of social welfare.

The oppressed and suppliant loses heart on seeing the shape of artificiality becomes disappointed of his life in the society. The coordination of social forces with each other breaks away, which creates a thinking of destruction instead of construction. If we look at the developed countries of the world, their officials and responsible persons of society possess sufficient resources but artificiality is not appreciated to a great extent and simplicity has been made a way of life, which is the peak of social welfare. Artificial pomp and show is a disease of inferiority complex. Open expression of one's capabilities is the flavors of life. Instead of justifying errors and omissions, admission and correction are the signs of greatness.

### **DECISIONS OF SUPREME COURT OF PAKISTAN IN RESPECT OF ROLE OF OMBUDSMAN.**

1. The functions and powers of the Ombudsman were discussed in detail by Hon'ble Supreme Court of Pakistan in the case of "**Federation of Pakistan through Secretary Establishment Division V/S Muhammad Tariq Pirzada and others**", 1999 SCMR page-2189. relevant portion whereof is reproduced herein below:-

*"The Ombudsman performs quasi-judicial functions. Aggrieved person can file a complaint or grievance application before the Federal Ombudsman, who can provide effective redress, in a case like the present one. That forum has several attributes of a Court in many aspects of its powers. It can also move in a matter promptly whenever so needed. At the same time it does not suffer from some of the handicaps, due to the technicalities of procedural nature, which operate as impediments or thwart such-like action by the Courts. For example the limitation or non-availability of an alternate remedy in this case for the High Court under Article 199 of the Constitution, is not applicable to the said forum. Besides, the same being quasi-judicial, it is also headed by a Judge, with similar powers to punish for contempt. In this context, therefore, it can be safely concluded, that it can provide the alternate effective and adequate remedy to the petitioner also.*

It was further observed by Hon'ble Supreme Court in the above referred judgment that:-

*"Contention that the recommendations of the Wafaqi Mohtasib were recommendatory in nature and not binding on the Government is in clear conflict with the directives of the President and the Prime Minister of Pakistan. They have emphatically directed the agencies to implement the finding/recommendations of the Ombudsman and desist from making unnecessary representations. These directives have been quoted in the Mohtasib (Ombudsman)'s Annual Report 1998. [P.2198]L*

*"It has been the departmental interpretation of the Federal Government itself that recommendations of the Mohtasib ought to be implemented promptly. It is unfortunate that the agencies/public functionaries unnecessarily resort to representations under Article 32 of the Order, instead of expeditious implementation of the*

*recommendations of the Ombudsman and thereby thwart the ends of justice, aggravating the sufferings of the complainants”.*

2. In a latest judgment reported in PLD 2004 Supreme Court page-99 titled “**Capital Development Authority through Chairman & another V/S Zahid Iqbal & another**”, the Hon’ble Supreme Court explained the jurisdiction and powers of Mohtasib in the following manner :-

*“The action of the President in setting aside the findings and the declaration of the **WAFaqi MOHTASIB** could also not be sustained in law for more than one reason. According to Art 9 of the Establishment of the Office of the Wafaqi Mohtasib (Ombudsman) Order being President’s Order No.1 of 1983 it is an obligation of the Mohtasib to undertake an investigation into an allegation of mal administration on the part of any Agency or any of its officers or employees. According to Art 2(2) of the said order mal administration included an act which was contrary to law, rules or regulations. Article 11 of the said order enjoined upon the Mohtasib to find out whether the complained act did or did not amount to mal administration and then to communicate his findings to the concerned Agency. No provision either of the said President’s order No.1 of 1983 or of any other law for the time being in force took a matter out of the jurisdiction of the Mohtasib only because the same related to a contractual obligation. If as a result of the investigation conducted by the Mohtasib he came to the conclusion that the complained act was offensive of any law, rules or regulations then the Ombudsman was well within his powers to deal with the said matter in accordance with provisions of the said order No.1 of 1983. The action of the President in setting aside the findings and recommendations of the Mohtasib only because the matter related to a contractual dispute was thus no reason or ground justifying interference with the findings and recommendations of the Ombudsman.*

*Needless to add here that the object of establishing the office of Wafaqi Mohtasib was to diagnose, investigate, redress and rectify any injustice done to a person through mal administration on the part of any*

*Agency. The purpose thus was to undo the administrative excesses from within the administration so that justice could be made available to the wronged persons without such persons being forced to knock at the doors of the courts of law. Therefore, vide powers had been conferred on the Ombudsman through section 9 of President's order No.1 of 1983 and the only matters which were kept out of his jurisdiction were the matters which were subjudice before some Court or Tribunal etc of competent jurisdiction; matters which related to the external affairs of Pakistan are matters which related to or were connected with the defence of Pakistan. All other matters irrespective of the fact whether the stemmed out of contractual obligations or otherwise were well within the powers of the Ombudsman and a complainant consequently could not be thrown out only because a complained matter emanated from contractual dispute.*

**GOOD GOVERNANCE.**

Developed societies are built on the foundation of good governance. It is so because good governance furnishes impetus for investment, trade and commerce, very essential for economic growth and progress. Good Governance implies besides other factors, the preservation of rule of law, adherence to due process procedure and expeditions, fair and impartial dispensation of justice under an effective legal system.

It must be the endeavor of every Government functionary to ensure access to justice to all segments of the population, including, the deprived and under privileged classes and people living in remote areas. This is a laudable objective and important goal, having far reaching consequences.

State functionary or authority while dealing with administrative matters of people must follow rules and principles of justice and equity so that even person against whom order had been passed should not stamp such order as mala fide and result of bias or malice. Because orders could not always be in favour of complainant, however satisfaction and confidence of complainant is very much essential. There should be no impression in the society that poor, resources less people cannot get their grievances reused, through public functionaries, on account of their apathetic attitude.

Functionaries of State derive their powers from the Constitution or laws and are required to act clearly within the redefined parameters of law Government powers residing in State functionaries is sacred trust and they

should perform their duties as trustees Whenever the actions/orders/decision/done/passed/made by State functionaries are contrary to said principle, there will be un-rest in society.

### **ACCOUNTIBILITY.**

Accountability, with honest intention and without any discrimination is the only sure mechanism for elimination of corruption or for its minimizing because strike at the root of corruption in society is basis need for good governance. It is the in alienable right of every citizen in the society where ever he may be to be treated in accordance with law and to be provided equal protection of law. There should be no discrimination. Though reasonable classification is not prohibited yet equal treatment and equal protection is need for class. If law is relaxed for one person or violated for the benefit of one person by making a distinction out of way it will adversely affect the whole society and the administration will squandered.

