

**FIRST ASIAN OMBUDSMAN CONFERENCE
ISLAMABAD, PAKISTAN
15 - 16 APRIL, 1996**

ASIA

ASIAN OMBUDSMAN ASSOCIATION



OMBUDSMAN OF PAKISTAN

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Delegates with Mr. Farooq Ahmed Khan Leghari,
President, Islamic Republic of Pakistan



Heads of Delegations with Mohtrama BeNazir Bhutto,
Prime Minister, Islamic Republic of Pakistan



Delegates with Mr. Justice Sajjad Ali Shah,
Chief Justice, Islamic Republic of Pakistan



Delegates with Mr. Justice (Rtd) Abdul Shakurul Salam,
Ombudsman, Islamic Republic of Pakistan



Welcome Address by Mr. Justice (Rtd) Abdul Shakurul Salam,
Ombudsman, Islamic Republic of Pakistan



Inaugural Address by Mohtrama BeNazir Bhutto,
Prime Minister, Islamic Republic of Pakistan



Response on behalf of delegates by Mr. Zuo Lianbi, Vice Minister of Supervision
People's Republic of China



Session chaired by Mr. Justice (Rtd) Abdul Shakurul Salam,
Ombudsman, Islamic Republic of Pakistan

CHAPTER - 1

INTRODUCTION

1.1 Ombudsmen or office-holders differently designated as Parliamentary Commissioner, Commissioner for Administrative Complaints etc. from 75 countries are members of the International Ombudsman Institute. Then, there are Regional Associations of Ombudsmen or similar office-holders in the various regions of the world like North America, Europe, Australasia Pacific. Asia though a vast region and having about 65% population of the world has not yet Regional Association. My predecessor was elected as a Director for the region by the Board of Directors of the International Ombudsman Institute. He was entrusted with the job of organising a Regional Association.

1.2 Since his tenure expired and I was instead elected as a Director, I attended the meeting of the Board of Directors, IOI, at Hague on 15th-18th October, 1995. I had earlier led a delegation on 2nd-10th July, 1995 to the People's Republic of China and also attended the 7th International Anti-Corruption Conference at Beijing on 6th-10th October, 1995. I had also attended as an Observer the 4th African Regional Conference of Ombudsmen on 18th-21st September, 1995 at Khartoum convened by Sudan. After the Board's meeting at Hague, I was also invited by Mr. Andrew So, Commissioner for Administrative Complaints to participate as an Observer in the 15th Australasian and Pacific Ombudsman Conference and the International Ombudsman Symposium on 23rd-27th October, 1995.

1.3 Having met leading Ombudsmen or similar office holders and broached the subject, I felt encouraged to pursue the decision of the Board of Directors of IOI and submitted a Summary to Mohtarma Benazir Bhutto, the Prime Minister of the Islamic Republic of Pakistan for organising an Asian Ombudsman Conference. The Prime Minister was happy to approve the idea and provided funds for the venture. Invitations were extended to the Ombudsmen or similar office-holders in the various countries of the region. It was stated in the invitation that the main objectives of the Asian Ombudsman Conference would be as follows:-

- (a) To promote the concept of the Ombudsman and its development in Asia.

- (b) To facilitate exchange of information and experience between Ombudsmen and Heads of Ombudsman-like institutions of the Asian Region.
- (c) To discuss the possibilities of setting up an Asian Ombudsman Association (AOA).
- (d) To discuss plans for arranging periodic conferences of the Asian Ombudsman/Ombudsman-like institutions.
- (e) Any other matter, ancillary to the above.

1.4 The Conference was held at Islamabad on 15th-16th April, 1996. As many as 40 delegates from 18 countries participated. Some regretted because of their personal engagements or on account of ill health. I am especially sorry that Sir Brian Elwood, Chief Ombudsman of New Zealand whom I had met before and who was very happy with the idea, could not participate because of his two surgeries. Mr. Martin Oosting, President of IOI sent a message and Ombudsmen of Australia passed a resolution for success of the Conference and sent it through Mr. Peter Boyce Ombudsman of Northern Territory. All others sent their good wishes.

1.5 The Conference was inaugurated by the Prime Minister of Pakistan. The first session was presided over by Mr. Justice Syed Sajjad Ali Shah, Chief Justice of the Supreme Court of Pakistan. The participants were received by Mr. Farooq Ahmad Khan Leghari, President of the Islamic Republic of Pakistan who welcomed the participants and addressed the gathering at some length.

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

1.7 At the conclusion of the fourth session, the delegates decided to form an Asian Ombudsman Association. A Preparatory Committee for working out the details was formed consisting of the delegates of Pakistan, China, Sri Lanka, Hong Kong, South Korea and Iran. Delegate from Korea, Mr. Dae Kyn SHIN, Ombudsman, offered to host the next conference of the Asian Ombudsman Association in April 1997 and Mr. Luis de Mendonca Freitas, High Commissioner from Macau, expressed the wish to host the next conference of AOA in 1998.

1.8 The participants had the opportunity to visit the Regional Offices of the Ombudsman of Pakistan at Karachi and Lahore. Besides, they also visited Taxila, site of the Gandhara civilisation, and the historical places from Mughal period at Lahore. All went back to their noble assignments, I hope, happy and satisfied. They said so subsequently.

1.9 Deliberations of this Conference have been recorded in this report which will be useful for all, specially those who did not attend or who are interested in Ombudsmanship. After evaluating the results of this Conference, the comments may be communicated for guidance of and for the organisers of similar Conferences in future.



(Justice (Rtd) Abdul Shakurul Salam)
Wafaqi Mohtasib (Ombudsman) of Pakistan/
Chairman/Convenor of the
Asian Ombudsman Association,
Islamabad — Pakistan

Dated: 24.07.1996

CHAPTER - 2

INAUGURATION

2.1 WELCOME ADDRESS BY MR. JUSTICE (RTD) ABDUL SHAKURUL SALAM OMBUDSMAN, ISLAMIC REPUBLIC OF PAKISTAN



“Prime Minister of Pakistan, distinguished delegates, ladies and gentlemen, Assalam-o-Alaikum

I am very grateful to the Prime Minister of Pakistan, Mohtarma Benazir Bhutto for accepting my suggestion for convening a Conference of Asian Ombudsman or differently designated authorities who inquire into the complaints of ordinary people against public functionaries with a view to redress their grievances, providing fund and now having spared time, I know, from her very heavy engagements, to inaugurate this Conference. This shows her spontaneous positive response to redressal of grievances of people.

Madam Prime Minister,

Heads of the institutions or in some cases their deputies from 17 countries of Asia have taken the trouble to travel from far flung areas, leaving their immediate work to await, which they don't like as one does not willingly postpone redressal of grievance of ordinary people, to participate in this Conference on my request. I am grateful to all of them.

Madam Prime Minister,

You would know that to do 'good deed' is difficult. Still 'to think' good thought is more difficult. It is very rare and requires special talent, intellect and originality. But once a concept is evolved, it has its own potentiality of growth and

even its fragrance finds roots wherever the circumstances and soil are ready and receptive. The same has happened to the idea that ordinary people *per force* come into contact with the administrative authorities of the State, and they do not always get relief from them which has been provided to them by the laws of the State, or are otherwise treated arbitrarily or oppressed by them. To alleviate their sufferings, China in the olden times of dynastic rule provided for the remedy that any person aggrieved could approach a specified authority for redressal of his grievance. Rome elected Censors. Holy Quran and traditions of Prophet Muhammad (PBUH) laid emphasis on accountability here and hereafter of all — including the rulers and they were ordained especially to do *adl* and *Ihsan*, justice and kindness. In the institutionalised form, it was established as a court of *Mazalim* in Turkey where people could go for redressal of their grievances. The concept was picked up by Charles II, King of Sweden while in exile there. On restoration, the King created a similar office in his own country at the end of the 18th century. Now the idea is in full bloom in some 75 countries. In Pakistan, the office was established in 1983 and since then it has redressed the grievances of the people in thousands upon thousands of cases. It has provided them succour and solace. It is no mean service. Satisfied people are a boon for the government as well. The officials whose wrongs are set aright, instead of taking it amiss, should feel happy that their mistakes or omissions had not injured anybody finally.

Madam Prime Minister,

May I now say that the distinguished delegates have come from different countries, with diverse cultures, language, legal and government systems. But they all, in their own way and according to their own principles, try to redress grievances of their people. We gather here to exchange information, to learn from each other's experiences and see what we can do for each other so that in our own countries we can serve our people better. At international level, there is International Ombudsman Institute in which some 75 countries are represented. Since international gathering of the Ombudsman is only at four years' interval because of preparation and expense, various regions have also established Regional Ombudsman Association, like North American Ombudsman Association, European Ombudsman Association, Australasia Pacific Ombudsman Association. Sudan had last year held a conference of Ombudsman of African States with a view to form an Association. Asia alone is without such an association. Many of the countries in the region have rich experiences to impart. Others are keen to develop their system to meet the needs of their people. All are represented by the pick of the their flowers. Their speeches will smell sweet. Put together they make a beautiful bouquet.

Mr. Marten Oosting, President of the International Ombudsman Institute has sent a message and expressed his hope for a positive attitude from the participants of the Conference for establishment of an Asian Ombudsman Association. Hon'ble Pe-

ter Boyce, Ombudsman of Northern Territory has brought a Communiqué from the Australian Ombudsmen of best wishes and success in the development of a strong and enduring Asian Ombudsman Forum.

May I now, Madam Prime Minister, request you to inaugurate the First Asian Ombudsman Conference and address the distinguished gathering. Adieu for now.”

2.2 INAUGURAL ADDRESS BY MOHTARMA BENAZIR BHUTTO, PRIME MINISTER, ISLAMIC REPUBLIC OF PAKISTAN.

“Distinguished delegates from all over the Asian continent, Ladies and Gentlemen,

Assalam-o-Alaikum, Peace Be With You, and Welcome to Pakistan.

It is an honour for me to meet and greet you on behalf of the People of Pakistan.

You, in a very real, direct and important way, seek to address one of the fundamental problems facing mankind as we move into a new century and a new millennium.

That problem is the growing sense of alienation and cynicism of the governed with their governments.

A people who believe that government does not care about their problems, fall into despair, despondency and hopelessness.

Cynicism and alienation choke initiative, strangle innovation, depress the intellect.

“Why participate,” the people say “it does not make any difference anyway”.

“Why join a political party”, ask a weary public, “nothing ever changes”.

And possibly the worst precipitated of this negative spiral of public opinion and public confidence is the frustration of the people in dealing with their governmental bureaucracies, the most direct link between the people and their governments.

It is sad, even tragic, that bureaucracies in many cities, provinces and nations, instead of being the agents of delivery of services to the people have become the principal obstacles and barriers to the people receiving goods and services to which they are entitled.

Like the frightening scenarios of the novels of Franz Kafka, governmental bureaucracy has all too often become a nightmare, where the individual grievances of our people are mired in red-tap and denied.

Thank God for the Ombudsman! You are the people’s agents, the average people’s agents. You give strength and hope, you empower. You work not only to redress grievances, but to restore dignity and legitimacy to the political process itself.

I know there are those who believe that the concept and institution of Ombudsman has its genesis in European enlightenment. But our friends should look to the East.

Governmental oversight and governmental accountability are very much products of the Asian continent, from the Chin and Han dynasties that controlled the system of public functionaries in China, to the very establishment of Islam almost fifteen hundred years ago.

Before the third century B.C Confucianism was a system of ethic precepts for the management of society, based on the practice of jen-sympathy or human-heartedness- as shown in one's relations with others and demonstrated through adherence to Li, a combination of etiquette and ritual.

A person who wishes to be properly treated when in a subordinate role must, according to Confucian Golden Rule, treat his own inferiors with propriety.

The Holy Qura'n makes it clear that the principal operations of the democratic process- consultation between elected officials and the people, and accountability of leaders to the people they serve, are fundamental to Islam.

Islamic society is contingent on mutual advice through mutual discussions on an equal footing. This is fundamental to concept of providing a bridge between the people and the government.

When, our Ombudsman remarked to the eighteenth century, the Swedish King was exiled to Ottoman Empire, he was exposed to the ongoing, functioning mechanism for relief in the Court of Qazi-ul-Quza't where the people could go with their grievances and be granted relief.

He returned to Europe with the idea intact, creating the term that has now come to describe your critical work — Ombudsman.

Let me briefly describe the Ombudsman concept as operated in Pakistan. As provided for in the Constitution, on the advice of the Prime Minister, an Ombudsman is appointed by the President. Traditionally, Pakistani Ombudsmen have been judges of the highest Courts in our land, and have served with a free and independent hand, removable only by judicial impeachment.

The Ombudsman in Pakistan has the authority in his own right to investigate maladministration--behaviour by government and bureaucratic officials which is, prima facie, unjust, biased or discriminatory.

Under law, all executive authorities in our government are required to provide assistance to the Ombudsman, and I have issued a directive to insure that the recommendations of the Ombudsman are complied with by the agencies, promptly and immediately.

Only last week, the Ombudsman presented the Annual Report of 1995. Of approximately forty thousand complaints received, more than sixteen thousand cases

were granted relief, in many cases to people who had been waiting for redress for many long years.

Whether it was an old man getting his pension, small claims for insurance, remission of interest, assistance to widows and dependent children, or the disabled, there are now sixteen thousand families in Pakistan this year alone who have renewed faith in their government and their institutions, because there was someone to talk to, someone to listen, someone to respond.

I have participated in the governmental process from both sides--as a Prime Minister who has headed a government, and as someone who has been oppressed by government under the harshest leadership. I understand the nature of redress and the hope that it offers.

I view the job as a classical embodiment of the new model of private-public partnership that will define the role of government into the next decade, century and millennium. Your office will become increasingly important and powerful ahead, as governments continue to grow more complex in the years.

I am glad that your first Asian Ombudsman Conference is taking place in Pakistan, especially delighted that the Asian Ombudsmen are gathered together for the first time and I am glad. Associations of Ombudsmen have long gathered and pooled ideas and resources in North America, in Europe and in Australia. It is long overdue that Asian Ombudsmen organised a permanent structure to deal with the growing crisis of confidence and performance as we reach the threshold of a new political and economic era.

Asia is a vast continent, Asia is largest land mass on this planet, comprising almost two-thirds of the people on earth. Our geographic and demographic resources are unmatched in the world.

And just as the nineteenth century belonged to Europe, and the 20th century became known as the American century, we are moving inexorably into the new millennium knowing that the 21st century will see the transfer of resources to Asia and will become century of Asia politically, economically, socially and culturally.

Because of you, the Ombudsmen of Asia, our leap into the future will be based on the moral foundations and protections of a just society.

Again, Peace Be With You, and I wish you every success in your critical endeavours.

Thank you ladies and gentlemen."

2.3 **RESPONSE ON BEHALF OF DELEGATES BY MR. ZUO LIANBI, VICE MINISTER OF SUPERVISION, PEOPLE'S REPUBLIC OF CHINA.**

“Your Excellency Mohtarma Benazir Bhutto, Your Excellency Mr. Justice Abdul Shakurul Salam, distinguished ladies and gentlemen.

On the occasion of the First Asian Ombudsman Conference being held today at Islamabad, the beautiful city and capital of Pakistan, please allow me to have the honour on behalf of the participating colleagues from various countries and regions, to extend our warmest congratulations to the opening of this Conference, and present our highest respects and best regards to the esteemed Government of Pakistan, who hosts the Conference, and have actively sponsored and greatly supported this Conference. As well as to Her Excellency Prime Minister Benazir Bhutto who has personally graced the inauguration of the Conference. I also would like to avail this opportunity to express our great appreciation and sincere gratitude to the Wafaqi Mohtasib (Ombudsman) of Pakistan, Mr. Justice Abdul Shakurul Salam for the efforts to facilitate the organising of the Conference.

The Conference has provided a good opportunity to our colleagues from various Asian countries and regions to increase mutual understanding and exchange of experiences according to the programme of the Conference. The participants will have a wide range of experiences for establishment of the Asian Ombudsman Association.

We are confident that with the efforts of all participating delegations of the countries, Conference will surely produce positive and a far reaching influence for further enhancement of the friendship among our colleagues of Asian countries as well as the strengthening of our friendly relations and the cooperation in the future. Our Chinese delegation of the Supervision Ministry comes to this Conference with the principle of sharing with others the experiences as well as joining arms with each other. We sincerely wish the Conference a great success.

Thank you Mr. Chairman. Thank you all.”

CHAPTER - 3

PRESENTATIONS

FIRST SESSION

Mr. Justice Syed Sajjad Ali Shah, Chief Justice of the Islamic Republic of Pakistan chaired the first session.

3.1 PROFESSOR BERTRAM BASTIAMPILLAI, PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION, THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.

The Parliamentary Commissioner for Administration was provided for in Article 156 (Chapter XIX) of the Constitution of the Democratic Socialist Republic of Sri Lanka introduced in 1978. He was charged with the duty of investigating and reporting upon complaints or allegations of the infringement of fundamental rights and other injustices by public officers and officers of public corporations, local bodies, and other institutions in accordance with and subject to the provisions of Law. His tenure of office and terms and conditions of office are secure so long as his conduct and behaviour are unimpeachable; and he is appointed by the President of the Republic. The Article gives him wide powers and assures him independence to be impartial and secures to him Constitutional recognition of office and the right to discharge his duties without fear or favour.

Over time the Parliamentary Commissioner for Administration who had been designated also as the Ombudsman from the very beginning, is commonly popularly known as such in Sri Lanka. The working of the institution or office is based on Act No 17 of 1981 and Act No 26 of 1994 whereas Act No 16 of 1991 is solely confined to raising the age of retirement of the Parliamentary Commissioner for Administration upto seventy years of age.

As a rule the Sri Lankan Parliamentary Commissioner for Administration receives petitions or complaints through the postal services or at the office. Before

the Amendment of 1994 petitions had to be lodged through a member of Parliament with the Speaker and it was referred to from there to the Parliamentary Commissioner for investigation and report embodying his recommendations on relief and redress. Now, however, after the Amendment of 1994 from 1st February 1995 petitions could be directly addressed to the Parliamentary Commissioner for Administration. Direct access made conditions easier and less cumbersome to complainants and the numbers of petitions received dramatically increased from about 10 earlier to over 350 now per month.

When a petition is received it is examined and if a *prima facie* case of injustice having been committed is clear then reports are obtained from the officials or authority that had given cause for the complaint. These reports are referred to the complainant and if he accepts them as valid and reasonable no inquiry is held. On certain occasions the officials or authority to whom the petition is forwarded correct the wrongs alleged to have been done and then no inquiry is necessary.

On the other hand, as is common, if the petitioner disagrees with the explanations afforded then the complainant and the head of the institution are listened to at the investigation by the Parliamentary Commissioner. The inquiry is exhaustive, not adversarial but inquisitorial in nature.

If the complainant is found to have proved that an injustice has been done or that his rights have been violated then suitable relief or redress is afforded by the Parliamentary Commissioner for Administration. Otherwise, if the complainant fails to establish his case then the complaint is dismissed. In regard to the relief or redress, be it in the form of compensation for losses suffered owing to an unfair decision or restoration to a job after unjust dismissal or the grant of a due promotion that was withheld or an appointment to a position that was unreasonably not granted, the decision taken is communicated as determination made by the Parliamentary Commissioner.

The determination is transmitted to the relevant head of a department or the concerned authority with a copy of it to the Minister under whose purview the department or authority lies, and a copy to the Public Petitions Committee of Parliament. A reasonable period of time is allowed by the Parliamentary Commissioner for the execution of his determination. If it is not executed then he should be provided with a report stating the reasons for non-compliance with his determination. The Parliamentary Commissioner for Administration forwards this explanatory report along with a copy of his own report embodying the determination and his comments to the President of the Republic and to Parliament for any further action. This may take the form of further inquiry by the President or could be a question in Parliament. But very few officials would relish this consequence and often determinations are complied with.

Generally the Parliamentary Commission for Administration endeavours to get both parties to an inquiry, the complainant and the alleged wrong doer, to agree on a settlement once an allegation is reasonably proved. There is an earnest attempt to mediate and conciliate rather than to be confrontational alone. Often a settlement is reached and this leaves the two parties to go out with less heart-burning or a hostile and antagonistic attitude.

The remedial functions of the Parliamentary Commissioner for Administration is taken rather seriously. Counselling administrators or Managers, the Parliamentary Commissioner urges improvements in the running of the Government Departments or Statutory Authorities. Where systems are wanting the deficiencies are indicated and advice is rendered to improve them. Similarly, whenever rules, regulations and practices are unfair, corrections are commended. The objective is to prevent repetition of wrong doing and errors and to make public management turn out to be more effective, efficient and human.

The Legislation governing the creation of the Parliamentary Commissioner for Administration provides for security of tenure and freedom from Ministerial interference. It empowers the Parliamentary Commissioner to call for and probe into evidence or to question witnesses material to any inquiry in a complaint. Non-cooperation of any official in such an exercise can be reported through a Certificate to a High Court and the official is tried. If found to be culpable the official is liable to either a stipulated period of imprisonment or a defined sum of money as fine or both penalties together could be imposed.

There are certain topics of subjects into which inquiry cannot be instituted such as into powers or functions discharged in terms of the Legislation governing public security, appointments etc. of Public officers.

There are no expenses to be borne by a complainant to the Parliamentary Commissioner for Administration. Moreover, the usual time taken to dispose of a complaint is about four months. Thus the institution of the Parliamentary Commissioner for Administration provides to the citizens an easy, economical and expeditious means to gain equity. As an institution it also acts as a deterrent to maladministration in public administration and as a spur to efficient management. The Parliamentary Commissioner for Administration provides vigilance over public administration and thereby enhances good governance.

The Parliamentary Commissioner is required to submit an annual report in addition to the reports sent at the end of each inquiry to the Public Petitions Committee to the President of the Republic and to Parliament. This ensures his answerability and restrains him from resorting to unaccountable behaviour.

I welcome the establishment of a Regional Association of Ombudsman for the exchange of ideas and thoughts on the promotion of good governance through a

better bureaucracy. I consider that the creation of the Association could enable suggestions to be jointly mooted for improving and strengthening the mechanism of Ombudsman for improving the quality of management in the public sector. It would provide an opportunity for experience of Ombudsman being fruitfully shared in the regional association. I express the view that against such a back ground it was eminently appreciable that there should be a gathering of the Ombudsmen in the Asian Region.

THE CHAIRMAN

Thank you Professor Bertram Bastiampillai for a very lucid exposition you have given and we are happy to note that the institution of Ombudsman is functioning very successfully in Sri Lanka and you are doing your best in improving it. Thank you very much.

3.2 MR ANDREW SO, COMMISSIONER FOR ADMINISTRATIVE COMPLAINTS, HONG KONG.

The Hong Kong Ombudsman is officially known as Commissioner for Administrative Complaints (COMAC). The first COMAC was appointed by the Governor of Hong Kong in 1989 under the COMAC Ordinance. The COMAC is an independent person outside the Public Service who reports directly to the Governor. Before 1994, COMAC could only investigate complaints referred to it by the Legislative Council. Amendments to the COMAC Ordinance in Mid-1994 brought some fundamental changes to the system, among the more significant of which are the provisions to allow members of the public direct access to COMAC "without the need for referral and for COMAC to take a more proactive approach in addressing problems of potentially wide public interest and concern by undertaking direct investigations out of its own volition notwithstanding that no complaint has been lodged."

The COMAC's mission is:

"To serve the community of Hong Kong by redressing grievances and addressing issues arising from mal-administration in the public sector, and through independent, objective and impartial investigations, to bring about improvements in the quality and standard of and promote fairness in public administration."

The COMAC Ordinance confers extensive powers necessary for COMAC to conduct investigations in matters of maladministration. COMAC may exercise his discretion to determine whether to undertake or discontinue with an investigation and the manner in which it is to be conducted; and whether a complaint is duly made under the Ordinance. Notwithstanding that no complaint has been lodged, COMAC may direct an investigation into a matter if he is of the opinion that any person may have sustained injustice as a consequence of maladministration. COMAC has the power to call for information or documents from any person, summon witnesses under oath, if necessary, enter, inspect and conduct investigation in any premises managed, occupied or controlled by the concerned organisation under his jurisdiction.

COMAC's jurisdiction cover all government departments, except the Royal Hong Kong Police Force (the Police) and the Independent Commission Against Corruption (ICAC) which have their own bodies to deal with complaints from the public, and the major statutory organisations such as the Hong Kong Housing Authority, Hospital Authority, Mass Transit Railway Corporation, the two municipal councils etc.

The COMAC assumes sole ombudsmanship in Hong Kong. When a complaint is lodged with COMAC, it is given full and proper attention. Every complaint

will go through a vigorous screening process to establish whether the complaint is within COMAC's jurisdiction. If so, consideration will be given as to how best it should be handled, having regard to the nature and merits of the complaint. When COMAC decides to conduct an investigation into a complaint, formal investigation is conducted. It involves examination of relevant files and documents, seeking of explanations and comments from the complainee departments or organisations, calling of witnesses to give evidence and seeking of expert advice, if necessary, from COMAC's panel of legal, medical or engineering advisers. Before the final results of the investigations are made known to the complainants, the complainee departments or organisations are given the chance to comment, confirm the facts and accept the conclusions and recommendations in the reports and, in case of non-acceptance of any part thereof, to state their reasons for non-acceptance. COMAC does not possess the executive power to require departments or organisations to implement its recommendations. It can, if circumstances warrant, bring the matter to the attention of the Governor or through him, to the Legislative Council, so that it will be fully considered and decided at the highest levels in the administration and legislative hierarchies.

The COMAC system exists to serve the Hong Kong community. It is important that the public is made well aware of its existence and how it can help redress their grievances and improve the administration. COMAC has taken a number of initiatives to enhance public awareness and promote the system. These include:-

- ◆ Production of a publicity video on the COMAC system.
- ◆ Mounting of posters at prominent places frequented by members of the public.
- ◆ Publishing anonymised investigation reports and complaint statistics in its monthly news-letter "COMAC News

Exchange programmes and study visits to the ombudsman and kindred offices in other jurisdiction including Netherlands, Australia, Canada, China have been arranged for COMAC staff. They brought back invaluable information and experience from their trips.

COMAC is a member of the International Ombudsman Institute (IOI). It played host to the 15th Australasian and Pacific Regional Conference held in Hong Kong in October 1995.

THE CHAIRMAN

Thank you very much Mr. Andrew So. Your talk has been very informative and instructive.

3.3 MR ARTURO C MOJICA, DEPUTY OMBUDSMAN, THE REPUBLIC OF PHILIPPINES.

Under the Philippine Constitution presently in force, there are three main branches of government-the Legislative Department, the Executive Department and the Judicial Department. The Office of the Ombudsman does not belong to any of these main branches of government but to the group known as the independent Constitutional offices.

The rationale for the creation of Office of the Ombudsman in the Philippines is that recourse to penal system, resort to judicial machinery and even cleansing effect of electoral process was insufficient to redress the grievances of an inhabitant of the country. The Ombudsman of the Philippines is also known as the TANOD-BAYAN which means Protector of the People or Sentinel of the Nation. The office was founded on the bedrock of the Constitution. Neither the President exercising his executive powers nor Congress performing its legislative functions can abolish the Office of Ombudsman or influence its functions.

The qualifications required of the Ombudsman and the Deputy Ombudsman are practically the same as are necessary for appointment to the Supreme Court of the Philippines. They are appointed by the President of the Philippines, after nomination by the Judicial and Bar Council, a separate Constitutional body. They serve for a term of seven years without reappointment.

Ombudsman has the power, authority and duty, on receipt of complaint, to:

- I. Direct any public officer/employee to;
 - a) perform and expedite any act or duty required by law.
 - b) stop, prevent and correct any abuse or impropriety in the performance of duties.
 - c) adopt, institute or implement measures to emphasize principle of public accountability and prevent efficiency and corruption.
- II. Investigate and prosecute any act or omission of any public or government agency when such act or omission appears to be illegal, unjust, improper or inefficient.

Principal powers and authority of the Office of the Ombudsman may be briefly classified into two main categories: the remedial/corrective/preventive authority and the punitive powers. Punitive powers consist of the power of investigation and the prosecutory power aided by the fact finding function.

Any complaint filed in any form or manner against all public officials/employees regarding alleged acts or omissions appearing to be illegal, unjust, improper or inefficient may be inquired into by the Ombudsman. The highest ranking cabinet member down to the lowest employee, members of Congress down to the last clerk of the legislative department, officials and employees of the Judiciary and officials and employees of Constitutional bodies are all subject to the investigatory jurisdiction of the Ombudsman. However, officials - the President, the Justice of the Supreme Court, Chairman and members of the Constitutional bodies or commissioners - who can be removed from office only through the impeachment process provided for in the Constitution are excepted from the investigative machinery of the Ombudsman.

The Ombudsman Act makes perfectly clear that the jurisdiction of the Ombudsman encompasses "all kinds of malfeasance, misfeasance and nonfeasance that have been committed by any officer or employee during his tenure of office." If the act complained of is not illegal but appears to be unjust, improper or inefficient, the office of the Ombudsman still has jurisdiction.

The other well known power is the prosecutory power of the Office of the Ombudsman. After a complaint has been evaluated, and investigated, the Office of the Ombudsman (whether in the Central Office or any of the offices of Deputy Ombudsman) resolves or decides whether to dismiss the complaint or to file the corresponding information in court, if the case is cognisable by the Sandiganbayan (the Special anti-graft court). It is the office of the Special Prosecutor, which prosecutes the case. If the case falls under the jurisdiction of the regular courts, the regular prosecutor deputised by the Ombudsman takes charge of presenting the evidence against the accused.

The Office of the Ombudsman has investigated and charged before the Sandiganbayan eleven Members of Congress, ten Cabinet Members, twenty-five Provincial Governors, twenty-eight City Mayors, five Ambassadors, seventeen Generals and fourteen members of the Judiciary. All of the them are facing charges before the Sandiganbayan because they are considered high ranking officials, while low ranking officials are prosecuted before the regular courts.

Ombudsman or his Deputy may preventively suspend any officer or employee pending an investigation if in his judgement the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression of grave misconduct or neglect in the performance of duty (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

Less well known but equally potent is the preventive/corrective/remedial authority of the Office of the Ombudsman. If no criminal act can actually be attrib-

uted to a public official, but “in the view of the Ombudsman, there is an abuse on the part of said public officer in the performance of his administrative duties, the erring official can be stopped or prevented from committing such impropriety.

Lodged with the Office of the Ombudsman is the authority to inquire and obtain information. This, is the most effective, easily implementable weapon of the Ombudsman. Office of the Ombudsman has the authority to direct that it be furnished “with copies of documents relating to contracts or transactions entered into by any public official involving the disbursement and use of funds or properties” or ask “any government agency for assistance and information necessary in the discharge of its responsibilities and to examine if necessary, pertinent records and documents.”

The Office of the Ombudsman has the duty to adopt, institute and implement preventive measures and “determine the causes of inefficiency, red-tape, mismanagement, fraud and corruption in the government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.”

THE CHAIRMAN

Thank you Mr. Arturo C Mojica. You have given us very detailed information about the institution of Ombudsman in Philippines. It enjoys high status and the Ombudsman has a long tenure of seven years. Thank you very much.

3.4 DR BARAKAT MUSA EL-HAWATI, PRESIDENT, PUBLIC CONTROL & ADMINISTRATIVE EVALUATION BUREAU (OMBUDSMAN), THE REPUBLIC OF SUDAN.

One of the main objectives of any state, is to satisfy the material and moral (spiritual) needs of its citizens, defined in public policy, through its executive system. The achievement of such goals invariably requires scrutiny and vigilance for shortcomings and defects, and , subsequently, the treatment of what may come to be discovered of administrative financial and criminal offences, in accordance with the provisions of law and in conformity with the norms of justice and equity.

Viewed through this scientific perspective, control goes beyond the classical approach of fishing flaws and errors of individuals, to suggest the more accommodative concept of gearing all available resources to serve the ultimate goal of achieving higher productivity, in minimum possible time, at minimum possible cost and with best possible returns. This necessitates a competent and fully authorised control organ.

The idea of public control is as ancient as human civilisation itself. Both the Mohtasib (Controller) and Mazalim (Redress) chambers are considered among the advanced system of control. According to Prof. Victor Pickl, the idea of the OMBUDSMAN, first conceived in Sweden in 1809, was based on the model of these two systems. Public control organs may differ in name from one country to another. Yet, the essence remains one and the same to safe-guard workers and citizens rights against violation by public servants and government agencies.

In Sudan, redress and control system based mainly on the Islamic discipline of “Al-Amr-bil-ma’ rouf Wa’ l-Nahiu An-i l-munkar” (advocacy of benevolence and reprehension of bad attributes) was introduced during the Mahdist reign. In 1970 the May regime founded the “Public Control Bureau”. In 1981 the Control and Administrative Inspection Bureau was founded. However control as an active ingredient of public administration was never consistently present at any time. Within the context of the “National Programme for Public Service Reform and Revolutionisation” the Revolution Command Council and the Council of Ministers declared, in their joint session of January 14, 1990, their approval, in principle, to the establishment of an institution for controlling the performance of the executive. An act on the establishment of Public Control and Administrative Evaluation Bureau (PCAEB) was issued by way of a provisional decree, in 1994, and adopted by the Transitional National Assembly on February 2, 1995.

PCAEB’s objective is to realise without prejudice to the generality of the context, the state policy aimed at the creation of an objective public service, which is competent enough to match the requisites of effective high quality performance, in

line with the Islamic state principles upheld by the Government of Sudan. Main functions of PCAEB *inter alia*, cover the following:

1. Inspection of public service units with the aim of upgrading performance and enhancing efficiency.
2. Reception of complaints, investigation of reasons for such complaints and remedy of malfunction.
3. Investigation of reasons behind defective performance.
4. Detection of financial and administrative contraventions.
5. Reference of criminal cases discovered in the inspection to competent authorities.
6. Performance of studies and research work on the improvement of methods and optimisation of performance.
7. Any other task assigned to it by the Head of State.

PCAEB enjoys competence to act as follows:

1. Summoning any person for interrogation based on valid reason.
2. Ordering the delivery of any papers, data, documents, records etc.
3. Forming enquiry committees.
4. Issuing directives to institutions concerned on curbing financial and administrative malfunction.
5. Dissemination of excerpts from PCAEB reports for public information.
6. Recommending cessation of any administrative procedure deemed in contradiction with the laws, rules or regulations in force.
7. Advising authorities concerned to suspend any public servant if necessary.

THE CHAIRMAN

Thank you very much Dr. Barakat Musa El-Hawati. We are very happy to note that the institution of Ombudsman in Sudan has its roots in Islamic values and rule of law. Thank you once again.

