



8th Asian Ombudsman Association Conference

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

Presentation

Plenary Session III

“The Ombudsman and citizen participation”

April 26-29, 2004

Seoul, Korea





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Legality and Participation-Some Swedish experiences

Mrs. Anna-Karin Lundin,
Parliamentary Ombudsman, Sweden

Legality and Participation – Some Swedish experiences

**Mrs. Anna-Karin Lundin,
Parliamentary Ombudsman,
Sweden**

1. Introduction

My native country is Sweden, a small nation of about nine million inhabitants in the northern part of Europe. Sweden has been luckily spared from wars for nearly two centuries. It is a wealthy, industrialised and technologically advanced society. Politically, it is a parliamentary democracy.

Sweden has a stable social security system and the population is in average highly educated.

2. Some crucial elements in Sweden's political development since 1809

Let me, very briefly, introduce you into some specific features of the Swedish political system. One might perceive three different stages of development.

The first one is the peaceful regime change in 1809, a change from royal autocracy to constitutional royal rule. The King, through his Council, kept the power to rule the country but his power was to a certain extent balanced by the Parliament, a diet of four estates.

Hence, democracy was far away, members of Parliament represented a tiny elite of landowners and higher civil servants (even if peasants were represented by the fourth estate). Women had no political influence at all.

In this context the establishing of the office of the Parliamentary Ombudsman in 1809 constituted a remarkable element of popular control of the ruling state elite. Its main task was to control state bureaucracy. And most remarkable in those times: every citizen got the right to make a complaint against civil servants.

In Europe democracy developed in different speeds and ways. In some countries democratic tendencies broke through already in the end of the eighteenth and the first part of the nineteenth century.

For a long period Sweden was a backward country, economically and, to a certain extent, also politically. Only gradually democratic elements were introduced or enforced. Full democracy with universal and equal suffrage was not established until 1921. The government became responsible only to the Parliament, not to the King. Parties were already accepted as the natural means of political representation.

This constituted the new, second stage of Swedish democracy. However, the old constitution of 1809 was formally maintained. It was not replaced by a truly parliamentary constitution until 1974.

Political parties play a key role in every representative democracy by constituting links between citizens and political power. But the Swedish model of government by people also contains substantial elements of self-organisation, decentralisation and self-administration.

Typical of the Swedish democracy is also the strong influence of NGOs (Non Governmental Organisations), especially the temperance movement and the trade union movement. Traditionally, some of them have interacted closely with the political parties.

One might say that we are now facing a third phase of democracy and participation in Sweden. Political parties are weakened, the membership is shrinking and participation in the elections is slightly decreasing. Also, the membership of traditional NGOs' is declining.

On the other hand, the importance of human rights in the conscience of the citizens (and also in the constitution of 1974, with an extension in 1978) is strengthened. New popular movements, representing e.g. peace, environment, feminism, gay rights and animal rights, have emerged. Local action groups are much more common than earlier.

On the official level experiments of various forms of self-government have been introduced. Municipal boards have got the right to delegate decision-making authority to self-administration bodies. Strengthening of the institution of popular referendum is being discussed. Thus, citizens' participation has in some respects grown stronger and it has also been channelled along new tracks.

What does this mean to the system of the Parliamentary Ombudsmen? How has their role changed during two centuries?

3. The Parliamentary Ombudsmen and the Parliament

The task of the Ombudsmen is to supervise the application in public service of laws and other statutes.

Today the Ombudsmen have mainly a preventive function; their task is to contribute to the improvement of legal standard of the public administration and the administration of justice and thus prevent mistakes.

Since the Ombudsmen are neither courts of law nor administrative agencies, they cannot function as an instance of appeal, nor can they issue binding decisions.

The main provisions concerning the Parliamentary Ombudsmen are laid down in the constitution. The Ombudsmen are elected by the Parliament. They are part of the parliamentary control of government, but the office is in itself totally apolitical. By tradition, all political parties represented in Parliament accept the candidate proposed by the standing Committee of Constitution.

5 The Ombudsmen are accountable for their actions only to Parliament. They are completely independent in relation to Government and the state and local administrations.

The Parliamentary Ombudsmen function as a stabilising factor in the Swedish society by offering the ordinary citizen a cheap and simple way of having the actions of an authority impartially scrutinized as to their legality and fairness.

But, the break-through of democracy in the beginning of the last century and the more central role of Parliament meant a change. Now, when the Ombudsmen were appointed by a democratically elected Parliament the popular participation was more clearly expressed than in 1809, when the first ombudsman was elected.

4. The citizens and the Parliamentary Ombudsmen

In Sweden, one might say, all the citizens are aware of the existence of the Parliamentary Ombudsmen. They generally consider the office of the Ombudsman as a citizen's institution in which they show a great confidence.

For an ordinary citizen it is very easy to complain to the Parliamentary Ombudsmen. Everyone has the right to submit a complaint – in other words the right is not restricted to Swedish citizens or residents. Even those who have been arrested or are committed for care are entitled to complain to the Parliamentary Ombudsmen. The complaints can also be made by individuals who are not affected by the issue.

Complaints should be made in writing, but not necessarily in Swedish. A complaint may be submitted by mail, e-mail, telefax or it may be handed in to the Parliamentary Ombudsmen's secretariat.

Each year the Ombudsmen receive some 5,000 complaints. We are four ombudsmen. When the institution was created in 1809 one single Ombudsman was elected.

5. Factors of importance for the citizens' participation

Of course many different factors are influencing and strengthening the prerequisites for citizens' participation in the Swedish political system. Let me stress three important factors:

- The level of education
- Political stability
- Stability of institutions

A fourth factor is transparency. What I refer to is transparency of government, enabling every citizen to rightly assess the actions and performances of the government.

As a last factor I will mention accountability; the accountability of those who are entrusted with the right to exert public power.

The two last mentioned principles - transparency and accountability - are two key principles in the Swedish system of government. I am going to describe the application of these two principles in Sweden. Let me start with transparency. I will deal with this matter at some length.

6. Transparency and democracy

Sweden is often pointed out as a very good example of a culture of openness.

The right of citizens to have an insight into the political agencies, courts of law and public authorities is since long – by any international comparison – extensive.

Furthermore, the statutory guarantees of this right are firmly entrenched in constitutional laws.

Transparency is a necessary condition for a living democracy. Democracy requires public participation in discussions on matters of common public interest. It is also a prerequisite

that citizens have the means of exercising control over the administration in order to promote its efficiency and deter corruption. A democracy therefore must ensure and encourage openness within public administration and guarantee the right of public access to official information.

7. Public access to information

The principle of public access to information is expressed in various ways:

1. Anybody whatsoever may read the documents of authorities (*access to official documents*).

In Sweden the right of public access to official documents is a constitutional right since 1766.

2. Public servants are entitled to inform outsiders (*freedom of expression for public servants*). Everyone in Sweden has this right but it is of particularly great importance to public servants.

3. Public servants have right to disclose information to newspapers, radio and television. Their employers must not trace them. Mass media are, on the other hand, forbidden to disclose their sources of information (*communication freedom for public servants*).

4. The public and mass media are entitled to attend trials (*access to court hearings*).

5. The public and mass media may attend sessions of Parliament, the municipal assemblies, county councils and other similar bodies (*access to meetings of decision-making assemblies*).

Here I will concentrate on the first and the third principle.

8. Legislation concerning public access to official documents

The legislation guaranteeing public access to official documents is of decisive importance to the culture of openness. The simple principle is that everything is open to public, which is not explicitly made secret.

Purposes for secrecy

Official documents can be kept secret only for specific purposes. They are enumerated in the Freedom of the Press Act, which in Sweden is a Constitutional act, e.g.

- the security of the Realm and its relations with a foreign state or an international organisation
- the interest of preventing or prosecuting crime, and
- the protection of personal integrity or economic conditions of individuals.

Furthermore any restrictions of the right to access to official documents "shall be scrupulously specified in provisions of a specific act of law", viz. the Secrecy Act.

An important principle of the Secrecy Act is that the area of information covered by the act should be as small as possible.

The principle of public access in practise

What does the principle of public access to official documents mean in practise? It means that any such document, not secret under the Secrecy Act, shall be available to any person who wants to get access to the document. This must be done by the responsible authority, immediately and free of charge at the office or other place where it is kept.

If the authority refuses to hand over the document to the person asking for it – e.g. since the authority considers it to be secret under the Secrecy Act – he or she can appeal to an administrative court. This court has the right to change the decision and order the release of the document.

My second comment on public access will deal with freedom to communicate information for publication.

9. Freedom to communicate information for publication

Anybody has the right, unless otherwise provided in the Freedom of the Press Act, to make statements and communicate information for the purpose of publication to an author, to an editor or editorial office of a publication or a news agency.

This freedom comprises most of the information classified as secret under the Secrecy Act, provided that the information is communicated orally. The exceptions from this freedom are enumerated in the Secrecy Act. However, it is always a criminal offence to hand over classified documents.

The right to anonymity.

Editors receiving secret information are, with few exceptions, forbidden to disclose the identity of persons communicating information to a newspaper or other media. In most cases authorities are not allowed even to make inquiries about their identity.

10. The ombudsman and transparency

As I stated before transparency is one of the key principles of the Swedish system of government. This principle has always been regarded being of utmost importance.

The Parliamentary Ombudsmen have an important function in this area. Let me give you some typical examples. Quite often it occurs that an authority fails to reply to a person who wants to read a specific document. Or the request might be processed very slowly.

It also happens that authorities do not respect their employees' freedom to communicate with media.

In these and similar cases the Parliamentary Ombudsmen normally criticise the authority.

11. Accountability

The other key principle in the Swedish system of government that I want to stress is the principle of accountability.

As I have already mentioned, the Ombudsmen may not change the decision of a court of law or a public authority and they may not give directions as to how a court of law or public authority is to decide in any particular case. Instead, the rule of the Ombudsmen is based on the principle that every official is answerable for the decisions he or she makes in execution of his or her duties.

Public servants are accountable under criminal law. There is also a system of disciplinary accountability.

The law provides that anyone who, in the exercise of public authority, intentionally or through negligence failed to perform his or her official duties would be convicted of misuse of office. The punishment is fine or imprisonment for at most two years. If the crime is grave, the punishment might be imprisonment for at least six months and at most six years.

In such cases the Ombudsmen have the right and duty to prosecute. The Ombudsmen and the general prosecutors have overlapping competencies in this respect.

Prosecutions are not very frequent due to the fact that very few of the errors discovered by the Ombudsmen are serious enough to deserve punishment under criminal law.

If an official has committed some offence which can be the subject of disciplinary measures, the Ombudsmen may, instead of initiating legal proceedings, submit a report to the authority which is empowered to decide on disciplinary sanctions (the public authority in which the official is employed or a special board for disciplinary cases).

This is not done very frequently either, but the Ombudsmens' most important weapon is to criticise officials found at fault.

12. Government-appointed Ombudsmen

During the last decades a series of other Ombudsman institutions has been established in Sweden. They have duties of surveillance, each in a particular sphere. The new Ombudsmen are appointed by Government, which of course means that they are not independent in the way the Parliamentary Ombudsmen are.

These new governmental Ombudsmen are six, namely

- The Consumer Ombudsman
- The Equal opportunities Ombudsman
- The Ombudsman against ethnic discrimination
- The Ombudsman against discrimination on grounds of sexual orientation
- The Children's Ombudsman
- The Disability Ombudsman

The main purpose of The consumer Ombudsman is the protection of rights of consumers in different ways.

The first obligation of The equal opportunities Ombudsman is to seek to persuade employers to comply with an Act on Equality between Men and Women at Work (The Equal Opportunities Act). This act is directed towards labour market conditions.

The Ombudsman against ethnic discrimination shall work to prevent the occurrence of ethnic discrimination in society.

(The term ethnic discrimination means unfair or offensive treatment due to race, skin colour, national or ethnic origin or religious faith.)

The Ombudsman against discrimination on grounds of sexual orientation is an authority commissioned to combat homophobia and discrimination on grounds of sexual orientation in all areas of Swedish society.

Swedish children and young people up to the age of 18 have an Ombudsman of their own, The children's Ombudsman whose main task it is to safeguard the rights and interests of children and young people as laid down in the UN Convention on the Rights of the Children.

The disability Ombudsman works to achieve the general objectives of disability policy, which is full participation and equality for people with disabilities.

It is easy to understand the differences between these Ombudsmen and the Parliamentary Ombudsmen.

Obviously, these new Ombudsmen are products of another time and another society than that of the Parliamentary Ombudsmen. Political and social changes, a more pluralistic, human and tolerant society have produced a need for new kinds Ombudsmen.

Various groups of citizens, with growing influence during recent decades, have called for a spokesman for their special interests. When, simultaneously, as I mentioned earlier, the parties have been weakened and less representative, the new Ombudsmen can be seen as new means of channelling popular demands.

13. Self government

In Sweden local self-government has expanded during the last years. Municipal councils and county councils have got the right to delegate decision-making authority to so called self-administration bodies managed by groups of citizens. The idea is to strengthen the participation and involvement of ordinary citizens.

When new forms of participation are established, it is essential not to forget old values. It is e.g. important that the system of openness and of accountability is maintained in these new bodies.

These self-administration bodies stand under the supervision of the Parliamentary Ombudsmen. This is to guarantee that these bodies uphold the principle of law and the fundamental rights and freedoms.

14. Conclusion

I began asking: What has the development and strengthening of citizens' participation meant to the system of the Parliamentary Ombudsmen? In what respect has the role of the Ombudsmen changed during two centuries?

Citizen participation is a very broad concept. The main tools are still political in form of parties, local councils, parliament, referendums and self-administration. Of growing importance are the voluntary civic organisations with a legally guaranteed free space and (perhaps) public support.

Every vivid democracy also needs a system of checks and balances. There are various models in different countries, but some features are common: independent courts, honest administration, and independent institutions as trade unions, private companies and free media.

The system of the Parliamentary Ombudsmen has a role of its own in this sphere of checks and balances. On one hand the Parliamentary Ombudsmen are not legal courts and they have no executive powers. On the other hand they act within a legal framework, not within a political one. They supervise, they set up guidelines, and they channel complaints of citizens into an administrative level.

In this respect the Parliamentary Ombudsmen have a direct bearing on citizen participation – the channel of the Parliamentary Ombudsmen gives the citizens a possibility to express their complaints and get irregularities and abuses publicly

known (even if the Ombudsmen do not have the authority to change decisions of other bodies). The steady increase of citizens' complaints rather shows a higher level of participation than a lower quality of administration.

The main object of the activities of the Parliamentary Ombudsmen has always been safeguarding the rule of law and protection of rights and freedoms of individuals. Supervising the application of these values in everyday life is of crucial importance in every democratic society.

The Office of the Swedish Parliamentary Ombudsmen has remained virtually the same in all fundamental respects for nearly 200 years. The basic structure of the office is such that it has been able to adapt itself to the great social, economic and political changes that have taken place in Sweden during that time. I am firmly convinced that The Parliamentary Ombudsmen will take an active part in safeguarding the rule of law when it comes to new forms of citizens' participation in the future.

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The Ombudsman and Citizen Participation: Thai reflections and future implementation

Mr. Poonsup Piya-Anant,
Thai Ombudsman

The Ombudsman and Citizen Participation: Thai reflections and future implementation

**Mr. Poonsup Piya-Anant,
Thai Ombudsman**

Presentation Framework

1. History and Nature of Thai culture
2. Occurrence
 - fear of dark influence
 - patronage value tend to induce supervisors to protect subordinates
 - lack of awareness in basic rights
 - lack of determination to uphold good governance
 - perceiving administrative deeds as blameless acts
 - obedient to the governing bodies
 - negligence of responsiveness to public service
 - organization's internal inspectors tend to grant favor to their own officials, hence, no trust
3. Administrative and Legislative solutions
 - Independent organizations such as Ombudsman, National Counter Corruption Commission, Administrative Court, Constitutional court, etc.
 - Administrative and bureaucratic reform
 - Campaign to empower civil rights and to encourage citizen participation
4. Ombudsman as a channel to promote citizen participation, transparency , and governance
 - Background and establishment
 - Mandate, Policy, and Performance
 - Type of grievances
 - Problems and lessons learnt

- Future direction and Projection
 - Being proactive instead of mere responsive
 - Own initiative amendment
 - Generating networks with parallel organizations
 - Last resort amendment
 - Call Center establishment
- Ombudsman's contribution towards citizen empowerment and public access (being a voice for people, means to remedy people grievances, and change agent in the society)
- 5. Public participation promotes social development in various aspects
 - Pressurize local authorities to improve public services
 - Oversee transparent local government decision making
 - Reduce financial mismanagement
 - Support program and project that facilitate social and economic development
- 6. Conclusion

Excellency,
Board of Directors of A.O.A.,
Distinguished Ombudsmen,
Ladies and Gentlemen,

I am very honored to have a chance to present to you the notion of Ombudsman and citizen participation, which I took a case from Thailand as our instance today. First of all, I would like to take this opportunity to congratulate the success of the eighth Asian Ombudsman Association Conference organized by the Ombudsman of Korea, Dr. Lee Wun-Hyoung, and his staff in the Korean Ombudsman office as well as every A.O.A. organizing committee who untiringly prepare today's conference to become flourishing and fruitful.