### **ASSETS OF GOVERNMENT.**

In fact Government property is a trust and holding charge of its a trustee. It is the duty of trustee not only to prove his trustworthiness, but also to make efforts for inclining the society to protect the state property from every kind of misuse. With words of mouth every one pretend his loyalty to state and society, but simple test of patriotism is that one should be careful while dealing with state property and its affairs. It is also a fact that each and every persons of

society has some concern with state property at his level; therefore, he must go through the test of self-accountability to eliminate nepotism from his deeds.

### **SINCERITY.**

I feel very important to mention here that during my long experience of different positions, I found that our countrymen waste their energy mostly on loquacity with very little action. When attention to any problem is invited, the state functionaries bureaucracy and common man both without giving due consideration, to the facts and realities, try to justify their negligence with prolixity, which is very adversely affecting the characterization of the whole society. Therefore, one must be sincere with his deeds.

Universally it is admitted that acts depend on the intention. Sincerity and bonofide intention is the only measure, which can eradicate very mischief from society.

### **OBJECT OF THE LIFE OF A PATRIOT.**

It is a fact that states come into existence an defected. Similarly different nation come into limelight and also meet with decay. But state and nation both need such devoted and brilliant persons who have the capability to pull out state and nation from eddy and vortex and enable both to achieve the respective objects and reach to exact destination. Because a state can only be given strength, and can be developed and unconquerable by a modest nation, other wise state is an inanimate thing. If nation become though less and un attentive will be resulted in its weakness and ultimately the state will meet with

decay. The nation can get recognition worldwide only through its dutiful sons who (i) with full devotion utilize their entire resources, knowledge, ability, for the service of nation (ii) ensure unity of nation and equal treatment without any discrimination (iii) give sacrifice of their own interest and take into consideration only and only national interest.

Such like nation can awe struck the entire world. Otherwise nation will be disorganized and will have no value.

Different persons, of nation are entrusted with different responsibilities; the Administration of a country is the very important duty. If the Administrators are wise, accomplished and devoted they will establish a pious society. Then the state will be incomparable and the nation will be known as great nation. For growth of prestigious nation establishment of a virtuous society is essential.

#### **QUALITIES OF VIRTUOUS SOCIETY.**

In virtuous and orthodox society, its inhabitants lead their lives with peace and tranquility, normally people remain worried about their children, and protection of their family from fear of the evil, which is fully protected in a pious society similarly observing of merits, equal treatment, by administration freedom of movement in violability of dignity of inhabitants, no discrimination fearless justice freedom of trade, business and profession are also requirements of a virtuous society. Every person from Administration and bureaucracy has his specific powers, and responsibility. If powers are exercised justly and fairly and

the duty is performed with devotion and sacrifices then the goals of good governance can be achieved with certainty. Masses are affected by good and bad Administration both. It is obligatory for the Administrator of every level to be anxious to the extent of area of his Administration, and to utilize all sources available to him, to obtain the confidence of common run of mankind.

### **REPETITION OF ORIGIN OF INSTITUTION OF MOHTASIB (OMBUDSMAN)**

Basically Mohtasib is word of Arabian language however it is commonly used in Urdu and its general definition is the person entrusted with function of accountability and check. In the present era its conventional synonymous is "Ombudsman" the Ombudsman as defined in "Blacks Law Dictionary" is

**Ombudsman** (Om-buds-man). 1. An officer appointed to receive, investigate, and report on private citizens' complaints about the Government. 2. A similar appointee in a non-governmental organization (such as a company or university).-----Often shortened to Ombuds.

"An Ombudsman serves as an alternative to the adversary system for resolving disputes, especially between citizens and Government agencies.... An Ombudsman is ...(1) an independent and nonpartisan officer of the legislature who supervises the administration; (2) one who deals with specific complaints from the public against administrative injustice and mal-administration; and (3) one who has the power to investigate, criticize and publicize, but not to reverse administration action."

Accountability is a principle which is now universally acknowledged, but in fact initially, Accountability has been accorded pivotal importance in Islam. The religion of Islam lays special importance on man's accountability for *deeds* deeds and acts. The phrase ( ) used in Holy Quran is Multi dimensional since it includes the distinguishing between truth and spurious the accountability of wrong doer and reformation of society for better human relation ship. The Holy Quran Exhorts upon the believers to always distinguish between the right and the wrong. Every human being, be he the strongest among the strong or the humblest among the humble, is bound, according to our faith, to render account of each and every moment of his life on the Day of Judgment, when even the subtlest form of good and evil will be brought to account.

In the Early days of Islam, the Holy Prophet (Peace Be Upon Him) himself acted as Mohtasib. There was a system of checking market places, prices and quality of goods and to rectify wrongs. The concept of accountability of Hisab was given a practical shape alongwith the principle of Adl and Ehsan, i.e. Justice and doing of good.

### **THE CONCEPT OF GOOD GOVERNANCE.**

The concept of good governance is precisely that of ensuring good governance to the peoples, firm faith that rule of law is superior to the will of the administrator of any level. If the administrator ignored his responsibilities and acted in unjust and oppressive, manner the people have a right to challenge such administration.

The end of all economy and polity must be social good and endeavor in improvement in the quality of human life. Human beings should not to be considered as a mere resource for administration or development but they are the ultimate end and all administration, development etc are the resource for their good. If administrative authority is generated into struggle for power for ones, own sake, the very concept of good governance to people will be defeated. In such circumstances the use of administrative powers, will be with technique of governing over the people for keeping them under control of the administrative authority. Mere enjoying the exercise of power over the masses, without keeping in mind their need is anarchy. What has become a categorical imperative is clean and quality governance as it affect the lives of the people. The whole idea of good governance is that of giving, of serving and of doing good to the people , or solving their problems and making their lives more livable, satisfying and enjoyable.

The essential pre-requisites for quality governance are that the system should be good and suited to the needs, aspirations, background and ethos of the people concerned and that those selected for operating the system should endowed with character and competence and motivated by the spirit of public service.

### **ALARMING SITUATION FOR POLITICAL LEADERSHIP.**

Political system is now required to be diverted towards principles of good governance, as it is the source of stability of the system. The political leadership now should learn lesson from continuous failure for decades. If focus is on organization of state apparatus, or on only constitution of Government without any idea of reform, or on division of powers and offices and or on calculation of their rights, privileges and powers, without bothering to principles of Governance and traditional values, will cause the destruction of society and system both.

The growth of political system can not be based on self interest, adhocizm, exploitation of sensitive ideas. Firmness and fairness in political system can be seen only when action for improvement in the quality of human life is taken with sincerity by sacrificing personal interest and not only with words of mouth.