3.5 MR. DAE KYN SHIN, OMBUDSMAN, THE REPUBLIC OF KOREA.

In 1971, the Office of the Joint Government Counselling Service (JGCS) was created to take whole responsibility for receiving and resolving a wide range of complaints and grievances against public administration. This scheme was not used as much as originally expected. So Basic Act on Administrative Regulations and Civil Complaints was promulgated on the recommendation of the Presidential Committee for Administrative Innovation in January 1994. It introduced the institution of the Ombudsman of Korea to uphold the fairness and transparency of public administration and protect citizens rights. The institution of Ombudsman of Korea was created to maximise complaints handling and secure public's trust in government.

The Ombudsman has the legal power to investigate complaints and to make and publicise recommendations. He also has the power to subpoena witnesses, to investigate documents and other evidences, and has access to information held by any governmental agency.

The Ombudsman can look into administrative actions that are:

1. contrary to laws or regulations;
2. unreasonable, unfair, oppressive, or inconsistent with the general course of an administrative agency's functions;
3. mistaken in laws or arbitrary in ascertainment of facts;
4. improper in motivation or based on irrelevant considerations;
5. unclear or inadequately explained when reasons should have been revealed;
6. inefficiently performed; or
7. otherwise objectionable.

After reviewing a complaint, the Ombudsman can make recommendations to the agency concerned if he is of the opinion that an administrative agency should consider the matter further, modify/cancel administrative actions, provide comprehensive explanation of the actions in question, or take any other step.

Agencies are required to give the Ombudsman any assistance or information deemed necessary by him. If so requested, the agency should inform the Ombudsman of the actions taken on the recommendations or the reasons for not complying with the same within 30 days.

The Ombudsman submits annual report on his operations to the President and publishes it for public information.

The term “administrative agency” means any department, office or other units of both central and local governments, or any public corporation, association or individual who exercise the entrusted administrative authority; but the term does not include the President, courts or judges members of the National Assembly and local councils.

The Ombudsman (Organisation) of Korea is composed of 5 Ombudsmen, including one standing Ombudsman. The President of Korea appoints or commissions the Chief Ombudsman and 4 other Ombudsmen from amongst the civilians recommended by the representatives of social organisations for being highly respected as well as knowledgeable in public administration, or at most one ombudsman from those who are serving or had served in the government. The tenure of the Ombudsmen is three years and can be renewed once. To ensure the independent status of the Ombudsman of Korea, the Ombudsmen can not be a member of the National Assembly, local councils, political parties, and can not be an employee of organisations or corporations having special relationship with administrative agencies.

Basic Act provides for the exclusion of some complaints which fall under prosecutorial jurisdiction. The Act also exclude certain complaints for which administrative appeal and litigation procedures under other relevant acts are in progress.

While some Ombudsmen of certain countries under the parliamentary system are the parliamentary Ombudsman. The Ombudsman of Korea is administrative Ombudsmen under the Korean Presidential system. It is necessary for the Ombudsman of Korea to include all the administrative complaints except for the parliament and the judiciary ones in its jurisdiction.

THE CHAIRMAN

Thank you very much Mr. Dae Kyn SHIN. The talk has been very useful and informative. There is always a room for improvements and efforts are to be made to make development in the system in order to see that the functions are accomplished more efficiently.

3.6 DR ABED ALI SHAKHANBEH, PRESIDENT, BUREAU OF ADMINISTRATIVE INSPECTION & CONTROL, THE HASHEMITE KINGDOM OF JORDAN.

Countries all over the world realise the importance of establishing organisation to fight corruption, responsible for monitoring the performance of public institutions. They also realise the importance of Ombudsman like institutions working for the redressal of grievances of ordinary citizens against public authorities.

In Jordan, in implementation of the directives of His Majesty King Hussien, and in harmony with the content of ministerial declaration, Jordanian Government is keen to eliminate corruption and develop comprehensive and specific strategies that enhance accountability, advance transparency and Justice and elevate public awareness in order to uproot corruption.

In Jordan the Bureau of Administrative Inspection and Control came into existence in 1992, with the prime goal of fighting against corruption and performing Administrative Control over the Ministries and departments of the Jordanian Government. It also acts as an Ombudsman like institution working for the redressal of grievances of ordinary citizens against public authorities.

Exchange of information and experience with Ombudsmen and Heads of Ombudsman-like institutions of the Asian region, would be beneficial to Jordan.

Bureau of Administrative Inspection and Control of Jordan was looking forward to increase cooperation with Asian Ombudsmen and Ombudsman-like institutions in general and the Ombudsman of Pakistan in particular.

THE CHAIRMAN

Thank you very much Dr. Abed Ali Shakhanbeh. I must say that some very useful views and information is exchanged. The intention is how the institution of Ombudsman should be made more efficient and useful because this idea is now catching up in Asia and it is a new experiment for us. We are all trying our best to have the information and exchange of views with other participants in order to see that the institution has deep roots and becomes successful for redressal of grievances of the public.

3.7 DR. MOHAMMAD AL-IRYANI, CHAIRMAN, CENTRAL ORGANISATION FOR CONTROL AND AUDIT, THE REPUBLIC OF YEMEN.

In Yemen supervision over the executive was exercised through audit and control over expenditure. In addition, complaints, particularly those in respect of contracts were received from the public and appropriately dealt with.

I wish the Conference success.

THE CHAIRMAN

Thank you Dr. Mohammad Al-Iryani. We come to know that supervision of the functionaries is exercised through financial system.

SECOND SESSION

Mr. Justice (Rtd) Abdul Shakurul Salam, Ombudsman of Pakistan, chaired the session.

3.8 MR PETER BOYCE, OMBUDSMAN, NORTHERN TERRITORY OF AUSTRALIA.

An Ombudsman in Australia has four distinctive characteristics.

1. He is an officer of parliament.
2. His whole process is informal and in private; he superintends investigations closely and reaches all conclusions himself.
3. He makes no binding decision, his role is to make recommendations only.
4. While he is subject to the law his functions mean he can stand apart from other remedial processes in the law, that is, he is to one side of the legislative, administrative and judicial processes, observing apprising and when necessary censuring.

In recent times concern has arisen within the various Ombudsman communities, particularly the Commonwealth, as to the growing use of the term "Ombudsman". Commonwealth has set up a Telecom Ombudsman, Taxation Ombudsman, a Defence Force Ombudsman and a Banking Ombudsman. South Australia has recently created an Employee Ombudsman. Victoria is currently considering the concept of a Legal Ombudsman.

The issue was raised at the 14th Australian and Pacific Ombudsman Conference in New Zealand in October 1994. At that Conference it was agreed that:

"in order to protect the credibility of the name 'Ombudsman' in the Public interest, the following criteria would be adhered to when deciding whether or not a position should be filled by a person called 'Ombudsman'."

The following are regarded as minimum criteria to ensure the independence, accountability and effectiveness of the Ombudsman's office itself.

Independence:

1. The Ombudsman should be independent of those being investigated and the complainant.

2. The Ombudsman should be appointed for a set term (such a term would be capable of being renewed), with removal only on the basis of incapacity/proven misconduct or bankruptcy.
3. The majority of those selecting the person to be appointed as an Industry Ombudsman must not be from the industry which it is proposed the Ombudsman will investigate.
4. Any determination of whether a matter falls within the jurisdiction of the Ombudsman must be made by the Ombudsman or as set out in jurisdiction.

Jurisdiction:

While it may be useful practice that a complainant should first exhaust any internal complaints procedures set in place by the body being investigated, the Ombudsman should have the right to investigate any complaint without the need for any prior consent of any person or body against whom the complaint is made.

Comprehensive information setting out the jurisdiction should be publicly available.

There should be some independent procedure to review the extent of the jurisdiction from time to time and a public review of operations and effectiveness of the Ombudsman's operation.

Desirably, the jurisdiction should give 100% industry coverage but, at the very least, a majority of industry members should be subject to the Ombudsman's jurisdiction.

In industry schemes, those investigated should be bound by the Ombudsman's decision, whereas the complainant should not be bound.

In those cases where the Ombudsman's decisions or recommendations are not complied with, the Ombudsman should have the power to publicise, or require the publication of such non-compliance at the expense of those investigated.

Powers:

The Ombudsman should be required to give decisions with reasons to the parties.

The Ombudsman's procedures should accord with principles of natural justice.

The criteria against which cases should be decided should include a reference to fairness in all the circumstances.

The Ombudsman should have the right to require all relevant information, documents and other materials from those who are being investigated, or from other parties capable of providing information relevant to an investigation.

Accountability:

Parliamentary Ombudsman should be responsible to Parliament.

Industry Ombudsman should be responsible to a body made up of both industry and client groups, with an independent Chair, and with the proviso that the numbers of industry members of such a group do not predominate.

The Ombudsman should publish an annual report to the Public about the activities of the office and should have the right to name industry members or agencies and give anonymous case notes.

The Ombudsman should have the ability to make statements in the public interest on matters within the jurisdiction of the Ombudsman.

The Ombudsman and staff should either be protected from, or indemnified against, any civil litigation which may arise as a result of the exercise of the Ombudsman's powers. Complainants should be protected from or indemnified against any civil actions which arise as a result of the content of a complaint.

Accessibility:

The office of the Ombudsman should be directly accessible to complainants.

Parliamentary Ombudsman provide services free of charge.

The Industry Ombudsman should be free of costs to persons acting in a non-business capacity and to small businesses.

The Ombudsman should be enabled to ensure the Scheme is made known to potential users.

Australia now has seven Governments and a further two Territory Governments in the Australian Capital Territory and the Northern Territory. Therefore, in Australia there are 9 Ombudsmen involved in the review of Government, actively. Each legislature has given its Ombudsman slightly different powers and responsibilities but, broadly, we have an identical role. Our jurisdiction is limited to the administrative conduct of Government agencies (including local or municipal councils)

and we can investigate, express conclusions and make recommendations as we see fit. No Ombudsman, however, can compel his or her recommendations to be adopted, but each has the power to have a report as to his investigation and conclusions tabled in the legislature should a Departmental head choose to ignore his recommendations.

Some Ombudsmen have a role in the review of complaints about the conduct of police. In some states this role has been taken over by specialist bodies. Where an Ombudsman has a role in the review of police conduct, our powers remain recommendatory only.

The issue of accountability has been the subject of significant debate in Australia for, at least, the last 30 years. The inquisitorial role of the Ombudsman, far more common in Europe and other cultures, is one fundamentally unfamiliar to Australians.

The other avenue of appeal from the Departmental decisions had been via the Courts. This process has however, become more complex costly and time consuming.

In Australia, particularly at the Federal level, there has developed a large number of specialist and general review bodies with jurisdiction over various Commonwealth organisations. There are a significant number of specialist tribunals. There are 6 major review agencies, most pre-eminent being the Administrative Review Tribunal. Of all the above, the Administrative Appeals Tribunals is the most significant since it has jurisdiction over, generally, all Commonwealth Government Agencies' decisions.

Increasing number of review tribunals are being created; Development of these tribunals is not entirely a desirable process. It calls for consideration if their cost and complexity are justified compared with the ease and inexpense of the service offered by Ombudsmen. It is clear that access to the Court and Tribunals is becoming increasingly harder for the ordinary persons. They can not afford the cost and reject the formality of the process. They look to much more cost effective and quicker avenues of redress.

The Australia, New Zealand and South Pacific Ombudsmen have formed an informal association. The region does have two delegates to the International Ombudsmen Institute. The association meets yearly in one of the member localities. Last year it met in Hong Kong. Australian Ombudsmen meet once a year to discuss matters of interest, exchange information to enhance understanding of our roles and functions. There are clear merits to the creation of an Asian Association. Innovations and approaches developed by one can be described, evaluated and utilised by others. Individual difficulties can be analysed and solutions identified. Unified positions on common issue can be developed.

Ombudsman for the Northern Territory of Australia also provided a copy of Ombudsman (Northern Territory) Act.

THE CHAIRMAN

Mr. Boyce has given us the talk about Australian experience and has pointed out clearly about the Provincial Ombudsman in the Northern Territory. This idea has been appreciated by the President of Pakistan, realising that we do not have Provincial Ombudsmen in the three Provinces of Pakistan. He has said that he would try to have Ombudsman in the rest of the three Provinces. I am thankful to Mr. Boyce. He is a friend and has expressed the idea which was on my mind. I thank him again. His paper was brilliant, of course.

3.9 MR HISAO TSUKAMOTO, DEPUTY FOR DIRECTOR GENERAL OF ADMINISTRATIVE INSPECTION BUREAU, MANAGEMENT & COORDINATION AGENCY, PRIME MINISTER'S OFFICE, JAPAN.

Administrative Inspection Bureau (AIB) of the Management and Coordination Agency (MCA) is the equivalent of ombudsman institutions in other countries of Asia. It is an independent organisation of the Prime Minister's Office and is headed by a Minister of State (member of Cabinet). Its functions are administrative inspection and administrative counselling and are carried out by 1,200 staff. They together provide an effective system of administrative supervision and relief, ensuring that public administration is conducted in a democratic, effective, efficient, and fair manner, protecting the rights and interests of the citizens, and thereby securing the trust of 120 million people of Japan in their government.

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

The administrative inspection and the administrative counselling are the functions within the executive branch of the government to hold the administrative organs accountable to the public.

The Management and Coordination Agency Establishment Law provides that one of its functions is "to inspect the operation of administrative organ, and make recommendations if deemed necessary" (Art. 4, Cl. 12).

For the purpose of performing the function, the above law gives Director-General of the MCA necessary authority including those of: (i) demanding the head of administrative organs submission of materials and explanations (Art. 5, para 2); and (ii) making on-site investigation of the operation of administrative organs (Art. 5, para. 4). The authority is internally delegated to the heads of AIB field offices.

The objective of administrative inspection by MCB is to maintain the effectiveness of government operation, to prevent unlawful or improper practices and damages to the national treasury, and to maintain official discipline.

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

It has contributed to the elimination of misuse of funds and other corrupt practices, introduction and reform of policies and procedures, and improvement of government operations, all in keeping with the demands of the times.

The administrative counselling was started around 1955. In 1961, the system of administrative counsellors was introduced also as an operational arrangement for the purpose of broadening the system's base and enhancing the accessibility to the people of administrative counselling service. In 1966, the Administrative Counsellors Law was enacted to give the activities of the administrative counsellors a solid statutory base. The system dramatically improved the people's access to the administrative counselling system both in geographic and psychological terms.

The Administrative Counselling is an activity in which the AIB field offices and the administrative counsellors throughout the country receive citizen's complaints about the actions of the government's agencies and act to bring the matters to a satisfactory conclusion through mediation.

The Administrative Counsellors Law provides that the Director General of the MCA may commission "a person who enjoys a social confidence and is possessed of a deep understanding and ardour for improvement in administrative operations" for the work of: (i) receiving people's complaints, giving necessary advices, and informing the MCA (AIB) field offices) and the administrative organs concerned of the complaints; and (ii) responding to the inquiries by the administrative organs concerned and informing the complainants of the results of review by the administrative organs concerned (Art. 2, para. 1). Today they are over 5,000 of them and people can find at least one of them in the area of municipalities they live in. In many cases, satisfactory solutions are obtained by simply forwarding the complaints to the agencies concerned. Many cases are actually resolved by the administrative counsellors studying the background and getting in touch with the government agencies concerned and the latter reviewing the case.

Complaints can be filed free of charge either by phone, by letter, or by visit. There is no restriction on the subject of complaint except that cases falling into a number of categories including those pending in courts will not be eligible for mediation.

In the national government, the ministries and agencies operate counselling units of their own.

The work of most ombudsman institutions in other countries appears to entail the elements of administrative supervision and administrative relief. As it happened, the AIB in Japan came to embody these very elements in its work as a consequence of unique historic development that gave it the functions of administrative inspection and administrative counselling independent of the development of ombudsman institutions in other parts of the world.

There is also an advisory body to the Director-General called the Administrative Grievance Resolution Promotion Council. It is composed of seven private individuals from the judicial circle, academic circle, mass media and others. It maximises fairness and impartiality in AIB's operation of administrative counselling and make it as close as possible in practice to that of independent Ombudsman. Since its inauguration in 1987, the Council submitted to the Director-General a large number of opinions which were reflected in mediations to result in important changes in the system and practices of administration that benefited not only the complainants but also other members of the public.

It is important for all grievance handling institutions to learn from, assist, and stimulate one another. The AIB's recent efforts in the international involvement date back to the participation in 1992 in the 5th International Ombudsman Conference of the International Ombudsman Institute held in Vienna, Australia. In 1994, the AIB sponsored an international symposium participated by ombudsman and high officials in charge of grievance resolution in Tokyo. That same year, the AIB was made voting member of the I.O.I.

In October 1995, Japan participated in the 15th Australasian and Pacific Ombudsman Conference and International Ombudsman Symposium organised in Hong Kong. From the successful international conference, it appeared that this kind of meetings in Asian Region on a regular or ad-hoc basis would bring benefits to all those involved in the redressal of people's grievances.

First Asian Ombudsman Conference convened by the Ombudsman of the Islamic Republic of Pakistan is a very important step. It would now be a challenge to consider how to follow up Pakistan's initiative in spite of the differences that existed in the situation faced by various countries.

THE CHAIRMAN

Mr. Hisao Tsukamoto has been very thorough in telling us about the system operating in Japan and also about the remarkable feature of that system of administrative counselling. I think that is a very nice and a good provision in the Ombudsman concept that the office should provide the services of counselling people how to solve their own problems if they can or otherwise to bring about understanding between the two contending parties. As he has said, I think his paper would require a thorough reading and a greater amount of examination and discussions.

3.10 HOJETOLESAM SYED IBRAHIM RAISI, HEAD OF GENERAL INSPECTION ORGANISATION, THE ISLAMIC REPUBLIC OF IRAN.

In ancient times, Iran had a vast territory and was one of the major pioneer in setting up administrative system. Being aware of a necessitating consistent organisation for supervising and inspecting the proper conduct of executive affairs, a public organ of capable and confident people was organised. They were called the eyes and ears of the state. Their reports led to the redressal of grievances and punishment of those who violated rules and regulations. With the advent of Islam, supervision and inspection got a high aspect and special consideration.

Imam Ali (May God be pleased with him) in his command addressed to the Governor (wali) of Egypt ordered as follows:-

“Then make thorough investigation into the character of your agents, after being sure of their capability and virtue, put them on work, then keep vigil over their proceeds, and appoint righteous and virtuous supervisors inspecting their activities. This, thus would be a motive for them to trustworthy and exerting justice to the people as well.”

Precedents based upon historical investigations denote that such, blessed traditional in various degrees have been current in almost all the Islamic countries as well as in Iran.

Before the Islamic Revolution, there existed in Iran two organisations for inspecting and controlling the public affairs, one for courts and the other for administrative organs. After the victory of the glorious Islamic Revolution, supervision of the whole administrative system of the country was specially provided in law as exponent in the principle No 174 of the Constitutional Law of the Islamic Republic of Iran reading as follows:-

“On the basis of the right of supervision by the judiciary on the good conduct of affairs and proper implementation of laws by the administrative departments, an organisation known as the State Chief Inspectorate shall be established under the supervision of the Head of the Judiciary.”

Regarding the fulfilment of the aforesaid principle, the due rules for constituting the General Inspectorate organisation of the Islamic Republic of Iran were passed and ratified in 1982 by the Islamic Consultative Assembly. Since then, through the activities of the experienced judges and efficient experts the organisation has been exerting its duties. It has already had great achievements removing the administrative, executive and judicial inconveniences. As a result, it has been known as an active organisation of high significance and dignity. Under the mentioned article,

the scope of the jurisdiction of the General Inspectorate Organisations been so assigned.

- A- "Constant controlling and supervising all the ministries, administration, military forces, police, state run institutions and companies, municipalities and the offices associated with them, public notary departments, the institutions whose financial resources totally or partially belong to the government and etc."
- B- "Extra ordinary inspections would be implemented upon the order of the head of the judiciary, or required by the commission of the article 90 of the constitution of the Islamic Consultative Assembly, or requested by a minister or by the highest rank official of any executive organ or also any other instances which the head of the Inspectorate organisation discerns as necessary to be inspected."
- C- "Hearing the complaints and investigating the notifications. Real and legal persons can notify their complaints against the organisations and institutions covered under the section above, to the General Inspectorate Organisation. The notifications and complaints may be relating to the governmental sanctioned orders, regulations, circulars, orders by executive officials or the contingent violated private rights of the complainants."

However, the Inspectorate Organisation implements its assigned duties, based upon timely-planned programme through the inspecting corps. The duties and responsibilities of the inspecting corps are:

- 1 - Examining the institutions and organs in respect to proper conducting of affairs and duties, correct implementation of law, plans and programmes, and considering the range of the development of each of those organs in proportion to the common requirements.
- 2 - Investigating the behaviour of the head of the organs and that of the relating staff in respect to ethics, faith, morale, knowledge, quality of their proceeds, accuracy, capability and courage, their behaviour in confronting with the people referring to those organs, the extent of their information and speciality in respect to their duties.
- 3 - Investigating the common and social circumstances in respect to the common morale, economic affairs, agricultural and industrial productions, culture, hygiene, communications, roads, judicial affairs and common needs of the areas being inspected.

After the implementation of inspections in each case, the General Inspectorate Organisation would offer necessary suggestions for removing the inconveniences

considered and also prosecute, through legal authorities those who have violated the law and regulations. In case that it is proved that the orders, regulations and circulars are not consistent with the rules made and ratified by the Islamic Consultative Assembly, a copy of the report would be sent to the court of administrative justice for prompt proceedings.

Islam as a divine way of life and its executive measures would lead the officials of different responsibility and duty, to believe that God is considering all their affairs and also to have faith in the last divine judgement. Such religious beliefs are better means for self-control than other (administrative) measures.

It appears that establishment of an independent regional, Islamic or universal ombudsman, having humanitarian intentions, is very necessary for limiting the tyrants and 'restituting the rights of the tyrannised.' Iran will welcome such sincere measures, and honestly mobilise its resources and abilities to attain such sublime objectives. The following points are stressed upon:

- a) To have a new Asiatic institution and consequently annual meeting with each other to exchange ideas and experiences is a matter of high significance and pleasure for all of the countries of the region. Nevertheless it should not be a means for inflicting political pressure on the member-state.
- b) The Asiatic institution, however, should completely remain an independent Organisation. Strict measures should be taken so that it under no condition falls under the hegemony of the world political powers and becomes an instrument for them to impose their political views.
- c) The suggestion at (b) should be offered to the international conference of Argentina, as the views of the member of the Asiatic ombudsman institution which is going to be established in future.

Regulations of Asian Ombudsman Institution should meet the following requirements:-

- i) Goals desired should be quite clearly expressed as well as the way to attain them.
- ii) Necessary measures should be taken to encourage the countries of the region of Asia to get membership in that institution.

THE CHAIRMAN

The jurisdiction of the General Inspection Organisation, it appears, is very extensive and very comprehensive as well. When we get the written text of His Excellency's paper, we would be able to concentrate on its contents and try to learn

from it. As regards formation of Asian Ombudsman Association and his Excellency's views that it should not be a subordinate body to any party or it should be under no control or pressure of any body or group, it is quite correct. There is going to be no exception whatsoever. The body if formed with your consent will be non-political purely professional only concerned with redressal of the grievances of the people. The body would have nothing to do with the politics either of the country of origin or of the other countries in the world. So there should be no doubt whatsoever that this will be a purely professional body having nothing to do whatsoever with politics. I can assure His Excellency all my life I have never been in politics. As a lawyer, I was purely a professional lawyer never looked right nor left to prepare my case, and went to Court to present it. For nearly last twenty years, I have been a judge of the High Court and of the Supreme Court. My duty required, my temperament was so, that I had nothing to do with A, B or C party. So as far as I am concerned and as long as I participate in a body which is concerned with the redressal of the grievances, and if all of you agree to be a member of that kind of an Association, rest assure that it will not be a political body and the moment in turns out into a political body, I will be out. So I am very grateful to His Excellency for the excellent remarks which enabled me to clarify the position.

3.11 MR. JUSTICE ALI YILMAZ, EXAMINING JUDGE, INTERNATIONAL LAW AND FOREIGN RELATIONS DEPARTMENT, MINISTRY OF JUSTICE, THE REPUBLIC OF TURKEY.

According to the structure of the Constitution and the principles of Turkish Administrative Law, the "Administration" is not a satellite of the Executive, it is within the Executive branch, but a separate entity. It operates, however, in close relation with the Executive and under the supervision of the legislative, executive and judicial branches.

Parliament has vast and efficient means of control over the Administration. Some of this control is exercised directly by its members, and some with the assistance of expert agencies, such as the Court of Accounts and High Control Board.

The President of the Republic is authorised and charged with the duty of ensuring the implementation of the Constitution and the regular and harmonious functioning of the organs of the State (Const. Ar. 104). As one of the effective instruments for the fulfilment of this duty the Constitution provides a special agency, the State Supervisory Council (SSC) attached directly to the President. Its members and chairman are appointed by the President.

The President, by means of the SSC, is empowered to control public corporate bodies and Organisations, the Directorate of Religious Affairs, and the Council of Higher Education, as well as all enterprises in which the State holds more than half of the capital, public professional Organisations, employers associations, labour unions and public benefit associations and foundations. The Armed Forces and all judicial organs are excluded. The content of this control goes so far as to conduct enquiries, investigations and inspections, which are commenced upon the request of the President and are carried out to ensure that the administration has complied with law and functioned in an orderly and efficient manner.

The President has also acquired the power to sign decrees, chair meetings, appoint and dismiss ministers and appoint senior administrators, which should be considered some indirect and joint control over the Administration. Administrative control of administrative agencies consists of a vast network of various checks, supervisions, approvals, repeals, and suspensions, exercised in different forms with different content. In addition, the Prime Minister by means of the Board of Inspectors, may inspect "all public organisations, associations, foundations, cooperatives, unions." The High Control Board, which is attached to the Prime Ministry, examines Public Economic Enterprises and social security agencies and others falling within its jurisdiction upon the directive of the Prime Minister.

The whole balance of the Turkish Constitutional System is built upon the maxim of judicial review. Effective judicial control is therefore not only a matter of

distribution of justice, it is also a matter of supremacy of law, constitutional government, legality of the Administration and sound protection of rights and freedoms of the people. Judicial control of the Administration is the function of administrative courts.

The 1982 Constitution, in Article 125/I laid down the rule that "all acts and actions of the Administration shall be subject to judicial review". This Article also provides that the Administration is liable for damages caused by its own acts and action. All governmental cases governed by administrative law are within the competence of the administrative courts, except for a very limited number of cases referred by the law to the ordinary courts. The administrative courts include the Council of State, subordinate courts at the regions below the Council of State, and the Supreme Military Administrative Court.

A full remedy action may be brought by a complainant who alleges that the Administration has infringed his rights and thereby entitled him to compensation. In order to commence a full remedy action the plaintiff should have standing to sue, which now means existence of concrete, personal actual damage arising from the act or action of the Administration. The beginning of the time limit for bringing the action differs according to the origin of the damage, 'depending whether it is an act or action.'

Regional Ombudsman's Union will contribute a lot to regional peace and friendly relations between countries in the Region. If countries transmit their own experience to each other it would be beneficial to all concerned.

THE CHAIRMAN

Thank you very much Justice Ali Yilmaz. We had a very comprehensive survey of the Turkish Constitutional law and the law relating to the judicial review of administrative action. This has also highlighted that the Administrative authorities are liable to the damages for their inaction or for their omission. I find that in most of the laws, the administrators are not exempted from damages if their actions can be proved to be *malafide* or totally without jurisdiction. But by and large in various countries about whose laws I have some knowledge, the administrative officers are not sued for damages. But it does appear that in the Turkish system the complainant is entitled to compensation and also the administrative authorities can be made to pay damages if they have acted wrongly. I think that would be quite a great deterrent for the administrative authorities to make excesses.

3.12 MR FAISAL AL-GHAREEB, ASSISTANT UNDER-SECRETARY, COUNCIL OF MINISTERS, THE STATE OF KUWAIT.

Within the scope of Kuwait's efforts to establish justice and create climate of freedom, the Diwan of Following UP the Performance of Administrative Body and Citizen Complaints is established through decree No. 82/1992. The Diwan aims at studying the social phenomenon that may affect the administrative systems and suggesting means to provide the best possible services to the citizens. The salient features of this decree are as follows:-

1. The Diwan is affiliated to the "Council of Ministers" and is under the supervision of the Minister of State for Ministerial Council Affairs.
2. The Diwan consists of the head of the Diwan, one deputy, two under-secretaries or more and a sufficient number of employees of various specialisations. The head of the Diwan holds the rank of a "Minister".
3. The Diwan is responsible for helping the administrative leadership in the sectors that are included in its domain.
4. The Diwan carries out the responsibilities through the Organisation of one committee or more approved by the Council of Ministers. The committee is formed of five highly skilled and capable members, with enough experience in the field.
The committee submits a report concerning its works to the head of the Diwan to take necessary action.
5. The Diwan is empowered with the following:-
 - i) Interview specialists and contact experienced personnel in all administrative sectors and elsewhere on points related to the issues under investigation or study.
 - ii) Contact concerned authorities to obtain information, data and studies.
 - iii) Review any document or report, and acquire a copy thereof - after obtaining the permission of the authorised minister.
 - iv) Inform the administrative sectors of the facts revealed in issues in which the Diwan discovers a breach of rules or regulations for suitable and necessary action.
6. The domain of the Diwan includes:
 - 1) Governmental organisations.
 - 2) Public Organisations and foundations.

Court and Organisations of jurisdiction and their supporting bodies, Defence, Police departments and National Guard are not included in the domain of the Diwan.

7. The Diwan is not allowed to study any dispute that is simultaneously investigated by judicial authorities or to investigate in a court judgement which has been already taken. The same applies to cases and disputes which encompass confidential documents related to state security or of military nature.

If the Diwan obtains any information of that nature, it must transfer it to the legally responsible departments.

Nevertheless, the Diwan may investigate the forthcoming responsibilities in cases in which a final court verdict has already been reached. The Diwan is also held accountable for investigating the responsibilities in cases and disputes in which the court judgement revealed that there were faults in the conduct of the administrative sectors.

8. If it is proved to the Diwan that the work in any section is not carried out in accordance with the general policy of the state, or that the rules or regulations are not being applied properly, or it is discovered that there are defects or faults in the administrative or financial systems that impede the flow of work, the head of the Diwan should inform the responsible Minister of the misconduct or defaults and of suggestions of treatment.
9. If the Diwan reveals that there are cases which necessitate investigation and the formulation penalties, it must notify the responsible administrative sector of the case. This sector has to inform the Diwan of the Actions taken in this respect.
10. After finishing the study of any complaint or claim or public case, the Diwan prepares a justified report of its views. A copy of this report is sent to the relevant administrative sector. This sector must inform the Diwan of the actions taken in accordance with what came in the report within thirty days from notification. The head of the Diwan may ask Minister of State for Ministerial Affairs to include the subject on the agenda of the Council of Ministers, if it deems that the actions taken by the administrative sector are not enough.
11. The Diwan may employ the help of any specialist from a governmental body, or from outside expertise, in matters related to its work.
12. The Diwan submits to the Council of Ministers a semi-annual report on its achievements.

THE CHAIRMAN

You have given us a very good idea about the working of the Constitutional and administrative system in the Republic of Kuwait. The concept of Diwan is, of course, quite new to many jurisdictions and to the many countries. We are very thankful to you.

3.13 MR MUHAMMAD ALI YOUSAF, DEPUTY DIRECTOR GENERAL, PUBLIC COMPLAINTS BUREAU, PRIME MINISTER'S DEPARTMENT, MALAYSIA.

In Malaysia, management of public complaints is the responsibility of Public Complaints Bureau (PCB) of the Prime Minister's Department. It was established in July 1971 with the main objective "to assist the public who are aggrieved with the public service machinery and to take remedial action towards redressing complaints that are justified and to utilise complaints as an input for government agencies to improve accountability, quality and productivity in the public service."

FCB derives its power from the Development Administration Circular No 4 of 1992. PCB is designated as the centre for public complaints with responsibilities and functions as follows:

- a) to receive public complaints on government administrative actions which are alleged to be unfair, against the existing laws and regulations including misconduct, misappropriation, abuse of power, mal-administration and the like,
- b) to investigate public complaints which are deemed to be valid,
- c) to report the outcome of investigations and make recommendations to the Permanent Committee on Public Complaints (PCPC) and the relevant authorities.
- d) to forward the decisions of PCPC to Ministers, Federal Departments/Federal Statutory Bodies/Local Authorities/Agencies concerned for the purpose of corrective actions,
- e) to monitor the corrective actions taken by Ministries/Federal Departments/Federal statutory Bodies/Local Authorities/Agencies concerned and subsequently submit such feedback to the PCPC.

Permanent Committee on Public Complaints (PCPC) is chaired by the Chief Secretary to the Government and members of the committee are:

- a) The Director General of the Public Services Department.
- b) The Director General of the Anti-Corruption Agency.
- c) The Senior Deputy secretary-general, Prime Minister's Department.
- d) The Director General of the Malaysian Administrative Modernisation and Management and Management Planning Unit of the Prime Minister's Department (MAMPU).

PCPC has the following terms of reference:

- a) to formulate policies on the system of managing public complaints,
- b) to consider and make decisions on reports/cases submitted by the Public Complaints Bureau on Public complaints.
- c) to direct Secretaries General of Ministries/Heads of Federal Departments/Heads of Statutory Authorities/Heads of Local Authorities/Heads of Agencies concerned to attend meetings of PCPC to explain specific cases/complaints.
- d) to direct Ministries/Federal Departments/Local Authorities/Agencies concerned to take remedial actions to resolve complaints referred to them.

PCPC is so constituted as to ensure that all government agencies provide full cooperation to the system of management of public complaints and to resolve all complaints effectively and speedily. It deliberates and decides on each and every working paper tabled by PCB. The Director General of Public Services takes follow-up action on cases regarding neglect, delays and abuse of power of officers. The Director General of the Anti-Corruption Agency takes necessary action on cases where there is suspicion of corruption. The Director General of MAMPU handles cases where system's weaknesses and work procedures are identified. Public complaints, however, do not include subject matters relating to government policies and those which are within the ambit of the Anti-Corruption Agency, the Legal Aid Bureau, Special Cabinet Committee on Government Administration and the Public Accounts Committee.

The public is encouraged to assess the quality of services rendered by agencies by forwarding feedback on particular department. Complaints from the public are deemed as positive feedback which can help to improve the quality of the public service. Based on the cases investigated by PCB, the PCPC recommended disciplinary action against 7 government servants who had been negligent or had abused their powers while carrying out their duties in 1994 and against 8 officers in 1995.

The PCB's circuit programme provides members of the public the opportunity to forward their complaints directly to officers of the Bureau who have one-day stations in smaller towns and in rural areas.