As we are all familiar with Asian values, regional history and how it crafted our Asian characteristics nowadays, I shall not touch upon this issue in too detailed. Hence, a political, social and economic background, and nature of Thai culture will be briefly introduced.

Naturally, Thais are submissive, avoiding confrontation, peace loving, paying high respect and obedient to the senior. This is mainly because the strong Buddhist belief engraved in people's mind and way of living in a society for generations. In terms of political activities, since they are passive to the governing class. Thai ruling system in the past was that the King governed the country through absolute monarchy, and later on in 1942 changed to constitutional monarchy. Afterward there were several elections with civilian governments and military regime taking turn to rule the country.

From the mid-1980s, the Thai economy went on a roller-coaster ride of boom and bust. First, the urban boom shifted importance of agriculture in the national economy to industrial sector. Then, the financial and economic meltdown or the "Tom Yum Kung Disease" of 1997, which all of us here are well aware, threw at least three million of labors and businessmen back to the village economy and to the ranks of the poor. These

boom and bust eras are extremely connected with the existing social problems namely illegal land grabbing, natural resources destruction, poverty etc. which undoubtedly lead to extraordinary complaints we have been handling nowadays.

The administrative background consequences in the society relevant to our discussion today are

- Firstly, by normally being peace loving people, a great number of Thais are still fear of dark influence. The term dark influence can be meant as mafia, corrupted local or national politicians and officials, powerful business group that illegally exercise their power.
- Secondly, patronage value tends to induce supervisors to protect subordinates, gradually, the relationship of patron-client has been developed in the society, especially in the administrative organizations. The concept of 'yield to boss' or 'working under one's umbrella' is often perceived in the organizational culture.
- Thirdly, people are not well aware of basic civil rights due to the fact that they are qualified to be good citizen by listening and following the leader. Citizenship rights were not introduced widely in school curriculum and general publicity. To the majority of the Thais, economical knowledge and skills more important than civil rights comprehension.
- Fourthly, as a consequence of the mentioned factors, people especially, government officials lack sufficient determination to uphold good governance. Many rather passively 'wait and see' than actively involve in the public hearing process.
- Fifthly, any administrative deeds, right or wrong, are likely to be perceived as blameless acts. People tend to be passive to the governing class and are very fearful to confront law enforcement. Therefore, tea money or bribery was frequently offered to officials.
- The sixth occurrence is that when people have problems, they tend to absorb the grievances by themselves and avoid asking for help from officials or any other legal actions. Lodging complaints about mal-

administration or official misconduct to government agencies is almost unheard of in the previous time.

- The seventh thing is a tendency to neglect the responsiveness to public service. It is reflected by low rate of general election voting, public campaign, and public hearing.
- The last incident which happened is when people have problems with government officials, they often feel they get unfair play, or the government officials are in the opposite side, or even they are right they might get accused of doing something wrong. If such case happens, people may accept it. However, they reluctantly turn to department's inspector or another oversight unit within that particular organization for fear of unfair treatment and even negative impact.

Therefore, when people are harassed or treated an unfair treatment by the government agency, they are seriously doubtful that the internal oversight unit will act justly; as a consequence, complainant will hardly listen to the explanation of that agency if the result is contrast to his notion.

But if there is Ombudsman as an impartial alternative providing fairness and convenient access to complain easily without costing money or much time, their perception might be positively changed and may have more faith on fair procedures in the government agency.

The new constitution

The relevant agencies, administrative or legislative, governmental or non governmental, govern or be governed, have recognized the importance of participation and participatory democracy as a means of good governance. Thus, there was widespread outcry for new constitution. In addition, the new constitution enacted in 1997 is also called the 'participatory constitution' or the 'people constitution' because public participation was included in the drafting process. In the constitution drafting process, civil society

organizations insisted on and were given opportunity to make substantive inputs. The Constitutional Drafting Assembly was itself a participatory body with 99 members - 76 representing the country's different provinces. Civil society organizations did offer critical suggestions to the assembly on several occasions.

In addition, 28 organizations active in democracy met regularly in early 1997 to formulate draft resolutions on the new constitution. Another set of recommendations was published jointly by the main networks of NGOs, private organizations, the Coordinating Committee on Rural Development (with 300 members), the 28 democratic organizations, the Political Reform and Civil Society Group, the Women and Constitution Network, the Labor Organization of Thailand, and the Regional People's Forum for the Constitution. Others that broadened the debate on the new constitution through mass media campaigns and by public hearings organized in Bangkok and all provinces complemented these initiatives with the significantly underlying concepts of participation as follows:

1. promoting and protecting rights and liberties of the people
2. providing for public participation in the governance and inspecting the exercise of State power
3. improving a political structure to achieve more efficiency and stability.

Current government's Administrative and bureaucratic reform policy

Thailand's bureaucratic system is salient in that there are a lot of government and state agencies in Thailand, there are 20 ministries, 187 departments, 64 state enterprises, almost 10,000 local administrative organizations or local governments such as the Bangkok Metropolitan Administration (BMA), the Pattaya Municipality, the Provincial Administrative Organizations (PAOs), the Tambon Administrative Organizations (TAOs), and general municipalities. Hence, the number of civil servants and members or employees of state agencies counts approximately 3 millions. There are also more than 600 laws administered by those agencies. These laws allow the agencies to do their works accordingly. In addition, there are plenty of organic laws called the Acts, ministerial rules, regulations and notifications.

As we know, people will have to involve with all these state's powers every day. In Thailand, Ministry of Interior is the agency that the complaints are lodged against most since it has to take care of most laws, or more than 100 laws, and it also involves with the people since birth to death. The ministry also takes care of land issue and rural development.

With recognition to these extraordinary responsibilities, many agencies concerned have been trying to reform services of the public sector. Not only the Constitution that focuses on the good governance and stimulates changes, the policy of the current government also promotes the country's political development towards participatory democracy in order to give the people the opportunity for greater self-government and protection of their own rights.

In addition, the Two Public Sector Reform Acts, the Public Administration Act and the Ministerial Restructuring Act were promulgated on the 2nd of October 2002. The main objectives of these laws are to illustrate government's commitment as social contract to improving efficiency, creating greater transparency and eliminate corruption in public administration and services, with a view to enhance social justice and national development at present and in the future. Many policies were introduced to support the public sector reform in order to improve efficiency and streamline the governmental structure in line with the current situation and to enable the public sector to better serve national economic and social development.

Attempts to accelerate measures to improve the quality of government officials and to inculcate in them a 'dedicated' attitude towards public service are initiated. Administrative branch would revise various laws, regulations, operation procedures, and guidelines in order to achieve flexibility, effectiveness, transparency, and accountability in public administration. The Government's administration should also be open to a systematic and fair evaluation.

Budgeting reform process will create an efficient tool for the allocation of resources in a way that is consistent with national development policies and strategies. These policies will create transparency and accountability in the public service, which in turn help promoting public satisfaction and reducing number of complaints. I view this as a good sign to every organization in the governance sector concerned, including ombudsman.

NGOs' campaign to empower civil rights and to encourage citizen participation

Recently, as political environment allows freedom of expression, non-governmental organizations actively participate in development projects and human rights activities. Regional civil society networks have been established which would enable more participation in decision-making and management at the national and local government levels. Many community radio learning centers have also been established. It is an important channel to promote public awareness and participation.

In case of Thailand, general election voting and civil society participation, community groups, households' participation in local groups and social services could measure participation.

Comparing to the last decade, citizens nowadays take more active roles in voicing their grievances, participating in political activity and having awareness of basic human rights. Various local institutes, foundations, non-profit organizations, charity groups have been set up to absorb different types of interests, shared grievances, or community' specific purpose. Example illustrated this local organization are the people of Klong Dan who gathered and protested the construction of Samutprakarn Waste Water Treatment which would have been located next door to their fishing village and would have ruin water quality in the gulf of Siam where they have been living as fishermen for generations. Though the group was very small and insignificant at the beginning but the grievance was very resilient, after receiving assistance from various organizations they finally made it to the Minister of Science and Technology Ministry and the Prime Minister. Therefore, the construction was terminated; high-level officials were put under disciplinary investigation

of corruption. This is one of the successful examples but there are still many more unsuccessful cases in the society which we need to help solving their grievances.

Independent organizations

The 1997 constitution therefore has set up many investigating bodies such as the Court of Justice, the Administrative Court, the Constitutional Court, Ombudsman, the National Committee on the Human Rights, the State Audit Commission, the National Counter Corruption Commission, and the National Election Commission. These investigating bodies have shared their principle in oversight institute to control the use of power of ministries, departments, and their personnel since the Parliament is unable to oversee all state organs thoroughly. One key principle is that the investigating bodies to be set up must not work in duplication. Thus, the Ombudsman has to perform his vested function with the authority under such stipulation.

As another alternative, people sometimes turn to mass media believing that this institute would help solving their problems.

Ombudsman as a channel to promote citizen participation, transparency, and governance

Background and establishment

It was almost 25 years of development process since the first technocrat and Member of Parliament introduced the concept of ombudsman in Thailand in 1975. The first Ombudsman was appointed in April 1999. Each ombudsman should serve only one term of six years. Currently, two ombudsmen are holding the position.

Mandate, Policy, and Performance

As we are in the ombudsman world, our mandate should be in the same manner, we are responsible for investigation and fact finding relating to the grievances filed by the public

who are suffering from the unlawful practices of the government officials of all levels, resulted in the unfair public damage, whether or not such practice is lawful or unlawful abuse of functions.

The Ombudsman has the background and relationship with the Parliament since this institution has been set up by the Parliament and has to report to the Parliament. Hence, the Ombudsman is, in the constitution, under the Parliament Section. The Ombudsman is regarded as a mechanism of the representatives of the people. An appointment of the Ombudsman also has been made by the Parliament. Thus, the Member of Parliaments have the right to lodge the complaint to the Ombudsman.

In some countries such as the United Kingdom Parliamentary Commissioner and the Mediator of France, the law even state that the Ombudsman is not allowed to receive the complaint from the people directly but has to receive through the Member of Parliaments or the Senators. Besides, the report has to be submitted to the Parliament so that the Parliament can use its supreme political power to order the administration for correction or change.

Thai Ombudsman is one of parliamentary tools to check and balance the transparency and accountability of the administrative branch. The main duty is to investigate complaints on mal-administration within government organizations, state agency, state enterprise, or local governmental organization, provide recommendations for remedial actions, and report to the House of the Representatives, Senate and the public. The report will reflect public attitudes, which will generate discussion, leading towards movement for the correctness in society. The second duty is to study and analyze the cause of complaints in order to reduce or prevent the further complaints. Another important task is to provide and deliver knowledge to general public about procedures and methods of submitting complaints and about civil rights and related laws.

Another unique role of Thai ombudsman is that if, in the opinion of the Ombudsman, a law or regulation or any act of any government official begs the question of the

constitutionality, the Ombudsman shall refer the matter and the opinion to either the Constitutional Court or an Administrative Court, as appropriate, for further review. The constitution also stated in Section 198 that the Constitutional Court or Administrative Court shall decide the case submitted by the Ombudsman without delay. Thus, looking from the people perspective, if there was any issues contradict to the constitution or any administrative acts violate the law, Ombudsman would be the initial institution receiving complaints prior to reaching the Administrative Court.

Ombudsman is empowered to make a recommendation for change or correction of unfair treatment to the complainant. If the agency does not change or correct according to that recommendation, what the Ombudsman can do is to report either to the minister responsible for that ministry or department, or to the Prime Minister if no action is taken by the minister. Failing of any action, the channel provided to the Ombudsman is to report to the Parliament for further action in the capacity as people's representatives who are expected to uphold the fairness to the people.

If there is the Ombudsman to listen to people's problems, there will have an opportunity to know the reasons or aware of the fact that the matter is already treated fairly or not. I believe that with the emphasis on the philosophy of sympathy and fairness, the Ombudsman acts as a bridging gap in public administration, the people will better understand the work of the government agency. This will lessen and finally end their resentment and anger.

I accepted that the public sometimes would suspect the transparency of investigation among government officials, whether they are helping each other. If they report directly to government agencies, they are in doubt that their complaints would be treated unfairly or even kept in silent or disappeared. With the existence of the Ombudsman, the complaints will be directed to and handled by the officials who are impartial, and to whom the public has a confidence so the conflict should be decreased.

Type of grievances

Incorporating the public participation and giving them their first opportunity to express the unfair treatment that they have been receiving from the government officials and administrative branch into consideration, the Ombudsman has to carefully handle the nationwide complaints. During the first year of operation, though the existing of the office was not widely known publicly, the ombudsman received almost 200 complaints, then the figures jumped to 728 in the second year, then again double to 1,337 in the third year. In 2003, we received almost 2,300 plaintiffs came almost throughout every region.

Proportion of complaints lodged to the office can be categorized as

Land issue	18%
Police affairs	17%
Infrastructure and service problem	10%
Misconduct of the officials in general administrative issues	26%
Local administration	6.5%

Problems and lessons learnt

Similar to other newly established independent organizations, ombudsman's office faces an overload of work, civic trust build-up, limited public awareness on the duties, duplication of duties among the organizations, and qualified personal.

The operational problems found in the performances according to our tasks were the people's lack of understanding in the roles of the ombudsman's competence, making some of the grievances submitted to the ombudsman became inadmissible for the consideration. In addition, ombudsman's grievance-solving operation in the past were mostly the solution of the case by case grievance problems and it was not very systemic solution.

Future direction and Projection

From what we have learnt from the problems, we are trying to solve these constraints as follows:

1. Being proactive instead of mere responsive

We put high emphasis on the preventative approach in order to avoid problems of injustice that have been repeatedly lodged to the office. The resolutions derived from the case by case grievance problems have been compiled, analyzed, and recommended as the systemic problem solutions. The land title issuing, public land encroaching, compensation from private land expropriation, local administration organization's budgeting and procurement systems, which shared high proportion of the complaints lodged previously, are some of the samples to be studied and proposed as systemic resolutions.

To my perspective, dealing with same type of problems in the complaints constantly lodged to the office is wasting of time, budget, efforts, and yield no benefit to the public at large. It is more worthwhile and efficient to solve one problem and find solution to prevent the repeated incident to happen again. During the previous years of operation, we have been recommending an amendment of laws; ministerial rules and regulations that not only solve problems arose in the plaintiffs but also help improving standard practices of that particular ministry which in the long run reduce number of complaints to the office.

The laws, rules and regulations have sometimes outdated and been unable to respond to changes leading to damages and injustice. This is what the Ombudsman would be expected to look into. The Ombudsman would recommend the way to solve problems arisen from impractical laws, rules and regulations. To some extent, this would help relieve fundamental problems related to the law.

The Ombudsman's power to take care of each complaint as well as the power to make recommendations for the improvement of administration for good governance, and the change of laws, rules and regulations to better serve the people will be of great benefit to the reform of the government.

2. Amending Ombudsman Act 1999 to be able to initiate own motion investigation

As problems in our society have been more and more complicated, people who confronted such problem might be unaware of the existing of the Ombudsman or other oversight institutions, consequently, they do not lodge any complaints to any organizations. A lot of problems effected not only one particular person but generated repercussion effects to society as a whole, such as pollutions, environmental management etc. were brought up to public by mass media. Currently, without complainants, we could not initiate own motion investigation. I and my colleague realize that it is our prime responsibility and firm commitment to look after people's grievances even without complaints. Similar to mandate of the ombudsman worldwide, there should be a special mandate for the Thai ombudsman to initiate own motion investigation.

3. Generating networks with parallel organizations

In addition, the trends of the Office's operation development had been established by adding the cooperation networks to work with various agencies for the grievance solution for the quick and effective services. Memorandum of understanding between ombudsman office and other organizations such as Lawyer Association of Thailand, Ministry of Interior, Royal Police Bureau have been the development of the non-complicated grievance solution system by emphasizing on the coordination by phone for the speed and prompt action.

The connection with the Ministry of Public Health's village health volunteers, with firm belief that it would generate people in the grass-root to participation, has been established since this institute is very solid in terms of grassroots oriented approach and volunteer's active operation. More than 3,000 village volunteers have been asked to distribute information on Ombudsman and direct any complainant to the office.

The development of the database connection with the Ministry of Interior was attached in the operation process in order to expedite the complainant's identification checking stage.