It is very unfortunate aspect of our society that a person is honest when he is empty handed i.e. without power, office and administrative command. The movement he enters into an office or entrusted with some authority of the state, structure built on his slogan when he was out of power, all of sudden kiss the ground. Therefore, a clean and honest society is required to be established, the moral values are to be upgraded and the national conventions, are to be developed and preserved.

It is a fact that the difference between, practical acts and words, of mouth in applying the constitutional provisions, and law of land, to our society, brought us to a state of uncertainty as well as lack of faith. Uncertainty regarding the true and final state of constitutional value and status and lack of faith because human nature attaches various issues of national importance to

fix values and principles alone and looks, with suspicion at every thing that oscillates or fluctuates. This lack of conviction or loss of faith breeds rejection in some and design for reform in others.

**HOW THE POLITICAL GOVERNMENT AND THE HEAD OF THE DEPARTMENT CAN CHECK THE GOVERNANCE OF THE FUNCTIONARIES OF THE STATE.**

1. The negative impact could be checked by improving the standard of efficiency, rewarding for honesty and devotion, and punishing for slackness among government functionaries.
2. Unfortunately the history of political parties does not show that they ever induced the bureaucracy not to take recommendation. The political Government & parties should proceed on merit and sacrifice self-interest, than guideline can be provided to bureaucrats.
3. Standards could be developed further in harmony with requirements of the welfare state by introducing the system of accountability, by strengthening the investigation departments, introducing a system to monitor their performance.
4. To control basic shortcomings in the democratic infrastructure the greediness and the power hungriness in the bureaucracy is to be eliminated. This can only be done when the Heads, them selves go strictly by merit without usurping rights of any one.
5. It is required to provide bureaucracy being knowledgeable and incorruptible so that the nation have a system of governance according to Constitution and law of land.
6. We have to revive or evolve a political culture and a superstructure that is suited to our background, and ethos. We should stop the fruitless and largely irrelevant debates. We need to look at our own historical and cultural background and our experience of working various institutions, and then decide upon the most suitable structures that would best meet our needs and fulfill our aspirations. Time is passing with swiftness, each and every day is valuable.

7. It is a fact that due to the absence of competent leadership in politics as well as administration, the bureaucracy could not be guided appropriately to contribute effectively to have the democratic infrastructure desired by the people of Pakistan, assistance to needy public, therefore due importance is required to be given to this aspect by above two pillars. Similarly District Administration can provide peaceful atmosphere to general public if heads are competent and sincere.
8. We have to consider what changes are imperative to solve the main national problems of poverty, corruption, criminalization of public life, un-equal treatment. We have to ensure our nation's socio-economic development and quality of life for all citizens.
9. The bureaucracy is required to be pull-out from the style of the governance of the colonial, era, because at that time when the government was to provide facility and ease for the rulers and not for the public. There was no concept of Good Governance in its real sense i.e Good for people, but if now the administrators adapt the same colonial style than the society/public will not be free to pursue their vocations and to enjoy their rights.

In all the civilized countries the jurists and other intelegencia agree that Ombudsman's system meet the need of a most wanted remedial system with no social cost. The personalistic and non-legalistic review of the administrative lapses as the Ombudsman stand for, is always needed by the society to influence the public opinion.

This office is a forum of informal justice being a very suitable institution, to provide justice to the oppressed and needy persons. It is also the object of the office of Ombudsman to invite the attention of the agencies towards their responsibilities, functions and obligations, so that the object of good governance is achieved. This office from very beginning is dealing with

bureaucracy/state functionaries in a very affectionate manner, though it is the prime object of this institution to secure justice to the complainants, but at the same time this office safeguard the image of the agencies complained against. It is the effort of this office to provide full protection, to the honest and sincere officers in discharge of their duties. I am much aware that if honest, sincere and dutiful persons from state functionaries are not given honour and encouragement, the whole society will be taken over by barbarians which will resulted in disorganization of the whole society. If an institution like that of Ombudsman is effectively functioning in a society administrative lapses can be rectified. The administrators should not regard the office of Ombudsman as an alien or hostile element. Though the office is a general check, over the bureaucracy and the same is set up for enforcing accountability; however the endeavor is to adopt a conciliatory and understanding posture utmost care is taken to run parallel with Government functionaries and not at cross purposes. Coercion is always avoided and the way of persuasion is adopted.

Now in the first instance it is relevant to mention that the functions and powers of the Ombudsman were discussed in detail by Hon'ble Supreme Court of Pakistan in the case of "***Federation of Pakistan through Secretary Establishment Division V/S Muhammad Tariq Pirzada and others***". 1999 SCMR page-2189. relevant portion whereof is reproduced herein below:-

*"The Ombudsman performs quasi-judicial functions. Aggrieved person can file a complaint or grievance application before the Federal Ombudsman, who can provide effective redress, in a case like the present one. That forum has several attributes of a Court in many aspects of its powers. It can also move in a matter promptly whenever so needed. At the same time it does not suffer from some of the handicaps, due to the technicalities of procedural nature, which operate as impediments or thwart such-like action by the Courts. For example the limitation or non-availability of an alternate remedy in this case for the High Court under Article 199 of the Constitution, is not applicable to the said forum. Besides, the same being quasi-judicial, it is also headed by a Judge, with similar powers to punish for contempt. In this context, therefore, it can be safely concluded, that it can provide the alternate effective and adequate remedy to the petitioner also.*

*"The functions performed by the Wafaqi Mohtasib are quasi-judicial. The concept of a representation envisaged by Article 32 of the office of Wafaqi Mohtasib (Ombudsman) Order, 1983 is that where the Mohtasib has failed to record just and proper findings/recommendations, the President should undo the wrong done to the complainant for the advancement of the purposes of the Order. The powers vesting in the President under Article 32 have to be exercised in conformity with section 24-A of the*

*General Clauses Act, 1897, as amended by General Clauses (Amendment) Act, 1997.*

It will be relevant to reproduce section 24-A of the General Clauses Act as below:-

**["24-A. Exercise of power under enactments.—(1)**

Where, by or under any enactment, a power to make an order or give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly justly and for the advancement of the purposes of the enactment.

(2) The authority, office or person making any order or issuing any direction under the powers conferred by or under any enactment shall, so far as necessary or appropriate, give reasons for making the order or as the case may be, for issuing the direction.