THE CHAIRMAN

Thank you Mr. Yousaf it is very nice to know the functioning of the Public Complaints Bureau. It is a quite nice to learn that last year you went on tour to 165 places. It was not a small job. People would have opportunity to express their grievances to a responsible officer who would report to the higher authorities for redressal. Thank you very much.

3.14 MR LUIS DE MENDONCA FREITAS, HIGH COMMISSIONER, HIGH COMMISSION AGAINST CORRUPTION AND ADMINISTRATIVE ILLEGALITY, MACAU.

Exemption, sobriety, honesty, transparency, competence and respect for the legally protected rights and interests of its citizens are qualities that the Public Administration should maintain.

It was in this context that the High Commission against Corruption and Administrative Illegality was created in July 1990 to protect the rights and legitimate interests of Macao's inhabitants. The High Commission is a public body with one difference: it is independent. It is a high authority within the administration, independent from both the Administration and the Courts. Its object is to receive complaints from private individuals concerning the behaviour of public bodies. It uses its authority and powers of persuasion to lead public bodies to make reparations for any injustice or illegal act that they may have committed, or to alter decisions based on bad management that they may have taken.

Although this office also pursues the public interest in other ways, such as preventing or repressing corruption or fraud by employees of public bodies and their agents, the High Commission was created after the model of the Ombudsman. This is universal model, whose limitless essence is dominated by the ideas of Justice and Good. In order to protect the legitimate rights, freedom, safeguards and interests of Macao's people, the High Commission has a broad range of powers permitting it to:

- ◆ assess the legality and justice of administrative acts or procedures concerning private individuals;
- ◆ supervise the lawfulness and administrative correctness of acts involving property interests;
- ◆ denounce the relevant bodies for punitive actions and punish signs of breaches of which it becomes aware;
- ◆ supervise the progress of cases dealt with by the relevant bodies with powers to deal with disciplinary or criminal proceedings;
- ◆ propose to the Governor or the Legislative Assembly that the unconstitutionality or illegality of norms affecting people's legitimate rights, freedom, safeguards or interests be examined;
- ◆ Propose to the Governor or the Legislative Assembly that legislative measures be taken to improve the operations of public departments and enhance respect for administrative legality;

- ◆ propose to the Governor that administrative measures be taken with a view to improving public services;
- ◆ cooperate with the relevant bodies and public departments to find the most suitable solutions for protecting people's legitimate interests to enhance administrative action;
- ◆ to publicise, in the media, its acts in pursuing its goals.

Access to the High Commission is guaranteed to everybody, either individually or in a group, and also to public or private collective persons. Any private individual may make a complaint about any illegal or unfair act, or about any anomaly in the running of a public department. The High Commission may also, on its own initiative, open an investigation of facts of which it has learned in any way. Public bodies should also inform the High Commission of any criminal or disciplinary infraction of which they have knowledge, and of the final decisions of any cases.

Complaints or denunciations should be submitted personally and directly to the High Commission in a written document which does not have to conform to any special form or specific procedure. This document is addressed to the High Commissioner and submitted to the High Commission by post, telegraph, telex, fax or any other means of communication. There is also a 24-hour hotline.

After receiving a complaint, the High Commission opens a preliminary investigation to determine whether or not the matter is to be dealt with. If it is accepted, the necessary steps are then taken to clarify the facts. The High Commission can use the following measures for doing this: inquiries, investigations, inspections, interrogations, hearings and the examination of documents. It may also notify the relevant bodies to provide clarification on the matter, request public bodies to provide necessary cooperation in resolving the complaint, and examine the legality and regularity of the administrative procedure leading to the decision which is the cause of the complaint.

In order to protect and safeguard the legality and justice of decisions taken by the Administration, the High Commissioner can adopt the following measures:

- ◆ recommend to the relevant body that it make reparations for the illegal or unjust act, by modifying, cancelling or revoking its actions;
- ◆ recommend to the relevant administrative authorities criteria for the correct interpretation of legal norms;
- ◆ propose the evaluation of whether norms are unconstitutional or illegal;
- ◆ point out to the relevant organs any legislation that is missing or insufficient;
- ◆ suggest the drafting of new legislation;

- ◆ suggest the adoption of administrative measures which could simplify administrative procedures and bureaucratic circuits;
- ◆ inform the person making the complaint of the method or approach he should adopt in order to have a right recognised, an interest protected or damage made good;
- ◆ clarify to the person making the complaint, or to the public in general, any act concerning the management of public affairs brought to light by the complaint or about which there is any doubt;
- ◆ use the media as a final method for responding to public opinion, both for providing information about any unresolved situation of injustice, and for publicising letters, reports or official memoranda concerning cases in which no reparation has been made for an offence committed.

High Commissioner has no decision-making powers. He cannot order, decide or impose. However, he can make recommendations, suggestions, criticisms and comments. He can also encourage, inspect and spread information. Through his independence, he can play as informal control of acts practised by the Administration's organs as a promotion of reform aimed at transparency and justice.

High Commissioner offered to hold next Asian Ombudsman Conference in Macau.

THE CHAIRMAN

Thank you very much. Mr. Luis de Mendonca Freitas. It has been a very nice survey of the law which operates in Macau. The performance of the duties in your offices of High Commissioner is generally in consonance with the systems prevalent in other offices whether known as Ombudsman or Parliamentary Commissioner or Commissioner for Administrative Complaints. We have been well informed about the systematic developments of procedure relating to the receipt of the complaints and its inquiries and investigation. Now, no doubt you have pointed out that you do not pass any order and only make recommendations, but my point is that if a recommendation is made knowledgeably, objectively, impartially, then any person who receives that recommendation feels himself and should feel himself lucky that he has got an opinion from an impartial, objective, knowledgeable man and it is in his own interest to carry out that recommendation. It is not always necessary that an order must be passed for another to obey. We all know that when our parents say we may do this, well, we do that even though they may not order us. So, the effectiveness or implementation of recommendation is defendant upon that if our recommendations are well based on facts, well based on law, are objective and impartial trying to solve the problems and redressal of the grievances of the people, to whom so ever they

THIRD SESSION

Mr. Justice (Rtd) Abdul Shakurul Salam, Ombudsman of Pakistan chaired the session.

3.15 MR ZUO LIANBI, VICE MINISTER OF SUPERVISION, THE PEOPLE'S REPUBLIC OF CHINA.

Since the very beginning of the founding of new China, the Chinese government, in pursuing its fundamental aim of serving the people wholeheartedly, has always been making the promotion of honest and accountable administration. The first supervisory organisation the People's Supervisory Commission was established as early as in October 1949 under the state Government Administration Council. This was replaced by the Ministry of Supervision in 1954. In 1959, the Ministry was abolished due to restructuring of the state administration system. To establish and improve the national supervisory organs and give full play to their role, in 1987, the Ministry was re-established. The Ministry of Supervision, under the leadership of the Premier, is the nation's supreme administrative supervisory body. Its main functions are to supervise the government organs and their personnel, according to the laws, regulations and policies, and to see that they perform their official duties honestly, accountably and industriously. The Ministry and other supervisory bodies at various levels exercise their functions independently, and are not subjected to any interference from other administrative organs, public organisations or individuals. The Minister of Supervision is a member of the State Council. He is nominated by the Premier and appointed by the State President with the approval of the National People's Congress. The ministry's nature, its system of leadership, scope of jurisdiction, duties and responsibilities as well as limits of power and institutional set-ups have been specified in the "Regulations for Administrative Supervision" in the People's Republic of China" promulgated by the State Council.

The Ministry of Supervision is empowered by law to inspect, investigate, recommend and to impose administrative penalties directly.

The specific functions of the Ministry are, to supervise and inspect the implementation, by those to be supervised, of state policies, laws, decrees, national economic and social development plans as well as the decisions and orders promulgated by State Council; to investigate and handle cases of violation of state laws, decrees, and breach of administrative disciplines and meet out disciplinary punishments; to study and examine the policies or regulations made by all the departments under the State Council and the local governments and put forward recommendations for revision or amendments accordingly.

Ministry of Supervision comprises 23 offices and departments with a 1000 odd staff. Ministry has set up 50 branch offices in other ministries and commissions under the State Council. Special supervisory organs in governments from the provincial down to the county level have been established. Ministry has specially invited a certain number of scholars, experts, democratic party members and personages of non-party affiliation to be part-time supervisors.

Fight against corruption is a common subject facing all countries in the world. Ministry of Supervision attaches importance to absorbing and learning from the successful experiences and practices in this regard in other countries and regions and has established and developed friendly ties with more than 70 countries in the world and studied the administrative supervision systems in over 40 countries.

Establishment of the "Asian Ombudsman Association" was a step in right direction. The Association will surely make positive contributions towards promoting friendly exchanges and cooperation amongst the supervisory organs of various Asian countries and regions and help the development of supervisory work in each other's countries and regions.

THE CHAIRMAN

Thank you Mr. Zuo Lianbi, Vice Minister of Supervision, Peoples of Republic of China. I am very grateful to you for the views you have shared with us and also your enthusiastic approval and agreement for establishment of the Asian Ombudsmen Association. Besides that, I would say and I have been told by the traditions of the Holy Prophet, my Leader, that if you want to have knowledge, go to China. Now this morning luckily we have China amongst us. What he has said is something, for those who are not aware of the system, new and we can deliberate as to whether can't we really improve our system. Now what I have noticed is that the Minister of Supervision in China is differently appointed than in most of the countries where Ombudsman or Minister of Supervision or Commissioner of Administrative Complaints and other like office holders are appointed. In most of the countries the appointment is made by the Head of the State. Of course, that is good enough. But here in China what we find is that the Minister of Supervision is nominated by the Prime Minister, appointed by the President, then he is to be approved by the National Assembly. In other words, all concerned with the State who have the power, authority, jurisdiction, they are all participating in his appointment. And if they are all participating in his appointment and no body has any reservations you can well imagine how important and powerful the Minister of Supervision would be? That is one thing. I would like to share with you and bring to your notice, the other thing peculiar to Peoples Republic of China is that the Minister of Supervision in China examines and decides upon State laws and policies. In all the other countries about which I know, the Ombudsmen do not sit over the legislation. They do not decide that this legislation is good or bad. Legislation passed by the legislature is accepted by the Ombudsman.

That is the law of the land and that is about all. Similarly Ombudsman in other countries also do not examine or adjudicate upon the state policies. What ever State policies are that those are for the political leaders, assemblies and the legislature to decide and they enact the laws. From this lecture and from the documents I have seen that under the Chinese law the Minister of Supervision is authorised to examine whether the law passed by the legislature is good for the nation and for the people. I think that is very vast jurisdiction. So, what I have been trying to convey is that the functions of the Minister of Supervision are very grave and very comprehensive and very very important. Those kinds of jurisdiction and authorities are not, I think, exercised by all. My own appointment is made on the advice of the Prime Minister by the President. Now, the Prime Minister is the leader of the house and the President is the Head of the State. So, I can take it that I have the approval of the National Assembly as well as the President. But the scope of jurisdiction is not as extensive and supervening as that of the Minister of Supervision. I think I have learnt from the method of the appointment and the scope of the jurisdiction of the Minister of Supervision that not only he is constituted in a manner that he has to be a powerful man, having confidence of the entire nation but his jurisdiction is so vast that not only he can control the administrative excesses but can virtually sit on the policies and the laws of the State. I think his powers are really tremendous and we can examine in our own jurisdictions how for that is feasible. May be in some countries that would not be practicable because the parliamentary sovereignty has to be accepted as a fact. Thank you very much Mr. Zuo Lianbi. I am very grateful to you for enlightening us on the subject as well as for your very kind support for our endeavours that we should form an Association where we can exchange such views. Thanking you very much, indeed.

3.16 DR ALI ABDUL KAREEM AL-NIJAJDI, DIRECTOR GENERAL, MINISTRY OF JUSTICE, THE REPUBLIC OF IRAQ.

The experience of Iraq in this field was earlier based on a single and unified judicial system, through which was ensured effective implementation of the law of the state. Now Iraq has adopted rather dual judicial system, namely "Ordinary Judicial System" and "Administrative Judicial System". I would like to confine myself to the Administrative Judiciary which is concerned with the redressal of complaints of the citizens. This Administrative Judiciary may, otherwise, be called as the Institution of Ombudsman, as it has been protected and provided for by the law of the Consultative Assembly of the State. Its jurisdiction and scope covers the control and check on the decisions, decrees and orders issued by the government officials, functionaries and departments towards and against the citizens. For instance, the decisions by the government functionaries and departments for illegal detention of citizens, unjustified possession of the property of others and the cases of exploitation are taken up by this system and proper redressal is provided. However, the Administrative Judiciary is not authorised to interfere in the affairs of the Sovereignty. The Administrative Judiciary is authorised:

- a) to examine and determine whether the grievances or complaints by the citizens are valid or not;
- b) to abrogate the decisions and decrees of the government functionaries and officials against the citizens, if found justified;
- c) to amend the decisions or orders against the interests of common people; and
- d) to issue orders for proper compensation to public, resulting in the abrogation of unjustified decisions, if so required by the plaintiff.

The Court of Administrative Judiciary functions under the supervision of the General Authority of the Consultative Assembly of the State and has the jurisdiction of the Supreme Court. The General Authority consists its President, two Vice-Presidents and a minimum number of twelve advisors. They render judgements with majority vote. These advisors are appointed from amongst the judges of first class, director generals of the Ministry of Law and Justice, the attorney-generals and professors of law colleges.

The complaints and petitions under trial and consideration at the ordinary or general courts are not entertained by this system or what is called the Administrative Judiciary in Iraq.

THE CHAIRMAN

Administrative Judiciary is functioning almost alike an Ombudsman in most of the countries. Issuing order for payment of compensation to the aggrieved is an additional jurisdiction and authority. Thank you Dr. Ali Abdul Kareem Al-Nijajdi.

3.17 SHAIKH HUSSAIN YOOSUF, DIRECTOR GENERAL OF JUDICIAL AFFAIRS OF THE MINISTRY OF JUSTICE AND ISLAMIC AFFAIRS, MALDIVES.

With the name of Allah, the most Gracious and the most Merciful.

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

All praise belongs to Allah, Lord of the universe.

الْحَمْدُ لِلّٰهِ رَبِّ الْعَالَمِیْنَ

Mr. Mohtasib and distinguished participants.

جناب محاسب اور معزز حاضرین

Assalam-o-Alaikum. May peace and blessings of Allah unto thee!

السلام علیکم ورحمۃ اللہ وبرکاتہ

1. I feel happy to convey that because of excellent arrangements I felt no trouble from travelling from Karachi to Islamabad, I am deeply grateful to the organisers and specially of the Government of Pakistan that they arranged this Conference. They drew the attention to the redressal of the grievance of the people and also persuaded the Asian nations towards this end.

۱- میں یہ بات بتاتے ہوئے خوشی محسوس کرتا ہوں کہ انتظامیہ کی بہترین انتظام کی بناء پر میں نے اپنا کراچی سے اسلام آباد تک کا سفر میں کسی قسم کی تکلیف محسوس نہیں کی اور اس پر میں انتظامیہ کا تمہ دل سے شکر گزار ہوں اور خاص طور پر حکومت پاکستان کا کہ انہوں نے اس کانفرنس کا انتظام کیا اور لوگوں کو حسب سے عوام کی شکایات دور کرنے کی طرف توجہ دی اور ایشیا کی قوموں کو اس کی ترغیب بھی دی۔

2. There is no doubt that with highlighting the redressal measures of Asian nations great help it will be for overcoming the difficulties and problems.

۲- اس میں کوئی شک نہیں کہ اس کے ذریعے ایشیا کے ممالک میں حسب کے جو طور طریقے ہیں، وہ متعارف ہو کر مشکلات اور مسائل حل کرنے میں ایک دوسرے کو مدد ملے گی۔

3. I can confidently say that with this meeting brotherly relations between Maldives and Pakistan will further be strengthened.

۳- اور میں پورے وثوق سے کہہ سکتا ہوں کہ اس دعوت سے مالدیپ اور پاکستان کے درمیان اخوة کا سلسلہ زیادہ مضبوط ہو گا۔

4. Although in my country Maldives there is no such permanent institute but to some extent there is arrangement. As you would be aware that Maldives comprises of over one thousand islands but only 202 are inhabited. These comprises 19 provinces. Each province has a Chief who acts as an Incharge of the area.
- 4- ہمارے ملک (مالدیپ) میں اگرچہ اس کا مستقل کوئی ادارہ ابھی تک قائم نہیں ہوئے، لیکن کافی حد تک اس کا اہتمام ضرور ہے۔ جیسا کہ آپ کو معلوم ہو گا کہ مالدیپ ایک ایسے ملک ہیں، جو کہ ایک ہزار سے زائد جزیرے پر مشتمل ہیں، لیکن ان میں صرف ۲۰۲ جزیرے آباد ہیں اور یہ ۲۰۲ جزیرے ۱۹ پروینس پر مشتمل ہیں۔ اور ہر ایک پروینس میں ایک چیف، جو کہ ہر ایک جزیرے کی انچارج کی حیثیت سے کام کرتے ہیں، مقرر ہیں۔
5. President has further established an office in each island to which people can complain and their grievances redressed. This is addition to courts where people can have recourse. Further at the Male, the Capital there is an organisation which sends officials to islands to inquire into the matter.
- 5- اور پریزیڈنٹ نے صرف اسی پر اکتفاء نہیں کیا بلکہ ہر ایک جزیرے میں ایک آفس قائم کیا جس کے ذریعے سے بھی عوام کے شکایتیں سنی جاتی ہے اور ان کے مسائل حل کیے جاتے ہیں۔ باوجود اس کے کہ ہر ایک جزیرے میں ایک عدالت بھی ہوتے ہیں اور اس میں بھی لوگوں کے فیصلے ہوا کرتے ہیں۔ اور اس کے علاوہ ”مالے“ (دارالحکومت) میں ایک ایسا ادارہ ہے جو ان سب جزیرے سے متعلق ہیں، جو مسائل کی تحقیقات کے لیے لوگ بھیجتے رہتے ہیں۔
6. In the end I thank the distinguished guests and especially the organiser of the Conference and Government of Pakistan that they saw good of others for which they organised this Conference.
- ۶- آخر میں میں معزز شرکاء کا شکر گزار ہوں اور خصوصاً اس کانفرنس کی انتظامیہ کا اور حکومت پاکستان کا کہ انہوں نے اس میں دوسروں کی بھلائی دیکھا اور اس کا بہترین انتظام کیا۔
7. I hope that by this way especially Maldives and generally Asian countries will be benefited by the participation.
- ۷- اور میں امید کرتا ہوں کہ اس کے ذریعے خصوصاً مالدیپ میں اور عموماً ایشیا کے ممالک میں اس کا فائدہ ضرور پہنچے گا۔

THE CHAIRMAN

Thank you Sheikh Hussain Yousaf for taking the trouble to come over from Maldives and apprise us of the working of the redressal system in your country. We all know big fruitful trees grow out of a single seed. With exchange of views and course of time I am sure you will have full-fledged system of Ombudsman in your country.

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

The Office of Ombudsman was established under the 'Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983' (President's Order No. 1 of 1983). He is appointed by the President of Pakistan on the advice of the Prime Minister i.e. leader of the House, National Assembly of Pakistan. He holds tenure post for four years. He acts independently of the Executive. The Executive is required to "act" in "aid" of performance of his duties. He is not removable except for misconduct on reference of the President to be moved before the Supreme Judicial Council consisting of Chief Justice of Pakistan two next senior most Judges of the Supreme Court of Pakistan and the two senior most Chief Justices of the Provinces of Pakistan. The Order provides that Ombudsman may, on a complaint by any aggrieved person, on a reference by the President, the Federal Council or the National Assembly, as the case may be, or on a motion of the Supreme Court or a High Court made during the course of any proceedings before it or of his own motion, undertake any investigation into any allegation of maladministration on the part of any Agency or any of its officers or employees, except when the matter is *subjudice*, relates to the external affairs of Pakistan or to the defence of Pakistan. Maladministration includes: "(i) a decision, process, recommendation, act of omission or commission which: (a) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is *bonafide* and for valid reasons; or (b) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory; or (c) is based on irrelevant grounds; or (d) involves the exercise of powers or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favouritism, nepotism and administrative excesses; and (ii) neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities." The Agency is defined to mean "a Ministry, Division, Department, Commission or office of the Federal Government or statutory corporation or other institution established or controlled by the Federal Government but does not include the Supreme Court, the Supreme Judicial Council, the Federal Shariat Court or a High Court." The Ombudsman is to perform his functions and exercise his powers "independently of the executive" and "all executive authorities throughout Pakistan shall act in aid of the Mohtasib".

Recommendations of the Ombudsman are required to be implemented and the defiance of recommendations can attract punitive action for the defaulting functionaries. The recalcitrant can also be punished under the provisions for contempt of court.

No court or other authority have jurisdiction (i) to question the validity of any action taken, or intended to be taken, or order made, or anything done or purporting to have been taken, made or done under this Order; or (ii) to grant an injunc-

tion or stay or to make any interim order in relation to any proceedings before, or anything done or intended to be done or purporting to have been done by, or under the orders or at the instance of the Mohtasib. However, any person aggrieved by a decision or order of Mohtasib, may within thirty days, make a representation to the President who may pass such order as he may deem fit. This right is for a person who has not been granted relief by the Mohtasib for any limitation of law or otherwise. The President may grant him relief in his discretion. This right of representation cannot be evoked by any Agency which is expressly barred to question any action taken or order made by the Mohtasib under the Order.

A person aggrieved needs only send an application in any language pointing out his grievance. It is examined by the Registrar and the Director General. If it has no substance at all or totally without jurisdiction, it is proposed to be rejected for final order of an officer. Otherwise, it is sent to the Investigating Officer to probe the facts, call for report from the Agency concerned, hear the parties if necessary and recommend relief as far as permissible under the law. The findings and recommendations are put up to the Ombudsman. On his approval and under his signature, these are then issued.

The findings and recommendations of the Ombudsman are invariably implemented and seldom delayed beyond the prescribed time. Most of the time all the authorities and others carry out the recommendations quite promptly. Even in matters where the jurisdiction of Ombudsman does not extend, like the Provincial field and local bodies etc., when the matter is taken up informally for settlement the authorities co-operate, send report, and care for the recommendations.

The President and the Prime Minister of Pakistan have issued the directives to ensure that the recommendations/findings of the Wafaqi Mohtasib are complied with by the Agencies within the stipulated period.

During the year 1995, of 40,361, disposed of cases, 16057 complainants were provided relief.

3.19 CHIEF JUSTICE (RTD) RAJA MUHAMMAD KHURSHID KHAN, OMBUDSMAN, AZAD JAMMU & KASHMIR, PAKISTAN.

Ombudsman in its literal meaning stands for a person who represents and protects the interest of a person or persons. It conveys the sense of a grievance redressal agency which investigates and rectifies the effects caused by maladministration done to a citizen by a government functionary or agency. According to the British Encyclopaedia, Ombudsman is a legislative Commissioner for investigating citizens' complaints of bureaucratic abuse. It is true that the office of modern Ombudsman originated in Sweden in 1809 but there is no gain-saying the fact that the Ombudsman's concept dates back to the origins of Islam. The Holy Prophet (P.B.U.H.) himself acted as a Mohtasib. He used to inspect market places to check prices and quality of goods, rectify moral wrongs and ensure observance of social justice and equality to the citizens of the state. Thus Holy Prophet Muhammad (P.B.U.H.) was the first Ombudsman of the world.

Institution to investigate complaints can only be seen in the context of public administration; hence their history is also the history of public administration as a whole. It goes back to the "Quran". In the "Quran" itself the term "administration" is not used but under many of its verses the principles of political and administrative systems are expounded. Justice is one of the basic principles of Islamic ideology. Not only the rulers are responsible for it, but the exercise of justice is a task for the whole Muslim community and needs to be practised without regard to social status, race or religion or creed of the person concerned. Among Greeks and Romans, on the other hand, sharp distinctions were drawn between different persons and organisations in whom rights were vested.

Before the times of Prophet Muhammad (P.B.U.H.) there was no administration in the proper sense in many tribes. There was only simple administrative system. There was nothing like the organisational structure of the Romans. It was the Prophet Muhammad (P.B.U.H.) who first introduced administrative authorities. He appointed governors of the provinces, judges and tax collectors. They were all accountable to the Prophet (P.B.U.H.). We have no reports of complaints about these institutions. As an essential principle of government and administration the Prophet (P.B.U.H.) bequeathed trust, justice and effectiveness as well as combination of authority with responsibility. An interesting fact in this context is that the institution of "Hisbah" and its functions were also adopted by the crusaders in Jerusalem. They even used the Arab word, Mohtasib although they changed it into "Mathesep". The practice of entrusting higher judges with function of handling complaints has been retained to the present day. Under Turkish rule it was the "Qadi-al-Qudat" i.e. the judge of judges who occupied this office. In Saudi Arabia, the members of Board of Grievances enjoy judicial privileges and in fact have the status of Supreme Court

Judges. Thus it will be seen that the concept of Ombudsman owes its existence to Muslims.

In the State of Azad Jammu and Kashmir the Office of Ombudsman was established in September 1991, through an Ordinance. Prior to this, the government had, from time to time taken number of steps to redress the grievances of the public. These steps however could not achieve the desired results for the main reason that the findings of the bodies were recommendatory in nature and normally the executive authorities sat over the recommendations. It was only during the year 1991 that the government of Azad Jammu and Kashmir through an Ordinance established the Office of Ombudsman in the territory on the lines of Ombudsman institution in Pakistan. The Ordinance was converted as an Act of the Assembly in the year 1992 by the legislative Assembly of Azad Jammu and Kashmir.

The basic idea of having this Institution in Azad Jammu and Kashmir is to prevent the abuses of authority by the public functionaries. The law also gives powers to the Ombudsman to redress individual grievances arising out of bad administration due to inadequate procedures and administrative excesses. The findings and recommendations are always implemented. It is true, that the Ombudsman cannot interfere in policy matters of the government, but the powers given to him gives him ample opportunity to stream line the government policy, towards correct direction in the interest of good administration and fair play.

The Ombudsman concept has become so popular all over the world that at present about 40-50 countries have adopted this system to redress the grievances of their citizens. Ombudsman Associations have also been formed and are successfully working in almost all the regions of the world. The European Ombudsman Association, the American Ombudsman Association, South African Ombudsman Institute are working successfully by way of sharing experiences and pooling resources for their common benefits. Asian countries have no Ombudsman Association of their own. I feel that there is dire need for an association at Asia level.

The name of Mr. Justice (Retd) Abdul Shakurul Salam was suggested as convenor of the association.

THE CHAIRMAN

Thank you Chief Justice Muhammad Khurshid Khan for your historical description of development of the concept of Ombudsmanship. I am grateful to you for pointing out another word Mathessep. Thank you very much Raja Sahib.

3.20 MR JUSTICE (RETD) SALAHUDDIN MIRZA, OMBUDSMAN, PROVINCE OF SINDH, PAKISTAN.

Mr. Justice (Rtd) Abdul Shakurul Salam, Federal Ombudsman of Pakistan, Hon'ble delegates from People's Republic of China, Sri Lanka, Maldives, Philippines, Sudan, Australia, Hong Kong, Iran, Iraq, Japan, Jordan, Korea, Kuwait, Macau, Malaysia, Turkey and Yemen.

I consider it a great privilege that I have been invited to address this august and distinguished gathering. Credit must go to our Federal Ombudsman who gave a concrete shape to the idea floated by his predecessor Mr. Justice (Rtd) Syed Usman Ali Shah for organising the First Asian Ombudsmen Conference which we are all attending today here in Islamabad.

2. Although in Pakistan the Institution of Ombudsman was established at the Federal level in 1983, it was created in the Province of Sindh in May 1991 through the promulgation of an Ordinance by the Governor of Sindh which was later incorporated into an Act of Provincial Legislature on 25th September 1991 under the title of "Establishment of the Office of Ombudsman for the Province of Sindh Act 1991" and which was assented to by the Governor of the Province on 23rd January 1992 and notified on the same day as Sindh Act 1 of 1992. This enactment follows the pattern of the Federal Ombudsman's Ordinance 1983 and therefore the institution of the Provincial Ombudsman shares almost all the pleasant as well as unpleasant experiences with the Federal Institution in its working and approach and implementation of its decisions.

3. I had assumed the office of Provincial Ombudsman for Sindh after my retirement from the High Court on 22nd September 1995 and during the last 6½ months that I am here I have keenly watched the performance of this institution and its impact on the Government functionaries who, over the years, have degenerated and grown oblivious to the problems of the masses. You have already partly heard the virus of the Honourable Federal Ombudsman Justice Abdul Shakurul Salam about the changes wrought by the Ombudsman at the Federal level and the relief granted by the Federal Ombudsman to the needy and the weak and I believe he shall throw some further light on the subject in his concluding address and I shall therefore be brief in this regard lest I should be guilty of repetition. I would only say that my experience at the provincial level is not that much optimistic and the reason appears to be that this Institution, being so young in the province, has not yet found roots in the system.

4. Our modus operandi in dealing with the complaints is that we seek comments from the government departments against whom complaints are received and thereafter we hold hearings in which the complainants and the representatives of the concerned departments are called and the problems are discussed and then the decisions are given. The Ombudsman has a team of officers to assist him. The complaints

are initially dealt with by them and they submit the case to the Ombudsman after completing the enquiry and with a brief note of their investigative efforts. The Ombudsman then examines the case and if he finds it necessary to hear the parties anew, they are recalled for a final hearing. Sometimes we find that a third party is going to be affected if the grievance of a complainant is redressed and his prayer is allowed. There is no specific provision in the law to call and hear such third party but I have now directed that following the age-old dictum that no one should be condemned unheard, such third parties should also be called.

5. As the preamble of the Act say, the Ombudsman besides making investigation, is also required to diagnose the causes of mal-administration in the Agencies. Section 9 sub section (3) of the Ombudsman's Act, 1991, requires him to conduct studies in respect of such activities of the Agency where corruption, nepotism, exploitation and high-handedness have taken deep roots to the great harassment of the general public. This institutions has so far conducted two studies on the working and mal-practices of the Building Control Authority and on the rampant financial indiscipline of the Local Bodies in Sindh. Recently we have conducted an in-depth inquiry into the foundation and structural failure of the new University Campus in Khairpur District on the reference received from Governor of Sindh and our report is under consideration of the Federal Cabinet.

6. Ombudsman is appointed by the Governor of the Province for a 4-year term but he is not eligible for extension or re-appointment or for holding any office of profit in the service of Pakistan before the expiry of two years after he ceases to hold the office of Ombudsman. Nor is he eligible for election to either Provincial or Federal Legislature for a period of two years from the date he ceases to hold the office of Ombudsman. The Ombudsman has been given all the powers to punish for his contempt which are available to the High Court under the Contempt of Court Act.

7. Friends and fellow delegates! admittedly Ombudsman is armed with a good deal of powers under the Act; yet to effectively deal with various facets of mal-administration, Ombudsman needs to be strengthened especially in the sector of implementation of his decisions in letter and spirit. The Act presents Ombudsman as the "upholder of equity". Discrimination in any form is alien to him. His task of overseeing the wranglings and misconduct of the negligent but powerful government functionaries is by itself a tight-rope walking. Perhaps my colleagues in the Secretariat of Wafaqi Mohtasib and in the Secretariat of Azad Kashmir will agree that the Ombudsman's Act needs certain modifications and amendments to transform this institution into a "Real Protector of the Rights of the People." The very fact that the Ombudsman's decision on a complaint against the mal-administration of a Government Department is termed as "Recommendation" in the Act, takes away the required punch and teeth needed to put the wayward departments on the right track. I had realised this position within a couple of months after taking over as Ombudsman

and had undertaken the task, with the help of my officers, of suggesting amendments to the piece of law under which this institution is created. The exercise is now over and the draft of the amendments is receiving final touches and shall be shortly submitted to the Governor and the Chief Executive of the Province for their consideration. Even so, however, the very existence of the Ombudsman has to some extent discouraged and hampered perverse by arbitrary actions of the bureaucracy. They now know that any one irrespective of his status in life, can invite the intervention of the Ombudsman without undergoing the ordeal of going through the legal formalities normally required to file a suit in a Court of Law.

8. I am confident that if the institution of Ombudsman is given sufficient powers and freedom and is given the respect that is due to it and is not considered by the bureaucracy as a nuisance but is regarded as an arm in aid of the executive, a process of accountability will be generated which will surely arrest the downward trend in the efficiency and morality of our service structure. Already, the quick relief provided in some of the cases has gone a long way to create some confidence in the common man as to the efficacy of this institution. The bureaucracy sitting on a higher pedestal is beyond the reach of common man. It is thus a matter of great satisfaction to a common man that the system has provided him a forum where a head of a government department is obliged to face the aggrieved and to explain and prove the *raison-deter* of their actions.

9. This institution, even in its present unsatisfactory condition, has not only provided relief in individual grievances but has also taken cognisance of matters of general public interest where guide-lines have been furnished to the government departments and their subordinate officers to streamline their working so as to narrow down the area of discretion and discrimination.

10. I am not aware how in other countries the finance is provided for Ombudsman, but here the Ombudsman is dependent on the Finance Department for his budget but the Finance Department is one of the government departments over which the Ombudsman sits as a watch-dog and against which he hears complaints and quite often gives decisions against it. Ombudsman therefore needs to be made independent of the finance Department as far as his financial needs are concerned.

11. I am sure, Sir, that this Conference will enable us all to look into the ways and means to improve our respective institutions. I hope that this Regional Conference shall only be the first of its kind and such Conferences shall be held at regular intervals and by rotation in the capitals of the countries of the region where the Institution of Ombudsman has been established.

12. I also hope that some tangible decisions will be taken at this forum regarding the formation of "Asian Ombudsman's Association" on the pattern of American Ombudsman's Association, European Ombudsman's Institute, Australasia Ombudsman's

Association and South African Ombudsman's Institute which all are playing a useful role in their respective regions in redressing the grievances of the masses against the mal-administration of governmental agencies and in creating respect for basic human rights and in creating awareness of administrative accountability. The need for a formal Association at the Asian level can not be over-estimated. Formation of such Association is essential for achieving the following objectives and benefits:

- ◆ Sharing of experiences and ideas.
- ◆ Pooling of Resources.
- ◆ Exchange of information of mutual benefits among the Regional Institutions.
- ◆ Training and research facilities.

13. Once it is agreed that Asian Ombudsmen Association should be formed, it should not be difficult to mutually agree on some suitable place for housing its head-quarter.