4. Law Amendment to be last resort of the complaining process

This concept derived from rising number of complaints every year, limiting qualified officers, as well as an increasing of people's trustworthiness to government agency's accountability. After the reform, solid measures have been introduced to evaluate public servant's performances. Concrete human resource development plans were launched to improve and strengthen quality of government officials. The internal inspectors within each department suppose to receive and investigate complaints with fairness and transparency. With this standard and quality, complainants would be asked to go to department's internal inspector to have their grievance solved beforehand, when they are not satisfied with the resolutions of the department's inspector, the complainants could turn to ombudsman and lodge the appealed complaint. One advantage of this system is that if the problem was undertaken promptly by the complained agency, it will be resolved instantaneously.

5. Establishing a Call Center within office of the ombudsman

It can be seen that people nowadays have knowledge, understanding and participation in order to protect their interest. Our four-digit toll free number 1676, easy to remember, also encourages people to access our system effortlessly. Expecting more inquiry through modern technology such as facsimile, telephone, electronic mail, and other high-tech systems in the next future, we have been preparing our Call Center staff to assist inquirers in terms of availability of data, primary advice, investigating process, internal follow up etc. However, if the complainants are doubtful in the ministerial investigation and insist to have their complaints investigated by Ombudsman instead, it can be handled promptly as well.

The Ombudsman has not only achieved substantial success over the past year but also received good cooperation from government bodies as well as other investigating agencies. Our active call center would be another means of communication towards public and generate citizen participation in terms of voicing their grievances and inquiring administrative matters in the near future.

Ombudsman's contribution towards citizen empowerment and public access

The Office of the Ombudsman will help maintain the people's rights and liberty, as well as create the good governance in our democratic development. There are four important issues that the Ombudsman as well as other independent organizations would help to improve the public administration. Those are the accountability, transparency, participation and predictability. In particular the last word, our citizens would like to know what the country and the society are likely to be in the future, whether they are stabilized and secured, and so on. Whether or not are civil servants, politicians able to perform their duties for the benefit of the people? Citizen participation promotes social development in various aspects

- Pressurize local authorities to improve public services
- Oversee transparent local government decision making
- Reduce financial mismanagement
- Support program and project that facilitate social and economic development

Conclusion

Thai Ombudsman is one of parliamentary tools to perform the 'check and balance' duty in order to guarantee the transparency and accountability of the administrative branch. However, having Ombudsman institution alone or together with other six independent agencies operating under the current constitutional obligation does not guarantee the transparency and accountability. It is the effective and efficient performance of the Ombudsman as well as conscientious public sector reform that pave the way to responsive public administration, democratic development, or transparent government. The democratic development require and 'emphasize' on the activity where people jointly act in order to tackle collective problems. That is 'Citizen Participation.'

The benefit of society as a whole is the main focus. Individuals or groups must jointly advocate or join hands in the activities that will be beneficial to all. People have to be encouraged to govern themselves.

However, a continuous and great efforts together with sound strategies are still needed in further enhancing greater participation in rectifying mal-administration and improving public governance.

Excellency,

Board of Directors of A.O.A.,

Distinguished Ombudsmen,

Ladies and Gentlemen,

From my point of view, applying the Ombudsman system to the Thai society together with goodwill of people's participation will lead to the political development and good governance of the nation in the future. Though it is a long way to go, I wholeheartedly believe that it could be done if every single-hand in the nation, big or small, left or right, united.

I and my colleague as Thailand's Ombudsmen are strongly determined to uphold good governance relentlessly with integrity, impartiality, efficiency, and proactiveness for public interest, fairness better governance and better people's participation.

Thank you all for your kind attention.

The Ombudsman And Citizen Participation

Mr. John Belgrave
Chief Ombudsman of New Zealand

The Ombudsman And Citizen Participation

Mr. John Belgrave
Chief Ombudsman of New Zealand

I am very grateful for the opportunity to be able to address this Conference of distinguished Asian colleagues. Although my address draws heavily on the jurisdiction and practices of the Ombudsmen in New Zealand I hope that you will find that what I have to say is relevant to your own jurisdictions.

First a quotation from a Canadian, D C Rowan, who was writing on "*An Ombudsman Scheme for Canada*". He said when describing the Reason for Establishment and Continuance of the Office of Ombudsman:

"it is quite possible nowadays for the rights of a citizen to be accidentally crushed by the vast juggernaut of the government's administrative machine. In this age of the welfare state thousands of administrative decisions are made each year by governments or their agencies, many of them by lowly officials; and if some of these are arbitrary or unjustified, there is no easy way for the ordinary citizen to gain redress".

While this quotation points to the need for an Institution to help the ordinary citizen it stops short of suggesting what type of an Institution will fulfil this need. Clearly in my experience the Office of Ombudsman is such an Institution. As another Canadian, Stephen Owen, one-time President of the IOI said:

"Fundamental to the Ombudsman concept is the ability to invert bureaucratic attention towards the individual citizens who are intended to be served".

My paper therefore attempts to demonstrate the challenges facing Ombudsmen in providing for citizens accessible, effective and practical solutions to problems arising from a range of decisions by agencies of government that influence directly the lives of those citizens.

As we move into the new millennium it is becoming very clear that citizens of all of our countries are increasingly no longer prepared to have decisions and policies of governments forced upon them. With the decline of direct government economic intervention citizens are having to be more accountable for their own economic decisions. However those same citizens want Governments and government institutions, whose decisions can influence many aspects of their day to day existence, to be more accountable for those decisions. What's more, citizens want to have their say in the decisions themselves. Citizens want to know how these decisions were arrived at and whose views prevailed, particularly if their own did not, as final decisions emerge.

In this environment citizens often feel that the sheer size, scope and complexity of the institutions of government makes it very difficult for them to have any ability to access these institutions let alone have any influence on the decisions that are made by them. Indeed to the average citizen it sometimes appears that only large and well resourced organisations have the intellectual capacity and the critical mass to be able to take part in government decision making.

The citizen is in this environment faced with something of a conundrum. He or she is on the one hand being encouraged to participate in the business of Government, while on the other is being faced with larger bureaucracies that increasingly seem to be more remote from the citizenry at large. Furthermore, as information is often concentrated within bureaucracies, citizens can be ill-informed about the reasons why decisions affecting their daily lives are made.

Citizens' ability to participate and be informed of government decisions that impact on their daily lives can be inhibited also by an inability to question, or seek redress, about

decisions which they think are against their best interests. If one couples this with a lack of information on which decisions were made, there is little citizens can do to redress the balance.

The classical Ombudsman, with which we are all familiar, provides an avenue through which citizens can advance their goals of participation in the processes of Government. Traditionally an Ombudsman is empowered to review decisions of Government agencies. In my jurisdiction also an Ombudsman is also mandated to review refusals by Government agencies, including Ministers and local authorities, to release "*official information*". "*Official information*" covers a very wide range of information on which the business of Government is based. Citizens have a vital interest in the information on which decisions were made that influence their daily lives. Indeed without this information it is very difficult for citizens to participate at all in the business of Government.

New Zealand's Official Information Act (OIA), often called Freedom of Information in other jurisdictions, has proven to be a very effective tool in the growing participation by citizens in the processes of Government. Certainly this statute has provided a very strong impetus for Government institutions and organisations to release more "*official information*" as a matter of course. As I mentioned a moment ago the legislation has also given citizens the right to appeal to my Office against decisions of Government agencies not to release "*official information*".

The very fact that this appeal avenue exists has made Government agencies conscious of the desirability of not being seen to frustrate the intent of our freedom of information legislation. There remain of course debates about situations where information can be withheld and indeed freedom of information legislation usually sets out conditions where this is possible. The debate around this usually focuses on very sensitive issues surrounding the need for decisionmakers to have frank advice available to them or the need to protect information that is important for economic or other security. However freedom of information statutes are well able to accommodate such circumstances. In

New Zealand for example there have been no situations that I can recall where the legitimate business of Government has been frustrated by the operation of our Freedom of Information Legislation.

I see therefore these two fundamental powers, the ability to investigate the decisions of government agencies and the ability also to review the withholding of information on the part of such agencies, working very much in tandem. Information is power and the degree to which freedom of information statutes are successful in widening the availability of information, the more citizens' involvement in Government decisionmaking will become a reality.

Nevertheless it is all very well to establish institutions such as the Ombudsman to which citizens can have redress. However unless ready access to these institutions is available to the citizenry at large their impact can be severely limited.

Sometimes the Ombudsmen function might be seen as concerned with matters of high constitutional importance and not be seen to be available to the person in the street. It is important in this context therefore that the Ombudsman is, and is seen to be, independent from Government decisionmakers and is able to demonstrate this independence. Citizens also need to be confident that they will not be penalised if they take complaints to an Ombudsman. This applies equally to day to day complaints as well as to complaints of more serious nature that often are the subject of "whistleblower" and similar legislation which also comes within the jurisdiction of many Ombudsmen. The development and maintenance of this confidence is very important if an Ombudsman is to function effectively.

Also, and this applies particularly in my country which is increasingly becoming much more multicultural, Ombudsmen need to make particular efforts to reach out to the various communities that increasingly make up modern societies. Currently in New Zealand for example, we are at the moment looking at what we need to do to make

our Office more approachable to the increasingly diverse range of communities that now make up New Zealand Society.

As a consequence we are having to see how our operational practices might need to be changed to accommodate different cultural norms so that all New Zealanders can have effective access to the Ombudsman.

New Zealand, like many countries in Asia, is also facing an increase in the numbers of older people who make up our population. As a consequence, increasingly, many more people are becoming subject to decisions from Government agencies that are concerned with pensions, health and general facilities for older citizens compared with citizens at large.

These citizens are also likely to have different expectations of Governments from the expectations of citizens we have traditionally dealt with. Also older citizens are likely to expect more from Government agencies. They tend to be perhaps more experienced in the ways of Government and some are more affluent than other groups in the population; indeed commercially this group of people is seen increasingly as being a more sophisticated market for a range of high quality goods and services. Using this analogy they will expect similar professional treatment from Ombudsmen as part of our response to their complaints. We can expect that their complaints against government agencies will be well researched and well argued, presenting Ombudsmen, and for that matter, the government agencies themselves that service older citizens, with new challenges.

However access to an Ombudsman is only one side of the equation. The other side relates to how an Ombudsman deals with complaints that citizens make to the Ombudsman.

In New Zealand, and I suspect elsewhere, an Ombudsman's recommendations on complaints about actions of Government agencies are not usually backed up by the force of the law. Ombudsman recommendations must therefore in large measure stand on their

own. As a consequence many decisions are based on the test of reasonableness of the decision of the organisation against whom a complaint is directed. Sometimes citizens who complain to an Ombudsman feel very strongly indeed about the matter. As a consequence in cases where an Ombudsman is unable to sustain a complaint, care must be taken to explain fully the grounds on which this position has been reached. It goes without saying that where complaints are sustained, the grounds for such findings must also be explained clearly to the organisation concerned. Indeed I would submit that the point of final recommendation, is for Ombudsmen generally, the culmination of an open and consultative investigation process involving all relevant parties.

Finally to end on a note of realism:

As I said earlier while an Ombudsman is often powerless to the extent that he or she cannot direct or coerce, Ombudsmen have an enormous opportunity to influence most powerfully by persuasion, outcomes for citizens who have been wronged by decisions of government agencies. It is after all how we can help the ordinary citizen, often in circumstances where the Ombudsman is the last person available, to redress wrongful decisions. Indeed it is this somewhat awesome responsibility that should guide our total approach to our work.

I conclude with reference to a judgement of the Supreme Court of Canada. This judgement describes accurately the role of the Ombudsman from the perspective of both the citizen who might bring a complaint, and the organisation against whom the complaint is made:

"The Ombudsman represents society's response to problems of potential (administrative) abuse and of supervision. His unique characteristics render him capable of addressing many of the concerns left untouched by the traditional bureaucratic control devices. He is impartial. His services are free and available to all because he often operates informally, his investigations do not impede the normal processes of

government. Most importantly, his powers of investigation can bring to light cases of bureaucratic maladministration that would otherwise pass unnoticed. On the other hand, he may find the complaint groundless, not a rare occurrence, in which his impartial and independent report, absolving the public authority, may well serve to enhance the morale and restore the self confidence of the public employees impugned".]

Thank you for the opportunity to speak to you today.

The Ombudsman and Citizen Participation

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Introduction

Mr. Chairman, distinguished delegates, ladies, and gentlemen, may I express my appreciation to Mr. Cho Young-Hoang, Chief Ombudsman of Korea, for his initiative in organizing this 8th Asian Ombudsman Conference, and for giving me an opportunity to present a paper on "The Ombudsman and Citizen Participation" in Japan.

1. Participation of citizens as beneficiaries of administrative counseling

(Citizen participation in the administrative process)

The system of parliamentary democracy is also adopted in Japan. Namely, the parliament composed of the people's representatives chosen through elections performs the legislative role, and the administrative organization enforces legal measures instituted as a result. Because it is difficult to deal with all complicated and changing social phenomena by means of laws, many forms of administrative legislation, such as the use of Cabinet orders, are currently adopted. These administrative legislation steps are planned under the responsibility of the administrative sector—the government—for enforcing laws or under the consignment of laws, but various revisions are made to

reflect popular opinion.

When an administrative agency executes a law or an ordinance, it is also necessary to introduce a system of citizen participation. Unless the people fully understand the purpose of a law or an ordinance and its specific execution procedures, smooth legal execution will be hampered. For this reason, sufficient explanations to the people, the targets of the law, and expression of their opinions and their understanding are necessary.

Among basic laws for the participation of citizens enacted recently in Japan, I can mention the Administrative Procedure Law and the Law Concerning Access to Information Held by Administrative Organs.

The Administrative Procedure Law was instituted in 1993. The law stipulates general principles for administrative actions including a regulation that sets standards for judging whether or not to authorize a request, and if execution of an action that is not beneficial to the people is to be enforced, the reason for it must be revealed. In other words, this law aims at securing fairness and enhancing transparency in administrative execution. Under this law, it has become possible for the people to learn about the process of administrative determination, and to make positive proposals based on a position that is equivalent to that of administrative organizations, thereby affecting the method of administrative management.

The Law Concerning Access to Information Held by Administrative Organs was enacted in 1999. This law recognizes people's rights to demand the disclosure of administrative documents held by administrative organizations. It aims to promote fair, democratic administration based on an accurate understanding of the people and their views.

Since 2000, furthermore, it has become obligatory, based on a Cabinet decision, to

follow procedures to seek public comments when establishing, changing, or abolishing regulations. The procedures announce an original plan worked out by an administrative organization, and collect the people's opinions on the plan. Opinions are collected in various ways, including announcements through news media and distribution of documents at the counters of administrative agencies, but reflecting widespread use of the Internet, collection is carried out in most cases through announcements on the homepages of the responsible administrative organizations. Even in fields where such steps are not obligated, moreover, cases of administrative organizations following procedures seeking public comments have increased each year.

(Administrative counseling system performing the function of citizen participation)

The administrative counseling system has been frequently cited as a system for providing relief for administrative grievances. Other relief systems in Japan are administrative litigation raised in a judicial organization (court), and administrative dissent examination demanded of the administrative organization concerned. Compared to these, the administrative counseling system is more convenient in several points: the procedure is simple; there is no limit to the action that is the target for relief; and, it is expedited quickly. As such, it is widely used by the Japanese people.

The administrative counseling system is applied to the businesses of all Offices, Ministries, and Government Agencies. The total number of counseling requests received during fiscal 2002 was 187,000. Each Office, Ministry, and Government Agency also accepts counseling regarding its administrative steps. Although the total number of such cases is not available, counseling requests accepted by the Tax Consultation Office of the National Tax Agency in fiscal 2002 alone amounted to 2.8 million. Including requests

accepted by other organizations—Cabinet Office, Ministries, etc.—innumerable counseling requests have been made and accepted throughout the nation. This indicates that, compared to other administrative grievance relief systems, the administrative counseling system is much more convenient and more widely supported by the Japanese people.

Even so, there are many forms of counseling. The simplest one is to inquire about the method of undertaking a procedure and seek knowledge about the content of a system. In reply to such requests, it is sufficient to simply give related information. With regard to matters raised by erroneous application of relevant laws or ordinances by administrative executors concerned, however, it is required to rectify the errors and realize an appropriate state. Further, even if the legal application is not necessarily wrong, but if a more reasonable option was possible in the execution procedures, the execution method should be improved in the course of execution. In these cases, the execution method is modified based on specific representations from citizens, so the function of citizen participation is reflected in the administrative counseling system.

(Continuity of administrative planning process and administrative execution course)

Thus far, I have explained the administrative counseling system and citizen participation, while paying attention to the process of administrative execution, but the administrative legislation process and the execution process are mutually related continual processes. Apart from legislation for a situation that has not previously occurred, most legislative steps represent modifications of existing legal systems. (Even if the form of legislation is not a partial amendment but a new institution, it is not enforced in a manner unrelated to the existing legal system.) These steps are taken in

cases where some inconvenience is found to arise if existing laws or ordinances are applied to a specific case, or it has become necessary to keep abreast of the progress of the times. Even if a new execution is implemented on the basis of a on a new law, further modification will be required to reflect the implementation results. In addition, modified execution is enforced on the basis of modified legislation. This process of legislation—execution—legislation—execution is carried out sequentially. Particularly concerning low-level laws/ordinances and their operating principles, continual processes are most frequently repeated. Accordingly, it is not rare for specific citizen participation, in the course of some execution process, to be reflected in the next legislation. This is not a major problem if such a development is classified as citizen participation in the legislative process or citizen participation in the execution process. It should be considered citizen participation in the administrative process of legislation—execution—legislation—execution.