(3) Where any order made or any direction given in exercise of the powers conferred by or under an enactment affects any person prejudicially such person may require the authority, office, or person making the order or giving the direction to furnish the reasons for the order or, as the case may be, the direction and such authority, officer or person shall, furnish the reasons to such person"]

The Hon'ble Supreme Court has further held that

"---Arts. 32 & 11---Creation of office of the Ombudsman ---Purposes---Implementation of findings/recommendations of Wafaqi Mohtasib (Ombudsman)---President and the Prime Minister of Pakistan have emphatically directed the agencies to implement the findings/recommendation of the Ombudsman and desist from making unnecessary representations---Resort to representation under Art. 32 of the Order instead of expeditious implementation of the recommendation of Ombudsman and thereby thwarting the ends of justice, aggravating and sufferings of the complainants deprecated by Supreme Court.

It was further observed by Hon'ble Supreme Court in the above referred judgment that:-

"Contention that the recommendations of the Wafaqi Mohtasib were recommendatory in nature and not binding on the Government is in clear conflict with the directives of the President and the Prime Minister of Pakistan. They have emphatically directed the agencies to implement the finding/recommendations of the Ombudsman and desist from making unnecessary representations. These directives have been quoted in the Mohtasib (Ombudsman)'s Annual Report 1998. [P.2198]L

"It has been the departmental interpretation of the Federal Government itself that recommendations of the Mohtasib ought to be implemented promptly. It is unfortunate that the agencies/public functionaries unnecessarily resort to representations under Article 32 of the Order, instead of expeditious implementation of the recommendations of the Ombudsman and thereby thwart the ends of justice, aggravating the sufferings of the complainants".

In another case titled "Muhammad Ismail & others V/S Secretary Education, Government of Punjab & another" reported in 2000 PLC (C.S) page-112, wherein the Lahore High Court in a constitutional petition under Article 199 held that:-

"Petitioners response to advertisement applied for respective posts. Testimonials of petitioners as to their qualifications were scrutinized and after interview by selection committee petitioners were selected as per merit list displayed on notice board. Merits list was displayed before issuance of notification whereby ban was imposed on new recruitment. Authority neither issued appointment letters to petitioners nor they were allowed to join respective posts and because of ban on new recruitment. Right having been created in favour of petitioners by display of merit list no locus poenitentia was left with authority to retract its steps once the list was displayed it had been made public thereby creating right in favour of

petitioners and the power of authority to retract its steps had been taken away by law. Ban on new recruitment subsequent to selection of petitioners could not take away rights of petitioners which had already accrued to them. Said ban at best could be applied prospectively and not retrospectively. High court accepted constitutional petition directed authority to issue appointments letters to the petitioners forthwith for posts they had applied for”.

it is an obligation of the Mohtasib to undertake an investigation into an allegation of mal administration on the part of any Agency or any of its officers or employees. According to Art 2(2) of the said order mal administration included an act which was contrary to law, rules or regulations. Article 11 of the said order enjoined upon the Mohtasib to find out whether the complained act did or did not amount to mal administration and then to communicate his findings to the concerned Agency. No provision either of the said President's order No.1 of 1983 or of any other law for the time being in force took a matter out of the jurisdiction of the Mohtasib only because the same related to a contractual obligation. If as a result of the investigation conducted by the Mohtasib he came to the conclusion that the complained act was offensive of any law, rules or regulations then the Ombudsman was well within his powers to deal with the said matter in accordance with provisions of the said order No.1 of 1983. the action of the President in setting aside the

findings and recommendations of the Mohtasib only because the matter related to a contractual dispute was thus no reason or ground justifying interference with the findings and recommendations of the Ombudsman.

Needless to add here that the object of establishing the office of Wafaqi Mohtasib was to diagnose, investigate, redress and rectify any injustice done to a person through mal administration on the part of any Agency. The purpose thus was to undo the administrative excesses from within the administration so that justice could be made available to the wronged persons without such persons being forced to knock at the doors of the courts of law. Therefore, wide powers had been conferred on the Ombudsman through section 9 of President's order No.1 of 1983 and the only matters which were kept out of his jurisdiction were the matters which were subjudice before some Court or Tribunal etc of competent jurisdiction; matters which related to the external affairs of Pakistan are matters which related to or were connected with the defence of Pakistan. All other matters irrespective of the fact whether the stemmed out of contractual obligations or otherwise were well within the powers of the Ombudsman and a complainant consequently could not be thrown out only because a complained matter emanated from contractual dispute.

The question whether a revolution has been brought about with the establishment of the institution of Wafaqi Mohtasib in Pakistan must be answered in the negative. No one can claim that by just setting up an institution the entire administrative those has undergone a complete transformation. It would be obviously wrong to asset that everything has changed, or that mal-administration has vanished and the cancer of corruption has been excised. No human agency, even in the best of circumstances, with all the institutional

support, can accomplish such miracles. But it is a matter of great satisfaction to note that we are marching ahead on the right path. I am confident that with the grace of Almighty Allah; with the unremitting efforts on the part of my institution; with the co-operation of the Governmental Agencies; with the awareness and vigilance of the citizens, the system for enforcing administrative accountability will find deep roots and become an enduring feature of the public affairs of this country.

My central concern is with institutionalizing the Office of Wafaqi Mohtasib in Pakistan. Individuals come and go but the welfare and progress of the society depends upon the survival and dynamic evolution of institutions. Any institution which falls victim to inertia, which comes to a stand-still in a changing world will be swept away. Stagnation is a sure recipe for consignment to oblivion. In the process an institution does not only vanish from the scene but a traumatic blow is delivered to the credibility of the institutions. As a consequence a sense of hopelessness comes to dominate the thoughts of the citizens. It is, therefore, of utmost importance that this institution should continue its onward march, otherwise the citizens will give up all hope of securing speedy and prompt redressal of their grievances.

It should be recognized that the establishment and withering away of institutions is a common phenomenon. Only those institutions can endure which possesses innate vitality and inner dynamism and which satisfy the genuine needs of the people. It is gratifying to observe that the institution of

Ombudsman in Pakistan falls within this category. I am sanguine that out of many institutions which have been set up recently, the Wafaqi Mohtasib's office has bright prospects not only for survival but of emergence as a potent force in the days to come. But there is certainly no automaticity in the process of survival. Neither is there an guarantee of unbroken linear progress. I would, therefore, like to reiterate what I stated in my First Annual Report "In the larger interest of the nation incessant endeavors ought to be made by all of use to ensure that the setting up of this institution does not turn out to be an ephemeral episode or a passing event in the beginning of the Report, the credit for establishing the institution of Ombudsman solely goes to the President. I sincerely hope and fervently pray that no one would earn the discredit of destroying, damaging or impairing this institution which is performing such a vital role for the welfare of the citizens.

I recognize that single-minded devotion, missionary zeal and commitment would continue to be required from us. But that would not be enough by itself. The future of the institution depends upon constant and keen interest and full support of the President, the Legislature, the people and media and the whole hearted cooperation of the administrators. But in the ultimate analysis it depends upon the Grace and Bounty of Almighty Allah.