THE CHAIRMAN

I am quite happy to know that the Ombudsman of Sindh has prepared a draft law for putting teeth to the Ordinance. When he succeeds, I would like to have a copy to try to see that if I can get teeth in my own Federal Ombudsman Office as well, though we don't intend to bite. In any case if the amendment as proposed by Justice Mirza is accepted by Provincial Governor then that will add to the authority and efficacy of the Ombudsman concept, otherwise at the moment, the Ombudsman of Sindh functions in the same jurisdiction and under same kind of law as well as other Ombudsman do and perform the same kind of functions.

CHAPTER - 4

FORMATION OF ASIAN OMBUDSMAN ASSOCIATION

FOURTH SESSION

Mr. Justice (Rtd) Abdul Shakurul Salam, Ombudsman of Pakistan chaired the session.

4.1 PROPOSITION

Mr. Andrew So (HK) read out the papers comprising the preamble, general guidelines, the way forward. Copies were supplied to the delegates. These were:

“Preamble:

The delegates attending the First Asian Ombudsman Conference in Islamabad, Pakistan felt the need for formation of the Asian Ombudsman Association to pool the rich resources of ideas, practical experiences and know-how of Ombudsman in the Asian Region as well as to render individual support and encouragement amongst the Ombudsman in the region. Another enduring value of having an Association set up is the opportunity for understanding and development of each jurisdiction with a full awareness of changed laws and administration throughout the region. The Association may involve the Parliamentarians, and the members of Government in the support of Ombudsman.

To facilitate discussion by the delegates on formation of the Asian Ombudsman Association, the attached papers on the guidelines and on the way forward are prepared.

General Guidelines:

1. The objectives of the Association shall be:
 - (a) to Promote Professionalism in discharging our role as Ombudsman;

- (b) to facilitate exchange of information that assists the resolution of problems which Ombudsmen in Asia are confronted with; and
 - (c) to promote the aims and concepts of Ombudsmanships in Asia, including the assistance in the establishment of new jurisdictions and assistance to newly appointed Ombudsman.
2. The Association shall be non-political, democratic and professional.
 3. The Associations' boundaries are not fixed but the aim of the Association is to bring together Ombudsman whose constitutional environment has the sufficient similarities to make understandable collegiality coordinating a meaningful and shared experience.
 4. Meeting of the Asian Ombudsman Association will generally be held annually and the Ombudsman of the host country will serve as Chairman.
 5. Besides members of the AOA, observers, i.e. persons interested in Ombudsman or like function, may be invited.
 6. A Member shall be a person, whether titled Ombudsman, Parliamentary Commissioner, Minister of Supervision, Commissioner for Administrative Complaints, or with other designation who has been appointed or elected according to the constitution or law of the country concerned and whose role includes the following characteristics:
 - (i) to investigate grievance of any person or body of persons concerning any decision or any act done or omitted by any administrative authority over which jurisdiction exists; and
 - (ii) to make recommendations to authorities under jurisdiction.
 7. Other guidelines/instructions may be suggested by delegates of the Asian Ombudsman Conference.

The Way Forward:

1. The participants to the First Association Ombudsman agree to form an Asian Ombudsman Association. However, if for any reason any participant will not like to continue, he may inform accordingly.
2. A Preparatory Committee of 3 to 5 members is formed to work out the details and bylaws of the Asian Ombudsman Association. The Ombudsman of Pakistan shall be the Chairman/Convenor of the Pre-

paratory Committee. There shall be a Secretary from amongst members of the Preparatory Committee. The Secretary shall prepare a draft to be circulated to all members of the Preparatory Committee for endorsement before submitting it to the members for acceptance.

3. The next meeting of the Asian Ombudsman Association shall be held in April/May 1997 in a suitable location. (The Macau High Commission has indicated his willingness to play host).
4. The bylaws shall be ready before the end of May 1996 and endorsed by the members before the end of August, 1996 so that it could be submitted to the Board of Directors of IOI via the Ombudsman of Pakistan, who is a director representing Asia in IOI in October, 1996 at Buenos Aires, Argentina."

4.2 DEBATE AND ENDORSEMENT:

Mr. Andrew So (H.K) expressed the need for formation of Association to pool the rich resources of ideas, practical experience and know-how of Ombudsmen in the Asian Region as well as render individual support to and enhance understanding amongst Ombudsmen in the region. He highlighted the objectives of the proposed Association, which were:

1. to promote professionalism in discharging the role of Ombudsman;
2. to facilitate exchange of information that might assist the resolution of problems which Ombudsmen in Asia were confronted with; and
3. to promote the aims and concepts of Ombudsmanships in Asia, including the assistance in the establishment of new jurisdictions and assistance to newly appointed Ombudsmen.

Mr. So (HK) explained in details the points set out in the general guidelines. He stressed that the proposed Association should be non-political, democratic and professional. He suggested that a Preparatory Committee (PC) of 3 to 5 members should be formed to work out the details and by-laws of the Association. The Ombudsman of Pakistan should be the Chairman/Convenor of the PC. The by-laws should be ready before the end of May 1996 and endorsed by the members through circulation before the end of August 1996 so that it could be submitted to the Board of Directors of the International Ombudsman Institute (IOI) via the Ombudsman of Pakistan, who is a Director representing Asia in the IOI in October 1996 at Buenos Aires, Argentina. Meetings of the Association could be held annually and the Ombudsman of the host country would serve as Chairman. Macau had initially indicated an

interest in hosting the next conference but later qualified that the timing might present a problem.

Prof. Bertram Bastiampillai (Sri Lanka) totally agreed with the suggestion to form a PC of 3 to 5 members to work out the details and by-laws of the Association. On the preamble, he suggested that the words “changed” in line seven and “involve the Parliamentarians” in line eight should be amended to read “changing” and “seek the support of the Parliamentarians” respectively. Regarding the guidelines, he proposed that the objective of giving “assistance to newly appointed Ombudsmen” in para 1 (c) should be regarded as a separate objective, i.e., objective (d). Referring to para 5, he considered that “observers” needed to be defined more precisely to include those persons whose work were more akin to the roles and norms of the Ombudsmen, although the process of screening, if employed, should not be too exclusive. He welcomed the suggestion made by **Mr. So (HK)** that it would be up to the Ombudsman of the host country who would chair the meeting of the Association to decide who should be invited as observers.

Mr. Peter Boyce (Australia) opined that at the present stage, the guidelines should preferably be kept simple and not too definitive, otherwise they might turn out to be obstructive. Referring to the term “Ombudsmanships” in para 1 (c), he said this should be given a wider meaning to embrace all systems in addressing grievances resulting from maladministration.

Chief Justice (Rtd) Khurshid Khan (Azad Jammu and Kashmir, Pakistan) proposed to add “and the submission of the resolution of the problems to the respective governments” after “confronted with”. He also intimated an interest in hosting the next Association meeting if the position was still open.

Dr. Barakat Musa El-Hawaṭi (Sudan) expressed his view that the guidelines should attempt to define the level of control from say, the judiciary or the ruling regime, the meaning of maladministration and the role of the Ombudsman. He opined that the possibility of unifying the various elements such as anti-corruption, maladministration, illegal practices etc. under one element should be explored.

Mr. So (HK) responded by saying that the guidelines were not exhaustive and were only meant to facilitate discussion on the formation of the Association, which should be non-political and should not dictate the working of each jurisdiction.

Mr. Dae Kyun SHIN (Korea) confirmed his support for the formation of the Association and also expressed an interest to host the next meeting, which would coincide with the third anniversary of the establishment of the Ombudsman of Korea. He sought clarification regarding the term “Member”

in para 6 of the guidelines, i.e., whether the voting right of the Member should be on a personal or national basis. He opined that the PC should have an expanded membership of 5 to 7 and should gather the views of all jurisdictions in Asia before finalising the by-laws.

Mr. So (HK) responded that it was necessary to avoid legal jargons in order to keep the guidelines simple. He suggested that the voting arrangements could model on similar associations such as the Australasian and Pacific Ombudsman Conference under which voting was by holder of office. He added that the reason for proposing 3 to 5 members on the PC was to minimise governmental costs. The PC should be of an *ad hoc* nature and could be dissolved once the Association was formed.

Responding to a question from **Dr. Ali Abdul Kareem al-Nijaidi (Iraq)** on the meaning of “with other designation” in line 3 of para 6 of the guidelines, **Mr. So (HK)** explained that the clause were simply to accommodate the fact that not all persons carrying out the functions of an Ombudsman were designated as “Ombudsmen”. In view of the diversity in language, culture and political systems etc., the aim of Association should be unity rather than uniformity.

Mr. Hojetoleslam Syed Ibrahim Raisi (Iran) expressed his views that, although there might be many similarities in the Ombudsman systems in many countries, the purpose of the Association should not be so much to find out these similarities but rather to share ideas and experience. He suggested to add “independent” before “non-political” in para 2 of the guidelines. **Mr. So (HK)** and **Prof. Bastiampillai (Sri Lanka)** shared these views and opined that the Association should include all and exclude none.

Dr. Abed Ali Shakanbeh (Jordan) expressed the view that since the objectives of the Ombudsman systems varies from country to country, it would be necessary for the Conference to reach an agreement on the main objectives of the Association.

In response to a proposal from **H.E. Dr. Ahmed Mohammad Al-Iryani (Yemen)** that the meetings of the Association should be held bi-annually instead of annually, **Mr. So (HK)** said that most delegates seemed to prefer annual meetings but perhaps the meeting of the Association could be skipped for the year when IOI would hold its conference. He opined that the matter could be flexibly determined, taking into account resources and other considerations.

Mr. Zuo Lianbi (China) expressed his general support of the views of **Mr. So (HK)** and **Prof. Bastiampillai (Sri Lanka)** given earlier. He agreed that the Association should be non-political and that there was a need for a PC to

work out the by-laws of the Association. He said that in China, the supervision system had been in force for many years but under a different designation than "Ombudsman". He therefore suggested to add "and other supervisory ideas" after "Ombudsmanship" in para 1 (c) of the guidelines. He enquired whether the purpose of submitting the by-laws of the Association to IOI was to seek the latter's approval or for any other purpose. He confirmed that China would definitely attend the next Association meeting irrespective of where it would be held.

Mr. So (HK) clarified that the purpose of submitting the by-laws to IOI would be merely for the latter's information. As the Asian Region was represented by **Mr. Justice Salam (Pakistan)**, it would be appropriate for him to inform IOI of the formation of the Association and its by-laws. Another purpose of informing the IOI was for the appointment of directors of the IOI, which was dependent on the number of voting members of IOI in the region.

The Chairman, Mr. Justice Salam (Pakistan) stated that the idea of "other supervisory ideas" after "Ombudsmanship" has already been taken care of as it is provided that a Member can be an authority, whether titled Ombudsman, Parliamentary Commissioner, Minister of Supervision, Commissioner for Administrative Complaints, or with other designation whose role included the basic characteristics of an Ombudsman.

Mr. Muhammad Ali Yusof (Malaysia) welcomed the idea of less restrictions on membership. He requested that the PC should inform him of the details and proposed by-laws of the Association when these had been worked out so that he could seek a decision from higher authorities whether to join.

Mr. Justice Salam (Pakistan) assured delegated that any country could decide freely whether to join the Association and there was absolutely no obligation. An immediate decision needed not be made and countries which had joined the Association could also withdraw from it at any time. Financial implications would be confined to passages and accommodation expenses for delegates attending the meetings and logistic expenses for the countries hosting the meetings.

Mr. Hisao Tsukamoto (Japan) stated that Japan's position on the matter had been made known in his speech during the session on 15 April 1996. He felt comfortable with the draft papers presented by **Mr. So (HK)** and regretted that Japan could not, for domestic reasons, host the next Association meeting.

Mr. Faisal Al-Ghareeb (Kuwait) voiced his general acceptance and appreciation of the draft presented by **Mr. So (HK)**. He referred to para 6 (i) and

(ii) of the guidelines and considered that membership of person “with other designation” should be more clearly defined.

Mr. Justice Ali Yilmaz (Turkey) expressed reservation on joining the Association as a permanent member. He said that a firm decision would be made in the near future and if possible, Turkey might wish to attend the Association meetings as an observer. He noted that no immediate decision was required.

Hon. Arturo C. Mojica (Philippines) generally agreed with most views expressed during the session.

Mr. So (HK) rounded up the session by saying that the delegates had overwhelmingly endorsed the formation of the Association, based on the guidelines presented, although some slight amendments to take into account comments from some delegates might be necessary.

4.3 BYLAWS PREPARATORY COMMITTEE

To draw up details and bylaws a Preparatory Committee was constituted consisting of Ombudsman of Pakistan, China, Korea, Sri Lanka and Hong Kong has volunteered to be members. So did Iran later on.

Ombudsman of Pakistan Justice Abdul Shakurul Salam was elected as Convenor/Chairman. Delegates agreed that in order to avoid any duplication or misunderstanding, no abbreviation should be used for the Asian Ombudsman Association. The Preparatory Committee was to finalise the Charter & Bylaws by August, 1996.

4.4 THANKS BY CHAIRMAN

The Chairman, **Mr. Justice (Rtd) Abdul Shakurul Salam (Pakistan)**, thanked **Mr. So (HK)** for the excellent lead, highly expert skills and efficient manner in conducting the session, which resulted in tremendous achievement in formation of the Asian Ombudsman Association.

CHAPTER - 5

CLOSING

The delegates from Korea, Macau and Azad Jammu & Kashmir (Pakistan) offered to host the next Conference of THE ASIAN OMBUDSMAN ASSOCIATION. The delegate from Korea stated that the occasion will correspond with the National Day Celebration of The Republic of Korea. It was, therefore, decided to accept the offer of Korea. Delegate from Macau said that then the next Conference in 1998 should be held in his country. The offer was accepted.

The Ombudsman of Pakistan announced the First Asian Ombudsman Conference officially CLOSED, expressing:

“It is an honour and a privilege for me to offer my sincerest gratitude to your Excellencies for participating in this Conference and extending full support in the formation of the Asian Ombudsman Association. It would have been impossible without your total commitment. This forum will not only play a pivotal role in promotion of the concepts of Ombudsman, its professionalism and will also prove a corner stone in furthering the regional and global contacts in friendships.

I hope, your Excellencies had enjoyed the brief stay in Pakistan. For any deficiencies I beg your pardon with a promise to do better when you visit us again.

Wishing you safe return and hope to see you in the second moot.”

APPENDIX

**Extract from the Address of Mr. Farooq Ahmed Khan Leghari,
President, Islamic Republic of Pakistan**

Mr. Farooq Ahmad Khan Leghari, President, Islamic Republic of Pakistan received the participants of the First Asian Ombudsman Conference who called on him at the Aiwan-e-Sadr, on 15th April, 1996. Mr. Justice (Rtd) Abdul Shakurul Salam, Ombudsman of Pakistan, introduced all the participating delegates and briefed the President about the aims and objectives of the Conference.

While talking to the delegates he said that "Pakistan fully supports and greatly values the institution of Ombudsman for its expeditious and inexpensive redressal of the grievances of people".

The President appreciated "the functioning and the performance of the Ombudsman in Pakistan which had provided relief to about twenty thousand persons during the last one year alone". He said that the institution of Ombudsman in Pakistan is still in its infancy but we would like to develop it further as it had inspired the confidence of our people. "Pakistan would like to learn from the experiences and ideas of other countries and such Conferences could be very useful for the purpose and added that he shall be looking forward to see the final formal recommendations of this Conference". He also highlighted "the need for cultural sensitive models in Ombudsmanship to cater to the needs of the diverse cultural groups in the Asian region which would help in systematic stability and integration.

The President said that Pakistan welcomed the idea of having an Asian Ombudsman Forum and would be very happy to set-up its Secretariat in Pakistan.

The delegates thanked the President and the Government of Pakistan for the courtesy and warm hospitality extended to them to make their stay in Pakistan comfortable and useful.

**Message of Mr. Marten Oosting,
President,
International Ombudsman Institute**

“Distinguished participants, dear Colleague-Ombudsmen,

It is a privilege for me, as President of the International Ombudsman Institute, to say a few words on the occasion of this Asian Ombudsman Conference. I would like to start by expressing my sincere regret for not being able to be with you. Unfortunately, your meeting coincides with the first Congress of the new Iberoamerican Federation of Ombudsmen, these same days in Mexico. I had already accepted an invitation to speak at that conference before I received the highly appreciated invitation from Mr. Justice Salam to come to Islamabad. I am grateful for his willingness to make this message known to you, as well as I appreciate his initiative to organise this Conference.

The Ombudsman scheme develops rapidly, all over the world. At present, over 75 countries have an Ombudsman, on the national level, and sometimes (also) at a regional and local level. In 1983, this number of countries was only 27. A considerable number of countries did not adopt the Scandinavian word ‘Ombudsman’, so there is a variety of names. However, at the same time there are basic similarities. Essential elements for an Ombudsman’s office are: its independence, more in particular from the organisations within its jurisdiction, and its powers of investigation, both based on the law, its access for the individual who wants to complain about a government department or agency, and its professionalism as an office that deals with these complaints. The Ombudsman contributes to the protection of the individual against the government, more in particular against forms of maladministration, corruption and violation of basic rights by public authorities. Through his power of recommendation, he may contribute to redress, when necessary. At the same time, the Ombudsman is an important provision of feedback to the government, in the interest of the quality of the performance of its tasks, and thus of ‘good governance’.

Experience has given enough evidence of the great values of the Ombudsman scheme for both the individual and his government. Hence, it is not a surprise that so many countries have decided already to establish an Ombudsman office, while others are now moving in that same direction. Communication and co-operation between Ombudsmen is important, for various reasons. As you all know by experience, being an Ombudsman is, to a certain extent, a lonely job. Moreover, as the duty of the Ombudsman is to monitor critically government performance, he must not be surprised to be critically followed himself. Occasionally, this may even mean a challenge to his independence. Furthermore, most Ombudsman offices are relatively young, and thus face the task to build experience and professionalism. In

all these respects, international contact may be helpful. Drawing upon my own experience, as the National Ombudsman of the Netherlands for 8½ years, I have always found contact with my colleagues abroad encouraging and enriching.

Platforms for international co-operation between Ombudsmen are indispensable for establishing these contacts. They are also important for those countries who would like to call upon expertise and advice from existing Ombudsman offices for the establishment of such a scheme in their own country. On a world wide scale, the International Ombudsman Institute (IOI) aims at serving that goal. One of the important activities is to organise a World Conference, every four years. The next 5th Conference will be held in Buenos Aires, October 20-24, 1996, with the National Ombudsman of Argentina, Dr Jorge Maiorano, acting as host. I call upon you to come to Buenos Aires, and take profit of that opportunity to enrich your knowledge of Ombudsmanship in other countries, and also to share your own views and experience with others. As you may know, the IOI also edits a journal, the International Ombudsman Journal, and a Newsletter for its members.

Within the framework of the IOI, the various regions of the world organise their own modes of co-operation. As I have already mentioned, the Ombudsmen of Latin American, together with their colleagues from Spain and Portugal, have established a Federation in 1995, which has its first Conference these same days, in Mexico. Some of you may have attended the meeting in Hong Kong of the Australasian and Pacific Ombudsman Conference, October 1995, organised by our colleague Mr. Andrew So, to which also the Ombudsmen of Asia had been invited. In my own region, Europe, we have—for many years already—our regional meetings on a regular basis as well.

Against the background of the foregoing, I consider your meeting as a very important one. Communication and co-operation between the Ombudsmen of Asia is still in a rather early stage of development. Moreover, there is a considerable diversity between the various countries of Asia, this continent being a world in itself. Consequently there are also considerable differences between the various offices that deal with complaints of the citizens about their Government. Some of them are very similar to Ombudsman offices in other parts of the world, while others have certain elements in common with the Ombudsman scheme, but at the same time have their own characteristics, in accordance with the tradition of the specific country. Some of you have already met before, but for others this may be the first time. This meeting will give you an excellent opportunity to get better known to each other. It is my own experience that such a process at international meetings takes its time. However, the aim of this meeting reaches further. I know from Justice Salam that he—in his capacity of member of the IOI Board of Directors for Asia—would like to promote the establishment of an Asian Ombudsman Forum, and to find out your interest for such a forum of future co-operation. I sincerely hope that there will be a positive attitude

toward the idea of Mr. Salam. At the same time, I am aware of the fact that it takes time to come to a definite decision. Time is needed to find out which offices in Asia qualify for membership of such a Forum. Time may also be needed to discuss the best way of organising such a Forum — in such a way that all offices involved can get on with it — and its relationship with the world community of Ombudsmen. In my view, it is of essential importance that you allow yourself that time which is needed to answer all these questions. When it would turn out that more time is needed than available at this meeting, I hope that you will continue to discuss this item during the months to come. After all, when there will be consensus about the line of march, the final decision could also be taken at a next meeting, e.g. in 1997, and after further consultation and preparation. When many of you would attend the World Conference in Buenos Aires, that would also offer an excellent opportunity to work further on the structure of the future co-operation of Asian Ombudsmen.

There is a lot of interesting and important work on your Agenda. I wish you very fruitful discussions and a most pleasant meeting, and look forward to hearing the results of your work. Equally, I look forward to a next opportunity to meet you, and to participate in your debates.

With my best regards to all of you”.

Communiqué from the Ombudsmen of Australia

All the Ombudsmen of Australia, in their meeting held in Sydney on 16.4.96, conveyed the following communiqué:

“The Australian Ombudsmen wish Mr. Justice Abdul Shakurul Salam, Ombudsman for Pakistan, success in the Conference of Ombudsmen and parallel office-holders in the Asian Region and congratulate him in his initiative in bringing together the Asian Region for the first time”.

COUNTRY PAPER: **THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI LANKA**

PRESENTED BY: **PROFESSOR BERTRAM BASTIAMPILLAI,
PARLIAMENTARY COMMISSIONER FOR
ADMINISTRATION.**

**THE INSTITUTION OF THE PARLIAMENTARY COMMISSIONER FOR
ADMINISTRATION (OMBUDSMAN) IN SRI LANKA**

Introduction

Accountability of Public Service and of Government institutions in Sri Lanka is ensured in diverse ways and means. There is Parliament and at question time Ministers have to answer and account for the policies and practices pursued by Departments, Statutory Authorities and other State Bodies that come under their ministerial purview.

Then there are the Courts of Law. The public can institute legal action and thereby seek reversal of unjust and illegal actions of Public Officials and even those taken by Ministers. Often the type of action is that which alleges violation of natural justice, fundamental rights enshrined in the Constitution of the Republic of Sri Lanka and rules and regulations that have been proclaimed from time to time in order to govern administration.

In addition public citizens appeal to the President of the country and directly to various Ministers seeking redress through them whenever wrongs have been committed by Public Officials. As a general practice then a review is undertaken of the action complained of but this is invariably done by senior officials within a Department or Statutory Authority. It is an 'in house' affair.

There is also a Public Service Commission with whom Public Officials lodge complaints relating to grievances arising from appointments, promotions, transfers, dismissals and such similar actions. The Public Service Commission is headed by a Chairman and consists of other members chosen from experienced and eminent citizens. It is an independent body and its impartiality is adequately safeguarded.

Even the Newspapers and the Electronic Media act in ways to ensure the accountability of officials in the Public Sector. The English and the local languages media act in a vigorous and vigilant matter and they keep a surveillance on ministerial and Presidential actions too. There are a few National Dailies and Weeklies and more of fortnightlies and monthly publications and many of them do provide space for airing grievances and naturally this in turn ensures remedial attention. Some of the media publications run grievance columns and render a form of Ombudsman's

services. Complaints are made, the editorial staff contact the officials and through them gain corrective actions. This form of activity is growing increasingly popular and should not be overlooked in scrutinising agents that assure accountability of the public action.

The Parliamentary Commissioner For Administration, Sri Lanka

The Parliamentary Commissioner for Administration was provided for in Article 156 (Chapter XIX) of the Constitution of the Democratic Socialist Republic of Sri Lanka introduced in 1978. He was charged with the duty of investigating and reporting upon complaints or allegations of the infringement of fundamental rights and other injustices by public officers and officers of public corporations, local bodies, and other institutions in accordance with and subject to the provisions of Law. His tenure of office and terms and conditions of office are secure so long as his conduct and behaviour are unimpeachable; and he is appointed by the President of the Republic. This Article gives him wide powers and assures him independence to be impartial and secures to him Constitutional recognition of office and the right to discharge his duties without fear or favour.

In terms of this Constitutional provision a further piece of legislation, Parliamentary Commissioner for Administration Act No. 17 of 1981, was enacted and a Parliamentary Commissioner was first appointed in 1982. He has been succeeded by three others since then. The next legislation on this institution was passed as the Parliamentary Commissioner for Administration (Amendment) Act No. 16 of 1991, and again another amendment was made as the Parliamentary Commissioner for Administration (Amendment) Act No. 26 of 1994.

Over time the Parliamentary Commissioner for Administration who had been designated also as the Ombudsman from the very beginning is commonly popularly known as such in Sri Lanka. The working of the institution or office is based on Act No. 17 of 1981 and Act No. 26 of 1994 whereas Act No. 16 of 1991 is solely confined to raising the age of retirement of the Parliamentary Commissioner for Administration upto seventy years of age.

As a rule the Sri Lankan Parliamentary Commissioner for Administration receives petitions or complaints through the postal services or at the office. Before the Amendment of 1994 petitions had to be lodged through a member of Parliament with the Speaker and it is referred to from there to the Parliamentary Commissioner for investigation and report embodying his recommendations on relief and redress. Now, however, after the Amendment of 1994 from 1st February 1995 petitions could be directly addressed to the Parliamentary Commissioner for Administration. Direct access made conditions easier and less cumbersome to complainants and the numbers of petitions received dramatically increased from about 10 earlier to over 350 now per month.

When a petition is received it is examined and if a prima facie case of an injustice having been committed is clear then reports are obtained from the officials or authority that had given cause for the complaint. These reports are referred to the complainant and if he accepts them as valid and reasonable no inquiry is held. On certain occasions the officials or authority to whom the petition is forwarded correct the wrongs alleged to have been done and then no inquiry is necessary.

On the other hand, as is common, if the petitioner disagrees with the explanations afforded then the complainant and the head of the institution are listened to at the investigation by the Parliamentary Commissioner. The inquiry is exhaustive, not adversarial but inquisitorial in nature.

If the complainant is found to have proved that an injustice has been done or that his rights have been violated then suitable relief or redress is afforded by the Parliamentary Commissioner for Administration. Otherwise, if the complainant fails to establish his case then the complaint is dismissed. In regard to the relief or redress, be it in the form of compensation for losses suffered owing to an unfair decision or restoration to a job after unjust dismissal or the grant of a due promotion that was withheld or an appointment to a position that was unreasonably not granted, the decision taken is communicated as determination made by the Parliamentary Commissioner.

The determination is transmitted to the relevant head of a department or the concerned authority with a copy of it to the Minister under whose purview the department or authority lies, and a copy to the Public Petitions Committee of Parliament. A reasonable period of time is allowed by the Parliamentary Commissioner for the execution of his determination. If it is not executed then he should be provided with a report stating the reasons for non-compliance with his determination. The Parliamentary Commissioner for Administration forwards this explanatory report along with a copy of his own report embodying the determination and his comments to the President of the Republic and to Parliament for any further action. This may take the form of further inquiry by the President or could be a question in Parliament. But very few officials would relish this consequence and often determinations are complied with.

Generally the Parliamentary Commissioner for Administration endeavours to get both parties to an inquiry, the complainant and the alleged wrong doer, to agree on a settlement once an allegation is reasonably proven. There is an earnest attempt to mediate and conciliate rather than to be confrontational alone. Often a settlement is reached and this leaves the two parties to go out with less heart-burning or a hostile and antagonistic attitude.

The remedial functions of the Parliamentary Commissioner for Administration is taken rather seriously. Counselling administrators or Managers, the Parlia-

mentary Commissioner urges improvements in the running of the Government Departments or Statutory Authorities. Where systems are wanting the deficiencies are indicated and advice is rendered to supply them. Similarly, whenever rules, regulations and practices are unfair, corrections are commended. The objective is to prevent repetition of wrong doing and errors and to make public management turn out to be more effective, efficient and human.

The Legislation governing the creation of the Parliamentary Commissioner for Administration provides for security of tenure and freedom from Ministerial interference. It empowers the Parliamentary Commissioner to call for and probe into evidence or to question witnesses material to any inquiry into a complaint. Non cooperation of any official in such an exercise can be reported through a Certificate to a High Court and the official is tried. If found to be culpable the official is liable to either a stipulated period of imprisonment or a defined sum of money as a fine or both penalties together could be imposed.

The Parliamentary Commissioner can obtain evidence on oath and is hence an ex-officio Justice of the Peace. Usually complaints can be inquired into at one sitting but in instances where the issue is complicated more than one inquiry is required. There are certain types of subjects into which inquiry cannot be instituted such as into powers, duties or functions discharged in terms of the Legislation governing public security; any decision or action of the Attorney General, Solicitor General or Departmental Legal Officer; into the terms of services of security forces or any order given to a security officer by a superior; into any matter that is or has been before Court; appointments etc. of Public officers; any decision of the Auditor General, Commissioner of Elections or an earlier Ombudsman or Parliamentary Commissioner.

The usual type of grievances are non-payment of compensation or a sufficient amount for acquisition of lands and buildings for urgent public purposes, the delay in making payments that are due, and unfair acquisitions of lands and buildings. Discrimination in the allocation of public housing is also complained of as well as failure to allocate houses where applicants deserve to receive them.

The other common complaints relate to denial of equality in treatment by a public authority or discrimination in treatment in respect of appointments or promotions in Statutory Bodies. Delays in payment of pensions and gratuities or wrong calculations of the amounts due are also alleged. In regard to dismissals from corporations or similar public bodies it is often alleged that they were unfair, not in accordance with rules or procedure, or it is complained that the right to be heard in defence had been denied.

The Parliamentary Commissioner's determination may recommend that a matter could be reconsidered, an omission be rectified, and the decision be cancelled

or varied. He also urges that the practice on which an erroneous decision or unfair recommendation was made or owing to which an act or omission had averred to be altered. Furthermore, he could call for the reasons on which a decision, recommendation, act or omission had been made.

There are no expenses to be borne by a complainant to the Parliamentary Commissioner for Administration. Moreover, the usual time taken to dispose of a complaint is about four months. Thus the institution of the Parliamentary Commissioner for Administration provides to the citizen an easy, economical and expeditious means to gain equity. As an institution it also acts as a deterrent to maladministration in public administration and as a spur to efficient management. The Parliamentary Commissioner for Administration provides vigilance over public administration and thereby enhances good governance.

The Parliamentary Commissioner is required to submit an annual report in addition to the reports sent at the end of each inquiry to the Public Petitions Committee to the President of the Republic and to Parliament. This ensures his answerability and restrains him from resorting to unaccountable behaviour.

Idea of a Regional Association of Ombudsman

A Regional Association of Ombudsman undoubtedly is welcome. It is a salutary exercise for those engaged in the promotion of equitable administration in the public sector to meet from time to time at regular intervals and exchange their ideas and thoughts on the promotion of good governance through a better bureaucracy. Moreover an association provides a forum and allows an opportunity to listen to constructive criticism from colleagues in the region in regard to the institution of ombudsmen as it functions and had been designed in the diverse countries of the region. Suggestions can be jointly mooted by the association to the various countries in the region for improving and strengthening the mechanism of the ombudsman so that it could contribute even better to upgrade the quality of management in the public sector.

Several ideas readily come to one which could be discussed with reward in a regional association of Ombudsmen. Powers and functions, qualifications or qualities needed, staffing and the status of officers of ombudsman, modes of receiving and entertaining petitions from complainants, methods of investigation, determinations or decisions and their validity or effectiveness, emoluments and perquisites of ombudsman are some subjects on which the thinking and experience of Ombudsman could be fruitfully shared in a regional association and their values, conventions and customs. The time is ripe indeed for the formation of a regional association of Ombudsmen. There is much to gain from it and little to lose.

Conclusion

The Asian Region embraces a wide variety of peoples who are inheritors of rich cultures and civilisations. In almost all of those countries there have been institutions or offices from early times for people to air their grievances so that rulers could afford relief, redress or compensation. The pre-colonial periods, wherever countries have been subjected to colonial dominance, have not been times devoid of grievance mechanisms to assist the public and to make administration accountable.

Against such a back ground it is indeed eminently appreciable that there should be a gathering of the Ombudsmen in the Asian Region. I wish to record my profound respect for the initiative and imagination shown by the Ombudsman of Pakistan and deeply thank him for inviting me to this first 'get together' of Ombudsmen of the Region and for his noble hospitality.

COUNTRY PAPER: **HONG KONG**

PRESENTED BY: **MR ANDREW SO, COMMISSIONER FOR
ADMINISTRATIVE COMPLAINTS.**

Purpose

The purpose of this paper is to provide an overview of the Hong Kong ombudsman system for the reference of ombudsmen and representatives of kindred institutions attending the first Asian Ombudsman Conference being held in Islamabad, Pakistan on 15 and 16 April 1996.

Background

The Hong Kong Ombudsman is officially known as the Commissioner for Administrative Complaints (COMAC). The first COMAC was appointed by the Governor of Hong Kong in 1989 under the COMAC Ordinance. The COMAC is an independent person outside the Public Service who reports directly to the Governor. Before 1994, COMAC could only investigate complaints referred to it by the Legislative Council. Amendments to the COMAC Ordinance in Mid-1994 brought some fundamental changes to the system, among the more significant of which are the provisions to allow members of the public to directly access COMAC without the need for referral and for COMAC to take a more proactive approach in addressing problems of potentially wide public interest and concern by undertaking direct investigations out of its own volition notwithstanding that no complaint has been lodged.

COMAC's Mission

2 The COMAC's mission statement is-

“To serve the community of Hong Kong by redressing grievances and addressing issues arising from maladministration in the public sector, and through independent, objective and impartial investigations, to bring about improvements in the quality and standard of and promote fairness in the public administration.”

COMAC's Powers and Jurisdictions

3. The COMAC Ordinance confers extensive powers necessary for COMAC to conduct investigations in matters of maladministration. For example, COMAC may exercise his discretion to determine whether to undertake or discontinue with an investigation and the manner in which it is to be conducted; and whether a complaint is duly made under the ordinance. Notwithstanding that no complaint has been lodged, COMAC may direct an investigation into a matter if he is of the opinion that any

person may have sustained injustice as a consequence of maladministration. COMAC has the power to call for information or documents from any person, summon witnesses under oath, if necessary, enter, inspect and conduct an investigation in any premises managed, occupied or controlled by the concerned organisation under his jurisdiction.