A variety of problems are presented by people in the system of administrative counseling. If a nonconformance develops in administrative execution, the nonconformance is immediately removed through its correction. If a problem exists within a law or an ordinance, however, a fundamental solution cannot be achieved unless the law or the ordinance concerned is amended. Counseling comes to an end only when the law or the ordinance is amended. In this case, the cause of the related amendment is the subject of administrative counseling. Accordingly, such counseling can be considered to be citizen participation in the course of execution and also citizen participation in the legislative process.

3. Participation in administrative processes by citizens as counseling beneficiaries

I have explained that people's actions seeking administrative counseling lead to their participation in the administrative processes. This may be the same in other countries, but in the case of Japan, there is also citizen participation in the internal structures of offices handling counseling requests from the people. Now, I will explain the arrangement of such activities.

(Administrative counseling by MPHPT)

The Administrative Evaluation Bureau of the Ministry of Public Management, Home Affairs, Posts and Telecommunications is engaged in policy evaluation, administrative evaluation/inspection, and administrative counseling. Any of these functions represent actions for rating policies and administrative steps of individual administrative organizations, and reflect evaluation results in the following planning processes, thereby seeking effective and efficient administrative management.

Administrative counseling began in 1955, as complaints received in the process of administrative inspections (now called administrative evaluation and inspection) had become so numerous that it was judged necessary to handle them under a separate procedure. At that time, however, counters for accepting complaints about state administration were limited to the local offices of the Administrative Management Agency (predecessor of the present MPHPT), so there were the following problems: the offices were geographically inconvenient for most people, and as formal government facilities, they were not familiar and it was difficult to seek counseling.

Given this state of affairs, it was considered necessary to open windows for informal consultations close to the general public. As a result, the administrative counselor system was established in 1961.

(Administrative counselors)

Administrative counselors are knowledgeable private citizens, and are not civil servants. They are commissioned by the Minister for the MPHPT to receive people's complaints regarding governmental administrative actions, give appropriate advice, convey issues raised to the appropriate administrative agencies of the government, and execute various other tasks. Administrative counselors do not receive remuneration. At present, about 5,000 persons are commissioned as administrative counselors throughout the nation.

The total number of administrative counseling requests accepted by the MPHPT annually is about 187,000 (in fiscal 2002). Of these requests, about 70% are accepted and handled by administrative counselors. Administrative counselors are not given special training as is the case of professional civil servants. However, they have common sense and social trust, so they judge the reasonableness of a consultation theme based on their sound judgment, and ask for related administrative organizations to make improvements, as needed. This encourages people to be able to bring counseling cases to the counselors in an informal setting, and for the reflection of the people's opinions in administrative management, resulting in its improvement.

Of course, the counselors refer consultation cases, if the cause is due to a law or ordinance or a system, or in which specialized examination or study is needed as the matter is related to multiple administrative agencies, to the local offices of the Administrative Evaluation Bureau. But, even in these cases, there is no change to the fact that a matter has been subjected to screening by an administrative counselor.

In this way, an administrative counselor plays a significant role as a citizen in the

process of handling administrative counseling cases.

(Counselors' opinions)

In addition to handling specific counseling cases, an administrative counselor may express to the Minister for the MPHPT his opinion developed as a result of performing his duties with respect to improving administrative operations. Administrative counselors, who are in direct contact with residents and receive complaints and requests on a daily basis, are expected to be able to absorb and relay public opinion accurately and effectively. During fiscal 2002, 267 opinions were submitted to the Minister.

Among the counselors' opinions submitted to the Minister recently, I would like to cite an opinion seeking expansion of the scope of discounts applicable to physically handicapped persons.

One of the merits of governmental recognition as a physically handicapped person is for the person to be able to benefit from fare discounts when he (or she) uses railways, air services, and bus and ship transport. In the case of air services, however, the type and the class of handicaps eligible for discounts were limited compared to other transport services. Therefore, a counselor submitted an opinion in favor of expanding the scope of eligible physically handicapped persons to be the same as that of other transport means.

In response, the Civil Aviation Bureau of the MPHPT, conveyed the counselor's opinion to domestic aviation enterprises and asked for a study of the matter. The domestic aviation enterprises subsequently provided full cooperation, such that the range of discounts for physically handicapped people was extended to be similar to those of railways. Consequently, a total of 825,000 additional physically handicapped people became possible beneficiaries.

It is true that the counselor did not receive a request from a specific citizen. The counselor himself was physically handicapped, and as he repeatedly heard complaints from physically handicapped people, and he submitted the opinion to the Minister for the MPHPT.

(The Administrative Grievance Resolution Promotion Council (AGRPC))

I would like to introduce the Administrative Grievance Resolution Promotion Council, another example of citizen participation in the administrative counseling process. AGRPC was created in 1987. The Council is composed of seven well-informed private persons from legal and academic circles, and the media.

As government activities become more complex and technical, and people's values diversify under accelerating changes in the socio-economic environment, we see an increasing number of cases for which it is not easy to provide a prompt resolution. These cases include those in which both the complainant and the agency in question have legitimate arguments under existing law, and those in which the complaint is of such a nature that only a change in law or measures with certain budgetary implications—which in themselves may be a matter of national debate—can solve them.

In its deliberations, members of the Council always freely state their respective views, based on their individual knowledge, experience, and good judgment, thereby conducting active discussions. These opinions gradually converge to reach a consensus. As a result, we can reach a conclusion that is fair and appropriate, and reflects the people's wishes.

Good offices themselves are provided by the MPHPT to the administrative agency concerned. Because good offices are provided on the basis of the views and the judgment of the AGRPC, however, the administrative agency concerned has to respect them and

respond sincerely.

In this context, I will explain a case of relaxing the requirement for the acquisition of juridical person status by a condominium management union, which is a recent example of a system improvement resulting from the MPHPT's good offices based on the opinion of the Council.

In Japan, the Law Regarding Sectional Ownership of Buildings is currently in force, to enable many sectional owners of a condominium, which is one building as a whole but with many independent sections within, and its grounds, to smoothly manage them. Under the law, all of the sectional owners could constitute a union for managing the condominium and its grounds, but the sectional owners had to number 30 or more persons if the union was to obtain juridical person status.

Under such a situation, the director general of a condominium management union composed of 17 sectional owners made the following request: "Our union cannot obtain juridical person status, as its sectional owners do not number more than 30 persons. For this reason, the bank account in which repair expense money is held has to be the personal account of the director general. This results in much inconvenience, including the requirement to change the nominal holder of such a bank account whenever the director general is replaced. Therefore, we request that even a condominium management union whose sectional owners number less than 30 persons may obtain juridical person status."

The request was studied by the Administrative Grievance Resolution Promotion Council (AGRPC), and the Council's opinion in favor of the request was conveyed to the MPHPT. Considering that there will be many merits, including simplification of legal relations in the conclusion of contracts and other external transactions, and thinking of

the balance with the conditions for juridical person status acquisition in other areas, the MPHPT used good offices to relax the requirements for obtaining juridical person status.

The Ministry of Justice, which is in charge of the matter, removed personnel requirements for obtaining the legal status concerned, amending the related law so that a condominium management union consisting of less than 30 sectional owners can obtain juridical person status. As a result, the grievance was resolved, and institutional improvement was attained.

(Independent nature of administrative counseling system)

The Japanese administrative counseling system is composed of three parties: the Administrative Evaluation Bureau of the MPHPT, which is one of the state administrative organizations, administrative counselors, and AGRPC. As these three parties jointly perform their functions in resolving grievances, the Ombudsman function as a system is said to be used in Japan. Of these functions, two functions, namely, those of administrative counselors and the AGRPC, are shouldered by ordinary citizens, and as already explained, they play an essential and highly significant part in the continued management of the Japanese administrative counseling system.

With regard to this, Mr. Masajiro Kamada, president of the National Federation of Administrative Counselors' Association, stated in his presentation to the 6th Asian Ombudsman Conference held in Tokyo in 2001: "Independence and impartiality are the lifeline of any Ombudsman institution. Any suspicion about the independence of Japan's Administrative Counseling System should be removed, as, for any citizens with complaints, administrative counselors, who are the private citizens just like them, are right there at the closest points of access as the handlers of such complaints. Furthermore,

the stance of administrative counselors is additionally strengthened by the fact that they do not receive remuneration from the central government.”

3. Promotion of Citizen Participation

(Administrative counseling symbol mark and unified grievance-specialized telephone number)

The Japanese administrative counseling system is an organization in which citizen participation has permeated considerably, but we cannot be satisfied with the present state of affairs. Instead, we should continue activities to further promote citizen participation. To attain this purpose, it is necessary, first, to have the general public know more about the administrative counseling system.

The Administrative Evaluation Bureau has created the administrative counseling symbol mark (refer to the attachment), for new publicity and PR activities, and has nationally unified the telephone number for accepting administration-related complaints.

The design of the symbol mark shows a citizen seeking counseling and the person who accepts a counseling request by means of two faces, and at the same time shows one smiling face, indicating satisfaction with the result of solution to a problem obtained through counseling.

The phone numbers of local Administrative Evaluation Bureau offices for accepting complaints were previously different, but have since been unified so that grievances can be aired by phone using one number. Although the phone number is common throughout the country, a call is routed to the local office of the Administrative Evaluation Bureau, so that speedy handling of any problem, based on local knowledge, is possible as before.

In private enterprises, telephone numbers for inquiry-accepting personnel are shown

in product operation manuals or various advertising media, so that complaints lead to the development of new products or services. The Administrative Evaluation Bureau and its local organizations may be considered the customer-handling staff members for the entire government, in that they hear the people's complaints, opinions, and requests regarding the Cabinet Office, Ministries, and Government Agencies. Based on this recognition, we printed the symbol mark and the unified grievance acceptance telephone number on various governmental media, such as posters, pamphlets, envelopes, and name cards, thereby conducting positive publicity activities.

(Conclusion)

In Japan, powerful village communities historically existed under a tillage culture, based on which administration was implemented. With industrialization and the progress of an information-oriented society, however, village communities crumbled in urban areas, and individual citizens increasingly confront the administration. In such a modern society, it is necessary to ensure an environment in which citizens can not only indirectly participate in the administration through an assembly composed of their representatives, but also speak directly to the administration informally, as needed, so that administration can be improved and meet the needs of the people. We believe that to achieve this purpose, Japan's administrative counseling system functions highly effectively, because arrangements for citizen participation, such as administrative counselors and the Administrative Grievance Resolution Promotion Council, are incorporated into the complaint resolution part of the system. In the future, we would also like to continue to work so that the functions of the system are more effective and efficient in the months and years to come. Thank you.

(Appendix)



Note) “行政”means “Administrative,” while “相談”signifies “Counseling.”

The Ombudsman and Civic Participation

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The Ombudsman and Civic Participation

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I. Introduction

The principle of democracy calls for not only democratic justifiability regarding the exercise of public power, but also democratic control over public power. There are several means by which citizens grant justifiability and exercise control over the governmental authority. The most important method among them is the election. Although the exercise of power by the person in power is justified through the election, it is evaluated and controlled through the subsequent election. The decisions made by those elected by the people are regarded as coinciding with the will of the people, but in reality this is not so in many cases. The elections held once every few years are not enough for the citizens to exercise control over or influence the public power. With the exception of the short election period, the citizens are often treated as the subjects of the public power rather than its masters. In order for the citizens to have influence over the public power, a control mechanism is necessary. This consists of the indirect control mechanism of the government agency and the direct control mechanism of the citizens. The National Assembly, the Board of Audit and Inspection, judicial courts, and the internal audit systems of the administration fall under the former category while the citizen participatory system falls under the latter.

One example of the general control mechanism guaranteed to the residents is the citizen participatory system, such as resident ballots. The citizen participatory system is extremely useful for promoting the influence of the citizens regarding the exercise of public power, but it is restricted to matters that have significance to the community and thus is not useful for resolving minor day-to-day issues.

Some of the methods that citizens rely on to resolve the minor issues in their everyday lives are lawsuits and petitions. However, filing a lawsuit requires a tremendous amount of time, effort and expense. In many cases, lawsuits cannot be filed due to restrictions found in the strict laws pertaining to the process. The resolution of issues through lawsuits is limited to legal matters, and other issues are neglected. Also, the resolution of issues through lawsuits is limited to individual matters and cannot be applied for the fundamental resolution of problems by improving the system, for example.

The system under which citizens can express their wishes to the government agencies

from a relatively liberal perspective is through the exercise of the petition rights that are recognized as the basic rights of the citizens. Through the exercise of petition rights, citizens can address personal difficulties by appealing to any government authority, seek resolution of the problems and propose measures for solving these problems. One of the advantages of petitions is that they can be filed easily, although they cannot be reviewed in depth by government authorities, and thus satisfactory results cannot be expected. A blind spot is bound to exist in any kind of power control system today. The ombudsman system is viewed as a third failsafe that can make up for this blind spot. Countries around the world are experimenting with this system and are making achievements.

The ombudsman system contributes to narrowing the gap between the citizens and the government bureaucracy by acting as their intermediary. Civic participation is called for in order to facilitate the activities of the ombudsman, but at the same time the ombudsman can play a part in activating civic participation. By narrowing this distance between the citizens and the administration, the ombudsman exercises control over the administration. With regard to the objective of enhancing the rationality and quality of the administration and overcoming bureaucratic abuses, civic participation and the ombudsman have mutual goals. The objective of this paper is to examine the correlation between civic participation and the ombudsman. To this end, the paper studies the significance of civic participation, its status and related problems in Korea. The paper also examines the significance of civic participation and its status in Korea, and finally, measures are sought for improved results by linking the two.]

II. The Role of the Ombudsman and its Status in Korea

I. The Significance of the Ombudsman System

The ombudsman is used in different concepts in different nations and arenas. The specific form of the ombudsman also varies significantly. The roots of the ombudsman can be traced back to Sweden. In Sweden, the ombudsman has spoken for and protected the rights of the people for centuries.

The ombudsman system was further developed in Sweden during the Enlightenment in the early 18th century. During this period, criticism of the abuse of power based on absolutism was expressed, and emphasis was placed on democracy, humanism and personal freedom. Democratic values placed emphasis on the responsibilities of those in power regarding the citizens. The role of the ombudsman was to guarantee that civil servants accomplished their public duties in a fair and honest manner, fulfilling their public responsibilities. The role of the ombudsman in

promoting democracy in the public administration and bringing the administration and the citizens closer was particularly emphasized. The ombudsman system focused on reducing the arbitrariness and improper activities of public servants, bridging the gap between public servants and citizens, and enhancing personal security. In this regard, the ombudsman system became a useful mechanism for representing the interests of the citizens, protecting their basic rights and producing qualitative improvements in the administrative system. King Karl IX of Sweden appointed a judicial minister by royal decree in 1713, establishing a system similar to the ombudsman of today. Following the constitutional revision of Sweden in 1809, the *Justitieombudsman* (ombudsman for justice) was established in the Parliament. For over a century, it remained a system unique to Sweden, but it was introduced in Finland in 1919 and in Norway in 1952, and later in many countries around the world.

The role of the ombudsman continues to change as the system is applied in various sectors and organizations. In addition to the ombudsman in the governmental sectors set forth by ordinances, there is also an ombudsman established voluntarily in the private sector. An ombudsman exists in the administrative sectors, as well as in the parliament. There are also all-purpose ombudsmen as well as specialized professional ombudsmen.

2. The Function of the Ombudsman

The function and emphasis of the ombudsmen differ according to their type and focus. In general, the ombudsman can assist in resolving complaints resulting from improper exercise of the public administration and to safeguard personal rights from a microscopic and subjective point of view. It can also contribute to enhancing the qualitative standards of the administration through administrative controls. Furthermore, as the channel linking the administration with the citizens, it can serve to make the public administration more humane.

Firstly, the ombudsman can help resolve complaints filed due to improper exercise of public power and protect the rights that have been infringed upon. Procedures for safeguarding rights include standardized methods of protecting those rights through judicial courts or administrative action. The procedure for safeguarding rights through the courts is the most reliable method, but this requires a great amount of time and money, must follow strict procedure, and often, the results are portrayed in the extremes of right or wrong. As a result, it is not easy for the general public to resort to lawsuits. Meanwhile, as the internal control procedures of the administrative offices, administrative actions are less strict than legislative procedures, but the general public still find them difficult to approach. The ombudsman system makes up for such rigidity in procedures for safeguarding rights and resolves administrative complaints in a more flexible and less expensive manner. The major advantage of the system lies in its accessibility. Rather than

being given the decisive measures, the complainant goes through the procedure of arbitration and negotiation with the ombudsman. The ombudsman serves as an intermediary to resolve problems in an amicable manner.