I should like to state here that my expectation from the Press and the other media is not what is generally solicited from them by important official agencies. My approach has been strictly to obtain a favorable reaction to the

Ombudsman's institution rather than to the Ombudsman's person, although in its essentials it is a personality-oriented institution. My lean direction to my Public Relations Wing from the very beginning was to keep this approach in mind and to concentrate rather on informing the people through the media about what the Ombudsman's institution could do and was really doing in the sphere of redressing their grievances. I am glad to say that in conversations with me editors and journalists have praised this stance, which they agreed was necessary to build up a correct image of the Ombudsman in the public minds. Publicly they have given their whole-hearted support in conveying my decisions on complaints to their readers. The extent of their helpfulness and their willingness to highlight my decisions has been so great that my Public Relations Wing has never had to make a specific request to any newspaper to get a report published. One national daily has even taken it upon itself to print the postal address of my office on its special page featuring public complaints, merely for the convenience of its readers.

The Third International Ombudsman Conference was held at Stockholm (Sweden) from June 25 to 28, 1984, followed by the International Ombudsman Seminar at Helsinki (Finland). This Conference -- the most important even of the International Ombudsman community -- is held once in four years. The President graciously approved my participation in the Conference. However, owing to pressing official commitments at home and realizing that I should not absent myself from Pakistan even for a few days at a

critical juncture of the institution's existence, I sought the approval of the President to send instead a delegation consisting of senior members of my staff. The Conference and Seminar were accordingly attended by Messors Amjad Ali and Innamul Haque, Members of my Secretariat.

In the Conference nearly 100 Ombudsman from about 35 countries were present. In addition to the national Ombudsman, regional, local and organizational Ombudsman also attended the Conference and Seminar. The theme of the Conference was "Ombudsman and the Developing Society". Many important items of interest came up for discussion. They included: "The Ombudsman and the Media"; "The Ombudsman and the Discretionary Exercise of Powers"; "The Ombudsman and Computerized Administration"; "The Use of Outside Experts by the Ombudsman"; "Publicity in the Ombudsman's Office"; "E.D.P. in the Ombudsman's Office"; and "Dealing with Chronic Complainants".

I am happy to report that our delegates made a valuable contribution both to the Conference and the Seminar. They apprised the participants of our Institutional structure and functional details including the magnitude of work done by us; the methods and systems adopted in Pakistan for coping with the complaints' and the general performance of the institution. The presentation was most favorably received. In fact the number of complaints handled by us up to June 1984 (i.e. 28,000 in less than one year) literally stunned most of th delegates. The discussion at the Conference revealed that problems were far different in the developed countries where some

Ombudsman complained of receiving smaller number of complaints. They were in fact planning to give more publicity to their activities so as to attract greater number of complaints.

Participation in the Conference and Seminar was found useful and exceedingly rewarding. Notes were exchanged with the other Ombudsman and their senior officers. We managed to project the performance of our institution. It was noted that Pakistan was the only Muslim country, which participated in this Conference. Pakistan being a pioneer in this regard should act as a bridge between the rest of the Ummah and the International Ombudsman community. We are in the process of making contacts with other Muslim countries so that fruitful collaboration and coordination of efforts can be made.

It is of utmost importance that the institution of Wafaqi Mohtasib enjoys total confidence of the people. This credibility is predicated upon its independence from the Executive. As stated elsewhere, this essential attribute has been duly incorporated in the law. Article 3 of the Order, in unequivocal terms, enjoins upon the Wafaqi Mohtasib to perform his functions and exercise his powers independently of the Executive. In our country where the credibility of institutions has often posed a problem it is not only necessary that the Wafaqi Mohtasib should exercise his powers independent of the Executive but also that he should be seen to do so.

The need for making this organization at least as autonomous as a Statutory Corporation is felt in the larger interest of the institution. I would like to

make it clear that this perception of the requirement of autonomy does not reflect any personal desire or difficulty. With the support, which has been forthcoming constantly from the President, I have not encountered any hurdle in tackling functional problems. I have not had to face any difficulty in getting the services of anyone considered necessary or getting concurrence/approval of anything, which was deemed essential. But the operational constraints as set in law and government procedures need to be removed so that the autonomy given to this organization is institutionalized and no impediment remains in the way of effective functioning of this organization.

**The Role of the Central Organization  
for Control and Auditing (COCA)  
in Safeguarding the Civil Rights**

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Dr. Abdullah Abdullah Al-Sanafi  
President of COCA, Sanaa,  
Republic of Yemen

**The Role of the Central Organization for Control and Auditing (COCA)  
in Safeguarding the Civil Rights**

**Dr. Abdullah Abdullah Al-Sanafi  
President of COCA, Sana'a,  
Republic of Yemen**

Ladies and Gentlemen:

The Republic of Yemen is one of the growing democracies in the world. To that end, the political leadership and the government of Yemen are very serious to pursue all possible policies and reforms to establish a sound system to achieve that goal and maintain that image. The multi-party system, open public elections for the Presidency, the Parliament and local councils, freedom of speech, human rights, and promotion of accountability and transparency are only few elements constituting its comprehensive political development and reforms.

At the beginning of this year, January 2004, our country, the Republic of Yemen, hosted the Regional Intergovernmental Conference on Democracy, Human Rights and the Role of the International Criminal Court in Sana'a, the capital of our country. The main objective of this conference was to open the road towards mutual understanding and enhancing different cooperation based on the cultural understanding basis and civilized co-existence and definitely would strengthen firm bridges among various activities concerning human rights.

As a result, Sana'a, conference on Democracy, Human Rights final report represents harmony and become moral and humanitarian potential responsibility. Particularly, we realized that the main goal of Sana'a Conference is to establish the dialogue concepts

among regional states and western states. Such dialogue could constitute a prime mobilizing force towards enhancing channels of convergence on the other.

In this regard, it is scored for the Yemeni political leadership headed by President Ali Abdullah Saleh that it Made dialogue as original/ natural path of Yemen political movement, especially, in pursuing its quest of democracy. Thereby, Yemen has demonstrated one of the most appreciable models of political systems based on wisdom and balanced political growth admired by others.

This respect shows that selecting Sana'a for Regional Intergovernmental Conference on Democracy, Human Rights and the Role of the International Criminal Court, which brought a group of political and intellectual personalities from all over the world to Sana'a considered to be as an international medal for its successful efforts in promoting democracy and human rights.

In other words, the political dimension for choosing Yemen as a host for such conference represent the real trust of the international community in the democratic system in this country.