4. COMAC's jurisdictions are set out in Schedule 1 of the COMAC Ordinance. Basically, all government departments, except the Royal Hong Kong Police Force (the Police) and the Independent Commission Against Corruption (ICAC) which have their own bodies to deal with complaints from the public, and the major statutory organisations such as the Hong Kong Housing Authority, Hospital Authority, Mass Transit Railway Corporation, the two municipal councils etc. At present there are 61 government departments and 10 statutory organisations under COMAC's jurisdictions and plans are underway to increase the latter to 14 and to bring the Police and the ICAC within COMAC's jurisdictions in respect of alleged breaches under the Code of Access to Information covering some 75 government policy branches and departments by the end of 1996.

Organisation and Line of Responsibilities

5. The COMAC assumes sole ombudsmanship in Hong Kong. The Office of COMAC (OCAC) works under a trinary system and is organised into an Investigation Division, a Screening Division and an Administration Division each headed by the Deputy Commissioner, Assistant Commissioner and Principal Executive Officer respectively. Staff of the OCAC comprises of both contract officers recruited directly by COMAC and civil servants, mainly in the Executive Grade, seconded from the Government. The blending of officers of different backgrounds and complementing professional expertise and experiences provides a very good workforce necessary for the OCAC to confront its many difficult tasks and to achieve its missions in the highest possible standards.

6. An organisation chart of COMAC is at Annex 1.

Handling Complaints

7. When a complaint is lodged with COMAC, it is perceived to be the result of grievances based on serious concern from the standpoint of the complainant and therefore requires full and proper attention. Every complaint will go through a vigorous screening process to establish whether the complaint is within COMAC's jurisdiction by the Screening Division. If so, consideration will be given as to how best it should be handled, having regard to the nature and merits of the complaint.

8. For complaints which are capable of speedy resolution or conclusion after initial examination/enquiry, they will be dealt with by the Screening Division as far

as possible. If it is considered that the complaint should be handled by internal procedures first, the Screening Division will, with the consent of the complainant, request the organisation concerned to look into the matter, address the concerns raised and reply to the complainant direct. COMAC will review the action taken by the organisation to see if it is necessary for him to intervene or follow-up. Investigable complaints which are complex or incapable of speedy resolution or conclusion will be screened-in for investigation.

9. When COMAC decides to conduct an investigation into a complaint, the Investigation Division will take over the case and conduct a formal investigation, including the examination of relevant files and documents, seeking of explanations and comments from the complaine departments or organisations, calling of witnesses to give evidence and seeking of expert advice, if necessary, from COMAC's panel of legal, medical or engineering advisers. Before the final results of the investigations are made known to the complainants, the complaine departments or organisations are given the chance to comment, confirm the facts and their acceptance of the conclusions and recommendations in the reports and, in case of non-acceptance of any part thereof, to state their reasons for non-acceptance. Like many other ombudsman systems in the world, COMAC does not possess the executive power to require departments or organisations to implement its recommendations. Under the COMAC Ordinance, it can, if circumstances warrant, bring the matter to the attention of the Governor or through him, to the Legislative Council, so that it will be fully considered and decided at the highest levels in the administrative and legislative hierarchies.

10. COMAC's Task Force team is proactive and vigilant in conducting direct investigations of problems which involve alleged or suspected maladministration and considerable public interest. Such direct investigations aim at providing satisfactory and lasting solutions to problems, nipping them in the bud and/or resolving repeated complaints once and for all by addressing the fundamental or underlying issues involved.

11. A flow chart on complaint handling is at Annex 2.

Some Workload Statistics

12. The COMAC's reporting year starts on 1 July. During the first six months of 1995-96, COMAC received 2963 enquiries and 1611 complaints. Of the complaints received, 119 (7.4%) were screened in for investigation, 563 (34.9%) were concluded after initial enquiries, 37 (2.3%) were of simple nature referred to complaine organisations for action, 399 (24.8%) were deemed not investigable, 118 (7.3%) were withdrawn or discontinued, 207 (12.9%) were potential complaints which included anonymous complaints or complaints copies to COMAC and 168 (10.4%) were being screen/pending completion. Compared to the same period last year, the number of enquiries and complaints received increased by 79% and 180% respectively while the number of complaints screened in for investigation decreased by 6.3%.

13. COMAC believes that the huge increases in enquiries and complaints should not be taken as an indication of the deterioration of the services provided by organisations under its jurisdictions but are due to multifactorial causes, including direct access to COMAC, a gradual change in complaint culture of the Hong Kong people exhibited by the increased readiness of the public to come forward to make complaints, publicity and promotion of the COMAC system and the credibility of COMAC as an institution for redressing grievances, a watchdog to guide against maladministration and a facilitator of better public services. COMAC tackles the problem of huge workload increases by constantly reviewing and streamlining its procedures, enhancing professionalism and thereby efficiency of its staff in handling complaints, promoting improved services provided by public organisations to reduce incidents leading to complaints, cultivating better complaint handling mechanisms in the departments and organisations to investigate the more simple complaints if this is agreeable to the complainants and, inevitably, increase in staff resources.

Bringing COMAC Closer to the People

14. The COMAC system exists to serve the Hong Kong community. It is important that the public is made well aware of its existence and how it can help redress their grievances and improve the administration. COMAC has taken a number of initiatives to enhance public awareness and promote the system, including-

- Production of a publicity video on the COMAC system.
- Release of Announcements of Public Interest (APIs) and community service programmes to publicise COMAC's services on television and radio.
- Mounting of posters at prominent places frequented by members of the public.
- Staging of mobile exhibitions at major shopping arcades, Mass Transit Railway stations and public housing estates.
- Educating young people on the importance of fair, open and efficient government and nurturing a correct complaint culture by including the subject in the school curriculum for civic or public affairs education.
- Publishing anonymised investigation reports and complaint statistics in its monthly newsletter "COMAC News".

Holding of press conferences to announce the results of direct investigations, the issue of COMAC News or other special events.

15. Much effort have been geared to making the COMAC system more accessible to the general public, to understand their problems, and to help them as well as

the departments and public organisations understand more about the COMAC system OCAC has taken the following initiatives.

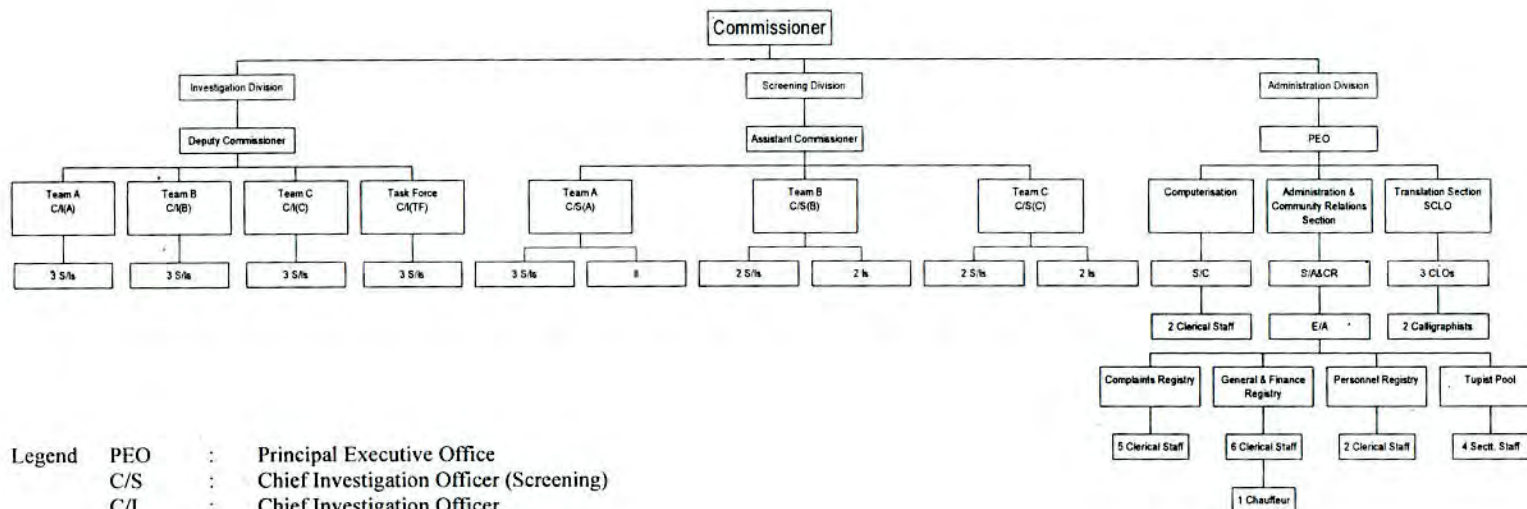
- Mounting of outreaching programmes whereby COMAC staff meets and receives complaints at the Districts Offices.
- Enlisting of support of Non-official Justices of the Peace in referring complaints and bringing COMAC's attention to areas of public concerns or deficiencies of public administration.
- Visiting of all departments and organisations under COMAC's jurisdictions with a view to promoting mutual understandings.
- Production of an Administrative Fairness Checklist for the reference of departments and public organisations.
- Making of regular visits to the Legislative Council, District Boards as well as departments and public organisations within and outwith COMAC's jurisdiction.
- Giving of talks to universities, institutes and secondary schools.
- Organisation of workshops and seminars on complaint handling.
- Mounting of meaningful youth involvement programmes to instil increased interest in and commitment and support for the ombudsman system.

Maintaining International Liaison

16. Maintaining liaison with other jurisdictions and ombudsman systems remains an important ingredient in the making of any successful ombudsman system and COMAC is no exception. Regular exchanges of concepts, methodologies and experiences are instrumental in moving towards professionalism, yet higher standards and greater achievements. Exchange programmes and study visits to the ombudsman and kindred offices in other jurisdictions including Netherlands, Australia, Canada, China, Jammu and Kashmir, Macau, Mexico, Pakistan, Portugal, Puerto Rico, Republic of Ireland, South Korea, Spain, Sweden and United Kingdom have been arranged for COMAC staff, who brought back invaluable information and experience from their trips.

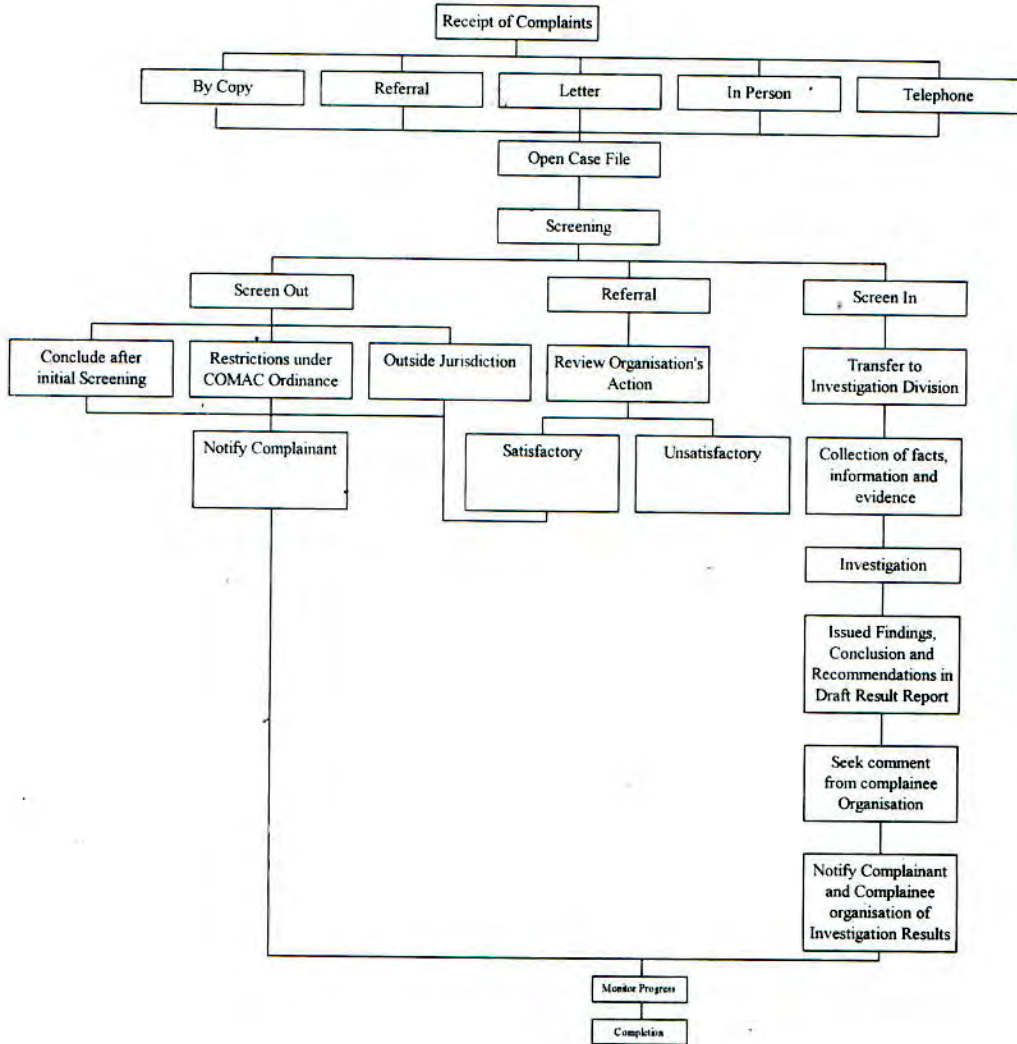
17. COMAC is a member of the International Ombudsman Institute (IOI). It played host to the 15th Australasian and Pacific Regional Conference held in Hong Kong in October 1995. Over forty overseas ombudsmen and representatives of kindred organisations attended the conference, the report of which was published in March 1996. New models and directions have been developed to help the ombudsman system treadle into the 21st Century.

Organisation of the Office of the Commissioner for Administrative Complaints (as at 01.04.1996)



- Legend
- PEO : Principal Executive Office
 - C/S : Chief Investigation Officer (Screening)
 - C/I : Chief Investigation Officer
 - CI(TF) : Chief Investigation Officer (Task Force)
 - S/I(TF) : Senior Investigation Officer (Task Force)
 - S/I : Senior Investigation Officer
 - S/C : Senior Executive Officer/Computerisation
 - S/A&CR : Senior Executive Officer (Administration & Community Relations)
 - SCLO : Senior Chinese Language Officer
 - I : Investigation Officer
 - E/A : Executive Officer (Administration)
 - CLO : Chinese Language Officer

Flow Chart on Complaint Handling



COUNTRY PAPER: **THE REPUBLIC OF PHILIPPINES**

PRESENTED BY: **MR ARTURO C MOJICA, DEPUTY OMBUDSMAN.**

Under our Philippine Constitution presently in force, there are three main branches of government - the Legislative Department, the Executive Department and the Judicial Department.

The President, head of Government and head of State who is directly elected by the people, heads the executive branch which includes his appointed cabinet members or secretaries of the departments of Justice, Finance, Foreign Affairs, Education, Local government, Health, Public works, Agriculture, Transportation and Communication, Agrarian Reform etc. The legislative branch or Congress is composed of the Senate (headed by the senate President) and the House of Representative (led by the speaker) the members of which are also elected by the people. And under the Judicial Department are the Supreme Court, the Court of Appeals, the Sandiganbayan (the special anti-graft court), Regional trial Courts, City Courts and Municipal Courts.

The Office of the Ombudsman does not belong to any of these aforementioned main branches of government but to the group known as the independent Constitutional offices such as the Commission on audit, Commission on Elections, Civil Service Commission and Commission on Human rights. (Append Chart A.) But this was not so in the past.

A perusal of the history of mankind reveals that the problem of neglect by or misconduct of government functionaries had been with us since the very beginning of government. But in the Philippines, even our early statutes and legal rules clearly stress that among the basic and inherent rights of the people in a democratic society is their right for redress of grievances or complaints versus government personnel or agencies.

The twin and related concerns cited above were addressed by our leaders. Since the 1950s or almost half a century ago, administrative boards or committees were created by executive fiat by our Philippine presidents. In the 1960s and 1970s government agencies were created by legislative enactment. But all of these executive committees or legislative offices were considered weak and ineffective because the funds and limited powers and even the existence of these administrative committees and legislative offices were dependent on the head of the executive department and/or the political leaders comprising the legislative authority, and yet the proposed inquiries would centre precisely on administrative acts of subordinate officials and would be conducted by appointees beholden to the same executive or legislative leaders.

The rationale for the creation of the Office of the Ombudsman (or Tanodbayan or "Sentinel of the Nation") in our scheme of government under the present Constitution is the well-grounded perception that recourse to the "repressive processes of the present penal system", resort to the "remedial processes of the judicial machinery", or even availability of the "cleansing effect of the electoral processes" have been proven so many times in the past to be insufficient and inadequate to resolve the complaint or grievance of a citizen or inhabitant of the Philippines against the neglect by or misconduct of government personnel.

Thus, the Ombudsman of the Philippines, also known as the TANOD-BAYAN which means Protector of the People or Sentinel of the Nation. The office is founded on the bedrock of the Constitution - the fundamental law of the land, which declares as a basic principle of government that public office is a public trust and public officers and employees are accountable to the people.

"Public office is a Public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, and with patriotism and justice and lead modest lives". (Article XI, Section 1, Philippine Constitution)

Upon the premise of the public accountability of those who serve in government, the Office of the Ombudsman was constitutionally created.

"There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman, to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed". (Sec. 2 Art. XI of Constitution)

The Office of the Ombudsman shall enjoy fiscal autonomy. Its approved annual appropriation shall be released regularly and automatically". (Sec 14 Art. XI of Constitution)

The present Office of the Ombudsman is an independent office created not merely by executive fiat or legislative enactment but by the fundamental law of the land, the Constitution itself. Therefore, neither the President exercising his executive powers nor Congress performing its legislative functions can abolish the Office of the Ombudsman or influence its functions. Even Congress, acting as a constituent assembly - the government agency authorized to propose amendments or revision of the Constitution - can only propose the dismantling of the Office of the Ombudsman. The final decision rests with the people. So, the Office of the Ombudsman, as long as the present constitution remains in force, is here to stay.

The other main features of the Office of the Ombudsman are likewise laid down in the Constitution and enumerated and detailed in the statutes enacted to implement the constitutional mandate.

The qualifications required of the highest Ombudsman officials - the Ombudsman and the Deputy Ombudsmen - are practically the same qualifications necessary to qualify for appointment to the Supreme court of the Philippines. Said Ombudsman officials like members of the Supreme Court are appointed by the President of the Philippines, after nomination by the Judicial and Bar Council, a separate Constitutional body. (Section 8, Art. XI of Constitution)

The Ombudsman pursuant to Constitution and the laws have the rank and remuneration of Supreme Court Justices while the Deputy Ombudsmen have the rank and salary of the Presiding Justice of the Court of Appeals (second highest Judicial tribunal) and their salaries may not be decreased during their term of office. (Section 10 Art. XI of Constitution, Joint resolution # 01 of Congress of Philippines dated 7 March 1994) The Ombudsman and his Deputy Ombudsmen shall serve for a term of seven years without reappointment. During their tenure, they shall be subject to the same disqualification and prohibitions imposed on members of the other Constitutional Commissions or bodies. (Sec. 2 Art. IX of Constitution and Sec. 8 Par. 2 of Art. IX of Constitution) All other public officers and employees may be removed from office as provided by law but the Ombudsman and the Deputy Ombudsmen, like the President, the Vice-President, Members of the Supreme Court and of the Constitutional Commissions may be removed from office only through the impeachment processes provided for by the Constitution (Section 2, Art. XI of the Constitution; In re Raul Gonzalez 160 SCRA 771. In re Jarque vs. Desierto 5 Dec. 1995 Supreme Court resolution en banc dated 5 Dec. 1995)

Based on the constitutional mandate, Congress enacted Republic Act No. 6770 (also known as the Ombudsman Act of 1989) an act providing for the functional and structural organisation of the Office of the Ombudsman. Marked as chart B which forms part of this paper is an organisation chart of the Office of the Ombudsman which graphically illustrates the functional organisation of our Office pursuant to the constitutional and legislative directives. (Append Chart B)

The Ombudsman and his Deputies as protector of the people shall act promptly on complaints filed in any form or manner against the following:

- (a) public officials or employees
- (b) any government agency, subdivision or instrumentality thereof.

(Section 12 Article XI of Constitution)

(Section 13 Republic Act # 6770)

In performing above mandate, the Ombudsman (and the Deputy Ombudsmen) shall have the power, authority and duty, upon complaint or at his instance, to:

- I. Direct any public officer/employee to
 - (a) perform and expedite any act or duty required by law.
 - (b) stop, prevent and correct any abuse or impropriety in the performance of duties.
 - (c) adopt, institute or implement measures to emphasise principle of public accountability and prevent efficiency and corruption.

(Section 13, (21) (7) of Constitution)

(Section 15 (7) of RA 6770)

- II. Investigate and prosecute any act or omission of any public or government agency when such act or omission appears to be illegal, unjust, improper or inefficient.

(Section 13 of Constitution)

(Section 15, 19, 21 of RA 6770)

A careful reading of the Constitutional provisions, the implementing legislative enactments and recent jurisprudence emanating from the Supreme Court clearly show that the principal powers and authority of the Office of the Ombudsman may be briefly classified into two main categories; the remedial/corrective/preventive authority and the punitive powers. (Append Chart C)

Punitive Power

In the Philippines, the more popular and better known powers of the Office of the Ombudsman are the punitive powers. These consist of the power of investigation and the prosecutory power aided by the fact finding function.

1. CRIMINAL INVESTIGATION

Any complaint filed in any form or manner against all public officials/employees regarding alleged acts or omissions appearing to be illegal, unjust, improper or inefficient may be inquired into by the Ombudsman.

Thus the highest ranking cabinet member (such as the Secretary of Justice) to the lowest employee in the Executive Department, members of Congress down to the last clerk of the legislative department, officials and employees of the Judiciary from the Presiding Justice of the Court of Appeals (the second highest judicial tribunal) and

the least ranking typist or janitor therein and officials and employees of Constitutional bodies are all subject to the investigatory jurisdiction of the Ombudsman.

However, officials - the President, the Vice-President, the Justices of the supreme Court, Chairmen and members of the Constitutional bodies or commissions - who can be removed from office only through the impeachment process provided for in the Constitution are excepted from the investigative machinery of the Ombudsman. The Office of the Ombudsman may conduct fact finding inquiries into the alleged illegal acts of said officials but the facts gathered therefrom should be submitted to Congress for evaluation and initiation, if warranted, of the impeachment proceedings of the aforecited official complained of.

In the case of *Deloso vs. Deputy Ombudsman Domingo, et. Al.* Promulgated on 21 November 1990 the Supreme Court interpreting the provisions of the present Constitution on the power, function and duty of the Office of the Ombudsman to

“investigate any act or omission of any public official where such act or omission appears to be illegal, unjust, improper and inefficient...”
(Section 13 (1) of Article X)

ruled that the above cited phrase or clause is “broad enough to embrace any crime committed by a public official. The law does not qualify the nature of the illegal act or omission of the public official or employee that the Ombudsman may investigate. It does not require that the act or omission be related to, or be connected with, or arise from, the performance of official duty.

The Ombudsman Act makes perfectly clear that the jurisdiction of the Ombudsman encompasses “all kinds of malfeasance, misfeasance and nonfeasance that have been committed by any officer or employee x x x during his tenure of office.” If the act complained of is not illegal but appears to be unjust, improper or inefficient, the Office of the Ombudsman still has jurisdiction.

2. THE PROSECUTORY POWERS:

A. The other well known power is the Prosecutory Power of the Office of the Ombudsman. After a complaint has been evaluated, and investigated, the Office of the Ombudsman (whether in the Central Office or in each of the offices of the Deputy Ombudsman) resolves or decides whether to dismiss the complaint or to file the corresponding information in court. If the case is cognisable by the Sandiganbayan (the special anti-graft court), it is the Office of the Special Prosecutor, which is a part of the Office of the Ombudsman, (*Zaldivar vs. Sandiganbayan & Zaldivar vs. Gonzales* 160 SCRA 843) which prosecutes the case. If the case falls under the jurisdiction of the regular courts, the regular prosecutor deputised by the Ombudsman takes charge of presenting the evidence against the accused.

The Office of the Ombudsman has investigated and charged before the Sandiganbayan eleven (11) Members of Congress, ten (10) Cabinet Members, twenty five (25) Provincial Governors, twenty eight (28) City Mayors, five (5) Ambassadors, seventeen (17) Generals and fourteen (14) members of the Judiciary. All of them are facing charges before the Sandiganbayan because they are considered high ranking officials, while low ranking officials are prosecuted before the regular courts.

3. ADMINISTRATIVE DISCIPLINARY AUTHORITY

The Office of the Ombudsman has disciplinary authority over all elective and appointive officials of the government and its subdivisions, instrumentalities and agencies, including members of the Cabinet, local government, government owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment, Members of Congress and the Judiciary.

In the exercise of the above-mentioned disciplinary authority, the Ombudsman or his Deputy may preventively suspend any officer or employee pending an investigation if in his judgement the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.

PREVENTIVE/CORRECTIVE/REMEDIAL AUTHORITY

Less well known but equally potent is the preventive/corrective/remedial authority of the Office of the Ombudsman. This includes the public assistance function. Article XI Section 13 of the Constitution and Section 15 of R.A. No. 6770 empowers the Office of the Ombudsman "to direct any government official or employee to perform or expedite any act or duty required by law or to stop, prevent and correct any abuse or impropriety in the performance of duties". In other words, although no criminal act can actually be attributed to a public official, if in the view of the Ombudsman, there is an abuse on the part of said public officer in the performance of his administrative duties, the erring official can be stopped or prevented from committing such impropriety.

On the other hand if the public official neglects to perform his legal duty or drags his feet in doing so, the Ombudsman can "light a fire" under said official's seat to compel him to be more efficient.

The Velarde case where a executive department head was prevented from arbitrarily reassigning a middle ranking official from Manila to a distant province, the Faelnar case wherein a City Mayor was directed to pay promptly P100,000.00 in salaries and allowances long overdue to a low ranking city official are examples where the corrective remedial authority of the Ombudsman were invoked and utilised. I mention these instances because there are circumstances where there might not be any necessity to investigate and prosecute any official or employee. All we have to do is call the attention of the public officials concerned, and the latter, knowing the powers of the Ombudsman will definitely respond. A criminal act need not be attributed to a public official. Even more abuse of his powers or obvious neglect to perform his duties will invite the intervention of the Ombudsman.

B. THE AUTHORITY TO INQUIRE AND OBTAIN INFORMATION

Aside from the foregoing powers, authority and functions of the Office of the Ombudsman, may I mention here that to effectively implement our duties, also lodged with the Office of the Ombudsman is the authority to inquire and obtain information. This, to my mind, is the most effective, easily implementable weapon of the Ombudsman.

Let me preface my proposition by again respectfully inviting your attention to certain provisions of the present Constitution.

Under Article II entitled Declaration of Principles and state Policies, Section 28 reads: Subject to reasonable conditions prescribed by law, the state adopts and implements a policy of full disclosure of all its transactions involving public interest.

Under Article III entitled Bill of Rights, Section 7 reads: The right of the people to information on matters of public concern shall be recognised. Access to official records, and to documents and to papers pertaining to official acts, transactions or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen.

These particular constitutional provisions were applied when a test case was decided on 29 May 1987 by the Supreme Court. Valentino Legaspi requested information from the Civil Service Commission on the civil service eligibilities of Messrs. Sibanghanoy and Agas who were employed as sanitarians in Cebu City Health Department. He was refused.

The ruling: When the question is one of public right and the object of the mandamus is to procure the enforcement of public duty, the people are regarded as

the real party in interest and the relater at whose instigation the proceedings are instituted need not show that he has any legal or special interest in the result, it being sufficient to show that he is a citizen and as such interested in the execution of laws. (Legaspi vs. Civil Service Commission 150 SCRA 530 citing Tanada vs. Tuvera 136 SCRA 27). This decision of the highest tribunal of the land was further bolstered by the enactment of R.A. 6713 (An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees on 20 February 1989). So we see that the citizen's right to public disclosure matched by the duty to comply on the part of the public official is already established doctrine.

But question might be asked. Who will enforce these rights and who will compel the public officials to perform their duty? The Office of the Ombudsman.

Under Article XI Section 13 (4.5) of the present Charter, the Office of the Ombudsman has the authority to direct that it be furnished "with copies of documents relating to contracts or transactions entered into by any public official involving the disbursement and use of funds or properties" or ask "any government agency for assistance and information necessary in the discharge of its responsibilities and to examine, if necessary, pertinent records and documents".

C. FUNCTION TO ADOPT, INSTITUTE & IMPLEMENT PREVENTIVE MEASURES

The Office of the Ombudsman has the duty to adopt, institute and implement preventive measures. The present charter authorises and encourages activities involving not just the Office of the Ombudsman but the officials in other government offices and the citizens themselves to develop long range plans and strategies that will help emphasise the principle of public accountability and prevent inefficiency and corruption. Thus Article XI Section 13(7) directs that the Office of the Ombudsman shall "determine the causes of inefficiency, red-tape, mismanagement, fraud and corruption in the government and make recommendations for their elimination and the observance of high standards of ethics an efficiency".

Reference has been made earlier to the participation of the citizens themselves. Article II Section 23 of the present Constitution reads: The State shall encourage non-governmental, community based or sectoral organisations that promote the welfare of the nation. Moreover, Article XIII declared in Section 15 thereof that "The State shall respect the role of independent peoples' organisations to enable the people to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means. People's organisations are bonafide association of citizens with demonstrated capacity to promote the public interest and with indeniable leadership, membership and structure".

Earlier, I cited the participation and involvement of "officials of other government offices" in activities that will prevent and hopefully minimise if not eradicate shenanigans and inefficiency in government. I refer in particular to the resident Ombudsmen.

They are the officials of the different government instrumentalities chosen by the Ombudsman to help the Office of the Ombudsman carry out its mandate under the laws and the Constitution. They help gather evidence in investigative matters, they serve as the expeditors, the facilitators of requests for assistance, and act as principally the link, the liaison men of the particular government agency to the Ombudsman. Together with an alert citizenry exemplified by corruption prevention units in the locality, they make government personnel aware that delivery of government services is being monitored, and if there is any perceived wrongdoing, or irregularity or neglect or abuse, quick action will be taken by the Office of the Ombudsman—to deter and discourage inefficiency or corruption.

More of our resources are presently being expended and additional efforts are being exerted in obtaining the assistance of regular government offices and civic minded citizens in the implementation of the preventive and corrective functions of the Office of the Ombudsman. We now reach out to all government units and obtain information on who among the officials therein are best qualified to be chosen as our resident Ombudsmen in their respective agencies. We contact civic clubs such as the Rotarians, the Knights of Columbus, the Jaycees, the Lions, the Masons, the cause oriented groups and religious organisations so that corruption prevention units may be established in all municipalities throughout archipelago. We believed that high visibility of our office will go a long way in impressing the people that a sustained campaign will be maintained so that misconduct of government personnel will be greatly reduced if not totally eliminated.

I hope that with this presentation, all the distinguished Ombudsmen who are participants in this First Asian Ombudsmen Conference have obtained more information about the Ombudsman of the Philippines. We are all here because we believe we want and need a forum for an exchange of ideas on how to combat inefficiency and corruption in our respective governments. How to map out our strategies and remedies and how to set up the appropriate mechanisms to implement them.

We sincerely submit that inefficiency is the breeding ground of corruption. We believe that in our scheme of government we must redress the grievances of our people against the misconduct of or neglect of our government personnel. That is why we must have an Ombudsman - as protector of the people vested with awesome and tremendous powers aimed at protecting the interest and rights of the governed - the people - from the "illegal unjust, improper and inefficient acts or omissions" of the governors - the public officials.

Thus an Ombudsman - as Sentinel of the Nation Tanodbayan - an additional framework of republican government, readily accessible to the citizenry to quickly,

inexpensively, and effectively present, correct, react and punish inaction or abuse of government functionaries, prodding, nagging and energising the regular government machinery and institutions to function efficiently and with justice. An Ombudsman which is a parallel branch of government constantly looking over the shoulders of the regular bureaucrats, vested with vast powers and authority, independent of even the highest elective officials of the land but whose actions could be also be reviewed and if found arbitrary and abusive, reversed by a revered institution composed of the fifteen wise men and women of the highest judicial tribunal of the land - the Supreme Court. A government agency envisioned to mobilise public and private resources to promote and deliver efficient graft free services by the government to the people.

Our motto should be we must love and honour the LAW but we must love and honour JUSTICE more.

Finally, please allow this humble participant representing the Philippines to confide to his fellow participants in this forum that wherever we go in the Philippines, in various fora, dialogues and conferences, we deliver this following message to our fellow Filipinos:

Allow me, however, to take this opportunity to remind everyone that in many parts of our nation, poverty, greed, injustice and corruption still rear their ugly heads and deter and delay the socio-economic development of the community. In the war against these evils, the combined forces of media - (represented by _____) and of the government (represented by the Office of the Ombudsman) will make very little headway without the full support and cooperation of the citizenry.

We Filipinos cannot afford to be indifferent to our national problems. Let us remember that no one else but the Filipino will fight inefficiency and corruption in our government. All of us must remember that no one will help us; that the Filipinos are the best qualified to combat poverty and injustice in our land.

Let us not forget, let us never forget that this is our own government, that this is our only country - here our ancestors were born, and here our great grandchildren will live - and if we don't succeed in our fight against maladministration and corruption in our own government; if we don't succeed in reducing poverty and giving justice to everyone in our land, then we will not survive and succeed as a nation.

But because we love our country - and I have no doubt that we all do, this dream of an efficient government, free of corruption, dedicated to the goals of reduction of poverty and elimination of injustice in our land, should be our vision of a happy, healthy and progressive Philippines under God at the turn of the century.