Additionally, the ombudsman contributes to making qualitative improvements in administration by exercising control over improper public administration. The ombudsman contributes to securing the objective validity of the administration. Of course, there are offices that exercise control over the public administration, including the National Assembly, the local councils, the citizens, the representative offices of the residents, the Board of Audit and Inspection, as well as the internal audit offices of the administration. In the exercise of administrative control through the National Assembly or regional or local councils, political factors play a major role. Also, many of the administrative problems remain unresolved and neglected due to a shortage of manpower and time. Audits by the Board of Audit and Inspection make significant contributions to administrative control in that it is the exercise of control by an independent audit office. Internal control also plays a vital role as a self-control system, even though its method of approach is different from the administrative control generally conceived by the public. There is a tendency to emphasize the integration and efficiency of the national administration. During the process of making efforts to resolve complaints of improper administrative actions filed by complainants, the ombudsman contributes to securing the objective fairness of the administration.

Furthermore, during the process of gathering administrative information to resolve problems and conveying the results to the complainants, the ombudsman contributes to enhancing transparency in the public administration. Through the accessibility and exercise of investigative authority of the ombudsman regarding administrative information that has been inaccessible to the public, such information will become more open to the public, which will lead to a reduction in abuses due to a closed-door administration. Of course, in some cases, the general public can also use their rights to seek for the disclosure of administrative information, but most often, citizens do not make full use of this system. As an intermediary between the complainant and the administrative offices, the ombudsman can contribute to the disclosure and dissemination of administrative information. During the process of resolving the complaints filed, the ombudsman can make recommendations for corrective measures or improved administrative practices or systems, which can lead to administrative reforms.

By offering citizens an available channel to the public administration, the ombudsman can enable the public administration to become accessible to ordinary citizens, as opposed to a cold, mechanical operation. The average citizen grows timid before the massive administration and powerless before the complicated administration. In most cases, the relation of an individual to the administration is unilaterally established. It is virtually impossible for an individual to gain

access to the administration. In this event, the ombudsman can enhance the accessibility of the administration to individual citizens and the unilateral relation can be transformed into a humane one based on mutual communication. Through the establishment of a humane relationship, the public trust in the administration can become enhanced, and a channel can be created for reflecting the diverse needs, experiences and ideas of the citizens in the administration.

3. The Ombudsman in Korea

1) The Ombudsman in the Central Government

The ombudsman at the level of the central government in Korea is the Ombudsman of Korea. This government agency was inaugurated on April 8, 1994 in accordance with Basic Act on Administrative Regulations and Civil Complaint Operations enacted in December of 1993.

Unlike the ombudsman offices in foreign nations that are under the wing of a National Assembly, the Ombudsman of Korea was under the wing of the Ministry of Government Administration during its inception. It was comprised of five ombudsmen (including one standing ombudsman), and among them was a chief ombudsman. The Chairman of the Joint Government Civil Complaint Committee supported the administrative operations of the agency as its executive secretary. In the Ordinance on the Establishment of the Ombudsman of Korea enacted on October 31, 1996, the Joint Government Civil Complaint Committee was abolished, and a Secretariat comprised of two bureaus, one Complaint Management Office and ten divisions was established. The agency thus became more independent. On August 22, 1997, the Basic Act on Administrative Regulations and Civil Complaint Operations was abolished, and under the new Act on Civil Complaint Operations, the number of ombudsmen was increased from five to ten. The basis for the establishment of the Secretariat was specified in the Act and the Secretary General was to be appointed from one of the standing ombudsmen.

In order to process the diverse and complicated civil complaints promptly and with deliberation, three sub-committees were organized for each specialized field. The items deliberated upon and decided by the sub-committee are considered to have been deliberated and decided by the Ombudsman of Korea. Each sub-committee comprises three ombudsmen, including one standing ombudsman.

The sub-committees launch investigations into civil complaints of improper administrative actions and on matters that infringe upon the rights of citizens or cause them inconvenience resulting from unfair administrative systems (Article 15 of the aforementioned Act). The following matters are excluded from the jurisdiction of the Ombudsman of Korea:

1. Matters that require highly advanced political decisions or classified information on the government or public office;
2. Matters pertaining to the National Assembly, the judicial courts, the Constitutional

- Court of Korea, the National Election Commission, the Board of Audit and Inspection, and the local councils;
3. Matters pertaining to investigation and execution of sentencing that are deemed more appropriately processed by the supervising organization of those matters and matters that the Board of Audit and Inspection has launched an audit on;
 4. Matters for which the procedures for non-compliance are underway with regard to administrative verdicts, lawsuits, verdicts by the Constitutional Court of Korea, applications for review by administrative petitions or the Board of Audit and Inspection;
 5. Matters for which procedures are under way for arriving at a compromise among the parties concerned such as reconciliation, arbitration and negotiation under the stipulations in the ordinances;
 6. Matters finalized through verdicts, actions, decisions, reconciliation and arbitration or matters decided in the meeting of the Audit Committee;
 7. Matters pertaining to personal administration of civil servants or staff;
 8. Matters pertaining to the relation of rights among private citizens or matters regarding the personal lives of individuals;
 9. Matters pertaining to the operations of the Ombudsman of Korea; and
 10. Matters recognized to be inappropriate for processing as a civil complaint by the Ombudsman of Korea.

The Ombudsman of Korea cannot hand down legally binding verdicts regarding administrative agencies, but it can resolve complaints through a process of counseling, investigation and processing of civil complaints regarding the public administration by promoting mutual understanding between the complainant and the administrative offices. In the event that a complaint is not resolved during the investigation, the Ombudsman of Korea makes efforts to resolve the civil complaint through mild recommendations for corrective measures, recommendations to improve the system and expression of opinions.

The total number of civil complaints registered with the Ombudsman of Korea from January 1 to December 31, 2003 is 17,128 cases, up 10.1% from 2002. A total of 8,394 civil complaint cases were received through the Internet, which accounted for 49% of the total number of civil complaints. Civil complaints registered by mail accounted for 5,706 cases, or 33.3%, civil complaints filed in person accounted for 6%, civil complaints transferred to the Office of the President of Korea accounted for 5.9%, while those transferred to the Office of the Prime Minister were 0.7%. As regards the processing status of the complaints, 601 cases were recommended to undergo corrective measures or improvements in the system, opinions were

expressed regarding 325 cases, 3,675 cases were resolved during the investigation, and 8,154 cases were given information for resolving the issue. The processing rate of the cases for investigation was 56.5%.

In the process of handling the civil complaints filed in 2003, the Ombudsman of Korea recommended government agencies named in the complaints to correct 11 cases of unreasonable ordinances or systems. Most were related to the everyday lives of the people, and infringed upon the property rights of individuals as a result of unfair regulations in the ordinances. Seven cases were related to urban construction, including urban planning facilities and permits within restricted development zones. Three cases were related to information and transportation, including collection of fares for disabled persons using the trains, and one case involved the exchange for government-owned property with private property (Refer to the website of the Ombudsman of Korea).

2) The Ombudsman in Local Governments

The demand for the establishment of an ombudsman in local governments began to escalate in 1995 when the heads of local governments were directly elected by the residents and the local autonomy system fully began to take root. The academic sectors and the civic organizations were the first to call for the introduction of an ombudsman system. In many cases, the local politicians pledged to introduce an ombudsman system as a part of their campaign platform. However, rather than offering specific details, they promised the system as one of many participatory systems of the residents. Among the many cases of civil complaints filed with the Ombudsman of Korea, the local governments accounted for the largest proportion of the filed cases.¹ The ombudsman system at the level of the local governments was also called for in order to alleviate the heavy workload of the ombudsman of the central government as well as to resolve local complaints within the regions. The Ombudsman of Korea recommended the active introduction of the local ombudsman system, and even proposed the standard ordinances (Song Chang-seok, 1999).

At the level of the local governments, 11 provinces and cities including the Seoul Metropolitan Government² have introduced the ombudsman system as of August 2003. In some

1. As regards the types of government agencies named in civil complaints filed with the Ombudsman of Korea in 2003, the local governments accounted for the largest proportion at 36.1% (6,188 cases), followed by the central administrative agencies at 22.5% (3,859 cases), public institutions and organizations at 12.8% (2,194 cases), police stations at 4.1% (694 cases), the prosecutor's offices and courts at 3.7% (632 cases), tax offices at 3.1% (532 cases), municipal and provincial educational offices at 1.6% (282 cases) and military units at 0.4% (66 cases).

² The Seoul Metropolitan Government introduced the Citizen Ombudsman System on July 1, 1997. The Mayor of Seoul appoints three citizen ombudsmen in the Audits & Inspections Bureau among the citizens of Seoul. Under this system, the citizen ombudsman takes direct part in addressing infringements on citizens' rights resulting

local governments, civil servants are appointed as the ombudsmen or their authority is given in name only, and they cannot be referred to as genuine ombudsman; however, some local governments, such as the municipal government of Bucheon, have introduced a highly advanced form of the ombudsman system.

The city of Bucheon enacted ordinances on the operation of the Citizen Ombudsman of Bucheon City in 1997 that set forth regulations on the appointment of three ombudsmen. The tenure of the ombudsmen was set at two years, and they would be appointed by the mayor of Bucheon City and subject to the approval of the city council. Under Bucheon City's ordinances, the citizen ombudsman launches investigations into complaints filed regarding improper actions by the city and its organizations, as well as corporations, organizations and institutions affiliated with the city government. The citizen ombudsman is also involved in the arbitration and coordination of collective civil complaints, monitoring of the municipal governance, and making recommendations for corrective measures regarding improper administrative actions. The citizen ombudsmen are also involved in the expression of opinions and making recommendations for improvements to the system. Exceptions apply in matters regarding the City Council, matters on information that cannot be disclosed pertaining to regulations in Article 7 of the Act on Disclosure of Information by Public Organizations, matters on the actions of the citizen ombudsmen, matters on rights finalized by judicial verdicts, and matters that have been received by the provincial and central government agencies and on which a verdict has already been made.

From January 1 to December 31 of 2002, the sixth year since the ombudsman system was implemented in Bucheon City, a total of 83 civil complaints were filed, which is an average of two cases a week. Of those, 83 cases were fully processed. In three cases, the actions of the city and the civil government were found to be proper and the complainants were notified as such. As regards civil complaints in which full accommodation was unacceptable, alternative measures were provided as a means of mediation, and these accounted for 60 cases. A total of 20 cases communicated recommendations and opinions regarding the city government, and in 16 cases, or 80%, corrections or improvements to the system were made. The city has publicized its decision against accepting the proposals regarding four cases (Refer to the website of Bucheon City).

4. The Limits of the Ombudsman

First, the general public is not fully aware of the existence of the ombudsman system or its

from various administrative actions or the unfairness of civil servants. It is designed to secure transparency and fairness in the audit administration and to enhance public faith in the municipal governance (Audits & Inspections Bureau, 60, Seoul Metropolitan Government).

role. Ordinary citizens thus face limitations in resolving civil complaints through the ombudsman and contributing to administrative controls. Despite the fact that the main feature of the system is its easy accessibility compared to the general administrative offices, many still remain unaware of the existence of the ombudsman or they are hesitant to contact the ombudsman as they do not know how to proceed. In particular, the safeguarding of judicial rights or administrative verdicts is passive by nature as the procedures are launched only when the parties concerned bring the matter forward; but this is not so for the ombudsman. The ombudsmen are able to become actively involved in the resolution issues that he/she comes across in the process of performing his/her duties. Despite this fact, most of the ombudsman's activities are a passive response, launched only when a complainant brings a matter forth. As a result, the advantages of the ombudsman cannot be fully leveraged. Furthermore, the isolated classes, who have many civil complaints, and the socially weak face difficulties in accessing the ombudsman.

Furthermore, the ombudsman is a system that relies upon the qualities, characters and devotion of the individual members of the ombudsman team rather than being a system that resolves the problem by the system alone. The activities of the ombudsmen can thus be effectively performed when the ombudsman has the trust of both parties concerned, has the professional expertise to persuade both parties and has the social status to attract the attention of the public media. Otherwise, the achievements of the ombudsmen will be significantly diminished. In the event that the social status or prospects for the ombudsman are not bright, it would be difficult to solicit those with outstanding qualities and virtues to serve as ombudsmen; and herein lie the limits of the ombudsman system.

The means for the ombudsman's activities generally rely upon recommendations and public opinions. The ombudsmen do not have the authority to alter administrative decisions nor order their alternation. The fact that the ombudsman cannot oblige the administrative offices to comply with their decisions promotes their flexible accessibility, but in some cases, the ombudsmen can be regarded as "sleeping lions." If the administrative agencies do not voluntarily comply with recommendations for corrective measures, the ombudsman system, which does not have enforcement authority, may become powerless. However, if the authority of the ombudsman is strengthened and if they are equipped with enforcement power, the relation between the administrative agencies and the ombudsman would become rigid. If the administrative accessibility of the ombudsman is reduced because of this, the role of the ombudsman as the intermediary between the citizens and the administration will be greatly diminished. Here lies the dilemma in determining the authority and status of the ombudsman.

II. The Significance of Civic Participation and its Status in Korea

1. The Significance of Civic Participation

There are several views regarding the definition of civic participation. Mainly, it refers to the activities of the non-governmental organizations that impact the decision-making procedures of the government. Today, emphasis is placed on civic participation as the mechanism for resolving community issues and seeking resolution regarding failed areas in the government and the market. Civic participation is emphasized particularly as a measure for compensating for deficiencies in solving problems in the existing representative political system. From the perspective of educating citizens, civic participation is also emphasized for fostering citizens' qualities and to encourage the fulfilling of their responsibilities through participation. Civic participation in today's democratic society is required to make up for shortcomings in the parliamentary system, to overcome bureaucratic abuses and to educate citizens on politics.

1) Overcoming the Shortcomings of the Parliamentary System

The democracy of today is based on a parliamentary democracy under which citizens elect their representatives and the decisions made by them are regarded as the decision of the citizens. In other words, by regarding the decisions of the representative as those of the people, the voice of the people, which is a fundamental value in the principle of democracy, is regarded as being guaranteed. However, decision-making through a representative has defects from several perspectives that cannot be overlooked.

Firstly, regarding the decision made by a government agency as representing the will of the citizens just because that agency elected by the citizens was granted democratic justifiability is merely a formality of the constitution. In reality, it may be very much alienated from the actual desires of the citizens. In the event that there are several candidates in an election, it is possible that a person with far less than a majority vote would be elected, and his/her decision would be regarded as the decision of the people.

Furthermore, since the opinions of the people change frequently during the term, the representative of the people merely reflects the will of the people at the time ballots were cast. As time passes following the election, the decisions by the governmental agency may vary from the will of the citizens in many cases. Despite this fact, the decision by the government agency is regarded as the decision of the people, which may be considerably alienated from the will of the majority. In order to compensate for these problems, civic participation is called for. In this regard, civic participation plays a role as a catalyst for reflecting the actual desires of the citizens in political procedures. In other words, citizens' participation is needed to make up for defects in the system and to enhance its role.

The recent decision by the National Assembly to impeach the President of Korea was found

to be against the will of the majority of the Korean people. Some 70% of the general public expressed opposition to the impeachment of the president. In this event, the National Assembly is representing the minority and the majority is without representation. As a result, there is the need to restructure the participatory system of the people to speak out for their rights.³

2) Balancing the Shortcomings in Administrative Controls

Administrative controls refer to a series of procedures for comparing the administrative objectives to be realized with the administrative reality and taking corrective measures. Systematic control of the administration can be categorized as internal control and external control, control by the councils and control by the judicial courts. In internal control, there exist limitations resulting from an organizational unity between those who exercise control and those who are controlled. Control by the council faces limitations due to the restricted access to information and its insufficient means of control. Control by the judicial courts is restricted to control of illegal activities, and the efficiency of the administration is excluded from the areas of control of the courts from the outset. Control of the illegitimacy of the court is also restrained by several factors. Even in the case of improper administrative actions, if there is no infringement on an individual's rights protected by the law, control by the court over improper administration is not permitted. Also, if those whose protected rights are violated fail to file a lawsuit for one of several reasons, control will not be exercised over the courts regarding the improper acts. In particular, legal proceedings require considerable time, expense and effort. The complainants are often psychologically burdened and eventually abandon legal action.

Due to insufficiencies in the existing administrative control system, improper, inefficient, unfair and illegal administrative actions are allowed to continue. Damages resulting from deficiencies in administrative control are eventually suffered by citizens who are the masters of the administration. The voluntary participation of citizens is called for in order to correct insufficiencies in administrative controls and achieve administration based on legitimacy, efficiency, fairness and promptness. Through the participation of citizens, their experiences and ideas will be reflected in the public administration, which will contribute to overcoming bureaucratic abuses and lead to an administration that benefits the citizens.