Along those lines, in his address to Emerging Democracies held in Yemen, 1999, UN Secretary General, Mr. Kofi Annan, appraised Yemen for hosting and participating in the organization of the significant event, which confirms Yemen adherence to democracy as a firm choice on the road of development and progress.

He pointed out that human development aims to expand people's choices for a better life, and that includes the expansion of economic, social and political choices. However, the most significant choices are those that are guaranteed by the right and freedom of expression, organization and participation since they play a crucial role in mobilizing people's contributions to development and to decision making that affect their life and future. He also said that the United Nations Development Programme (UNDP) in collaboration with governments, civil societies and private sector supports good

governance to enhance people participation in development. The best example of such activities is the ongoing technical cooperation between the Republic of Yemen and UNDP, which aims to support national efforts for improving decision-making capabilities in both the executive and legislative branches as well as the development of local administration.

The result of the conference was summarized in what was called "Sana'a Declaration". The most relevant principles to our discussion could be outlined as follows:

- Democracy and human rights, which have their origins in faith and culture, are interdependent and inseparable;
- Democratic systems protect the rights and interests of everybody without discrimination, especially the rights and interests of disadvantaged and vulnerable groups;
- Proper democratic governance and respect for human rights require a freely functioning, well-organized, vibrant and responsible civil society and a legal framework within which civil society can operate in a spirit of partnership and participation. Civil society should play its role responsibly within the framework of law and the principles of human rights and democracy.

Moreover, as a result of long lasting efforts exerted by the government of Yemen in the area of safeguarding civil or human rights, the Ministry of Human Rights has been established recently. It handles the responsibility of human rights protection and relevant issues. In that connection, the Complaint Office was established within the ministry. The main goal of the office is to facilitate receiving complaints/violation notices regarding liberties and human rights issues at the individual or group level. It also provides advices and legal assistances.

Furthermore, the ministry has formed a permanent technical commission representing eleven government bodies (ministries, corporations, and organizations like ministries of: interior, justice, legal affairs, and information). The ministry also works directly with

constitutional authorities representing 35 non-government organizations and civil societies.

These civil societies provide the government, through the ministry or any concerned government department, reports on the status of human rights. These societies include lawyers, political activists, and other volunteers. The ministry has also its own human rights watch, thereby setting a mechanism to observe and collect scattered reports or protests issued in different Yemeni newspapers. It takes necessary steps to impose suitable sanctions through the concerned and responsible government body.

In the midst of all that comes the role of our organization, the Central Organization for Control and Auditing (COCA) in safeguarding the civil rights:

Our organization as the supreme audit institution of the country, in some countries it is called "the office of the auditor general", is playing a very important role in enhancing the accountability and transparency in the environment of democracy. It is the watchdog of the government purse. It has the duties and responsibilities to audit all government bodies, organizations and subsidized entities entrusted with public moneys with due regard to economy, efficiency and effectiveness. It has also the duty to contribute to the improvement and development of the performance of those organizations. Thereby it serves the interest of the general public and ultimately safeguards the civil rights.

COCA, as an auditor of all government bodies including the Ministry of Human Rights, has the responsibility of reporting its results directly to the President of the Republic, the Parliament, and other stakeholders. That means managers and decision makers will have proper information about the collection of revenues and the spending of public moneys. They can make better-informed decisions and manage resources more effectively.

In fact, the ability of the Parliament to hold the government accountable for its spending of public money is closely linked to the quality of audit reports and financial reports issued by the government and the SAI (supreme audit institution), COCA.

The parliament and the public at large look to the SAI for independent, objective and supportable information they depend on to examine the performance of the government and hold it to account.

Because of the considerable independence accorded to our SAI, we have special duty to carry out our mandate, professionally, faithfully and honestly. So, we have the duty to maintain that we are strong and credible in the eyes of the President, the parliament, the stakeholders and the public. The SAI should accomplish prevention of irregularities and discrepancies and recommend corrective/remedial actions for wrongdoings with due regard to the overall welfare of the public. This goes along side with the public sector values and ethics, which include among other things fairness, honesty, and always acting in the public interest. All public officials elected or appointed have the responsibility to actively promote organizational culture that emphasizes these values and high ethical standards. It is important that they demonstrate these values and ethics in their behavior and actual practice and take necessary actions at times of failure.

1. Althowrah Daily Journal, special supplement on the occasion of Sana'a, Inter-government Regional Conference on Democracy and Human Rights, Sunday 11 January 2004.
2. Ibid, 13 January 2004).
3. COCA Act #39 of the year 1992.

# **HUMAN RIGHTS IN INDEPENDENT UZBEKISTAN**

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Prof. Akmal Saidov  
Director, National Human Rights Center of  
the Republic of Uzbekistan

## **HUMAN RIGHTS IN INDEPENDENT UZBEKISTAN**

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**Director, National Human Rights Center of the**  
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### **I. Introduction**

On 31 August 1991, the Republic of Uzbekistan gained its independence in a peaceful parliamentary way. With regard to this, this article presents our attempt to provide a brief analysis of the evolution of the development democratic transformations in our country, including the area of human rights promotion.

This is why this publication builds on approach to the issue in question from the perspective of the dynamics of what has been done from a scratch during the decade of independence in favor of approximation to the international human rights standards. The promotion of human rights is not a one-time process that could be instantly done. The Republic of Uzbekistan sees the protection of human rights as an integral and inseparable part of democratic transformations in the country. To this end, the mentality of the Uzbek people has to be changed and basic democratic principles, attitudes, and thinking should be anchored in people's mind.

What has Uzbekistan managed to achieve since gaining its independence in the field of human rights?

### **II. Key Approaches to and Principles of Human Rights Issues**

Immediately after gaining the independence, a newly emerged state started the formation of basic state institutions on the basis of the separation of powers into the legislative, executive and judicial ones. As these institutions were developed, an urgent need for bringing the domestic human rights protection process in consistence with the universally recognized principles and standards of international law to prove success in

the development of political and economic-trading relations. This has been stipulated by the following factors:

Firstly, the participation of Uzbekistan in the activities of the main international organizations, amongst which are the largest ones such as the United Nations and its special organizations, the Organization for Security and Cooperation in Europe (OSCE), the European Union, etc;

Secondly, acceding of the Republic of Uzbekistan to the main international human rights treaties, including the UN human rights instruments in the first place;

Thirdly, the choice of its own way of development in of foreign policy of the state. Uzbekistan chosen the development and strengthening of relations with democratic states as a foreign-policy political priority; since the main precondition of political-economic cooperation with countries is the observance of human rights, our country pays much attention to this issue.