REPUBLIC OF THE PHILIPPINES
CONSTITUTION

**THE THREE
MAIN BRANCHES
OF GOVERNMENT**

**EXECUTIVE
PRESIDENT**

DEPARTMENTS:

- ☞ JUSTICE
- ☞ FINANCE
- ☞ FOREIGN AFFAIRS
- ☞ EDUCATION, CULTURE, AND SPORTS
- ☞ HEALTH
- ☞ PUBLIC WORKS AND HIGHWAYS
- ☞ AGRARIAN REFORM
- ☞ LOCAL GOVERNMENT
- ☞ TOURISM
- ☞ DEFENCE
- ☞ AGRICULTURE
- ☞ TRANSPORTATION AND COMMUNICATION

LEGISLATIVE

- ☞ SENATE
- ☞ HOUSE OF REPRESENTATIVES

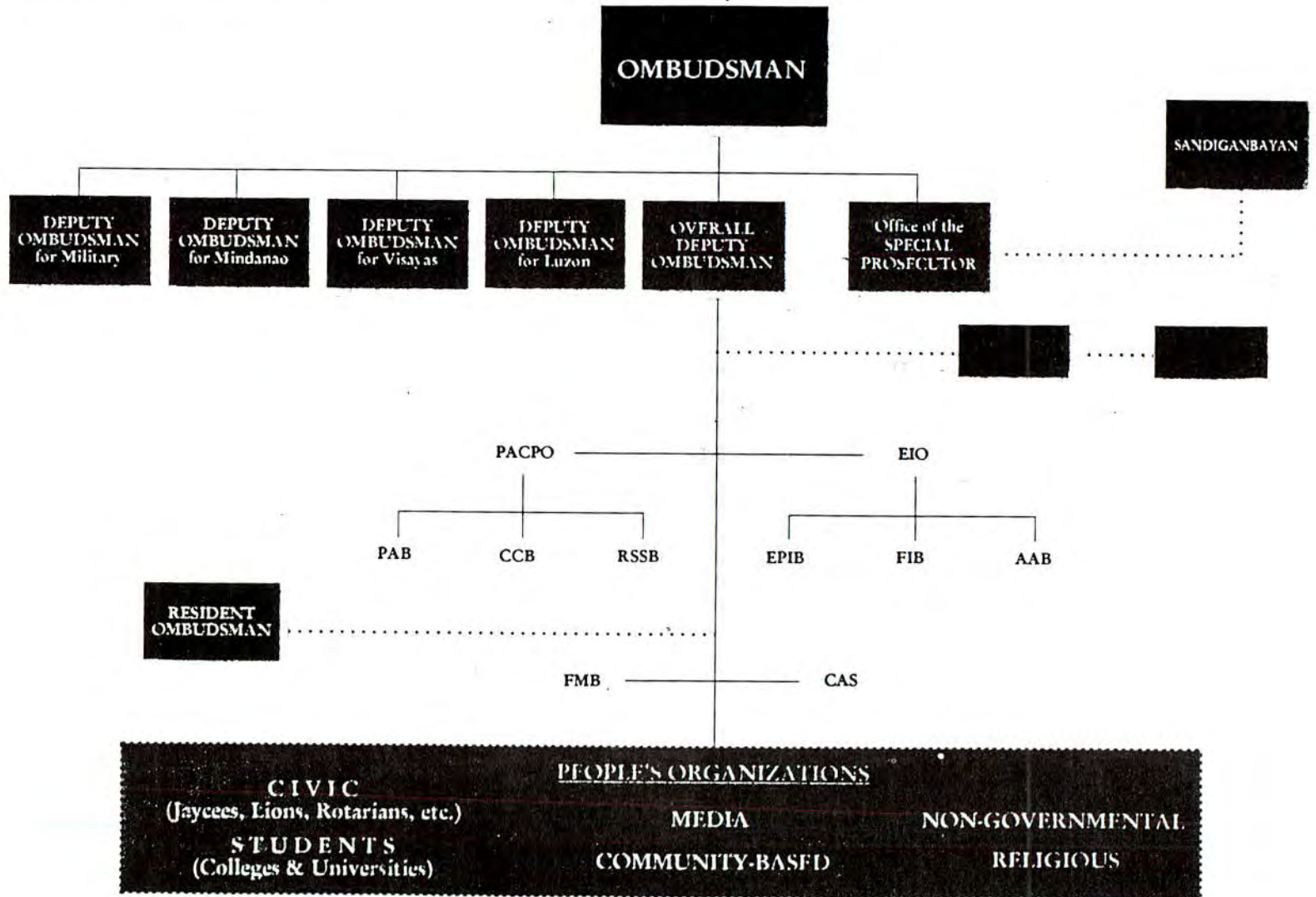
JUDICIAL

- ☞ SUPREME COURT
- ☞ COURT OF APPEALS
- ☞ SANDIGANBAYAN
- ☞ REGIONAL TRIAL COURTS
- ☞ CITY COURTS
- ☞ MUNICIPAL COURTS

**INDEPENDENT
CONSTITUTIONAL
BODIES**

- ☞ OMBUDSMAN
- ☞ COMMISSIONS:
 - a. AUDIT
 - b. ELECTION
 - c. CIVIL SERVICE
 - d. HUMAN RIGHTS

FUNCTIONAL ORGANIZATIONAL CHART OF THE
OFFICE OF THE OMBUDSMAN



OFFICE OF THE OMBUDSMAN

PRINCIPAL FUNCTIONS

PUNITIVE POWER	PREVENTIVE/CORRECTIVE/REMEDIAL AUTHORITY
<ul style="list-style-type: none"> ➤ INVESTIGATORY POWER <ul style="list-style-type: none"> - CRIMINAL - ADMINISTRATIVE - FACT-FINDING ➤ PROSECUTORY POWER <ul style="list-style-type: none"> - SANDIGANBAYAN - REGULAR COURTS 	<ul style="list-style-type: none"> ➤ DIRECT ANY GOVERNMENT OFFICIAL / EMPLOYEE/ GOVERNMENT AGENCY <ul style="list-style-type: none"> a) Perform or expedite any act or duty required by law b) Stop, Prevent and Correct any Abuse or Impropriety in performance of duties <ul style="list-style-type: none"> - REQUESTS FOR ASSISTANCE - APPOINT & MONITOR RESIDENT OMBUDSMAN <ul style="list-style-type: none"> - Workflow Chart - Gather Evidence - FILING OF SWORN STATEMENT OF ASSETS AND LIABILITIES ➤ ACTIVATE AND MOBILIZE PEOPLE'S ORGANIZATIONS <ul style="list-style-type: none"> - CIVIC (Jaycees, Lions, Rotarians, etc.) - STUDENTS (Colleges & Universities) - MEDIA - COMMUNITY-BASED - NON-GOVERNMENTAL - RELIGIOUS - LECTURES / DIALOGUES / SYMPOSIA
<ul style="list-style-type: none"> ➤ POWER OF INQUIRY ➤ CONTEMPT POWERS <ul style="list-style-type: none"> - To mobilize public and private resources for the promotion and delivery of efficient and corrupt-free government services to the people. 	

COUNTRY PAPER: THE REPUBLIC OF SUDAN
PRESENTED BY: DR BARAKAT MUSA EL-HAWATI, PRESIDENT,
PUBLIC CONTROL & ADMINISTRATIVE
EVALUATION BUREAU (OMBUDSMAN).

In the Name of Allah, Most Compassionate, Most Merciful
PUBLIC CONTROL AND ADMINISTRATIVE EVALUATION BUREAU (PCAEB)
FUNCTIONS, MECHANISMS, RELATIONS WITH SIMILAR ORGANS
AND PROSPECTIVES

PCAEB President and former Professor of Administrative Law at the Institute of Diplomatic Studies of The Ministry of Foreign Affairs, Kingdom of Saudi Arabia, Professor of Administrative Law, Graduate Studies, Faculty of Law, University of Khartoum and Faculty of Law and Al Neelain University, High Military Academy, Department of Graduate Diplomatic Studies, Faculty of Arts, University of Khartoum and The Sudan Academy of Administrative Science.

Prologue:

This paper is concerned with the determination of the functions of the Public Control and Administrative Evaluation Bureau, demonstration of the methods and means for the performance of its duties, investigation of performance impediments, and, subsequently proposition of remedial measures for the treatment of its ailments and amendment of its flaws.

In view of the above mentioned, presentation is scheduled as follows:

1. Definition of public control and illustration of the nature of public control organs and activities.
2. Brief review of past experience and its implications.
3. PCAEB functions and duties in respect of:
 - a) Objectives, jurisdiction and authority.
 - b) Mechanisms.
 - c) Relations with similar organs.
 - d) Evolution and future prospectives.

Firstly: Public Control: definition and role:

1. One of the main objectives of the state, any state, is to satisfy the material and moral (spiritual) needs of its citizens, defined in its public policy, through its executive system. Assuming, of course, that such system is com-

petent and effective enough, to attain public content. The achievement of such goals invariably requires scrutiny and vigilance for shortcomings and defects, and, subsequently, the treatment of what may come to be discovered of administrative financial and criminal offences, in accordance with the provisions of law and in conformity with the norms of justice and equity. In other words, control to make sure that actions and decisions taken by the administration are in accordance with the provisions of law, and in order to ensure the efficient and effective performance of administrative organs, within the context of the legislative and technical policies, objectives and rules set therefore.

2. Viewed through this scientific perspective control goes beyond the classical high-handed authoritarian approach of fishing for flaws and errors of individuals, to suggest the more accommodative concept of gearing all available resources to serve the ultimate goal of achieving higher productivity, in minimum possible time, at minimum possible cost and with best possible returns. However, as the role of control, in such manner, naturally covers all functions of the state, the need arises for a competent and fully authorised control organ.

The role of public control can be summed up as follows:

- a) To investigate and inquire into causes of poor performance, mal-administration and deterioration of standards.
- b) To monitor, within the scope of its jurisdiction and according to the provisions of laws, the enforcement of legislations that govern and control public service and to make sure that both decision making and action of public servants is based thereon.
- c) To refer discovered financial, administrative and criminal cases to the respective competent authorities.
- d) To examine, trace and investigate public grievances and monitor mass-media reports.

Secondly: Control organs evolution:

1. The idea of public control is as ancient as human civilisation itself. There is a wealth of historical records on ancient public control systems and principles. We may as well point out the fact that both the Mohtasib (Controller) and Mazalim (Redress) chambers are considered among the advanced systems of control on public administration, and labour and public relations in government institutions. According to Prof. Victor Pickl¹ the idea of the OM-

1 The Ombudsman Journal, No. "6", 1987, pp 101-107

BUDSMAN, first conceived in Sweden in 1809, was based on the model of these two systems. Public control organs may differ in name from one country to another, yet, the essence remains one and the same to safe-guard workers and citizens rights against violation by public servants and government agencies.

2. In view of their capital objective state organs designed to control the performance of the executive are entitled to the following:
 - a) The right to monitor and investigate incompetent and defective aspects of performance.
 - b) Independent management as a parastatal supervised by the Head of State or the legislature.
 - c) Appointment of chair-persons by the Head of State or the Legislature.
 - d) Appointment of aids by the chair-person or on his recommendation at least.
 - e) Special work conditions and prerogatives.
 - f) Immunity against prosecution unless caught red-handed.
 - g) The right to inquire into all cases deemed to impede public service expediency.
 - h) Access to all documents and papers, classified or unclassified, and the right to withhold such if deemed necessary.
 - i) The right to initiate corrective and precautionary measures.
 - j) The right to verify the conformity of the performance of officials and authorities concerned with technical and legal rules and regulations.
 - k) The right to summon and question persons deemed to have relevant information.
3. For purposes of the above mentioned control authorities must:
 - a) adhere to the rule of law and follow due legal procedure.
 - b) Guarantee the right to self-defence.
 - c) Justify all resolutions.
 - d) Be objective and impartial.
4. The chronology of the Sudanese experience in public control runs as follows:
 - a) Radu'l-mazalim (redress) and Ihtissab (control) based mainly on the Islamic discipline of "Al-Amr-bil-ma'rouf wa' l-nahiu an-i 'l-

munkar” (advocacy of benevolence and reprehension of bad attributes) during the Mahdist reign.

- b) Appointment of Rudolf Zlatin Pasha by the British colonials to the post of Inspector General in the Sudan, following the establishment of their rule in the country at the turn of the century. His function, however, was largely confined to financial aspects (taxes and excise).
- c) Nothing came to be heard of the word until 1968, when the establishment of “Administrative Control Chambers” was mentioned in the draft constitution tabled in the Constituent Assembly, whereby the proposed organ would have been affiliated to the assembly with a 7 year term of office, had the draft bill been adopted.
- d) In 1969 the issue was again raised in the First Administrative Reform Conference, with proposals that ranged from the Latin (Western) model of administrative courts, to the parliamentary model of the OMBUDSMAN.
- e) In 1970 the May regime founded the “Public Control Bureau” and assigned to it the following tasks:
 - 1. Monitoring the performance and conduct of public servants.
 - 2. Investigating cases of corruption, favouritism and abuse of public office.
 - 3. Entertainment of individual grievances and enquiry therein within jurisdiction.
 - 4. Any other tasks assigned to it by the “Revolution Command Council.”
- f) In 1981 the Control and Administrative Inspection Bureau was founded and charged with the following duties:
 - 1. ensuring optimal investment of resources.
 - 2. Ensuring effective enforcement of laws.
 - 3. Securing sound administrative, financial and technical performance and revealing weaknesses, therein.
 - 4. Conducting research work.
 - 5. Introducing scientific methods and modern systems.
 - 6. Pursuing inspection findings.

Any other tasks assigned to it by the Head of State.

5. What happened, in fact, is that control as an active ingredient of public administration was never consistently present at any time for various reasons among which:
 - a. Human resources constraints.
 - b. Infringements and abuse of power.
 - c. Workers and, perhaps, citizens scepticism.
 - d. Political monopoly (confiscations for example).
 - e. Conflicts triggered by encroachment of some parties on the domains and powers of others.
6. Findings derived from the past experience of public control practice in the Sudan are:
 - a. The main principle of the philosophy of public control should be the revision of the public administration system in such a way as to effect proper orientation, discipline and perfection, and, consequently, optimal productivity.
 - b. The rule of law must be sanctioned in the process.
 - c. Co-ordination between the different departments and officials must be attained while barring infringements and overlaps.
 - d. Objective recruitment of cadres and work planning, is essential, and
 - e. Provision of enough resources for effective function.

Thirdly: The Public Control and Administrative Evaluation Bureau (PCAEB) (OMBUDSMAN)

Introduction:

1. Within the context of the "National Programme for Public Service Reform and Revolutionisation" the Revolution Command council and the Council of Ministers declared, in their joint session of January 14, 1990, their approval, in principle, of the establishment of an institution for controlling the performance of the executive. A high ranking technical committee on the issue was formed, that delivered its report and recommendations in June 1990. Since then and up to the time an act on the establishment of PCAEB was issued by way of a provisional decree in 1994, and adopted by the Transitional National Assembly on February 2, 1995, the project was subjected to close scrutiny and lengthy debate. Furthermore, it was examined by various experts during conferences on public control attended by the Sudan.

2. PCAEB objective as defined in Section (5) of the said act, is to realise without prejudice to the generality of the context, the state policy aimed at the creation of an objective public service, which is competent enough to match the requisites of effective high quality performance, in line with the Islamic state principles upheld by the Government of Sudan, by the following means:
- a. Ensuring that the rule of law prevails over the decisions and actions of the executive and public servants.
 - b. Deep-rooting good morals and attributes.
 - c. Detecting weak and defective points of performance with the aim of amending such, in consultation with the authorities concerned.
 - d. Revealing instances of corruption, favouritism and prejudice and controlling such and addressing underlying causes.
 - e. Ensuring that:
 1. Laws, rules and regulations and administrative orders and resolutions governing the performance of units are appropriate and adequate therefor and that they are being applied effectively for the achievement of the set objectives in conformity with the policies and orientations of Islamic rule.
 2. Public services are rendered to the public efficiently and effectively and that public servants involved are practising the powers and authorities entrusted to them without over-action, favouritism or abuse of public office.
 3. State revenues are properly channelled to serve public interest according to the public policy and Islamic orientation of the state as stipulated in the laws that govern public expenditure.
 4. Units functions run in harmonious cooperation and do not overlap, counter or contradict each other as regards their objectives, jurisdiction and powers.
 5. Public servants are eligible for the posts they hold subject to the terms and conditions set therefor.
 6. Confidence is built in such a way as to maintain awareness of the administration and the public of their mutual obligations.
 7. Good relations are maintained with similar institutions.

- f) In view of this concept of the objectives of public control the main functions or, perhaps, the legal duties and responsibilities of PCAEB may be described as follows:-
1. Inspection of public service units with the aim of upgrading performance and enhancing efficiency.
 2. Reception of complaints on the performance of public service units and conduct of public servants, investigation of reasons for such complaints and remedy of mal-function in collaboration with the authorities concerned.
 3. Investigation of reasons behind defective performance of public service units and treatment of such.
 4. Detection of financial and administrative contraventions, application of appropriate measure for administrative enquiry, reference of cases to competent authorities for action and follow-up of such.
 5. Reference of criminal cases discovered and proved in the inspection to competent authorities for action and follow-up procedure.
 6. Performance of studies and research work on the improvement of methods and optimisation of performance.
 7. Any other tasks assigned to it by the Head of State or deemed expedient for the performance of its duties.
- g) In view of the said functions or duties and responsibilities PCAEB enjoys the legal status and competence to act as follows:
1. Summoning any person for interrogation based on valid reason for such or if such person is deemed to have valuable information on the matter under investigation.
 2. Ordering the delivery of any papers, data, documents, records or books and other relevant material, whether classified or unclassified, for inspection, with authority to retain such if deemed appropriate.
 3. Forming enquiry and/or inspection committee from within the bureau or with extramural membership.
 4. Issuing directives to institutions concerned on curbing financial and administrative mal-function.

5. Dissemination of parts of or excerpts from PCAEB reports for public information if deemed appropriate.
6. Recommending cessation of any administrative procedure deemed in contradiction with the laws, rules or regulations in force.
7. Advising authorities concerned to suspend any public servant if so comes to be necessary in the course of inspection.

Fourthly: PCAEB Mechanism:

1. What is meant by the term mechanism is the complex of legal means and procedures necessary for the attainment of goals. Thus we may as well say that PCAEB mechanism features:
 - a. Best organisation for the achievement of objectives, for which purposes PCAEB functions have been shared among its five main departments, which are the departments of follow-up and evaluation, complaints (grievances), technical affairs, information and research and statistics, beside the auxiliary department of Financial and Administrative Affairs.
 - b. Man-power most competent for the attainment of PCAEB goals (quality wise), whereon it has been decided to keep the actual size of the bureau to the minimal requirement. The bureau, however, may seek the help of experts and scholars, who shall be selected for the membership of committees, from a special list of names. Besides, this being a period of transition from administrative reform to public control, training of the bureau's workers is imperative.
 - c. Comprehensive data base that comprises adequate information on the executive as regards objectives and technical rules that govern the system's function (e.g. man-power statistics, distribution, occupations....etc.) and other material relevant to the process of evaluation and rectification.
 - d. Good contacts with the mass media with the aim of monitoring public opinion and citizens' grievances on decisions and actions of public officials, and investigating and pursuing potential cases of mal-function.
 - e. Appropriate response to public complaints delivered directly to the bureau, within the context of its jurisdiction.
 - f. Continuously updated profile of the general situation via:
 1. Field survey

2. Inspection
3. Investigation

However, two important facts must be mentioned here:

First: That PCAEB is not meant to dominate over the executive whereon its competence is limited, in respect of corrective measures, to issuance of recommendations and directives and follow-up (cooperation rather than orders).

Second: That no public office is beyond the limits of PCAEB jurisdiction, whereon punitive action is provided for at all levels and for all offences.

A remark also worth mentioning is that PCAEB shall pursue a policy of more public enlightenment on the theoretical concept of the idea of public control, for further establishment of the practice.

2. Having commenced operation only on January 15, 1996, PCAEB was immediately confronted with challenging issues that are not few or simple to match easily, these include:
 - a. The need to correct the concept of public control, in the sense that it constitutes an intrinsic part of the administrative process, and not a superimposed action aimed at incriminating people or counting their breath.
 - b. The difficult situation ensuing from the paradoxes of the above-said common belief as opposed to the fact that PCAEB is a vigilant eye of the state that safeguards public interest.
 - c. The heavy legacy of adverse effects left by the past experiences of public control (1970-1971) and administrative inspection (1981-1985).
3. Citing the above said, it is easy to perceive that PCAEB's mechanism is both simple and adequate, this being a target of the project in itself, as complexity and repetition of procedures in PCAEB's performance or its relations with other similar institutions, are impediments to the public control process.

Fifthly: PCAEB's relations with other public control organs:

1. We have previously pointed out in this paper, the necessity for exercising control over the performance of the executive, which, like all other human activities is liable to human error, misjudgement and infringements, and must, therefore, be scrutinised and corrected where necessary, thus making public control a necessity for the following reasons:
 - a. The complexity and diversity of activities practised by the executive.

- b. The terms of reference, discretion, exceptional powers and privileges enjoyed by the administration.
 - c. The ultimate goal of attaining public content through competence and proficiency.
 - d. The need to assert that powers entrusted to public officials by virtue of their status represent public and not personal interest and must, therefore, be controlled.
2. To examine PCAEB's relations with other control organs we must first come to know the existing types of control activities, divided, generally according to the nature of the institution charged with the duty, i.e. political, administrative or judicial. In this sense these organs form control circuits that interact and complement each other without infringement.

2.1 Public opinion control:

Control is achieved here under the influence of judgement or opinion made by the majority of the population on a certain issue of public interest, in what has come to be termed as community control, which is a main tributary of public control dynamics in certain areas (e.g. some aspects of organised crime).

2.2. Political Systems Control:

This is typical of totalitarian regimes, exemplified in the party control as was the case in the former USSR, political system control of earlier times in Egypt and the Sudan, and the more recent experience of communal and popular committees and the National Congress introduced by the National Salvation Revolution in the Sudan.

2.3 Parliamentary Control:

This type is based on the principle of collective responsibility (the ministry as a unit) and individual responsibility (the minister as chief-executive in his domain) is effected by means of enquiry and response in the house or investigations by expert parliamentary commissions, and include presentation of clarifications on issues and grievances investigated by such commissions and discussion and adoption of state programmes and budgetary proposals.

2.4 Presidential System Control:

Presumably, in these systems, powers are clearly delineate in such a way as to facilitate unsupervised performance of functions and duties, independently, by respective authorities. But, in practice, the case is different. Invariably, all experiences of these systems, have shown a growing tendency towards interference (e.g. powers vested by the American Constitution on both the Presidency and Senate in respect of the appointment of high public officials, ratification of treaties. etc.) and proved the existence of some type of control over the executive.

2.5. Parliamentary Control in the Sudan:

2.5.1. The Administrative Control Commission of the 3rd Peoples Assembly was formed by the May regime under the provisions of Article "181" of the Permanent Constitution, 1973, and charged with the task of receiving and investigating public complaints against harm inflicted upon any person or group because of any administrative decision or action marred with anything of the following:

- Favouritism, corruption or prejudice.
- Contravention of appropriate procedure.
- Negligence.
- Ineptitude.
- Loss of documents and papers.
- Traction and elusiveness.
- Unjustified discrimination.
- Any other thing similar to the above mentioned.

2.5.2. The Administrative "Hisba" (Control) Commission of the Transitional National Assembly, founded in accordance with the provisions of the Fifth Constitutional Decree, Section 7/3/K, is charged, under Section 46/11 of TNA Organisation Code, 1992, with the following:

- Reception of petitions and complaints on administrative performance from Federal Departments.

- Investigation, on approval thereof by the Head of State, of any grievance or issue within the responsibility of the Federal Government executive and any other issue pertinent to public life of interest.
- Evaluation of the performance of disciplinary-action systems of the civil service counter illicit-wealth and irregularity of organs and public control units in general.
- Evaluation of plans, programmes, projects, procedures and other issues concerning public service organisation.

Comparing the functions, past and present, of political control represented in the former Peoples Assembly “Administrative Control Commission” and the “Administrative Hisba (control) Commission” of the Transitional National Assembly, with the functions of administrative public control represented in the “Administrative Control and Inspection Bureau” of 1985 and PCAEB, it can be seen that no contradiction exists between the functions of the two control systems despite the apparent dichotomy. It can thus be deduce that:

- a. Legislative control is confined to the political domain, in that the results of its findings are not binding to the executive.
- b. Administrative control makes decisions and follows up the procedure that entails such decisions.

3. **Judicial Control:**

What is meant by judicial control is the control practised by courts (administrative and ordinary courts) over the functions of the executive, through verification of the legitimacy of its decisions and actions, bearing in mind that courts are basically competent to abolish all unlawful decisions and actions of the executive. In this sense control is seen as a safe-guard for peoples rights against infraction, mal-treatment or abuse of power by public officials. According to the renowned Sudanese jurist and scholar Ho. Mohammed Mahmoud Abu Gisseissa. “The Sudan uses a unified system of judicial control, in which ordinary courts can hear cases filed against decisions and actions of the executive, while other countries use the State Council or administrative court system.”

Also, that “administrative decisions considered by ordinary courts, are decisions issued by authorities concerned on incidences where these authorities exercise powers entrusted to them by law.”

The Judicial Control system also comprises the former "Committee for workers Appeals", on which a judicial precedent says: "The Legislature deemed it appropriate, for historical, social and legal considerations, to assign the duty of examining all decisions concerning the appointment and promotion of public servants or the enforcement of civil service laws and rules and regulations (Section 30/S "of the Public Service Act, 1973), to the "Committee for Workers Appeals", which is considered as quasi-judicial or parallel to a court of law, with independent functional competence. In other words this committee is in fact, a court despite its denomination". This committee was, however, dissolved by Presidential Decree No. (367) of 18/9/80 and an interim committee, with similar arms of reference, was appointed by Presidential Decree No. (91) of 28.12.92.

4. Federal and State Workers Grievances Redress Chambers (Diwan-ul-Mazalim).
 - 4.1. **Federal Chambers:** responsible, exclusively for the consideration and judgement of:
 - 4.1.1. Grievances and complaints of the higher echelon public servants against misapplication of the laws and rules and regulations that govern and organise public service performance.
 - 4.1.2. Appeals of higher echelon public servants filed against disciplinary councils' decisions.
 - 4.1.3: Challenges to disciplinary councils decisions by authorities concerned in matters concerning:
 - a. Disciplinary termination of office.
 - b. Demotion.
 - 4.2. **State Chambers: responsible for:**
 - 4.2.1. Reception and processing of grievances and complaints of public servants against the misapplication of laws, rules and regulations that govern and organise public service performance, filed by:
 - a. Workers in Federal units with offices in states.
 - b. Workers in state departments and units.
5. Reception and processing of appeals filed by both the authorities concerned and the public servants against disciplinary council's decisions for reasons of:
 - a. Incompetence.

- b. Formality disorder.
- c. Contravention and misinterpretation of laws and rules and regulations.
- d. Abuse of public office and power.
- 5.1. Grievances and complaints are accepted only after exhausting all administrative procedure therefor.
- 5.2. Reception of a grievance or appeal does not imply suspension of the appealed decision unless so directed by the authority concerned.
- 6. The implications of the above mentioned specifications and conditions for complaints are:
 - Unification of goals in stressing the rule of law, where the chambers may finally abrogate the appealed decision, while PCAEB may only order the suspension of the decision, i.e. precautionary action.
 - PCAEB may take the initiative or react to complaints or requests of parties concerned, while the chambers operate only on complaint.
 - Both the chambers and PCAEB are entitled to order the delivery of any documents or papers, but the following should be mentioned in this respect:
 - The chambers right to interrogate an evidence on valid confession.
 - The right of PCAEB to retain the obtained documents and papers.

Sixthly: Advancement and Future Prospectives:

Public control institutions are, in view of the above said concepts and mechanisms, basic tools for the achievement of administrative stability and building of confidence. It thus seems necessary to:-

- a. Establish co-ordination between these control systems in the form of a permanent council.
- b. Clarification of the idea and concept of public control.

COUNTRY PAPER: **THE REPUBLIC OF KOREA**

PRESENTED BY: **MR DAE KYN SHIN, OMBUDSMAN.**

1. Historical Background:

As a unique model of administrative ombudsman, the Ombudsman of Korea was established in April 1994 by a new Basic Act on Administrative Regulations and Civil Complaints. The Basic Act was promulgated on the recommendation of the Presidential Committee for Administrative Innovation in January 1994. By stipulating general principles and procedures of government regulations and introducing the Ombudsman of Korea in a unified act, the Basic Act upholds the fairness and transparency of public administration and protects citizens' rights.

In order to aid fast and fair services from public administrators, Korea stipulated rules at the level of Presidential decree in 1949 providing common procedures and standards which all administrative agencies should follow when they process applications for permits and licenses, complaints, etc. In 1971, the Office of the Joint Government Counselling Service (hereafter called JGCS) was created to take whole responsibility for receiving and resolving a wide range of complaints and grievances against public administration. For decades, along with administrative efforts to simplify and clarify administrative procedure of permits and licenses, etc. the Korean Government has also incessantly advocated scraping obsolete and unduly burdensome regulations which hamper the creativity and energy of the people.

From the viewpoint of individuals and businesses, however, substantive improvements were not achieved because of the reluctance and resistance of the Ministries concerned with any loss of their bureaucratic powers and the possible adverse effects as a result of deregulations. There still remained a number of problems: a complexity of laws and regulations, discrepancies between unrealistic rules and practices, a vicious circle of the relaxation of existing regulations and new regulations or deregulations, confusion surrounding ambiguous criteria and discretionary interpretations, irksome administrative processes and excessive paperwork requirements.

On the other hand, the JGCS scheme was not used as much as originally expected; it was probably due to the weakness of a legal basis for its functions and powers. Major portions of complaints received by the JGCS could not be investigated and handled by its own staffs, and were merely transferred to the agencies concerned. The result was that the services were not able to meet the ordinary people's expectation, and that the public was less tolerant of any breach of courtesy, delay, and laxity in the government's administration.

Recognising the greater necessity for overcoming these repeated problems, President Kim Young-Sam, who initiated far greater reforms than those of any previous regime, decided to enact the Basic Act mentioned above and at the same time, to establish the Ombudsman of Korea in order to maximise the capacity of complaints handling and to secure the public's trust in government.

2. Arrangements for Complaints Resolution:

Korea did not have an institutionalised ombudsman for the resolution of citizen's grievances on both the central and local level of governments until the establishment of the Ombudsman of Korea. The role had instead been played by various agencies on the basis of their own organisational functions. They are the Presidential Office, the Prime Minister's Office, the Board of Audit and Inspection (hereafter called BAI), the Ministry of Government Administration (through the operation of the JGCS), and individual counselling units of each Ministry and local government as a channel of receiving and resolving grievances within its jurisdiction.

However, the JGCS has occupied the central positions in the overall structure of complaint-resolution mechanisms. The Presidential Office and the Prime Minister's Office receive complaints filed directly to the President or the Prime Minister. But the scope of investigations by their own staffs is limited to such cases as those relating to corruption or potential social disturbances, and most of the individual cases are simply handed over to the JGCS.

The BAI, which is attached directly to the President, carries out a kind of grievances relief functions incidentally given to its main duties of accounting audit and administrative inspection. Disappointedly, however, administrative control by the BAI has been exercised mainly for the sake of ex-post-facto punishment, hence the wide spread tendencies of laxity attitude and self-protectionism among civil servants.

On the other hand, most of the agencies and local governments are naturally reluctant to admit and correct their own mistakes, and usually make plausible excuses. It is possible because public officials tend to adhere strictly to precedents and texts provide in laws and guidelines.

There are also formal avenues for remedying the people's rights and interests infringed on by illegal or unfair dispositions for example, the administrative appeal procedure and administrative litigation (the former is the prerequisite to the latter in Korea). Although these formal systems can play a role in correcting maladministration, citizens find them not easy to access because they are slow, expensive and usually not appropriate for the variety of grievances. Too often a citizen who suffers from the abuse or indignity at the hand of a government agency simply accepts the injustice because an attempt to secure a remedy seems too complex or useless.

3. The Joint Government Counselling Service:

The agency was created in 1971 and reorganised in 1980 as an attachment organ of the Ministry of Government Administration (hereafter called MOGA), which takes a complete charge of administrative improvement. The JGCS undertakes a number of functions as follows:

1. to receive and process public grievances concerning the operation of the government, and provide necessary information and consulting service;
2. to guide and inspect the counselling units of each administrative agencies including local authorities, for the purpose of ensuring that civil applications for permits and licenses, etc. are administered in a fair, expeditious and democratic manner;
3. to operate the system of administrative counsellors in local authorities.

The jurisdictional coverage of the JGCS includes administrative agencies of both the central and local government with regard to the administrative affairs handed over by the central government. The scope of complaints filed to the JGCS is basically open-ended. However, the cases below cannot be handled by the JGCS:

1. a case which requires political or highly technical consideration;
2. a case under criminal investigation;
3. a case pending in administrative litigation or administrative appeal/review procedures by the competent administrative bodies;
4. decision of the court has been issued as a result of the procedure cited in the above 3 cases.

To aid the JGCS's exercise of good offices, especially in cases which are hard to resolve due to the conditions of laws and regulations, budgetary expenditures and government policies, the Review Committee for Complaints was created by ordinance of the MOGA in 1990. The Review Committee, chaired by the JGCS director general, is composed mainly of officials designated from the Presidential Office, the Prime Minister's Office, the BAI, the MOGA and the Government Legislation Agency. According to the decision of the Review Committee, the JGCS urges the agencies concerned to reconsider the cases or recommends to change the current laws and regulations, or otherwise persuades the complainants with possible alternatives.

4. The Ombudsman of Korea:

The Ombudsman of Korea was established in April 1994 upon the enactment of the Basic Act on Administrative Regulations and Civil Complaints. The Ombudsman has the legal power to investigate complaints and to make and publicise its recommendations. It also has the power to subpoena witnesses, to investigate documents and other evidences, and to access to information held by any government agency.

The Ombudsman is able to address administrative actions that are:

1. contrary to laws or regulations;
2. unreasonable, unfair, oppressive, or inconsistent with the general course of an administrative agency's functions;
3. mistaken in laws or arbitrary in ascertainment of facts;
4. improper in motivation or based on irrelevant consideration;
5. unclear or inadequately explained when reasons should have been revealed;
6. inefficiently performed, or
7. otherwise objectionable.

After reviewing a complaint, the Ombudsman can state the recommendation(s) to the agency concerned if the Ombudsman has the opinion that an administrative agency should consider the matter further; modify/cancel administrative actions, provide a more complete explanations of the actions in question, after regulations or procedures to prevent similar complaints, or take any other steps.

Agencies are required to give the Ombudsman any assistance or information deemed necessary by the Ombudsman. If so requested, the agency should inform the Ombudsman of the actions taken on the recommendations or the reasons for not complying with them within 30 days. The Ombudsman should submit an annual report on the operation of the Ombudsman to the President and publish it to the public.

The Basic act gives the Ombudsman the power to investigate only the received complaints. The term "administrative agency" means any department, office or other unit of both central and local governments, or any public corporation, association or individual who exercises the entrusted administrative authority; but the administrative agency does not include the President, courts or judges, members of the National Assembly, the BAI, and local councils.

And "administrative work" includes every action (such as decisions, omissions, inactions, recommendations, practices, or procedures) of an administrative agency. But the Ombudsman does not have jurisdiction over the matter:

1. relating to personal privacy;
2. which fall under prosecutorial jurisdiction;
3. for which administrative appeal and litigation procedures under other relevant laws are in progress;
4. for which settlement procedures between the parties are in progress by way of compromise, mediation, conciliation, arbitration, etc. pursuant to statutory provisions;
5. which have been settled through the procedures cited in 3 or 4;
6. which the Ombudsman considers inappropriate to be handled: For example, the Ombudsman has the power to decline to investigate complaints where there is the reason to believe that the complainant's interest is trivial, frivolous, not made in good faith, or complaint is too old.