³ The national referendum and the subpoena can be considered as systematic mechanisms for the citizens to directly represent themselves. Although the latter is not recognized, the former is recognized by the Constitution. However, the national referendum is restricted to matters related to national security and constitutional amendments. In the event of a national referendum, only the President of Korea is allowed to make an initiative, while for the subpoena, only the President of Korea and the National Assembly are allowed to make the initiative. It is not a means by which the citizens may represent themselves directly.

3) The Significance of Educating the Public on Politics

Democracy is designed with a certain image of a citizen. Democracy can be maintained only when there are citizens who have the ability and the desire to be involved in community issues. However, such citizens are not born but raised. As a result, in order to foster citizens active in a democracy, political education is essential for the existence of such a democracy. Educating citizens on politics can be handled through regular classroom education, but what is more important is civic participation in political procedures. Civic participation is significant as a learning procedure by which the citizens are able to collect information through discussions on public issues, and are able to have a sense of responsibility in community issues (Cho Tae-je, 1997, 460). Citizens will not be able to take a genuine interest in politics if they are not addressed directly on political issues. By guaranteeing their participation, citizens will voluntarily engage in in-depth discussions and experience the political responsibility of making their own decisions (Barber, 145). The procedure for national referendums, therefore, is fundamentally different from simple public opinion polls. In the procedure for a national referendum, the will of the citizens is not decided from the beginning. Rather, the citizens collect relevant information through public discussions and form an opinion. On the contrary, if the role of the citizens is restricted to electing representatives or leaders under the parliamentary democratic system, the citizens will become politically illiterate. Through civic participation, citizens will be able to foster a political capacity to resolve community issues as well as develop a sense of responsibility and concern regarding the community.

4) The Dysfunction of Civic Participation

In civic participation, there is the eufunction described above, but in some cases, the following dysfunction may emerge. In the event that residents' opinions are coordinated but expressed in a drastic manner, a conflict may worsen rather than being resolved (Lee Seung-jong, 166). Civic participation may lead to the obstruction of swift and effective enforcement of the administration, as well as an increase in expenses. Above all, if civic participation is restricted to certain classes, problems may emerge in terms of equality and representation. In other words, the organized minority may overwhelm the unorganized majority and exert a strong influence over them. In discussing civic participation, a method for emphasizing the positive function and minimizing the side effects should be sought.

2. The Status of Civic Participation

The civic participation system comes in diverse forms, including *Bansanghoe* (ward

committees), committees, public hearings, meetings with residents, petitions for revision/alternation of ordinances and resident ballots. In *Bansanghoe*, or ward committees, people in a small ward (*ban*) meet once a month to discuss ward matters. It was first organized in May of 1976 to gather the opinions of the residents and to provide citizens with administrative information. There is criticism that the committees are initiated by the government, but their objectives lie in reflecting the recommendations of the residents in the administration.

The committees are organized by the central or local governments for consultation on major administrative policies and can serve as a channel for citizens' participation. Committees of the past were established due to the needs of the government and thus did not have strong features of civic participation. Recently, however, they began to gain significance as a channel for civic participation. The committees of the past were comprised mainly of civil servants and relevant experts. In many cases, they were used as the means for rationalizing the policies of the government agencies or evading responsibility regarding decisions. In some cases, these committees existed in name only, without much activity. However, the influence of private citizens has recently increased and the representatives of civic organizations or those recommended by the civic organizations were included in large numbers so that the committees could be used as a channel for civic participation.

Meetings with the residents are another form of resident participation. These include dialogue between heads of administrative agencies and the citizens. During these meetings, participants presented their personal complaints and urged for their resolution. The meetings were also used as an arena for discussing politics.

Public hearings were held with the purpose of gathering public opinion regarding administrative policies. Under Articles 14 and 20 of the Act on Plans for and Use of National Land, regulations are set forth for holding public hearings. The public hearings are also held by administrative agencies as needed. When there is little interest on the part of the residents, the public hearings are held in formality only, whereas when the interest of the residents is great, the public hearings can create disturbances. The panelists and those making the presentations were generally designated by administrative agencies, and in many cases, the public hearings were held as a means of justifying or rationalizing the policies already determined. As a result, the public hearings did not serve their original purpose of gathering a broad range of opinions.

Petitions are also widely used as a type of civic participation. Petitions are a way of setting forth opinions regarding the central or local governments and are guaranteed as a basic right of the citizens by the Constitution. There are petitions for resolving personal complaints or for safeguarding individual rights. Following the 1990s, the number of petitions calling for the implementation of government policies has risen. For example, petitions calling for the enactment or revision of ordinances fall under this category. Following the implementation of the local

government system, ordinances were enacted upon the request of the citizens, such as ordinances on the implementation of school lunches, ordinances banning the establishment of cigarette vending machines, and ordinances calling for the disclosure of administrative information.

The resident participatory system guaranteed under the Local Autonomy Act is the enactment of ordinances by the residents, requests for the revision and abolition of ordinances by the residents, demand for audit by the residents and national ballots. The rights for the enactment, revision and abolition of ordinances are a type of resident initiative, and under the system, a certain number of residents can present a draft bill of ordinances to the local council. Under the petition system for resident audits, a certain number of residents can collect signatures and ask supervisory institutions to conduct and audit on illegal or improper acts by the local governments. The resident ballot system is guaranteed by the National Ballot Act enacted on January 29, 2004. Major decisions by the local governments that have placed an excessive burden on the residents or that have a significant impact on them can be brought to the resident ballot.⁴ The resident ballots are implemented upon the request of the heads of the local governments, residents or the local councils.

Voluntary participation on the part of citizens had risen steadily in other areas since the 1990s. Activities that support and monitor the activities of the local council of the National Assembly, the representatives of the National Assembly or the local councils have increased through evaluation and disclosure of results. Falling into this category are the budget analysis and decision-making procedures by the citizens, the filing of complaints on wasteful budget expenditures by local governments⁵, and promotion of the campaign for the disclosure of the administrative information.⁶

⁴ The National Ballot Act takes effect six months after enactment, and thus has not been implemented as of yet. Prior to the implementation of this Act, opinion polls were conducted for the revision of the administrative zones of the local governments. Resident ballots by civic organizations have been conducted, and have exercised de facto influence over the major policies of the central or local governments. A resident ballot was initiated by the citizens on February 14, 2004 regarding the establishment of radioactive waste processing facilities in Buan, which had caused extreme conflict and disturbances both between the government and the residents and among the residents themselves. A Resident Ballot Committee was organized at the private sector level, and it was attended by 72% of the residents, 91.8% of whom raised opposition to the establishment of the facilities (Ha Seung-soo, 26).

⁵ The Citizens' Action Network, a civil organization, presents awards to the administrative agency with the most wasteful budget expenditure as a means of warning against carelessness with the budget in government agencies.

⁶ When civic organizations were denied in their quest for the disclosure of expenditures by the heads of the local governments, they filed an administrative lawsuit and won, which paved the way for the transparent operation of finances and direct audit by the citizens.

3. The Limits of Civic Participation

The administrative duties of the central and local governments today are governed by numerous regulations and processed by several administrative agencies. Due to their complexity and the professionalism required in these duties, ordinary citizens have a hard time understanding them. With the quantitative expansion and qualitative complexity of the administrative duties of the government, opportunities for the general public to exercise influence through active participation in the administration are diminishing. On top of this, the administrative offices, which wish to process administrative duties swiftly and without conflict, have a tendency to find the citizens' participation inconvenient.

Furthermore, with the increased time and effort residents have to devote to their workplaces, they have less time to take interest in public issues and they are less motivated to participate. With commercialization in the life structure, public interest in civic participation that requires services without payment also becomes reduced. Also, with a lifestyle based on individualism, citizens wish to spend their time in leisure activities and rest rather than taking part in troubling communal issues. From various perspectives, the condition of civic participation today is deteriorating.

In order to guarantee civic participation with minimal time and effort, diverse participatory systems have to be guaranteed. However, a systematic form of participatory system is still lacking. Recently, the resident ballot system was legislated, but its conditions and subjects are still very restricted, and systems such as lawsuits and summons by the residents are only under discussion and have not yet been introduced. Under these circumstances, today's civic participation takes place through civic organizations that were voluntarily organized by the citizens. Following the democratization movement in 1989, civic organizations became active in Korea as a means for voicing criticism against the government, formulating rational alternatives and serving as an intermediary for the citizens.

Residents' participation in the local administration is possible only when the residents have sufficient information on the overall status of the regional community. In this regard, it is necessary for the local governments to disclose information to the residents. At present, there is an ordinance on the disclosure of information, but only with regard to the passive disclosure of information regarding the local government at the request of the residents. The rate of utilization of this system is thus very low. In order to enhance the interest of the residents in the local administration and to promote residents' participation, there is a need to adopt an information disclosure system in order to enable the local governments to actively make public all the major issues in the local community. The role of the local media in reporting all the major issues of the

area to the residents is also crucial. When residents have in-depth knowledge of the major pending issues in the region, they will discuss such issues in their everyday conversations and become motivated to participate in the local administration. Citizens of today, however, are much more knowledgeable on the issues of the central government and therefore have much greater interest in the issues of the central government rather than in those of the local government. As a result, participation of the residents in the local administration is very low.

IV. The Synergistic Effect of Linking the Ombudsman and Civic Participation

1. Mutual Goals of the Ombudsman and Civic Participation

By serving as the intermediary for overcoming the distance between the administration and the citizens, the ombudsman has the same goals as civic participation in that they both aim for democratization of the administration and its qualitative improvement. Through the citizen participation, the administration can be controlled, qualitative improvements in the administration can be sought, and the capacity and energy of the citizens can be reflected in the performance of public duties. Above all, distrust between the administration and the citizens can be resolved and a relation of trust can be created between the two parties, eventually contributing to forming a cooperative relationship.

In this regard, the activities of the ombudsman can overlap with the citizens' participatory activities and be complementary to them. The fundamental objectives of the two parties are to contribute to the benefit of the citizens and to improve the administration. As such, cooperative relations should be sought between the two parties. Next, measures for rectifying the limitations of the two parties mentioned above will be studied.

2. The Role of Civic Participation in Overcoming Limitations in the Activities of the Ombudsman

The activities of the ombudsman generally rely upon civil complaints filed by the citizens. The act of filing a civil complaint alone falls under the category of civil participation. When citizens file their personal complaints with the ombudsman, seek for the safeguarding of their rights, or make policy recommendations regarding public issues, they become pointers for the activities of the ombudsman. The filing of civil complaints stemming from subjective motivation can lead to the objective control of the administration, which could ultimately lead to the improvement of the system.

The usage rate of the ombudsman system can fall because the average citizen is unaware of the existence of the system or is unaware of how to file a civil complaint, and there is a risk that only certain classes will use it. To overcome these limits, civil organizations can serve as a bridge between the ombudsman and the general public. When a civic organizations form a close network with the ombudsman, it is expected that the accessibility of the ombudsman to citizens can be enhanced through those civil organizations⁷.

The ombudsman does not have legally binding force, but resolves problems through recommendations or advice. In this regard, the professional capacity, credibility and character of the individual ombudsmen play a crucial role. In the current reality where the ombudsmen are not properly compensated and their status is not guaranteed, it is very difficult to appoint ombudsmen with outstanding qualities. In this event, civic organizations can make recommendations for ombudsmen. In some cases, those selected by civic organizations have been appointed as ombudsmen.⁸ Also, the evaluation or criticism of persons appointed as ombudsmen is made by civil organizations. Since they can be involved in ensuring the qualitative standards of the ombudsman, civic organizations can contribute to preventing administrative agencies from appointing biased persons as ombudsmen.

The ombudsmen are also expected to receive help in resolving specific issues by maintaining a close cooperative relationship with civil organizations since civil organizations, which were first established in the 1990s, were based on expertise and they formed close networks with experts.

Close ties with civic organizations are also important as the achievements of the ombudsman's activities are not made forcefully, but rely on public opinion and persuasion. When civic organizations make favorable evaluations, declare their support and promote campaigns for realizing the decisions and advice offered by the ombudsman, the ombudsman's activities will be significantly influenced. On the contrary, when their activities are criticized by civic organizations, their influence will diminish.

3. The Role of the Ombudsman in Complementing the Activities of Civic Participation

The major role of the ombudsman is to serve as an intermediary between the citizens and the administration. The ombudsman can contribute to enhancing the accessibility for the citizens

⁷ In reality, the Ombudsman of Korea processes civil complaints received by various civil organizations and also holds regular meetings with them. Also, in some cases, the Ombudsman of Korea actively creates a venue for arbitration through the expansion of participation by the complainants and relevant civic organizations in investigating and processing these cases (Lee Wun-hyoung, 2).

⁸ For example, an employee of the Citizens' Coalition for Economic Justice was appointed as the ombudsman of Bucheon City.

regarding the administration. In particular, in the event that civil servants that perform administrative functions find citizens' participation troublesome and inefficient, the ombudsman can convey the citizens' will to the civil servants as well as convey the thoughts of the civil servants to the citizens and make contributions so that unnecessary conflicts do not rise between the administration and the citizens.

In the event that citizens find it difficult to directly approach the administrative agencies due to the hostile attitudes of the civil servants or in the event that the problems are not resolved even through direct contact, a more amicable solution can be sought through the ombudsman, who serves as an intermediary.

Furthermore, if the citizens find it difficult to approach administrative policies due to their complexity or technicality, they can seek help from the ombudsman. In particular, citizens must have sufficient prior knowledge and pertinent information regarding the relevant matters. Ordinary citizens are given the right to call for the disclosure of administrative information, but limitations exist both in the procedure and the time that the information can be obtained through the ombudsman. The ombudsmen have extensive experience and can gather information through the investigative powers more effectively than the general public and thus have more information. The citizens can thereby obtain information necessary for civic participation from the ombudsman.

Civic organizations, for their part, will be aided by the sense of awareness of the ombudsman regarding public issues in seeking areas for civic involvement. The experience of the ombudsman can offer important clues for identifying the source of administrative practices or systems against which citizens have voiced complaints.

V. Conclusion

The elite democracy of today under which the role of the citizens is restricted to electing their representatives and entrusting them with everything has its limits. From a political point of view, parliamentary democracy is inevitable, but in the event that a representative cannot represent the citizens, there is a need for an exceptional mechanism under which the citizens can directly represent themselves. In order to enhance public trust and promote qualitative standards by guaranteeing rationality and fairness in the exercise of governmental power, citizens' participation is called for. Civic participation is required not only to resolve community issues, but to perfect the personal aspects of the citizens. Taking interest in community issues and being involved in their resolution is in itself significant. In this regard, civic participation calls for the manifestation of a liberal personality from a personal perspective, and from the perspective of the community, it calls for responsibility as the member of the community. More than anything else,

civic participation is significant in transforming the exercise of the public power from a unilateral vertical relationship to a bilateral horizontal one. In order to prevent the indifference of civil servants regarding civic participation, it is necessary to make use of the ombudsman system, which was developed to serve as an intermediary for civic participation. Since a direct relationship between citizens and administrative offices can cause resistance on the part of the administration, the ombudsman can serve as a buffer.

In contrast, civic participation can be helpful in overcoming the problems due to lack of legally binding force the ombudsman may face in its activities. If the ombudsman makes efforts alongside civic organizations in conducting investigations or seeking measures for resolution, the results will be augmented. The lack of independence, which is also a vulnerability of the ombudsman system in Korea, can be overcome to a considerable degree by making use of civic participation. What is necessary in Korea is the establishment of the ombudsman system at the level of local governments, and guaranteeing that they are substantially active and serving as an intermediary, thereby enabling citizens to participate in local governments. Through participation in civic organizations, citizens can stimulate the activities of the ombudsman while the ombudsman can strengthen the capacity of the civic organizations and support them. In so doing, the two parties will be able to make a giant leap toward reaching mutual goals as partners.

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THE OMBUDSMAN AND CITIZEN PARTICIPATION

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INTRODUCTION

The Public Complaints Bureau (PCB) in Malaysia was established in 1971 to deal with complaints made by citizens against the civil service. PCB today handles an average of 3,000 complaints annually covering the various aspects of maladministration such as delays or non delivery of service, abuse of authority, lack of public amenities and other inefficiencies. The management of PCB had always emphasized on a customer –oriented organization, committed to providing effective and quality service to the public at no cost. PCB subscribes to the view that customer complaints are an integral part of customer services function of any organization. Manage your complaints well means managing your customers well. In fact PCB had implemented its Client Service Charter in 1999 to provide quality service to its customers.

The PCB as the principal machinery for handling public complaints had continued to perform its role satisfactorily, drawing its authority mainly from the various Development Administrative Circulars (DAC) issued by the Chief Secretary to the government from time to time. The PCB is answerable to the Permanent Committee on Public Complaints (PCPC) a high powered committee headed by the Chief Secretary to the government. This paper will seek to examine briefly the

investigatory role of PCB and more significantly the various programmes that have been implemented to bring about greater public participation.