### **III. The Key Principles of Human Rights Policy of the Republic of Uzbekistan**

The key principles of human rights protection policy of the Republic of Uzbekistan are the followings:

1. Commitment to the universally recognized principles and standards of democracy and human rights;
2. The development of foreign policy activities in the field of human rights based on the national interests;
3. The gradual and phase-by-phase character of the implementation of democratic reforms;
4. Dynamic nature of the democratization and human rights protection processes;
5. Readiness for open and meaningful cooperation as an equal and fully-fledged partner and non-acceptance of the policy of "big brother" in this field.

On this basis, Uzbekistan began to implement at large international human rights standards in societal life, the mentality of the nation and civil servants. However, it has to

be stressed that the implementation of human rights protection system and mechanisms has been launched not to please some state or international organization.

It is the need for the observance of all international human rights documents and meeting the standards of the state, based on democracy and the rule of law, have become the key requirements for the development of independent Uzbekistan. The reason for this is the fact that these requirements meet our national interest rights, and not that Human Rights Watch or some other organization put pressure on the country. We do not need to be persuaded in the necessity of democracy, for we "have grown out of the clothes".

#### **IV. The Main Thrusts of Human Rights Policy**

##### ***4.1. Legislative Foundations of Human Rights Protection***

Over the years of the independence, the Parliament of the Republic of Uzbekistan has adopted more than 120 laws dealing with human rights protection. Among the main legislative documents, the followings deserve a special mentioning.

- The Constitution of the Republic of Uzbekistan (1992);
- Law On Ombudsman (1997);
- Law On Mass Media (1998);
- Law On Guarantees and Freedom of Access to Information (1997);
- Law On Protection of Professional Activity of Journalists (1997);
- Law On Non-governmental Not-for-profit Organizations (1999);
- Law On Additional Incentives for Women (1998);
- Law On Political Parties (1996);
- Law On the Constitutional Court (1996);
- Law On Complaints to the Court concerning Actions and Decisions Violating Human Rights and Freedoms of Citizens (1994);
- Law On the Freedom of Consciousness and Religious Organizations (1998);
- Law On Complaints of Citizens (2002);
- Law On the Guarantees of Voting Rights of Citizens (1993);
- Law On the Advocateship (Advokatura) (1996);

- Law on the Courts (2001).

Thus, one can state with certainty that the legislative foundations for human rights protection are created in Uzbekistan.

#### *4.2. Institutional mechanisms of human rights protection*

Simultaneously with the creation of the legislative foundations, enormous efforts have been made with regard to the institutional formalization of human rights protection mechanisms in the Republic of Uzbekistan. It should be emphasized that the state came up as the main initiator of the indicated process in response to the worldwide address of the United Nations Second World Human Rights Conference (Vienna, 1993) that urged the member-states to establish national human rights institutions in their respective countries. To date, the following democratic institutions have been established in Uzbekistan:

- The Constitutional Court of the Republic of Uzbekistan (1995);
- The Ombudsman of the Republic of Uzbekistan (1995);
- The National Human Rights Center of the Republic of Uzbekistan (1996);
- The Institute of the Monitoring of the Current Legislation (1996);
- The Committee for Democratic Institutions, Non-governmental Organizations and the Organs of Self-governance Citizens within the Oily Mails (Parliament) of the Republic of Uzbekistan (2000).

The constitutional principle of the separation of powers is being persistently implemented and the role of the parliament is increasing, while genuine independence of courts and judges is being sustained. On the basis of the referendum conducted on 27 January 2002, Uzbekistan will establish the bicameral national parliament in 2005. Beside the Constitutional Court, the specialization and separation of courts process takes place on the basis of the new edition of the Law On Courts that divide all the courts into the courts of common jurisdiction, criminal courts, and civil courts. In the Ministry of

Justice of the Republic of Uzbekistan, a department on organizational, logistic-technical and financial procurement of courts was established.

#### ***4.3. Human rights, non-governmental organizations, political parties and movements***

Apart from the state system of human rights and freedoms protection, much importance is attached to the development of non-governmental organizations. More than 300 nation-wide and international non-governmental organizations and about 4,000 local public associations have been registered to date. The largest of these organizations are Kamolot, Soglom Avlod Uchun, Makhalla, Ekosan, and Nuroniy.

Presently, non-governmental human rights protection organizations have recently become active in their development. Of these NGO, the following enjoy great authority among the public and work very actively: Public Opinion Study Center, Legal Aid Society, Center for Support of Independent Candidates, Human Rights And Humanitarian Law Studies Center, the Committee for the Protection of Rights of Individuals, the Association of Business Women, the Association of Advocates, and the Association of Judges.

The desire and will of political administration of Uzbekistan are appeared to have been conducive to establishing a dialogue between governmental agencies and non-governmental organizations. A brilliant evidence of this is a series of workshops and trainings on legislative issues, human rights monitoring and compiling alternative reports on the current situation in different fields of national activities.

What regards political life in Uzbekistan, there are the following political parties: Fidokorlar, Milliy Tiklanish, Adolat, Liberal Democratic Party of Uzbekistan, and also movements Halq Birligi and the Assembly of Cultures of Peoples of Central Asia. The role of political parties is expected to grow significantly due to the forthcoming parliamentary reforms and the creation of a bicameral parliament.

#### ***4.4. Informational-dissemination, educational, research and publishing activities in the field of human rights***

Within the framework of the United Nations Decade for Human Rights Education, with the purpose of increasing the knowledge of these issues, national institutions and non-governmental organizations focus much effort on information-dissemination and education activities in close cooperation with the country offices of different international organizations.

Additionally, state institutions carry out research and publishing activities as part of information-dissemination and public education efforts. Since 1997, Human Rights has been introduced as subject of the curricula at all schools and higher education institutions in Uzbekistan, including the UNESCO Chair of Human Right, Peace, Democracy, Tolerance and International Understanding at the University of world Economy and Diplomacy and the Chair of Human Rights Theory and Practice at the Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan.

All the ministries and state agencies of Uzbekistan, dealing with human rights issues have their own periodicals that prioritize highlighting human rights issues. Human rights issues are highlighted in more than 30 special legal newspapers and 10 magazines. Two leading periodicals in this area are journals 'Democratization and Human Rights' and 'Public Opinion. Human Rights', published by the National Human Rights Center of the Republic of Uzbekistan in English, Uzbek and Russian.

Posters, books and brochures on international human rights standards are also published in Uzbekistan.

The key target groups of the country's population for public human rights education are women, children, believers, and people in correctional facilities, and representatives of nongovernmental organizations (NGOs).