There have been many difficulties to enhance community access to the Ombudsman according to the operational results of the Ombudsman of Korea for the last one and a half years. I want to express my opinion about the problems the Ombudsman of Korea confronted in the aspect of statutory barriers in particular and some suggestions to enhance community access to the Ombudsman of Korea.

The Ombudsman of Korea is attached to the Prime Minister and the whole task of the Ombudsman is undertaken by the government officers of the JGCS. However, there is no doubt that the Ombudsman performs its duties independently of the government as well as impartially to both the complainants and administrative agencies.

The Ombudsman of Korea is composed of 5 Ombudsmen, including one standing ombudsman. The President of Korea appoints or commissions the Chief Ombudsman and 4 other Ombudsmen among the civilians recommended by the representatives of social organisations as being highly respected as well as knowledgeable in public administration, or at most one ombudsman from those who are serving or have served in the government.

The tenure of the Ombudsmen is three years and can be renewed once. To ensure the independent status of the Ombudsman of Korea, the Ombudsmen cannot be a member of the National Assembly, local councils, political parties, and cannot be an employee of organisations or corporations having special relationship with administrative agencies.

In order to make the system to take root in the shortest period, the Ombudsman of Korea makes a practice of investigating all the received complaints including even trivial or frivolous ones. There are many barriers the Ombudsman of Korea has confronted during its operation. The Ombudsman of Korea wants to emphasise the necessity of the reformation of legislative structure in particular for the enhancement of community access to the system. The following section deals with these statutory barriers and suggests some solutions for the barriers.

A. The Necessity of Unitary Legislative Structure:

The Basic Act on Administrative Regulations and Civil Complaints in April 1994 states the proceedings of administrative complaints, the prior review on the administrative control and the establishment of the Ombudsman of Korea in an act. In terms of legal structure, the Basic Act has some problems in comparison with those of other countries who adopt one unitary legal structure for the Ombudsman. The unreasonable legal structure was caused by the consulting process or adopting the newly born Ombudsman system in Korea. The consulting process required the Ministries concerned unanimous approval on the condition that the newly born organisation should not infringe on their jurisdiction as stated in the Basic Act. The establishment of the Ombudsman in Korea was based upon the desire of citizens to access easily to the Ombudsman for sustaining administrative complaints.

Although the Ombudsman of Korea is attached to the Prime Minister, there are no clauses requiring the Ombudsman of Korea to report to the Prime Minister and specifying the Prime Minister to support the organisation. Instead of the Prime Minister, the JGCS under the MOGA assists the operation of the Ombudsman of Korea. The manpower of the Ombudsman of Korea is very limited; 5 Ombudsmen including the Chief Ombudsman and 7 Ombudsman Advisors. The budget of the Ombudsman of Korea is included in the JGCS. The JGCS supports their manpower to the Ombudsman of Korea in investigation and administration.

To guarantee the independence of the Ombudsman of Korea in dealing with complaints, it is necessary to have its own staffs and budget. However, the Ombudsman of Korea does not have his own manpower except for 7 Ombudsman Advisors, and almost all of the investigators are seconded from the Ministries and the City of Seoul.

B. Jurisdiction:

One of the main reasons to constrain the proper functioning of the Ombudsman of Korea is the statutory regulation stated in the article 16 section 1 of the Basic Act on the function and jurisdiction of the Ombudsman. The article articulates the exclusion of some complaints which fall under prosecutorial jurisdiction. The article also excludes certain complaints for which administrative appeal and litigation pro-

cedures under other relevant acts are in progress for the efficient sustain of complaint. These exclusions prevent the complainants from accessing to the Ombudsman.

Certain complaints are also excluded when the Ombudsman considers inappropriate to handle. For example, the Ombudsman has the power to decline to investigate complaints where there is the reason to believe that the complainant's interest is trivial, frivolous, not made in good faith, or the complaint is too old.

Furthermore, the complaints which do not directly influence to complainant's interest are not included in the jurisdiction. However, because there are such grievances with no direct interest to the complainants as traffic congestion and environment pollution, these kinds of public grievances should be included in the jurisdiction. Meanwhile, as stated in the clause 4 of the article 24, if the content of complaints is false or unreasonable, it cannot be included in the jurisdiction. In this case, an investigation should be preceded to decide whether the grievances are false or not.

While some Ombudsmen of certain countries under the parliamentary system are the parliamentary Ombudsman, the Ombudsman of Korea is administrative Ombudsman under the Korean presidential system. It is necessary for the Ombudsman of Korea to include all the administrative complaints except for the parliament and the judiciary ones in its jurisdiction.

C. Independent staff, budget and administration:

The investigators and administrators of the Ombudsman of Korea consist of 133 public servants seconded from all the Ministries concerned and the City of Seoul as the end of September 1995 and only 7 Ombudsman Advisors employed by the Ombudsman of Korea. Two Managing directors of the Ombudsman of Korea, who administer and assist the Ombudsman, are not appointed by the Chief Ombudsman but by the MOGA. At present the managing directors are the head of JGCS and the director of Inspection and Guidance Section of JGCS.

It is necessary for the Ombudsman of Korea to operate the office by its own staffs and budget in order to investigate certain complaints in neutrality and independence.

D. Standing Ombudsmen:

The Ombudsman of Korea consists of 5 Ombudsmen; 1 Chief Ombudsman, another 3 Ombudsman and the other 1 standing Ombudsman. While only one standing Ombudsman has full time duty in his office, the others, who have their own jobs, work on a part time basis. To enhance community access to the Ombudsman, it is necessary to make all the Ombudsmen standing and to increase the number of the Ombudsman.

The tenure of the Ombudsmen is 3 years and can be renewed once. The tenure seems to be very short in comparison with that of other parliamentary ombudsmen whose term of office is 5 or 7 years and, in some cases, lasts until their retirement. To enable the Ombudsman of Korea to take root, it is necessary to extend the tenure of the Ombudsman to 5 or 7 years to take advantage of their experiences.

For the last one and a half years operation of the Ombudsman of Korea, many complaints have been received and the detailed direct investigation process has prevented the complainants from accessing easily to the Ombudsman. There still remain many bureaucratic legal barriers in the administration fields, which require some modification and reformation of mal-administrative law, decree, ordinance and customs to achieve administrative innovation.

E. Ombudsmen Advisors:

The Ombudsman of Korea has only 7 Ombudsmen Advisors, who are directly employed by the Office. Certain problems have occurred in some complaints which were investigated by the public officers seconded from the Ministries concerned, where the complainants and the Ministries concerned are parties immediately interested.

In investigating the complaints related to their own Ministry concerned, the investigators have a trend to be reluctant to find faults with their own Ministries. In these cases, on the request of an investigator with an approval of Chief Ombudsman, such complaints are to be transferred to Ombudsman Advisors. The Ombudsman Advisors also take care of recommendations on the legal and institutional reformation for administrative innovation. Therefore the number of the Ombudsman Advisors should be increased to deal with a wide range of works.

F. Introduction of Local Government Ombudsman:

The Ombudsman of Korea was established under the Basic Act to cover all of the Ministries and authorities concerned. As the local elections of the heads of the Local Governments and the councillors of Local Councils were held on 27 June 1995, the full Local Government system started in Korea on 1 July 1995. However, in the age of localisation, there is no legal basis to establish the branch office of Ombudsman in each local government.

The complaints should be solved in the local government for the convenience of the citizens. To cover the administrative complaints caused by the local government maladministration, the Basic Act should provide a legal basis for the establishment of branch offices of Ombudsman in local areas. It is necessary to change the Basic Act to enable the establishment of the Ombudsman local offices in the local areas.

5. Conclusion:

There exist some barriers to hinder access to the Ombudsman in the aspects of geography, language, resources, and statute. Among these barriers, I emphasised in this paper the statutory barriers the Ombudsman of Korea experienced for the last one and a half years.

I dealt with statutory barriers in terms of unified act, jurisdiction, independent staff and budget, standing ombudsmen, ombudsmen advisors, introduction of local government ombudsman. As Korea is now moving toward the new era of the Ombudsman, it is necessary to expand the jurisdiction, to establish independent organisation including its own investigators, administrators, budget and to increase the Ombudsman Advisors and Standing Ombudsmen by the enactment of a unitary Ombudsman Act in the near future. Before the unitary Ombudsman Act is enacted, the Ombudsman of Korea is in the process of reforming the Basic Act to make the Ombudsman more accessible.

The Ombudsman of Korea is now under progress in spite of its statutory barriers. As a unique model of administrative ombudsman, the Ombudsman of Korea devotes greatly to the new era of decentralisation and deregulation of Korea. I am quite sure that the Ombudsman of Korea will successfully enhance community access to the Ombudsman in the near future.

COUNTRY PAPER: **THE HASHEMITE KINGDOM OF JORDAN**
PRESENTED BY: **DR ABED ALI SHAKHANBEH, PRESIDENT,
BUREAU OF ADMINISTRATIVE INSPECTION AND
CONTROL.**

Mr. Chairman

Honourable delegates

I would like first of all to express my gratitude to the Islamic Republic of Pakistan for having invited me to attend this conference.

The invitation was a great honour to me personally and to the Hashimite Kingdom of Jordan.

Secondly, allow me to express my sincere appreciation to Mr. Abdul Shaku-rul Salam, Ombudsman of Pakistan for the facilitation which has enable me to attend this conference.

May I also express my thanks to the Government of Pakistan for hosting this important conference and for the warm reception accorded to me since my arrival in Karachi.

Mr. Chairman

Honourable delegates

Countries all over the world realise the importance of establishing organisa-tions to fight corruption, organisations which are responsible for monitoring the per-formance of public institutions. And they also realise the importance of Ombudsman like institutions working for the redressal of grievances of ordinary citizens against public authorities.

In Jordan as in other parts of the world, and in implementation of the direc-tives of His Majesty King Hussein, and in harmony with the content of ministerial declarations of the successive Jordanian Governments regarding the struggle against corruption.

And in accordance with the United Nations Resolution which urges countries all over the world to develop comprehensive and specific strategies that enhance ac-countability, advance transparency and Justice and elevate public awareness in order to uproot corruption.

And as extension of the democracy, pluralism and freedom of thought which Jordan is enjoying under the leadership of His Majesty King Hussein. The Bureau of Administrative Inspection and Control came into existence in 1992, with the prime

goal of fighting corruption and performing Administrative Control over the Ministries and departments of the Jordanian government.

The Bureau not only performs these duties, but also acts as an Ombudsman like institutions working for the redressal of grievances of ordinary citizens against public authorities.

Through my participation in the activities of this conference as a representative of Jordan, and the Bureau of Administrative Inspection and Control, I am looking forward to the exchange of information and experience between Ombudsman and Heads of Ombudsman-like institutions of the Asian region, which will help us in Jordan to enhance and enrich our experiment.

We are also looking forward to increase cooperation between the Bureau of Administrative Inspection and Control and the Asian Ombudsman and Ombudsman-like institutions in general and the Ombudsman of Pakistan in particular.

Finally I would like to thank you for the time you gave me to address this conference and for the hospitality accorded to me and, I hope we will be able to host the conference in Jordan in the future.

COUNTRY PAPER: **THE REPUBLIC OF YEMEN**
PRESENTED BY: **DR MOHAMMAD AL-IRYANI, CHAIRMAN,**
 CENTRAL ORGANISATION FOR CONTROL AND
 AUDIT.

Mr. Chairman

I will not talk about the role my organisation plays in the field of Ombudsman because it is not its main work, it is a part of its work. Its main work is auditing and control the financial work of the government but we receive the complaints of the officials in the government, administration and the people who made contact with government in construction. So my speech will concentrate on my delegation gratitude towards the Pakistan efforts to hold this conference in its beautiful capital Islamabad.

It is a great pleasure to me to take part in this conference as the first conference of Asian Ombudsman and at this occasion I would like to express my gratitude for the warm welcome my delegate received and the generous hospitality which the brotherly country Pakistan accorded to us.

I am sure that our first conference will get the full success as it is managed and leaded by our brother Mr. Abdul Shakurul Salam, Ombudsman of Pakistan. Thank you.

COUNTRY PAPER: **NORTHERN TERRITORY OF AUSTRALIA**

PRESENTED BY: **MR PETER BOYCE, OMBUDSMAN, NORTHERN
TERRITORY**

The Honourable Mr. Justice Salam, Ombudsman for Pakistan, colleagues, ladies and gentlemen, it is an honour and pleasure to be able to present this paper to you on such an auspicious and important occasion.

I congratulate Mr. Justice Salam for organising this conference and I wish him and his staff well in their endeavours. I have no doubt this conference will be successful and will result in the establishment of an Association for the Asian Region which will be an important and vibrant forum for the exchange of information, ideas, views and experiences of those persons and entities involved in redressing the grievances of citizens in their respective countries. The Association will be an important instrument for promoting and enhancing the concept of such important avenues of redress.

I as a relative outsider in the Asian Region can observe the fantastic rate of growth that is occurring within the Region and with it the ongoing process of change which is inevitable. With growth and change comes the growth of bureaucracies and government control and regulation. It is important that there are mechanisms in place which are effective and dynamic to ensure that those bureaucracies are accountable, that they afford natural justice, administrative fairness and procedural fairness to citizens.

The fundamental role of an Ombudsman or any similar functionary is to represent the interests of the public in respect to their dealings with the administration. This role of course is not a biased one, we do not advocate for the public, we inquire and resolve whether there has been any defective administration, an error by a public servant or any unreasonable conduct. The key is that we provide an accessible avenue to complainants, we empower them to seek redress and we are always focused on this prime and fundamental role. The individual can rely on the Ombudsman to listen to them, to inquire for them, and where appropriate provide redress to them.

An Ombudsman in Australia has four distinctive characteristics.

1. He is an officer of parliament.
2. His whole process is informal and in private, he superintends investigations closely and reaches all conclusions himself.
3. He makes no binding decision, his role is to make recommendations only.
4. While he is subject to the law his functions mean he can stand apart from other remedial processes in the law, that is, he is to one side of the legislative, administrative and judicial processes, observing appraising and when necessary censuring.

PROTECTION FOR THE TERM "OMBUDSMAN"

In recent times concern has arisen within the various Ombudsmen communities, particularly the Commonwealth, as to the growing use of the term "Ombudsman".

In recent time the Commonwealth has set up a Telecom Ombudsman, a Taxation Ombudsman, a Defence force Ombudsman and a Banking Ombudsman, South Australia has recently created an Employee Ombudsman. Victoria is currently considering the concept of a Legal Ombudsman.

This proliferation of the term "Ombudsman" is not always formally attached to a particular functionary (i.e. the Taxation Ombudsman is, in fact, no more than a Special Taxation Adviser employed within the Commonwealth Ombudsman's Office) but stems from a growing tendency for the community and the media to refer generally to various complaints officials for various institutions.

In New Zealand the term "Ombudsman" is protected by legislation.

The difficulty that appears to have arisen is the criteria to be applied for the use of the term "Ombudsman". Several attempts have been made to prescribe minimum criteria to ensure the effectiveness, independence and consistency of entities that are given the title "Ombudsman". The concern, of course, is that if used too loosely, inappropriate entities will be titled "Ombudsman" and will, over time, erode the integrity and effectiveness of the "Ombudsman".

The issue was raised at the 14th Australian and Pacific Ombudsman Conference in New Zealand in October 1994. At that Conference it was agreed that

"in order to protect the credibility of the name "Ombudsman" in the public interest, the following criteria would be adhered to when deciding whether or not a position should be filled by a person called "Ombudsman".

These are regarded as minimum criteria to ensure the independence, accountability and effectiveness of the Ombudsman's office itself.

1. Independence:

- ◆ The Ombudsman should be independent of those being investigated and the complainant.
- ◆ The Ombudsman should be appointed for a set term (such a term would be capable of being renewed), with removal only on the basis of incapacity/proven misconduct or bankruptcy.

- ◆ The majority of those selecting the person to be appointed as an Industry Ombudsman must not be from the industry which it is proposed the Ombudsman will investigate.
- ◆ Any determination of whether a matter falls within the jurisdiction of the Ombudsman must be made by the Ombudsman or as set out in jurisdictional rules or criteria.
- ◆ The Ombudsman should be provided with sufficient funding to enable complaints/disputes to be properly investigated.

2. **Jurisdictional Criteria:**

- ◆ While it may be a usual practice that a complainant should first exhaust any internal complaints procedures set in place by the body being investigated, the Ombudsman should have the right to investigate any complaint without the need for any prior consent of any person or body against whom the complaint is made.
- ◆ Comprehensive information setting out the jurisdiction should be publicly available.
- ◆ There should be some independent procedure to review the extent of the jurisdiction from time to time and a public review of operations and effectiveness of the Ombudsman's operations.
- ◆ Desirably, the jurisdiction should give 100% industry coverage but, at the very least, a majority of industry members should be subject to the Ombudsman's jurisdiction.
- ◆ In industry schemes, those investigated should be bound by the Ombudsman's decision, whereas the complainant should not be bound.
- ◆ In those case where the Ombudsman's decisions or recommendations are not complied with, the Ombudsman should have the power to publicise, or require the publication of such non-compliance at the expense of those investigated.

3. **Powers:**

- ◆ The Ombudsman should be required to give decisions with reasons to the parties.
- ◆ The Ombudsman's procedures should accord with principles of natural justice.

- ◆ The criteria against which cases should be decided should include a reference to fairness in all the circumstances.
- ◆ The Ombudsman should have the right to require all relevant information, documents and other materials from those who are being investigated, or from other parties capable of providing information relevant to an investigation.

Note: The Parliamentary Ombudsman has the statutory power to access information from a third party and the power to summons a witness on oath. The Parliamentary Ombudsman can also provide protection for privileged information so gained. The Industry Ombudsman does not have such powers or the capacity to provide such protection. As a consequence, there may be some limitations on the information capable of being obtained by the Industry Ombudsman.

4. Accountability:

- ◆ Parliamentary Ombudsmen should be responsible to Parliament.
- ◆ Industry Ombudsmen should be responsible to a body made up of both industry and client groups, with an independent Chair, and with the proviso that the numbers of industry members of such a group do not predominate.
- ◆ The Ombudsman should publish an annual report to the public about the activities of the office and should have the right to name industry members or agencies and give anonymous case notes.
- ◆ The Ombudsman should have the ability to make statements in the public interest on matters within the jurisdiction of the Ombudsman.
- ◆ The Ombudsman and staff should either be protected from, or indemnified against, any civil litigation which may arise as a result of the exercise of the Ombudsman's powers. Complainants should be protected from or indemnified against any civil actions which arise as a result of the content of a complaint.

5. Accessibility:

- ◆ The office of the Ombudsman should be directly accessible to complainants.
- ◆ Parliamentary Ombudsmen provides its services free of charge.
- ◆ The Industry Ombudsman provides its services free of charge.

- ◆ The Industry Ombudsman should be free of costs to persons acting in a non-business capacity and to small businesses.
- ◆ The Ombudsman should be enabled to ensure the Scheme is made known to potential users.

Australia is the world's smallest continent yet it is the largest island, our climate ranges from the tropical rain forests of our far north, through the fertile and temperate regions, to the snow and ice of our southern Alps. The centre of our country contains some of the harshest deserts in the world, yet some of our greatest tourist attractions.

Australia has a population of approximately 17 million people, the majority of which, reside in the south-eastern part of the country; in the cities and surrounds of Brisbane, Sydney and Melbourne.

Australia was colonised by the British Captain James Cook, asserting discovery in 1770, and Captain Arthur Philip establishing a penal colony known as New South Wales in 1886. As the size of the colony grew, exploration of the interior and the coastline of the colony began. Further colonies in Victoria, South Australia and Western Australia were commenced.

By 1990 there were 6 colonies. The colonies agreed to federate, but each retained its own legislature and judiciary, giving specific and defined powers only to the new Federal Government, established ultimately in Canberra. You will all possibly be aware that Sydney, in New South Wales, Australia will host the 2000 Olympic Games.

Thus Australia now has 7 Governments and a further two Territory Governments, in the Australian Capital Territory and the Northern Territory, which are, for the purposes of this paper, states in all but name. In all, then, there are 9 different Governments and 9 different bureaucracies to review. Therefore, in Australia there are 9 Ombudsmen involved in the review of Government, actively. Each legislature has given its Ombudsman slightly different powers and responsibilities but, broadly, we have an identical role. Our jurisdiction is limited to the administrative conduct of Government agencies (including local or municipal councils) and we can investigate, express conclusions and make recommendations as we see fit. No Ombudsman, however, can compel his or her recommendations to be adopted, but each has the power to have a report as to his investigation and conclusions tabled in the legislature should a Departmental head choose to ignore his recommendations.

Some Ombudsmen, myself included, have a role in the review of complaints about the conduct of police in our jurisdiction. In some states this role has been taken over by specialist bodies. Where an Ombudsman has a role in the review of police conduct, our powers remain recommendatory only. The situation is different in relation to the specialist bodies. My own Act is fairly typical but somewhat shorter than those of more sophisticated states.

The issue of accountability has been the subject of significant debate in Australia for, at least, the last 30 years. We inherited the British legal system which, as many here will appreciate, is an adversarial one with Crown competing with defendant in criminal law and Plaintiff competing with Defendant in civil law. The inquisitorial role of the Ombudsman, far more common in Europe and other cultures, is one fundamentally unfamiliar to Australians, although it is growing less so as our population becomes more culturally diverse.

Due to the unusual status of the Ombudsman, our role whilst acknowledged, has to a significant extent, been marginalised in the general debate about the accountability of Government agencies.

Traditionally, the other avenue of appeal from the Departmental decisions had been via the Courts. This process has however, become more complex costly and time consuming fact the extent of judicial review has become increasingly limited both by limitations imposed by legislation and the scope of the review being limited in many cases to procedural fairness.

In Australia, particularly at the Federal level, there has developed a large number of specialist and general review bodies with jurisdiction over various Commonwealth organisations. These bodies operate with various levels of informality but, broadly, all operate on some adversarial system. In recent times criticism has arisen areas with the view being expressed that a more inquisitorial role should be adopted. It is general feature of those organisations that they have the power to substitute their decisions for those of the primary decision maker and to reconsider his decision on different grounds. There are a significant number of the specialist tribunals, although I was not able to ascertain the precise number (well over 40 currently exist). There are 6 major review agencies, the most pre-eminent being the Administrative Review Tribunal. Other include the Social Security Review Tribunal the Veterans Review Board, the Immigration Review Tribunal and the Merits Reviews Agency, which has lately changed its name. Of all the above, the Administrative Appeals Tribunals is the most significant since it has jurisdiction over, generally, all Commonwealth Government Agencies' decisions, if not at first review, then on appeal. There is a further right of appeal to the Federal Court under the Administrative Decisions Judicial Review Act.

The direction of specialist adversarial tribunals with full review powers adopted by the Commonwealth, has not been followed uniformly in the various states. In the Northern Territory, I remain the major review agency for state administrative decisions. In other, more populous states however, there is an increasing number of review tribunals being created, although this waxes and wanes depending on the intentions and philosophy of the Government of the day. In my opinion, and of course I am less than objective, the development of these tribunals is not entirely a desirable process and I remain to be convinced that their cost and complexity are justified when com-

pared with the ease and inexpense of the service offer by Ombudsmen. It is clear that access to the Court and Tribunals is becoming increasingly harder for the ordinary person. They can not afford the cost and reject the formality of the process. They look to much more cost effective and quicker avenues of redress.

The Australian, New Zealand and South Pacific Ombudsmen have formed an informal association. So far as I am aware there is no formal structure or constitution for the group. All Australian Ombudsmen are members, as are the Ombudsmen of New Zealand, Papua New Guinea, Fiji, Hong Kong and other South Pacific Island States. Our region does have two delegates to the International Ombudsmen Institute, Mr. Eugene Biganovsky, the south Australian Ombudsman and Sir Brain Elwood, the Chief Ombudsman of New Zealand. The association meets yearly in one of the member localities. Last year it met in Hong Kong and I believe a number of you attended that meeting. There will be no meeting this year given the International Conference in Buenos Aires. Next year the meeting will be held in the Northern Territory. I invite anyone who wishes to attend as an observer, you will be most welcome.

In addition all the Australian Ombudsmen meet once a year to discuss matters of interest, exchange information and to enhance our understanding of our roles and functions.

In my view, there are clear merits to the creation of an Asian association. Merely knowing your fellow Ombudsman has many benefits. Innovations and approaches developed by one can be described, evaluated and utilised by others. Individual difficulties can be analysed and solutions identified. Unified positions on common issues can be developed. For example, our association is currently developing preconditions to be satisfied before industry review bodies can be allowed to call themselves Ombudsmen. Our association has recently organised and conducted a workshop designed to develop the investigative skills of south Pacific Ombudsman investigative staff. I would commend the development of an association to you.

I attach for your information copies of extracts from my recent Annual Report for 1994/95. These extracts set out:

1. The code of Ethics which the staff of the office of the Ombudsman in the Northern Territory follows. It is simple but provides a simple and clear message I believe.
2. The corporate plan for my office.
3. The Statutory functions I have as an Ombudsman.

In closing I would again express my appreciation to Mr. Justice Salam for the kind invitation to attend. I look forward to fruitful and interesting discussions with you throughout the conference. I wish you all well in your endeavours.

CODE OF ETHICS

In carrying out duties in relation to determination and resolution of complaints staff of the Office of the Ombudsman will:

- Act fairly and in accordance with the principles of natural justice.
- Treat all complainants equally and with dignity.
- Treat each complaint on its merits and not on the basis of preconceived views.
- Act impartially as between the complainant and the person or body whose action is the subject of complaint.
- Act in a manner which maintains the independence of the Ombudsman.
- Declare any interest which conflicts with the duty to determine and resolve complaints.
- Make inquiries and conduct investigations in accordance with legislative requirements.
- Observe legislative requirements relating to privacy and secrecy.

CORPORATE PLAN

Mission

To enquire into complaints against Northern Territory government agencies, statutory authorities, local government councils and police officers and, where appropriate, make recommendations for their resolution which are accepted.

Corporate Objectives

- The expeditious and effective determination and resolution of complaints about administrative actions by Northern Territory government agencies.
- The expeditious and effective determination and resolution of complaints about administrative actions by Northern Territory local government councils as defined in the local Government Act.
- The expeditious and effective determination and resolution of complaints about actions by members of the Northern Territory Police.
- The expeditious and effective determination and resolution of complaints about administrative actions by Commonwealth government departments and authorities. (cases from 30 September 1995.)

- The expeditious and effective referral to the Commonwealth Ombudsman of complaints under the complaints (Australian Federal Police) Act 1981 and the Freedom of information act 1982. (Cases from 30 September 1995.)
- Increased knowledge by the public of the existence and functions of the Ombudsman.
- Equitable access to the services of the Ombudsman's Office by all sections of the public.
- The effective and efficient operation of the Ombudsman's Office.
- Compliance by the Ombudsman's Office with reporting requirements.

Corporate Strategies

- To select appropriate methods of investigation to ensure the expeditious and effective determination of complaints.
- To operate in a professional and efficient manner.
- To adhere to the Code Ethics for the Ombudsman's Office.
- To maintain respect for the conduct findings and recommendations of the Ombudsman's Office.
- To inform the public by appropriate means of the existence and functions of the Ombudsman.
- To recruit and train appropriate and adequate staff.
- To obtain and maintain financial and physical resources.
- To maintain adequate information systems.

THE OMBUDSMAN

A Functions of the Ombudsman

1. To investigate any administrative action by, in or on behalf of, any Northern Territory Government agency or local government council to which the Ombudsman (Northern Territory) Act applies.

Where the Ombudsman is of the opinion, having regard to the nature and seriousness of the complaint, that it may be resolved expeditiously, the Ombudsman may make inquiries of the agency for the purpose of determining the complaint.

2. To investigate any action taken, or refusal to take any action by a member of the Police Force of the Northern Territory, whether or not that action was, an administrative action, where that action was, or was purported to be, for, or in connection with, or incidental to, the exercise or performance of that member's powers or functions as a member of the Northern Territory Police Force.
3. To investigate as Delegate of the Commonwealth Ombudsman any administrative action taken by, in or on behalf of, any department or authority to which the Commonwealth Ombudsman Act 1976 applies.

To receive as agency for the Commonwealth Ombudsman complaints under the Complaints (Australian Federal Police) Act 1981 and the Freedom of Information Act 1982.
 - These functions arise from letters of understanding exchanged between the then Prime Minister. The Honourable R.J.L. Hawke, A.C., M.P., and the then Chief Minister of the Northern Territory. The Honourable P.A.E. Everingham, in May 1984.
 - The Commonwealth Ombudsman will terminate the coronet delegate arrangement on 30 September 1995. As from that date I have no jurisdiction in respect of commonwealth departments.
4. To act pursuant to S. 48 of the Legal practitioners Act 1974, as a member of the Legal practitioners complaints Committee established to hear complaints against legal practitioners alleged to have been guilty of professional misconduct.
5. To act as a member of the Northern Territory Law Reform Committee.
6. To consider requests from the Law Society of the Northern Territory for assistance in carrying out its functions.

COUNTRY PAPER: **JAPAN**
PRESENTED BY: **MR HISAO TSUKAMOTO, DEPUTY FOR
DIRECTOR GENERAL OF ADMINISTRATIVE
INSPECTION BUREAU, MANAGEMENT &
COORDINATION AGENCY, PRIME
MINISTER'S OFFICE**

ADMINISTRATIVE INSPECTION AND ADMINISTRATIVE COUNSELLING

Introduction

May I express my appreciation to Justice Abdul Shakurul Salam, Ombudsman of Islamic Republic of Pakistan, for his initiative in organising this First Asian Ombudsman Conference and for the opportunity to present a paper on the functions of the Administrative Inspection Bureau of the Management and Coordination Agency, the equivalent of ombudsman institutions in other countries of Asia.

The Administrative Inspection Bureau (AIB) in the Management and Coordination Agency (MCA) (called the Administrative Management Agency before 1984 reorganisation) which is an independent organisation of the Prime Minister's Office and headed by a Minister of State (Member of Cabinet) has separate functions of administrative inspection and administrative counselling carried out by its 1,200 staff. They together provide an effective system of administrative supervision and relief, ensuring that public administration is conducted in a democratic, effective, efficient, and fair manner, protecting the rights and interests of the citizens, and thereby securing the trust of 120 million people of Japan in their government.

Japan has a parliamentary system of government. The government is held accountable to the public through the DIET, namely through its votes over laws and budgets proposed by the government and the power of investigation into government operations. Other systems of accountability includes the Courts through administrative litigation procedure and the independent Board of Audit through annual audit of government's use of money. The legal framework of such systems of accountability is provided by the Constitution, the Diet Law, the House Testimony Law, Administrative Litigation Law, the State Tort Liability Law, and the Board of Audit Law. In addition, the Administrative Procedure Law exists to guarantee the fairness and transparency in the actions of the government agencies.

The administrative inspection and the administrative counselling are the functions within the executive branch of the government to hold the administrative organs accountable to the public. They are now inseparable parts of the total system

of accountability in the government by supplementing the limitations of traditional mechanisms in the face of increasing size and complexity of governmental functions.

Today, I will be focusing on administrative counselling in my presentation as it has more relevance to the typical function of ombudsman in most of other countries. However, I have to touch on the administrative inspection first as, historically, it gave birth to the administrative counselling.

1. Administrative Inspection

The Management and Coordination Agency Establishment Law provides that one of its functions is "to inspect the operation of administrative organ, and make recommendations if deemed necessary" (Art. 4, cl. 12). "The "administrative organ" here means ministries, agencies and the like of the national government provided in Article 3, paragraph 2 of the National Government Organisation Law".

For the purpose of performing the function, the above law gives Director-General of the MCA necessary authority including those of: (i) demanding the head of administrative organs submission of materials and explanations (Art. 5, para. 2); and (ii) making on-site investigation of the operation of administrative organs (Art. 5, para. 4). The authority is internally delegated to the heads of AIB field offices.

"The origin of administrative inspection in the Japanese national government can be traced back to the creation in 1947 of Administrative Inspection Commission which aimed at enforcing strict discipline among government officials and increasing efficiency. The Commission was a temporary body and when its term expired in 1948, its function was given to the Administrative Management Agency created that same year."

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

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

"The commonly adopted viewpoints in individual inspections include legality, efficiency, and efficacy. The administrative inspection does not directly aim at exposing the irregularities or improprieties in government operations. Its focus is

rather on discovering the flaws in the systems and operations that give rise to the problems found and put in place the remedies to prevent the recurrence of such problems."

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

2. Administrative Counselling

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

Then in 1961, the system of administrative counsellors was introduced also as an operational arrangement for the purpose of broadening the system's base and enhancing the accessibility to the people of administrative counselling service. In 1965, the Administrative Counsellors Law was enacted to give the activities of the administrative counsellors a solid statutory based. The system dramatically improve the people's access to the administrative counselling system both in geographic and psychological terms.

A. Legal Framework

The Establishment Law of the MCA provides as its functions to "perform mediation deemed necessary concerning the complaints filed with respect to the administration of affairs within the jurisdiction of each administrative organ and the affairs mentioned in the preceding clause [affairs under delegation and subsidisation: author's note]" (Art. 4, cl. 14) and to "administer affairs concerning the Administrative Counsellors Law" (Art. 4, cl. 15).

The Administrative Counselling is an activity in which the AIB field offices and the administrative counsellors throughout the country receive citizen's complaints about the actions of the government agencies and act to bring the matters to a satisfactory conclusion through mediation.

The authority under the above law of the Director-General of the agency concerning the request of materials and explanation also covers administrative counselling. It is understood that on-site investigation is also possible as a matter of course for proper performance of administrative counselling.

The Administrative Counsellors Law provides that the Director-General of the MCA may commission "a person who enjoys a social confidence and is possessed of a deep understanding and ardour for improvement in administrative operations" the work of: (i) receiving people's complaints, giving necessary advices, and informing the MCA (AIB field offices) and the administrative organs concerned of the complaints; and (ii) responding to the inquiries by the administrative organs concerned and informing the complainants of the result of review by the administrative organs concerned (Art. 2, para. 1). They are commissioned the work for a renewable term of two years with their jurisdictional areas (usually cities, towns, or villages where they reside) designated by the Director-General. "Over the years, the MCA has worked hard to increase the number of administrative counsellors in the country through obtaining additional funding in the budget". Today there are over 5,000 of them and people can find at least one of them in the area of municipalities they live in.

"Under the law, the administrative counsellors are also authorised to formally express their opinions on the improvement in administrative operations to the Director-General of MCA. Each year around 700 opinions are submitted to the AIB, not a few of them resulting in the changes in systems and practices of administration after being conveyed by the bureau to the appropriate agencies for review."