ACTIVITIES / FUNCTIONS OF THE PCB

The Development Administrative Circular No. 4 of 1992 laid down the responsibilities of PCB. The objective of this circular was to put in place a more effective system of managing public complaints so as to enable speedy and effective actions to be taken on public complaints received against government agencies. It was envisaged that PCB should be the focal point for the public to forward their complaints and also seek redress on any alleged administrative unfairness in their dealings with the government machinery. This was followed by the DAC of October 8, 2001 and the DAC letter 1 of 2002 which had the effect of further enhancing the role of the PCB. I shall attempt to outline briefly the principal functions and responsibilities of PCB.

- I. to receive public complaints about injustice and maladministration from aggrieved persons against government agencies
 - II. to investigate public complaints which are deemed to be valid
 - III. to report the outcome of investigations and make recommendations to the Permanent Committee on Public Complaints (PCPC) and the relevant authorities.
 - IV. to forward the decisions of PCPC to Ministries , Federal Departments, Local Authorities and Agencies for the purpose of remedial actions
 - V. to monitor the corrective actions taken by the government Departments and subsequently submit feedback to the Committee.
 - VI. to implement a proactive programme by reporting to respective Government departments/agencies in cases of negligence, non enforcement of laws and regulations which affect public interest with a view to prevent complaints from arising.
- and,

- VII. to implement a " people caring " programme involving citizens at grass root level whereby members of the public are encouraged to air their grievances at the district level to enable the authorities to attend to such complaints urgently.

However, certain matters are not within its jurisdiction, mainly those touching on government policies, matters under the jurisdiction of the Anti Corruption Agency, the Legal Aid Bureau, Public Accounts Committee, and cases still pending in the courts. Operationally, the PCB is part and parcel of the government administrative machinery and its success over the years could be attributed to the close co-operation and understanding it had forged with the government departments/ agencies. Being complaints driven organization the vast majority of complaints forwarded are resolved speedily. PCB's standards of service as outlined in its Clients Charter clearly stipulate that investigations should commence within 14 days of receiving a complaint. The complaint will be referred to the particular Department /Agency for any remedial action and also provide feedback to PCB on any action taken. Departments are also given sufficient time frame to resolve a complaint which is usually about 3 months. Issues that take a longer time to resolve and the very complex cases may require that follow up meetings be held with the Department concerned to find a solution.

The PCB received a total of 3,154 complaints in the year 2003 as compared to 4,202 in 2002, a decline of 24.94%. It is worth noting that Federal Departments accounted for about 63.41% of the complaints while State Departments constituted about 36.58%. As in the previous year, the largest number of complaints was against the Ministry of Home Affairs which received 482 complaints followed by the Prime Minister's Department with 250 complaints. The number of complaints according to the various Ministries and State Government Departments is shown in ANNEX A and B respectively.

A large number of the complaints were received through the mail i.e. 1881 or 46.59 of the total figure of 3154 cases. Complaints through the electronic media mainly e-mail and the web site was 337 cases, while a total of 435 complainants were physically present at the PCB offices to file their grievances. PCB had also devised a standard form for complaints

which is made available to the public through the numerous post-offices, land and district offices and requires no postal charges. A total of 260 complainants had made use of this facility to forward their complaints. The mobile complaints counter, which continues to play a key role at the grass roots level, had received a total of 654 complaints. The categorization of complaints by PCB is based on issues rather than activities and a more detailed breakdown is provided at ANNEX C.

PERMANENT COMMITTEE ON PUBLIC COMPLAINTS (PCPC)

The PCB is answerable to the Permanent Committee on Public Complaints which meets once every four months. Systemic issues and other complaints that could not be resolved at the departmental level are referred to the PCPC for its deliberations and decision. The PCPC which is a high profile Committee and comprises the Chief Secretary to the Government, the Director Generals of the Public Services Department, Anti Corruption Agency, Malaysian Administrative Modernisation and Management Planning Unit and the Senior Deputy Secretary-General in the Prime Ministers Department. Since its formation in 1984, it had made several landmark decisions with the main objective of providing redress to aggrieved individuals. This Committee has extensive powers, including the right to institute investigations and to direct any officer to account before it. Besides, it also has inherent powers to scrutinize official records / documents. By virtue of being the Head of the Malaysian Civil Service, the Chairman of this Committee has wide ranging powers, inherent in his appointment. With such powers and authority behind it, the PCB is quite well equipped to carry on its core competency of managing public complaints effectively and to ensure that justice is done to the complainant.

In line with the government aspirations to create a transparent, accountable and an effective service, PCB is empowered to recommend the re-structuring / re-engineering of certain Agencies that had failed to deliver quality service to the public.

Those Departments /Agencies that did not have any complaints management system were required to set up an internal complaints handling mechanism and also appoint a

Complaints Liaison Officer drawn from the professional and management group whose main function is to monitor and resolve problems timely. These measures would undoubtedly serve as a management tool for Heads of Departments to identify weaknesses that may exist within their organization and to initiate remedial measures quickly. The PCPC had also recommended that disciplinary action be taken against errant public officials in order to ensure that the public service continues to perform effectively. It is not too far-fetched to say that PCB acts on the principle that "Prevention is better than cure" by trying to identify administrative weaknesses at an early stage in the interest of both the public and the relevant Government Agencies.

On a number of occasions, PCB had identified certain provisions of law, regulations and administrative practices that were outdated or unfair to the public. In such a situation, PCB would advise the government with a view to rectifying the particular offending legislation or regulation. A case in point was a recent decision taken by PCPC on the regulation and control of Co-operative bodies in the country.

Based on an increasing number of complaints concerning the management of Co-operative Societies in the country, PCB had submitted a report on its findings to the PCPC for a decision. The crux of the problem was the lack of enforcement by the Co-operative Department which was attributed to a shortage of staff, especially enforcement officers and certain weaknesses in the existing Legislation, namely the Co-operative Societies Act. Currently there are about 4,000 Co-operatives operating throughout the country and the Department concerned does not have sufficient manpower to monitor and supervise these Co-operatives. The PCPC made certain recommendations namely, the Co-operative Department should take immediate steps to recruit additional staff and also look into the possibility of further strengthening the existing legislation, to confer wider powers on enforcement officers.

ADMINISTRATIVE IMPROVEMENTS

PCB had introduced a number of administrative changes in its effort to upgrade its effectiveness. These innovations included changes in aspects of management, organizational structure, and revision of duties, publicity and its modus operandi of managing public complaints. The improvements also included changes to organizational structure and mode of operation such as:

- Mobile Complaints Counter
- Action Oriented Meetings
- On the Spot Investigation / Remedial Action
- Inspectorate
- Publicity
 - Newspaper
 - TV
 - Radio
 - Pamphlets / Posters
- Customer Satisfaction Index (CSI)
- Scanning Newspapers
- Liaison Officers on public complaints at all government agencies.

PCB has also created its own homepage and has an e-mail facility to enable complaints to be made electronically in line with the Malaysian Government policy towards an Electronic Government. Complainants can at any time check the status of their complaints through the internet. PCB'S homepage address is www.bpa.jpm.my and the e-mail address is aduan@bpa.jpm.my. A computerized case management system was introduced in 1999 which enabled staff to key-in the complaints, the management to assign the complaints and investigation officers to forward the findings of investigations and make decisions on resolution of cases.

PCB'S PROGRAMMES AND PUBLIC PARTICIPATION

In addition to its investigatory role, PCB's strategy also leans towards creating greater awareness amongst the public on the role and functions of PCB and also provide the citizen new avenues to channel their grievances concerning government maladministration. Of late, emphasis was placed on new strategies to reach the grass-roots and those residing in the more remote parts of the country.

Mobile Complaints Counter (MCC)

PCB introduced the MCC as early as 1985, and from the beginning these counters were mainly operated in the rural and inaccessible parts of the country where the local populace does not enjoy the same opportunities as their urban counterparts in voicing their grievances and also the level of awareness about PCB'S role is comparatively low. These counters are manned by PCB personnel based at the Regional offices. PCB has a total of 4 Regional Offices namely the Northern, Eastern, Southern and the Central Regional Office and each headed by a Director.

Each Regional office is required to operate a total of twenty-five mobile counters annually while the MCC for the East Malaysian states of Sabah and Sarawak is normally handled by the PCB Head office itself. These counters are usually opened for a day or two depending on the response and are located at shopping complex, government offices especially the local district / land office, and occasionally in conjunction with some local event that attracts a large section of the public. Publicity campaigns are conducted prior to the MCC program and PCB is assisted by the District and the Information office on the dissemination of information to the local residents through pamphlets and posters. This approach is advantageous to the parties involved since it enables the officer to carry out on the spot investigations to verify the validity of certain complaints and to meet personally with the Government Agency for discussions in order to resolve the issue speedily. During the year 2003, a total of 90 MCC were organized throughout the country with

1043 complainants visiting these counters. PCB had also received a total of 654 complaints through these mobile counters nation wide.

Meeting the Client Programme

Another important development in the efforts to further promote citizen participation is the "Meeting the Client Programme" implemented in 2001, following the issuance of an official circular. Under this programme, Heads of Departments whether at the Federal or State level were mandated to set aside a day in the month specifically to meet with potential complainants or even those who were merely seeking advice or information on the role and functions of the Department concerned. As a matter of fact, Heads of Departments were required to be present at these sessions and were advised to cancel or postpone their commitments such as attending meetings outside their office. The face to face encounter with the Departmental Heads not only gave the clients an opportunity to put forward their grievances personally but more significantly it had also demonstrated that the public service is always responsive and sensitive to the needs of the public and the right of every citizen to approach directly the Heads of Departments who can impartially investigate the complaints.

PCB's was given the responsibility to monitor and report to the Government the implementation of this new customer oriented effort. Based on the feedback, a total of 529 Government Agencies, both at the Federal and State level had already implemented the Client's Day Programme. During 2003, a total of 224,242 clients had benefited by visiting these special counters set up to receive complaints. There was a better attendance at Federal Departments which received a total of 177,365 customers compared to 46,877 at the State Departments. However it is envisaged that with greater publicity and awareness the Clients Day Programme would continue to play a key role as another important forum for the public to channel their complaints and also indirectly serve to improve the image of the Government in the eyes of the public.

People Caring Sessions

This is another revolutionary approach adopted by PCB to receive complaints from the public and to act upon such complaints quickly. The Programme is aimed at reaching the masses especially in the rural areas and is jointly organized with the co-operation of the relevant State Authorities. The Programme involves a dialogue session between the local residents and the State Departments /Local Authorities and these sessions are normally chaired by the State Chief Minister or the Chief Secretary to the Government. The target group usually encompasses local community heads, residents, hawkers associations, voluntary bodies, and the various committees at the district levels. As for the selection of the district, preference is given to those areas that had recorded the highest number of complaints during the year. There is no doubt that these dialogue sessions had brought the ordinary citizens closer to the Public Service, especially with the rapid growth in the size of the bureaucracy to-day, which had the effect of creating a serious gap between the civil servants and the public they serve.

The People Caring Sessions, in a sense, could be viewed as a platform for a two way communication between the Government and the people. The important issues put forward by the public can be scrutinized and referred to the Departments for immediate action. On the other hand, frivolous or unsubstantiated complaints could be easily identified and ignored thus saving time and resources of the Agencies involved in investigating such cases. Another important feature of the Programme is that it encourages openness and transparency, whereby, Heads of Departments who are present at these sessions are required to provide answers without fear or favour or clarify on the issues that are discussed during the dialogue. Lastly the forum is used not only to resolve complaints that have merit and substantiated but also to defend the particular decision made by a public servant and which is justified.

The major problems highlighted at the People Caring Sessions were those regarding delays on the part of Government Departments, lack of public amenities such as

roads, water supply and provision of electricity to rural areas and those matters that come under the Local Authorities. Many of the grievances were resolved timely except those that had financial implications or required amendments to existing legislations which took a longer time. During the year 2003, PCB was able to organize a total of six People Caring Sessions nationwide and about 3,105 people had participated in these Sessions.

National Convention on the Management of Public Complaints / Seminars / Workshops

In the efforts to bring about a more effective system of handling public complaints PCB organized a National Convention on Managing Public Complaints. The Convention organized both at the national and regional level attracted some 500 participants consisting of Heads of Departments, Public Relations Officers and Complaints Liaison Officers. An important objective was to discuss issues related to the improvement of the management of complaints and to share experience and positive values in the handling of public complaints. The participants also had the opportunity to study the various approaches adopted by the private sector in addressing this problem. Seminars and workshops were also organized at the regional levels to benefit the State and local Authorities who are saddled with an increasing number of complaints.

Conclusion

The government had introduced various innovations to enhance productivity, quality service and transparency in the public service, with the objective of achieving an excellent work culture. In this respect, PCB with its vast experience and adequate powers is well positioned to meet these challenges and play a more dynamic role in ensuring that the government's aspirations are fulfilled.

ANNEX A**COMPLAINTS RECEIVED BY FEDERAL GOVERNMENT
MINISTRIES**

Ministry/Federal Department	2002	2003
Home Affairs	428	482
Finance	320	227
Prime Minister's Department	287	250
Education	183	159
Human Resource	168	107
Energy, Communication and Multimedia	131	130
Health	126	134
Rural Development	84	53
Transport	76	64
Ministry of Works	73	82
Agriculture	66	65
Housing and Local Government	64	45
Entrepreneur Development	60	40
Land and Co-operative Development	55	36
Domestic Trade and Consumer Affairs	43	21
National Unity and Community Development	30	33
Science, Technology and Environment	22	20
Defence	20	16
Primary Industries	10	11
Information	9	9
Services Commissions	9	7
Culture, Arts & Tourism	3	6
Youth and Sports	2	1
Ministry of International Trade and Industry	1	-
Women and Family Development	1	-
Foreign Affairs	1	2
TOTAL	2,272	2,000

ANNEX B**COMPLAINTS RECEIVED BY STATE GOVERNMENT DEPARTMENTS**

STATE	2002	2003
SELANGOR	308	315
JOHOR	169	218
PAHANG	132	79
PENANG	122	68
PERAK	110	140
NEGERI SEMBILAN	75	111
KEDAH	74	76
MELAKA	57	21
KELANTAN	46	21
TERENGGANU	45	38
SARAWAK	27	8
PERLIS	11	15
SABAH	3	44
FEDERAL TERRITORY OF LABUAN	1	-
TOTAL	1,180	1,154

ANNEX C**CATEGORY OF COMPLAINTS FOR CASES RECEIVED IN
2003**

Category of Complaints	Ministry (%)		State (%)	
	2002	2003	2002	2003
	Delays in carrying out official duties	50.2	51.83	40.1
Unfair action or decision	17.6	12.52	16.0	11.08
Lack of public utilities or services	4.5	4.66	10.4	9.77
Rules and procedures which are bias or inadequate	0.8	0.55	0.5	0.26
Abuse of power	1.6	3.20	0.8	3.93
Misconduct of public servants	5.0	5.06	1.4	1.05
Inefficiencies of public servants	2.7	2.25	2.8	1.83
Advisory Services	2.9	7.41	2.6	3.14
Failure to enforce regulations and laws	9.0	6.71	18.1	15.01
Unsatisfactory services	5.7	5.81	7.3	6.02

The Ombudsman and Citizens Participation

Mr. Margarito P. Gervacio, Jr.
Over-all Deputy Ombudsman, office of the
Ombudsman Philippines

The Ombudsman and Citizens' Participation

Mr. Margarito P. Gervacio, Jr.
Over-all Deputy Ombudsman, office of the Ombudsman
Philippines

In the international community, the current trend now is towards the promotion of good governance. The concept of "*governance*" involves process of decision-making and the processes by which decisions are implemented or not being implemented at all. Since it is a process, the decisions are both made either by formal and informal actors. And speaking of actors, government is one of the actors in governance and the Office of the Ombudsman is one of the key players in aligning its thrusts towards good governance. In its efforts and initiatives to advance and heighten the concept and importance of good governance, it has taken into considerations its various characteristics which include, among others, being:

- Participatory;
- Consensus-oriented;
- Accountable;
- Transparent;
- Responsive;
- Effective and efficient;
- Equitable and inclusive; and,
- Adherent to the rule of law.

Within these contexts, the Office of the Ombudsman being one of the signatories in the United Nations Convention Against Corruption recognizes the pivotal role and participation of citizens in increasing transparency and accountability, which are being regarded as much needed and sought after antidotes to corruption that otherwise undermines governance and management. Corruption, as view from international

perspective has corrosive effects to economies. Governments like for instance India, Korea and Thailand almost nearly succumbed to economic collapse/fall (Arndt & Hill, 1999). Likewise, the global community realizes that indeed corruption hampers development in many ways. For one, it worsens ...

- Income inequality and poverty (Gupta, Davoodi & Alonso-Terme, 1990);
- Reduces investment rates (Mauro, 1997);
- Lowers economic growth (Tanzi & Davoodi 1998);
- Diminishes democratization; and,
- Weakens representation (Ocampo 2001).