**The protection of the rights of women and children.** In terms of social policies process, over recent years a special emphasis is placed on women and children. In Uzbekistan, the year of 1999 was announced the Year of Women, the year of 2000 the Year for Healthy Generation, and the year of 2001 the Year of Mother and Child. Over this period, the state took legislative steps to promote the protection of women's rights and maternity and childhood.

A distinctive feature of the country is women's social activism in NGOs' activities. More than half of NGO registered in Uzbekistan are either women's NGOs or work under the leadership of women.

**Religious tolerance.** Believers take a special place in the civil dialogue. The Ministry of Justice of the Republic of Uzbekistan has registered to date more than 2,000 religious organizations, belonging to all fifteen religious confessions existing in Uzbekistan, out of which 1,700 are Muslim religious organizations.

The state provides extensive support to different religions in their activities. Examples of this support are facilitating to religious holidays (such as Muslim Hajj) and other large religious events organized by other religions (e. g., the 130<sup>th</sup> anniversary of the Russian Orthodox Eparchy).

**Interethnic tolerance.** Interethnic tolerance has been inherent of Uzbekistan from time immemorial. Uzbeks have always practiced tolerance towards other ethnicities living in the territory of present-day Uzbekistan.

This tradition that dates back to previous epochs is tightly observed nowadays. Presently, in Uzbekistan more than 130 cultural centers of ethnicities living in Uzbekistan work actively in the country at both national and regional levels. People belonging to all the ethnicities living in Uzbekistan enjoy equal rights and have opportunities to celebrate their traditional holidays and to practice customs and rituals.

In 2000, the dialogue of religions was given a new impact, a fact that can be seen in the workshop on The Constitution of Uzbekistan and the Dialogue of Religions. At this forum, representatives of the organs of government explain the essence and details of the right of practicing religions to religionists who participated in the workshop, thus crossing all t's. This is the ongoing dialogue.

Regular meetings of the ethnic cultural centers are meant to meet objectives similar to the abovementioned ones through discussing ethnic minorities problems and issues in Uzbekistan among other questions.

**Monitoring and humanitarian aid in penitentiary institutions.** Since 2001, the International Committee of the Red Cross is authorized by the Government of Uzbekistan to exercise monitoring in jails. A series of human rights standards training events were organized in juvenile correctional facilities in cooperation with Save the Children (UK), a British charitable organization, and United Nations Children Fund (UNICEF). The penitentiary system has become transparent for international organizations, representatives of foreign states, and mass media.

## **V. International Human Rights Cooperation**

### ***5.1. Implementation of international human rights treaties in the national legislation of Uzbekistan***

The Government of Uzbekistan realizes clearly the fact that a democratic lawful state cannot be built but with acceding to the main international human rights instruments and assistance of international organizations. To date, Uzbekistan acceded to more than 60 main international human rights treaties. These human rights documents are the Universal Declaration of Human Rights, the Convention on the Rights of the Child, Geneva Conventions and Optional Protocols to these conventions, the Paris Charter for New Europe, the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention against Tortures and Other Cruel Inhumane or Degrading Human Dignity Treatments and Punishments, and many others.

### ***5.2. Meeting International Human Rights Commitments***

Having taken thus certain commitments, the Republic of Uzbekistan submits national reports on the implementation of these international human rights treaties in a

timely manner. Since 1996, Uzbekistan submits National Reports to the respective UN Committees. Since 1996, the national reports on the following Conventions and Covenants have been submitted to the UN Committees:

- the Convention against Torture and Other Cruel Inhumane or Degrading Human Dignity Treatments and Punishments (the first national report was heard in 1999 and the second one in May 2002);
- the Convention on the Elimination of All Forms of Racial Discrimination (the national report was heard in August 2002);
- the Convention on the Elimination of All Forms of Discrimination against Women (the national report was heard in January 2001);
- the Covenant on the Civil and Political Rights (the national report was heard in March 2002);
- the Convention on the Rights of the Child (the national report was heard in autumn of 2001);
- the Covenant on Economic, Social and Cultural Rights (the national report was submitted to the UN Committee for Economic and Social Rights).

### ***5.3. International Human Rights Cooperation***

Among the key international partners that assist to Uzbekistan in the building of the lawful democratic state are the United Nations and its special organizations, the Organization for Security and Cooperation in Europe (OSCE), the European Union, the United States Agency of International Development (USAID), the International Center for Not-for-profit Law, the Konrad Adenauer Foundation, the Friedrich Ebert Foundation, the Open Society Institute – Assistance Foundation Uzbekistan (OSI – AFU, or the Soros Foundation), the International Committee of the Red Cross (ICRC), the embassies of European states, etc.

Cooperation with these organizations allowed for successful implementation of the following project: Democratization, Human Rights and Governance in Uzbekistan (UNDP); The Development of the Civil Society Institutions, Support to the Organs of Self-governance Mahalla (TACIS, USAID, Konrad Adenauer Foundation, Friedrich

Ebert Foundation, Open Society Institute – Assistance Foundation Uzbekistan); International Human Rights Standards (OSCE); and Democratization of Legislative Activity (TACIS).

International cooperation in the field of information-dissemination and educational activities is implemented through organizing workshops, training sessions and courses targeted at various groups of the society.

Among new thrusts of international cooperation activity is law enforcement system reform process. Since 2000, OSCE supported a series of training sessions on International Human Rights Standards for the officers of the Ministry of Internal Affairs, Prosecutors' Office, judges and lawyers, in all the regions of Uzbekistan. In May 2001, two regional training workshops were held in Bukhara and Tashkent.

The Republic of Uzbekistan also cooperates with international organizations in information-dissemination and educational activities targeted at persons serving their sentences in correctional facilities. More than 20 training courses were organized for the officers of penitentiary system and also women and juveniles in correctional facilities. In January 2000, the Government of Uzbekistan authorized the ICRC to visit correctional facilities in Uzbekistan. As a good-will act and demonstration of a commitment to cooperation in furthering penitentiary system reform process, a correctional facility in Jaslyk, which democratic states criticized most of all, became the first penitentiary facility that has been visited by the ICRC.

International organizations, such as OSCE, ICRC, UNESCO and OSI – AFU, provide active support to and financing of publishing books, textbooks, posters and brochures on human rights issues.

The Government of Uzbekistan is committed to keep up the current tempo of the development of international cooperation. For example, in 2001 efforts have become focused on promoting genuine freedom of speech and mass media as follow-ups of the international cooperation.

**Conclusion**

Thus, never will it be overemphasized the importance of assessing the human rights achievements of the Republic of Uzbekistan from the perspective of what has already been done to build the real democracy.

Certainly, Uzbekistan is presented with challenges of the building of democracy. These challenges are largely objective – economic difficulties, necessity of maintaining national security, peace and stability in the country, and challenges of transition.