Given these ferocious realities and the deleterious multiple and harmful effects of this social "*cancer*", globally, there is a common concern of controlling it, precisely because once controlled; it will surely yield multiple benefits. Indeed, in countries wherein, corruption is curbed, critical socioeconomic indicators are performing well: there are greater foreign investments, higher per capita income growth, lower infant mortality, higher literacy, stronger property rights, increased business growth and so on (Kaufmann, Kraay & Zoido-Lobaton, 2000). Controlling corruption therefore means encouraging economic development, increasing one's country's competitiveness in international arena, alleviating social conditions, and reducing poverty.

The Office of the Ombudsman, to complement the existing culture that promotes good governance which demands delivery of quality service to the people, the Office as constitutionally mandated as being the protector of the people, has laid down and spelled out its medium-term anti-corruption plan for the next five years. Indicated and specified in that blueprint are the five priority areas, which the Office of the Ombudsman hopes to achieve remarkable and significant successes and accomplishments. The five battlegrounds of the Office of the Ombudsman include:

- Investigation and Prosecution;
- Public Assistance and Research;
- Community Relations and Linkages;
- Education; and
- Organizational Development.

One priority area, which the Office is relentless in pursuing active participation and involvement, include the civil society, non-governmental organizations, other governmental agencies, international institutions and donor community. Faced with the difficult reality of the baneful multifarious effects of corruption on the society, the Office of the Ombudsman takes another major step in effectively eradicating this age-old phenomenon that is eating away every system in our social milieu. And that is to forge alliances with the key players – the citizens whose involvement and participation is considered the key cornerstone of good governance, and who are the same people who dream to live in a world intolerant of perversion and graft and corruption.

Among the programs the Office has identified to ensure citizen's participation in establishing the most conducive atmosphere/environment for a government that is consensus-oriented, which has the best interest of the whole community and which operates in a milieu that speaks of accountability and efficiency, the Office has identified both current and proposed which are incorporated in the Medium-Term Anti-Corruption Plan and Investment Program for 2004-2009.

Current Programs

1. Ehem! Aha!

The Office of the Ombudsman has entered into a Memorandum of Agreement with the Philippine Province of the Society of Jesus on 13th October 2003 relative to the program entitled *Ehem! Aha: A Manual of Deepening Involvement in Combating Corruption*. This is an anti-corruption program that serves as major contribution to the fight against graft and corruption in the Philippines.

- **Ehem!** is composed of modules, workshops, designs and exercises geared towards the establishment/creation of a counter culture that espouses the processes of sensitivity and discernment by every individual and institution. Processes involved are intended to cause innovative reforms in individual and institutional orientation, attitude and behavior that combat or prevent acts of corruption.

- **Aha!** compliments and supports *Ehem!*, which in the process completes *Ehem!-Aha! Program*. It involves integrated process of sensitive, responsive, relevant and discerning program against graft and corruption through cultural sensitivity and other innovative counterculture initiative.

2. Corruption Prevention Unit (CPU) Program

A Corruption Prevention Unit (CPU) is a non-governmental organization (NGO), religious, civic, urban poor and people's organization (PO) of good standing accredited by the Office of the Ombudsman to promote its objectives in the war against graft and corruption.

Its objectives are:

- To raise public awareness on the evils of corruption and the means of fighting the same;
- To assist the Ombudsman in determining the causes of inefficiency, red tape, mismanagement, fraud and corruption in the government and to make recommendations for their elimination;
- To initiate campaigns pushing for the observance of high standards of ethics and efficiency in government service.
- To assist ordinary citizens in seeking assistance from government agencies;
- To assist the Office of the Ombudsman in monitoring the prosecution and trial of Ombudsman cases in the different regional trial courts and other lower courts nationwide;
- To assist the Ombudsman in the Lifestyle Probe drive of the Office;
- To assist the Ombudsman in the implementation of the Infrastructure and Procurement Watch Program of the Office; and,
- To form linkages with non-organic Resident Ombudsmen and other anti-corruption groups nationwide.

3. Junior Graftwatch Program

The Junior Graftwatch Program is part of the Office of the Ombudsman's multi-sectoral strategy to enjoin and empower the youth sector in graft prevention and control by encouraging them to establish Junior Graftwatch Units (JGUs) in schools and communities.

Students and community-based youth organizations duly recognized by their respective schools and communities can apply for accreditation as JGUs.

The general objectives of the program are:

- To direct the growing concern and awaken the consciousness of the young citizens into productive action towards the elimination or reduction of graft and corruption and its effects to the country's economy;
- To develop and ingrain in the youth in the youth traditional Filipino values such as honesty and efficiency in preparation for their future roles as leaders of the country; and
- To orient the youth on the tasks, functions and roles of the Office of the Ombudsman.

Proposed Programs

In its efforts to reach out to the international partners and stakeholders, the Office of the Ombudsman through various coordination and linkages has sought the assistance of the donor community to provide technical as well as financial support to OMB's programs and initiatives designed to strengthen its capacities. Among the proposed undertakings which some of the donor community expressed their commitment and assistance includes:

1. Court Watch

This program is being considered to tap the assistance of senior law students as volunteer court watchers to assist the Office of the Ombudsman in the monitoring of performance of prosecutorial staff of the Ombudsman during

trials in the Sandiganbayan and eventually to include other regular courts in the Philippines. (United Nations Development Programme)

This is tentatively scheduled to take off before the June 2004. Approximately, two hundred (200) student-volunteers are expected to undergo the training and capability-building workshop.

2. Procurement Watch

This is a program that will train volunteer observers from the business sector on the various bidding processes including implementation, contractual compliance and the pertinent red flags to watch for. (With EU/EC support and time frame from July 2004-2007).

3. Lifestyle Check Program

This program is designed to conduct a regular monitoring of the lifestyle of high profile personnel of graft-prone agencies. (With EU/EC support and time frame from July 2004-2007).

4. Corruption Awareness Prevention and Education Program

This is program intends to solicit the general public's involvement and participation in undertaking activities relative to increase awareness and consciousness in controlling graft and corruption. (With EU/EC support and time frame from July 2004-2007).

5. Participatory Audit Program

This project is intended to involve civil society members in the conduct of audit of government projects and/or programs. (With EU/EC support and time frame from July 2004-2007).

6. Bureaucracy Watch

This will look into the performance of the agency as a whole. (With EU/EC support and time frame from July 2004-2007).

To further enhance and strengthen the partnership between the Office of the Ombudsman and other oversight bodies in its pursuit to continue comprehensive and enduring reforms in the administrative adjudication and criminal prosecution of cases, asset disclosure and investigation, government procurement systems, value formation in the bureaucracy, and internal control systems improvement through various inter-agency collaborations.

Focusing on involving and consulting with citizens about important issues and needs, and involving them in making decisions, in the long run will definitely help the Office of the Ombudsman reap favorable and beneficial rewards. In addition to harnessing the energy and ideas of citizen groups toward addressing country's needs, such programs ideally provide citizens with a sense of ownership in the society. In order to lead a country towards good governance and development, it has to realize and acknowledge the pivotal role of its citizens. With their cooperation and participation, any undertaking that will help in nation building will surely produce success.

Thank you.

THE OMBUDSMAN AND CITIZEN PARTICIPATION

Mr. Justice S. C. Verma
Ombudsman, Uttar Pradesh, India

THE OMBUDSMAN AND CITIZEN PARTICIPATION

Mr. Justice S. C. Verma
Ombudsman, Uttar Pradesh,
India

Nowadays, corruption is internationally recognized as a major problem in society, capable of endangering the stability and security of societies, threatening social, economic and political development and undermining the values of democracy and morality. International cooperation is indispensable to combat corruption and promote accountability, transparency and rule of law.

Robert Klitgaard uses the equation $C=M+D-A$, where C (corruption)= M (monopoly) + D (discretion) - A (accountability).

In its widest connotation, corruption includes improper or selfish exercise of power and influence attached to a public office due to the special position one occupies in public life. Developing countries like India face this problem. Throughout the fabric of public life in the developing countries runs the scarlet thread of bribery and corruption.

Corruption hurts the public directly and tragically, particularly as it penalizes the honest and rewards the dishonest among them.

Corruption and mal-administration impose a great strain on democracy and we all know that corruption is the end product of a process of administration and is always preceded by mal-administration.

To live in a society which pursues good governance practices is today a basic human right. The quality of an individual citizen's life is materially affected by both the decisions taken by the government and the manner in which those decisions are implemented.

A just and civil society requires a system of government which, whilst operating within the rule of law, provides for a wider recognition of the need for accountability to citizens on whose behalf government undertakes its responsibility.

Accountability does not mean that those who rule are only answerable to those from whom they derive their authority. The availability of information to the general public and clarity about government rules, regulations and decisions should be made available under the laws made for information.

The mechanisms and processes by which authority is exercised in the country's economic, political and social spheres and the extent to which the citizens are involved and given responsibility should have transparency.

Participation can become meaningful only if governmental structures are flexible enough to facilitate easy and unhindered participation by public.

There should be orderly existence of citizens and institutions in the society. Predictability would be possible if there is rule of law. The rule of law encompasses both well-defined rights and duties as well as mechanisms for enforcing them and settling disputes in an impartial manner by agencies like Ombudsman.

A system evolved for exercising a control on the arbitrariness of the public functionaries and for removal of grievances arising in the functioning of the Government has been named as Ombudsman.

Effectiveness of Ombudsman is related to his primary objective: to ensure that the constitutional state is maintained, that public authorities respect citizens' rights and laws and that administrative problems are corrected (eliminate formalities, reduce delays, revise discretionary decision-making processes etc.)

Consequently, this mission is divided in two parts: monitoring and correcting, if necessary, public authorities' behaviour. That is why the Ombudsmen effectiveness, or his success in getting his recommendations implemented by the public authorities, relies on his ability to make public authorities accept and understand his recommendations.

His purpose is to resolve conflicts, which he must make public authorities aware of. He ensures that public authorities are aware of his intervention criteria and the general scale according to which he evaluates the government's administrative behaviour. He makes his general policy interventions public and makes the public authorities and media understand the rationale for his recommendations.

The traditional role of Ombudsman provides an effective accountability mechanism, which is now in place in more than 100 countries. The role of Ombudsman is necessary in providing a mechanism which can balance the fundamental requirement that governments must be able to govern but with appropriate accountability.

Corruption is so much rampant in every sphere of the Government Administration at present that in the perception of a common man it is no longer a problem but has been accepted as a way of life. Bribery has become customary.

The procedure for evaluation of national loss caused by ever-increasing corruption has been confined to a special class only. As a result, such a social atmosphere is taking shape in which government machinery is proving to be the most fertile ground for the nursing of corruption.

On the basis of the experience, which I gained during my working, mal-administration is the root cause of corruption.

The procedure for checking or controlling corruption, it is my firm belief, will only be effective if it is enforced from top level to down. A waterfall flows from up to downwards, is eternal truth.

Besides being a most objectionable corrupt practice, the custom of 'speed money' has become one of the most serious causes of delay, inefficiency and poor work culture. Deliberate delay in the movement of papers by petty officers in Government offices in the hope of collecting 'speed money' is one way of frustrating honest citizens.

Those who have tried to live as moral men in an immoral society have generally given way, sooner or later, under agonizing pressures of legitimate ambition which can only be achieved through illegitimate means, the pressure from family obligations, the slow insidious pressures of a society in which material success is adulated and where material failure is ruthlessly mocked. The pressure of increasing defeatism, or realization that public opinion stigmatizes the transgressor so lightly, and that so little seems to be gained by trying to swim against the tide, people have surrendered.

Thus the honest taxpayers pay their legitimate dues, pay the extra taxes to make up for the tax-evader and also pay interest on tax-evader's investment in loans. It amounts to penalizing honesty and rewarding dishonesty.

A second set of social cause of corruption can broadly be described as lack of personal virtue or a sense of morality. Corruption is a consequence of the way of life of our acquisitive society, where people are judged by what they have rather than what they are. The possession of material goods seems to have become the sine qua non of life. This inevitably results in scramble for acquisition of glittering prizes, irrespective of the means adopted. Lack of vigilance by the people has also contributed to the growth of corruption.

Codes of ethics and evaluating integrity are of great importance in developing a civic sense and respect for institutions and human rights. The prime need is a common standard of morality.

The institution of Ombudsman haven't dealt until now with issues that are related to professional ethics; and morality both to the administrator and the individual, they have concerned themselves only with powers conferred under statute.

The level of corruption in a society depends on the values and morals.

Corruption amounts to soul killing. It is an illusion that happiness rests on the indulgence of the self rather than service to the society and country.

All religions stand for reducing temptations and uphold the dictates of conscience. If we truly become religious, corruption will reduce in the society automatically.

Our duty is to stand by virtue and fight the forces of evil. Corruption is an evil. Lord Krishna says that he comes on earth to protect the good and destroy the evil. Our scriptures enlighten us about the emancipation of our souls and also the welfare of the world by following the path of Dharma and righteousness.

We have to fight for values otherwise the information age will create greater channels for the spread of the mischief. This is simply a fight for our values. As bribery rises, civil liberties fall. As bribery rises, the rule of law falls. As bribery rises, the competence of our civil services fall. Now is not the time to debate but, acknowledge that if the battle is lost then what kind of a world we shall be leaving for our children?

The value system of a society translates its spirit in the shape of conventions and traditions. The general moral fibre of a society system, the *modus operandi* of the political executive and members of civil service as well as the conduct and decisions of the Ombudsman are likely to play a decisive role in establishing the prestige and status of this institution.

The Institution of ombudsman is an office that exercises or wields moral authority over the government and commands confidence of the public. Such an Institution, it is felt, would scrutinize actions of the executive and keep a constant surveillance on the functionaries with a view to enhance their accountability to the legislature and, as an outcome to improve the image of the Government in public estimation.

In my opinion, Ombudsman will also have to perform the role of Clergy, Preachers, Pandits, Mullahs and Monks who are the public voice of conscience and command enormous respect in the society. In that capacity we can influence the life and thinking of the people, in the society. Ombudsman should create a conducive environment for clean and honest persons upholding the right ethical values, and attain the status of conscience keepers of the society. They will then strengthen those fighting for moral and ethical governance.

The best means to combat corruption, even in terms of the cost to the society, is prevention. Effective prevention can thus reduce the extent and the costs of penal action.

Public awareness and tolerance and effective role of the mass media would be of great help. The role of mass media in uncovering corruption cases and in building anti-corruption awareness is important for both the prevention and the investigation and control of corruption.

A reform to this effect in Government functioning is essential that a government functionary should always have this fear in mind that in case he was found guilty he will not escape the punishment because fear of punishment is more effective than the punishment awarded.

The unlimited, unbridled and unchannelized powers exercised by political leaders in democratic setup as Heads of the department is also responsible to a very great extent for mal-administration and corruption. The said powers should be curtailed and political intervention be reduced in public administration.

The power relationship in most states- the power balance between the governor and the governed- is perceived to be shifting dramatically away from those seeking to wield authority in the name of the state and in favour of the individual citizen.

Voluntary organizations have not yet come into the field for helping people with their complaints. We have to mobilize ultimately public opinion and public involvement in the fight against corruption. That is where the NGOs can play an effective role. The NGOs should take each department and find out that what are the rules and regulations which breed corruption and come up with suggestions.

Providing channels for ventilation of grievances is bound to have a very sobering effect on an erratic administration. It lies with the public, which should be prepared to put up a stiff fight against corruption. For every corrupt official, there are hundreds of members of the public wanting to make use of him and feed him. A society that does not attach any stigma to the corrupt man can hardly be rid of such ignoble men.

Ombudsman throughout the world, by whatever name they are described, have established themselves as an effective instrument of public accountability. We can be proud of the part we and our predecessors have had in meeting that purpose and should endeavour to make this authority more meaningful and effective.

Civil society and the Business community must be encouraged to establish codes of conduct. The codes of conduct must lay down moral guidelines to refuse either to accept or give bribes. Citizens are the ultimate victims of corruption. They must exert pressure on the government to fight this evil effectively.

The responsibility for fighting corruption is not limited to the government and its agencies alone. It is also the responsibility of the of the people from all walks of life. Initiatives will come from the bottom-power of the people, rather than the top. Fighting corruption requires a broad base and change of culture. The action needed is not only top-down but also bottom up from the people.

Political corruption can be defeated by strengthening the civil society. Ultimately it is the people who will pressurize the bureaucracy and the government to reform. Awakening public opinion is a primary task in fighting corruption. People view bureaucrats and politicians with mistrust. The starting point must be people. They must

generate pressure from below as it is not likely to come from the above because of involvement.

The society as a whole must accept the gauntlet against corruption and aim at establishing a corruption-free society. It must stand for values, virtues, culture and honour, which are essential ingredients of a corruption-free society. Education on the need to fight corruption should start in schools and must be kept up through regular society-wide campaigns. Moral renovation, cultural change and elevation of consciousness are a must.