B. Operation

Under the system of administrative counselling, a person may file a complaint either to the 50 field offices of the AIB or to the administrative counsellor in the area, who, then, "in the letter of law", inform the AIB field offices or the government agencies concerned of the complaint.

Regarding the complaint received "directly or through an administrative counsellor" by the AIB field offices, the staff (numbering 200 nation-wide) will study the background, confirm the fact by making a site visit and requesting materials and explanations from the government agency if necessary, and if he finds that the complaint is well-grounded, he will proceed to mediation either in writing or by word of mouth, formally requesting the review of the case in question and encouraging a quick and satisfactory conclusion, attaching the proposal for possible remedy if considered necessary to facilitate a solution. In many cases, satisfactory solutions are obtained by simply forwarding the complaints to the agencies concerned. "After the review by the agency in question, and further exchange when necessary, the final response is informed to the complainant either directly from the AIB field office or through the administrative counsellor who originally received the complaint. If the complaint is found to be unjustified due to the misunderstanding or ignorance on the part of complainant, he will be so informed and given an explanation to his satisfaction."

As regards the complaints received by the administrative counsellors, many of them actually are resolved by their hands. They are resolved typically by the ad-

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

Incidentally, both the AIB field officers and the administrative counsellors frequently receive calls from people requesting information on government programs and regulatory procedures. To satisfy such requests by furnishing pertinent information or advising on the appropriate authorities has come to occupy a substantial portion of day-to-day work of administrative counselling. But we attach as much importance to these requests as complaints because experience tells that many of the complaints are rooted in the lack of knowledge of laws, regulation, or procedure of administration, and providing adequate information on government operations in a timely and efficient manner will be conducive to eliminating unnecessary complaints.

C. Strengths

The system of administrative counselling is very open-ended. People may bring their complaints regarding any activities of the national government agencies or public corporations. The activities of the local authorities and other organisations are also covered by the system as long as authority for such activities is delegated by the national government or such activities are wholly or partly subsidised by the national government. Complaints can be filed free of charge either by phone, by letter, or by visit. The confidentiality is guaranteed. There is no restriction on the subject of complaint except that cases falling into a number of categories including those pending in courts will not be eligible for mediation.

In 1994, a total of approximately 230,000 cases were received by the system. In about 39,000 of them, the complainant sought solution of grievances against government offices or improvement in administrative operations. The rest include those which seek information and explanation on laws, regulation, and procedure (100,000) and those which are outside the jurisdiction (90,000).

Administrative relief is provided in Japan also through administrative litigation procedure in courts under the Administrative Litigation Law (Law No. 139 of 1962) and administrative appeal procedure for internal review in government offices under the Administrative Appeals Law (Law No. 160 of 1962), the latter being simpler and less costly. Compared even with the less formalised administrative appeals

procedure, the administrative counselling by the MCA is undoubtedly by far the easier and more comfortable for people to use in terms of procedural requirement and psychological factors.

Also, in the national government, the ministries and agencies operate counselling units of their own. In comparison with them too, people will be feeling far more ease in using the administrative counselling by the MCA in terms of accessibility and trust in impartiality as it is operated by an independent organisation charged with the responsibility of overall management and coordination of the government. The availability of the service of administrative counsellors will be having the effect of enhancing such feelings even more. In fact, close to 70 per cent of administrative counselling cases are received by the administrative counsellors each year, indicating the preference of the complainants.

All told, the administrative counselling today occupies a very important position in the overall system of administrative relief in Japan.

3. The Administrative Counselling and Ombudsman

The work of most ombudsman institutions in other countries appears to entail the elements of administrative supervision and administrative relief. As it happened, the AIB in Japan came to embody these very elements as a consequence of unique historic development, independent of the development of ombudsman institutions in other parts of the world.

One of the distinctive characteristics of the administrative counselling system as a grievance handling system is that it is backed by a separate system of administrative inspection in addition to sufficiently solid statutory backing given to the exercise of mediation.

In the administrative counselling system itself, there are a number of unique arrangements which aim at maximum attainment of the objective of protection of the rights and interests of people and the improvement in the operation of government.

First of all, it provides expanded and easier access through the use of administrative counsellors. This may well be Japan's answer to the question of improved accessibility which ombudsman in many countries face.

Secondly, an operational link is maintained with the administrative inspection. When it is found that there is a growth or recurrence of a particular kind of complaint, besides resolving individual complaint, an administrative inspection may be conducted to produce recommendations for changes in related laws, systems, and procedures that are the root cause of the problem to prevent further occurrence of the complaints in question.

Thirdly, an advisory body to the Director-General called the Administrative Grievance Resolution Promotion Council is set up to make up for the problems, actual or potential, that arise from the fact that administrative counselling is a function of the executive branch of government. The council is composed of seven private individuals from the judicial circle, academic circle, mass media and others. It is an attempt to introduce outside view in the mediation of hard-to-resolve complaints like those which could be adequately redressed only by changes in the basic system of administration like revision of existing laws and regulations or by additional funding in the annual budget of the government agency concerned.

As a practical matter, mediation at the field level is not always successful in achieving satisfactory resolution of the complaints of this kind, and in most of such cases, the negative responses of the government agency in question cannot usually be blamed because they are legitimately expected to operate under the existing policies and regulations. Under the present procedure, these cases are sent up to the AIB headquarters to decide whether to continue with the mediation. It is here that the Administrative Grievance Resolution Council is asked to judge from the unrestrained outsider's point of view whether the merit of redress outweighs the costs and other implications of the remedy such as those illustrated above.

The Council in effect is a mechanism to overcome the operational constraints of mediation such as lack of legal force, and it may also be viewed as an attempt to maximise the fairness and impartiality in AIB's operation of administrative counselling and make it as close as possible in practice to that of independent Ombudsman. Since its inauguration in 1987, the Council submitted to the Director-General a large number of opinions which were reflected in mediations to result in important changes in the systems and practices of administration that benefited not only the complainants but also other members of the public.

The administrative counselling which has been reinforced with these innovative arrangements and operated in concert with the administrative inspection stands very much in comparison with the ombudsman institutions of other countries both in the design of the system and its performance by providing easily accessible, simple, and reliable means for people in redress of their grievances.

4. International Activities

It will be important for all grievance handling institutions to learn from, assist, and stimulate one another.

The AIB's recent efforts in the international involvement date back to the participation by the then Parliamentary Vice Minister of-MCA, Mr. Takehiko Endo, and myself in 1992 of the 5th International Ombudsman Conference of the International Ombudsman Institute held in Vienna, Austria.

In 1994, the AIB sponsored an international symposium participated by Ombudsman and high officials in charge of grievance resolution in Tokyo. The participants including the then President of I.O.I., Mr. John Robertson of New Zealand, were introduced to Japan's administrative counselling system for the first time, and left almost unanimous comments indicating that the system was a unique grievance handling system developed under the political, social, and cultural climate of Japan and was fulfilling the function exercised by Ombudsman in other countries by facilitating the resolution of complaints with the AIB, the administrative counsellors, and the Administrative Grievance Resolution Promotion Council acting in one. That same year, the AIB was made voting member of the I.O.I..

In October 1995, I participated in the 15th Australasian and Pacific Ombudsman Conference and International Ombudsman Symposium in Hong Kong as an observer representing the AIB. It was one of the most successful international conferences that I know of, organised under the strong leadership of Mr. Andrew SO and efficient staffs of the COMAC of Hong Kong. The conference led me to think that meeting of this kind held in Asian Region on a regular or ad-hoc basis and participated by the Ombudsman and parallel institutions of the region would bring great benefits for us all involved in the work of redress of people's grievances.

I am of the view that this 1st Asian Ombudsman Conference convened by the strong initiative and leadership of the Ombudsman of the Islamic Republic of Pakistan, Justice Abdul Shakurul Salam, is a very important first step in that direction. And it will now be our challenge to consider how to follow up with Justice Salam's initiative in spite of differences that exist among us and difficulties we face in each country.

Closing Remarks

It is one of the precepts of administrative reform that every system and institution has to be continually re-examined to keep up with the change of times. The system of administrative counselling is no exception.

Today our efforts in the improvement of the system of administrative counselling are focused on two areas. One is to extend our reach to tackle the roots of the complaints, namely to bring about changes in the systems and regulations that caused the problem in the first place. This is most efficient and effective means to resolve complaints, and the key is to make the most of the strength of Administrative Grievance Resolution Promotion Council and to strengthen the tie-up with the operation of administrative inspection.

The second is to step up the efforts for more publicity of the system. The use of administrative counselling by the public in our view has not yet reached its potential. In a survey conducted in 1990, the public's rate of awareness of the system of

administrative counselling and administrative counsellors was a not-very-high 28 per cent. And it was much lower in large urban areas. Substantial resources have been put into public relations in recent years, but clearly, there is more that needs to be done in the area of publicity.

And these are probably not the only areas where improvements are needed. There may be weaknesses in our system which would surface only through comparison with other systems. We will continue to be attentive to the development of Ombudsman institutions in Asia and receptive to the strong points you will exhibit and fresh ideas you will offer in order to make our system a better one. We would appreciate you continuing friendship and cooperation in this respect.

I thank you very much for your attention.

**THE MANAGEMENT AND COORDINATION
AGENCY ESTABLISHMENT LAW
(excerpt)**

December 2, 1983
Law No. 79 of 1983

Article 1 (Purpose)

This law clearly stipulates the scope of function and the authority of the Management and Coordination Agency and provides for the organisation appropriate for the efficient performance of the functions under its charge.

Article 2 (Establishment)

The Management and Coordination Agency shall be established as an independent organisation of the Prime Minister's Office pursuant to Article 3, paragraph 2 of the National Government Organisation Law.

Article 3 (Mission)

The Management and Coordination Agency shall have as its principal mission to coherently perform the affairs concerning the management of personnel, the affairs concerning organisation structure, the fixed number of personnel and operation of administrative organs, the coordination of specific policy and its administration outside the purview of other administrative organs, and the affairs concerning inspection of the operation of administrative organs, pension of retired public officials, and statistics.

Article 4 (Specific Functions and Authority)

The Management and Coordination Agency shall have the following scope of specific functions for which it is responsible, and exercise its authority within the limits thus set in conformity with law (including orders based on law).

- (12) To inspect the operation of administrative organ, and make recommendations if deemed necessary.
- (13) To conduct investigations on the operation of the public corporations provided in clause 11 and the administration of affairs either delegated or subsidised by the state, so far as necessary to execute the inspection provided in the preceding clause.
- (14) To perform mediation deemed necessary concerning the complaints filed with respect to the administration of affairs within the jurisdic-

tion of each administrative organ and the affairs mentioned in the preceding clause.

- (15) To administer affairs concerning the Administrative Counsellors Law.

Article 5 (The Director-General)

The head of the Management and Coordination Agency shall be the Director-General of the Management and Coordination Agency, the post of which shall be filled by a Minister of State.

2. The Director-General may call on the head of each administrative organ for the submission of necessary materials as well as explanations with respect to the affairs under his charge.
3. The Director-General may submit his opinion to the Prime Minister or to the head of each administrative organ concerned at any time with respect to the affairs under his charge.
4. The Director-General may make on-site investigations of operations of each administrative organ, to the extent that it is necessary to conduct the inspection.
5. The Director-General, by requesting pertinent materials or explanation, may make investigations of the management of the affairs provided in Article 4, clause 13 in connection with the inspections of operations of each administrative organ. In this case those who are subject to investigations shall not refuse it.
6. The Director-General may ask public or private organisations as well as other persons concerned for cooperation in submitting necessary materials, as he may deem it necessary to carry out the inspections.
7. The Director-General, whenever a recommendation has been made to the head of the administrative organ concerned as a result of an inspection in accordance with paragraph 3 of this article, may call on him a report on the measures taken pursuant to the recommendation.
8. The Director-General, as he may deem it necessary for the improvement in administrative management as a result of inspection, may report to the Prime Minister his opinion requesting that a direction be issued to the head of the administrative organ concerned to improve matters under his jurisdiction.
9. The Director-General, as he may deem it necessary for the maintenance of official discipline as a result of inspection, may express his opinion on this matter to the head of the administrative organ concerned.

(Translation by Hisao Tsukamoto, Management and Coordination Agency)

APP 2

THE ADMINISTRATIVE COUNSELLORS LAW

June 30, 1966
Law No. 99 of 1966

Article 1 (Purpose)

It is the purpose of this law to provide necessary matters with respect to the commission of counselling service on people's complaints against public administration in order to facilitate their settlement and thereby to contribute to democratic administration of public affairs.

Article 2 (Administrative Counsellor)

The Director-General of the Management and Coordination Agency (hereinafter referred to as "the Director-General") may commission a person, who enjoys a social confidence and is possessed of a deep understanding and ardour for improvement in administrative operations, to conduct the affairs prescribed in the following clauses.

- (1) In response to a filing of complaint against the operations of administrative organs prescribed in Article 3, paragraph 2 of the National Government Organisation Law (Law No. 120 of 1948) and of the public corporations specified in the Cabinet order among those which are mentioned in Article 4, clause 11 of the Management and Coordination Agency Establishment Law (Law No. 79 of 1983) (hereinafter referred to generally as "administrative organs and the like"), to give necessary advice to the complainant and to inform the Management and Coordination Agency and the administrative organs and the like concerned of the complaint in accordance with the instruction of the Director-General.
- (2) Concerning the complaint informed in accordance with the provision of preceding clause, to respond to the inquiry from the administrative organs and the like concerned, and, as he may deem it necessary, to notify the complainant of the results of review by the administrative organs and the like concerned.

2. The commission prescribed in the preceding paragraph shall be made both with a designation of the jurisdictional area of the commissioned in terms of city (inclusive of special ward), town, or village and with a specified period of less than two years during which the commission is effective.

3. A person who is commissioned in accordance with paragraph 1 shall be known as an administrative counsellor (hereinafter referred to as "counsellor").

Article 3 (Dissemination and the like)

The Director-General shall take appropriate measures to disseminate counsellor's name and address to the residents concerned whenever a commission is made in accordance with the provision of paragraph 1 of the preceding article.

2. A counsellor shall enlighten the public and publicise the affairs under his charge.

Article 4 (Statement of Opinion)

A counsellor may express to the Director-General his opinion developed through performing his duties with respect to the improvement in administrative operations.

Article 5 (Discipline)

A counsellor shall not divulge any secret which may have come to his knowledge in the performance of his duties. The same shall also apply after he has been relieved of his office.

2. A counsellor shall not make use of his position for any political party or political purposes.

3. A counsellor shall perform his duties properly and adequately with impartiality.

Article 6 (Dismissal)

The Director-General may relieve a counsellor of his commissioned duties provided in Article 2, paragraph 1 when, in his judgement, the counsellor falls under any one of the following clauses.

- (1) When mental or physical defects hinder him from performing the duties properly or at all.
- (2) When he neglects his duties or infringes the provision of the preceding article.
- (3) When he is guilty of such malfeasance as to render himself unfitting to be a counsellor.

Article 7 (Guidance)

A counsellor, concerning the affairs commissioned, shall be under the guidance of the Director-General.

Article 8 (Expenses)

A counsellor shall not receive remuneration from the state for performing his duties.

2. A counsellor, within the allowance of budget, may receive compensation for the expenses necessitated for performing his duties.

(Translation by Hisao Tsukamoto, Management and Coordination Agency)

COUNTRY PAPER: **THE ISLAMIC REPUBLIC OF IRAN**
PRESENTED BY: **HOJETOESLAM SYED IBRAHIM RAISI, HEAD
OF GENERAL INSPECTION ORGANISATION.**

IN THE NAME OF GOD, THE MOST MERCIFUL

Mr. President, Ladies and Gentlemen,

First of all, I feel it my duty to express my gratitude and appreciation for the hospitality of the great people and the government of Pakistan, also for your warm and friendly reception of our delegation at our arrival in your country.

Thanks God for granting the possibility to our delegation of being among the respectable colleagues from many different countries of the world. While also appreciating those who have been in charge of administering this meeting, in order that the participants may have the opportunity to exchange ideas and experiences, for mutual understanding and co-operation, aiming at attaining high, human and social ends, wishing complete achievement for their efforts.

Personally, I am of the conviction that, such a meeting would undoubtedly be a positive step for gaining common ideas, deepening the relations among the countries of the Asiatic region as well as among other ones which will eventually pave the way for constituting the Asiatic OMBUDSMAN, par excellence and providing the preliminary proceedings for actively participating in the Sixth International Conference of the International Ombudsman Institute, in Buenos Aires-Argentina.

Honourable President, Ladies and Gentlemen,

I intend to solemnly present, at this session, certain information concerning Ombudsman in our country and my own viewpoints with regard to the establishment of Asiatic Ombudsman. But the incoming news concerning the bombardment of Lebanon, and message of defenceless and innocent people, and inattention of international human rights organisations caused my utmost regret. Therefore, I deemed it essential, while denouncing this inhuman act, to pay hug to the pure souls of the innocent martyrs of these bombardments.

I pray to God Almighty for patience on the part of the survivors. I appeal to all independent and free countries of the world that they should concentrate their entire efforts on preventing the repeated committing of such inhuman acts by the zionists.

Honourable President,

It seems relevant to point out here that in ancient times, Iran had a vast territory and was one of the major pioneer in setting up administrative system. Being aware of a necessitating consistent organisation for supervising and inspecting the

proper conducting of the executive affairs, a public organ of capable and confident people was organised. They were called the eyes and ears of the state. Their reports made the critic for removing the grievances, reforming the defective affairs and prosecuting those who had violated the rules and regulations. By the advent of Islam, supervising and inspecting got a high aspect and special consideration. Here, I ask permission to attract the attention of the esteemed president and the audience to a part of the content of the command of Imam Ali (May God be pleased with him) which is addressed to the general governor (Wali) of Egypt on how the procedure of the government ought to be and the way of supervising the proceeds of those working in public sections. In view of the limitation of the time, only that part relating to the goal of this meeting would be reflected here. Iman in his command so orders:

“Then make thorough investigation into the character of your agents, after being sure of their capability and virtue, put them on work, then keep vigil over their proceeds, and appoint righteous and virtuous supervisors inspecting their activities. This, thus would be a motive for them to trustworthy and exerting justice to the people as well.”

Precedents based upon historical investigations denote that such, blessed tradition in various degrees have been current in almost all the Islamic countries as well as in Iran.

Mr. President,

Before the Islamic Revolution, there have existed in Iran two organisations for inspecting and controlling the public affairs, one for courts, the other for administrative organs.

After the victory of the glorious Islamic Revolution, supervising the whole administrative system of the country got its special place in Law, exponent in the principle No. 174 of the Constitutional Law of the Islamic Republic of Iran. The principle mentioned above is worded so:

“On the basis of the right of supervision by the judiciary on the good conduct of affairs and proper implementation of laws by the administrative departments, an organisation known as the State Chief Inspectorate shall be established under the supervision of the Head of the Judiciary”.

Regarding the fulfilment of the aforesaid principle, the due rules for constituting the General Inspectorate organisation of the Islamic Republic of Iran were passed and ratified in 1982 by the Islamic Consultative Assembly. Since then, through the activities of the experienced judges and efficient experts the organisation has been exerting its duties. It has already had great achievements removing the administrative, executive and judicial inconveniences. As a result, it has been known as an active organisation of high significance and dignity. Under the mentioned article,

the scope of the jurisdiction of the General Inspectorate organisation has been so assigned.

- A. "Constant controlling and supervising all the ministries, administration, military forces, police, state run institutions and companies, municipalities and the offices associated with them, public notary departments, the institutions whose financial resource totally or partially belong to the government and etc."
- B. Extra ordinary inspections would be implemented upon the order of the head of the judiciary, or required by the commission of the article 90 of the constitution of the Islamic consultative assembly, or requested by a minister or by the highest rank official of any executive organ or also any other instances which the head of the inspectorate organisation discerns as necessary to be inspected.
- C. Hearing the complaints and investigating the notifications. Real and legal persons can notify their complaints against the organisations and institutions covered under the section above, to the General Inspectorate Organisation. The notifications and complaints may be relating to the governmental sanctioned orders, regulations, circulars, orders by executive officials or the contingent violated private rights of the complainants.

However, the Inspectorate Organisation implements its assigned duties, based upon timely-planned programmes through the inspecting corps. The duties and responsibilities of the inspecting corps are:

- 1. Examining the institutions and organs in respect to proper conducting of affairs and duties, correct implementation of law, plans and programmes, and considering the range of the development of each of those organs in proportion to the common requirements.
- 2. Investigating the behaviour of the head of the organs and that of the relating staff in respect to ethics, faith, morale, knowledge, quality of their proceeds, accuracy, capability and courage, their behaviour in confronting with the people referring to those organs, the extent of their information and speciality in respect to their duties.
- 3. Investigating the common and social circumstances in respect to the common morale, economic affairs, agricultural and industrial productions, culture, hygiene, communications, roads, judicial affairs and common needs of the areas being inspected.

After the implementation of inspections in each case, the General Inspectorate Organisation would offer necessary suggestions for removing the inconveniences

considered and also prosecute, through legal authorities those who have violated the law and regulations. In case that it is proved that the orders, regulations and circulars are not consistent with the rules made and ratified by the Islamic Consultative Assembly, a copy of the report would be sent to the court of administrative justice for prompt proceedings.

Mr. President,

It should be stated that in addition to governmental controlling Islamic procedure as what is now current in Iran, should be considered, because of its high effects mentioned below:

Firstly, Islam as a divine way of life and its executive measures would lead the officials of different responsibility and duty, to believe that God is considering all their affairs and also to have faith in the last divine judgement. No doubt such religious beliefs would be as better causes than any external ones for inner and conscientious self-controlling.

Secondly, generalisation of the Principle "enjoining good, and prohibiting erit" as an Islamic obligation. It must be explained that all people are obligated to prohibit every law-enforcer and the official implementing the administrative system from committing any violation of the law and religious law, and urge them to observe the regulations and properly perform their affairs. Practical and executive result of this principle has emerged in the establishment of a vast-ranging supervisory unit in the society.

Thirdly, possibility of access of the general public to the non-governmental organisations stationed in Iran, and the Islamic Human Rights Commission as a broad-based institution.

Honourable President,

Since all international organisations, including supervisory bodies, have been established, from the very outset, either to realise the special designs of a political minority of bullying countries or are eventually influenced by their hegemonistic designs, it appears that establishment of an independent regional, Islamic or universal ombudsman, having humanitarian intentions, is very necessary for limiting the tyrants and restituting the rights of the tyrannised. Iran will welcome such sincere measures, and honestly mobilise its resources and abilities to attain such sublime objectives, and I consider it essential to stress some point:

- a. To have a new Asiatic institution and consequently annual meeting with each other to exchange ideas and experiences is a matter of high significance and pleasure for all of the countries of the region. We consider it a very valuable opportunity to be a member of such institution. But strict care and measures should be taken so that it, un-

der no condition, be rendered as a means for inflicting political pressure on the member-state.

- b. The Asiatic institution, however, should completely remain an independent organisation. Strict measures should be taken so that it under no condition falls under the hegemony of the world political powers and becomes an instrument for them to impose their political views. We are all somehow in connection with such international organisations such as Red Cross, UNICEF, UNESCO, human rights institution, and in some other ones. Some countries avail the helping possibilities of those international organisations. But the crucial point is that, these organisations which should naturally remain independent, actually have fallen under the hegemony of world political powers. If a country in need of financial help requesting from International Monetary Fund though the fund required may be small it should obey the conditions, views and measures dictated by world powers and be constant with the direction and procedures assigned by them in respect with the activities of those organisations.

The countries of the third world, or some of them, in one way or another have been abused by the political confrontation of the commission of human rights. Undoubtedly, we are all aware that the human rights commission is nothing but a means for western powers to impose their political desires and views against the authority of some countries.

- c. The suggestion covered under section B should be offered to the international conference of Argentina, as the views of the member of the Asiatic ombudsman institution which is going to be established in future.
- d. The constitutional regulations which are to be codified for the Asiatic

Ombudsman institution should have the following specifications:

1. Goals desired should be quite clearly expressed as well as the way to attain them.
2. Necessary measures should be taken for whatever more encouraging the countries of the region of Asia to get membership in that institution. Possible facilities should be provided for the implementation of that purpose.
3. To take special procedure through which the measures for active procedures by the members in the framework of the Asiatic Om-

budsman would be provided. I thoroughly apologise for taking the time of the meeting. Other necessary views and problems will be debated during experts session.

In conclusion, availing myself of this blessed opportunity, I should state the most sincere feelings of individual members of our delegation and that of mine to the people and government of Pakistan. Also, I thank the dear audience for having paid kind attention to my speech.

Mr. President, Ladies and Gentlemen, Thank you very much.

COUNTRY PAPER: **THE REPUBLIC OF TURKEY**
PRESENTED BY: **MR JUSTICE ALI YILMAZ, EXAMINING
JUDGE, INTERNATIONAL LAW AND FOREIGN
RELATIONS DEPARTMENT, MINISTRY OF
JUSTICE.**

CONTROL OF ADMINISTRATION IN TURKEY

It is extremely satisfying and an honour for me to attend the first Asian Ombudsman Conference, representing my country Turkey. Before anything else, I would like to thank on behalf of my country to Pakistan Government for inviting Turkey to the Conference.

As you know, The Republic of Turkey is a democratic, secular and social state governed by the rule of Law.

In Turkey, there is no Ombudsman Institution as yet. However there is a tradition based on democracy and administration which comes from the Ottoman Empire. Therefore, all actions and acts of the administration are subjected to political and judicial supervision.

At this stage, I would like to say something about political and judicial control of administration in Turkey.

A. Non-judicial Control

According to the structure of the Constitution and the principles of Turkish Administrative Law, the "Administration" is not a satellite of the Executive, it is within the Executive branch, but a separate entity. It operates, however, in close relation with the Executive and under the supervision of the legislative, executive and judicial branches. The explanations below demonstrate the massive degree of non-judicial controls upon the acts, actions and agencies of the Administration.

I. Control by the Parliament

In practice, whether it functions effectively or not, Parliament has vast and efficient means of control over the Administration. Some of this control is exercised directly by its members, and some with the assistance of expert agencies, such as the court of Accounts and High Control Board.

Those controls that are exercised directly by members of Parliament include the collection of information about the activities of the Administration by asking questions, Parliamentary inquiry and general debate (Const. Art 98).

The control mechanism with concrete sanctions include interpellation with the political accountability of the Cabinet or the Minister concerned, and Parliamentary investigation about the penal accountability of the Prime Minister or Minister arising from the fulfilment of their duties.

By refusing to pass legislation introduced or supported by the Council of Ministers, the Parliament exercises a very important control; similarly, a more efficient weapon against the Prime Minister and his team is the discussions and the vote on the budget. If the budget is refused, the Administration collapses; therefore refusal of the budget is a very meaningful and concrete control over the past and future activities of the Administration and the Cabinet.

Voting on the budget, in practice, is a control, mostly political in nature; but, at the same time it is a financial control concerning expenditures allocated for public services.

A functionally similar financial control carried out by the Parliament is the review of the reports prepared by the High Control Board about the operations of Public Economic Enterprises. The Parliament eventually decides whether the Executive Committee and the Director General of each PEE should be acquitted or held accountable.

Another financial control, which is completely technical, is implemented by the Court of Accounts on behalf of the Parliament. The Grand National Assembly of Turkey, through Court of Accounts, audits all the accounts relating to the revenues, expenditures and property of departments financed by the budget and annexed budgets.

The Parliament gathers information and exercises control over the daily functioning of the Administration by receiving petitions from citizens with regard to requests and complaints about themselves or the public (Const. Art. 74). The TGNA, according to the laws in effect, examines valid petitions and decides upon the merits and informs the applicants and the administrative agencies concerned for proper action. It should be noted that these decisions are not legally binding upon the administrative agencies, and Parliament intervenes after the exhaustion of administrative recourses and in cases where judicial remedy is not available.

2. Presidential Control

The President of the Republic is authorised and charged with the duty of ensuring the implementation of the Constitution and the regular and harmonious functioning of the organs of the State (Const. Art. 104). As one of the effective instruments for the fulfilment of this duty the Constitution provides a special agency, the State Supervisory Council, attached directly to the President and whose members and chairman are appointed by him.

The President, by means of the SSC, is empowered to control public corporate bodies and organisations, the Directorate of Religions Affairs, and the Council of Higher Education as well as all enterprises in which the State holds more than half of the capital, public professional organisations, employers associations, labour unions and public benefit associations and foundations. The Armed Forces and all judicial organs are excluded.

The content of this control goes so far as to conduct enquiries, investigations and inspections, which shall be commenced upon the request of the President and shall be carried out with the purpose to ensure that the administration complies with law and functions and develops in an orderly and efficient manner.

The President has also acquired the power to sign decrees, chair meetings appoint and dismiss ministers and appoint senior administrators, which should be considered some indirect and joint control over the Administration.

3. Intra-Administration Control

Administrative control of administrative agencies consists of a vast network of various checks, supervision, approvals, repeals, and suspensions, exercised in different forms with different content.

Within the Central Administration the head of each agency — ministers, governors, sub-governors enjoy hierarchical supervision, including discipline authority over the acts, actions and persons of subordinates, from the point of view of expediency (opportunity) and legality. The same control exists in municipalities and functional decentralised agencies, and is exercised by the hierarchical head of each agency, e.g. by mayors, general directors, rectors, deans.

The organs decisions, contracts, budgets, and by-laws of local and functionally decentralised agencies are controlled a posteriori by central authorities explicitly designated by law, such as ministers Council of Ministers, Council of State governors and sub-governors, in a manner which is known as "administrative tutelage". This control, in very exceptional cases could be used in an a prior manner or in the form of action on behalf of the decentralised agencies.

In addition to the above mentioned basic controls, the Prime Minister by means of the Board of Inspectors, may inspect "all public organisations, associations, foundations, cooperatives, unions." The High Control Board, which is attached to the Prime Ministry, examines Public Economic Enterprises and social security agencies and others falling within its jurisdiction upon the directive of the Prime Minister.

Intra-administration control over certain institutions is conducted by specialised entities such as the Council of Higher Education and the Supervisory Board of Higher Education over the universities, and the Radio and Television Supreme Board over the Turkish Radio and Television Administration.

B. Judicial Control of Administration

The whole balance of the Turkish Constitutional System is built upon the maxim of judicial review. Effective judicial control is therefore not only a matter of distribution of justice, it is also a matter of supremacy of law, constitutional government, legality of the Administration and sound protection of rights and freedoms of the people.

Since the acts, actions and contacts of administrative authorities are exceptionally within the scope of ordinary courts. Judicial control of the Administration is the function of administrative courts. These courts of special competence carry out their duty according to the principles and organisation set forth below.

1. Basic Principles

The 1982 Constitution, in Article 125/1 laid down the rule that "all acts and actions of the Administration shall be subject to judicial review". The last paragraph of the same Article completed the system of judicial control of the Administration by stating the second rule: "The Administration shall be liable for damages caused by its own acts and action" These two rules, which compose a single fundamental rule, should always be borne in mind, especially in the interpretation of the following exceptions related to the extent of judicial review.

The following acts and actions, which are definitely "administrative in nature, are taken by the Constitution out of the scope of administrative justice and the Judiciary (Arts. 125, 129, 159 and 160).

The acts of the President in his own competence, such as appointment of rectors or members of State Supervisory Council; decisions of the Supreme Military council, for example promotion and retirement of generals.

Article 125 (Par. 6) authorised the Parliament to pass laws restricting the issuance of stay orders in cases of state of emergency, martial law, mobilisation, state of war, and for reasons of national security, public order and public health. Likewise, there shall be no recourse against the decisions of the Supreme Council of Judges and Public Prosecutors regarding the appointment, transfer, promotion of judges; and decisions of the Court of Accounts concerning acts and accounts of the responsible officials.

Article 125 comprises three more principles and the first one is, "in suits filed against administrative acts the time limit runs from the notification"; the second, "judicial power is limited to the control of the legality of administrative acts and actions"; and the third, "no judicial ruling shall be passed which restricts the exercise of the executive function in conformity with the forms and principles prescribed by law or in nature of administrative act and action or in a way which eliminates discretionary power".

Other principles of judicial review include the retroactive effect of decision of annulment; reviewable character of discretionary power; written, simple, inexpensive procedure; the inquisitorial nature of administrative adjudication and active role of the administrative law judge; two-tier judicial review; suspension of the enforcement and binding force of the act in question before final ruling, liability with or without fault.

2. Organisation of Administration Courts

The Turkish system of administrative courts stems from the French. As a general principle, all governmental cases governed by administrative law within the competence of the administrative courts, except for a very limited number of cases referred by the law to the ordinary courts.

The administrative courts include the Council of State, subordinate courts at the regions below the Council of State, and the Supreme Military Administrative Court.

a- Council of State

The Council of State is, in its judicial capacity, the highest administrative court, mainly with appellate jurisdiction. It does review administrative cases as a court of first instance, however, when it is required do so by law. It also functions as a court of conflicts charged with the solution of disputes concerning competence, venue and conjunction. Finally, Council of State has the duty to eliminate the conflicts among the judgements of its Chambers and to unify the opinions.

The judicial branch of Council of State now consists of eight judicial chambers; one plenary session of the members of the chambers is held for administrative cases, another is held for tax cases and the General Assembly meets for the unification of judgements.

Each Chamber convenes with five justices and renders its judgements with majority. The plenary sessions review cases involving the validity of regulatory acts, such as regulations of the Council of Ministers, and cases in which the trial court has insisted on its previous judgement after initial reversal by a chamber.

As a court of appeals, the Council of State either confirm or reverses and returns the case to the court below; or may decide on the merits.

Justice of the council of State are appointed by the Supreme Council of Judges and Public Prosecutors, and the President of the Republic; the Chief Justice and his deputies, the Chief Public Prosecutor, and the heads of Chambers are elected by the General Assembly for four years. membership for judicial chambers is confined to those having some legal training.

The personnel of Council of State also includes prosecutors, similar to the French "Commissaire de government", and reporter judges.

b- Supreme Military Administrative Court

Members of the Supreme Military Administrative Court are all military personnel, either military judges or high ranking officers of the Armed Forces. The jurisdiction of the Court comprises cases arising from administrative acts and actions including those made by civilian authorities, but involving military personnel and relating to military services.

members of the court are appointed by the President of the Republic. The Chief Justice, the Chief Public Prosecutor and heads of Chambers shall be appointed from among military judges sitting at the court according to rank and seniority.

The judicial function is carried out by three Chambers, the General Assembly and the Plenary Session of Chambers composed of certain members. Each Chamber has eight members, but convenes with five, provided that the majority of the members be judges and decides by majority.

Judgements rendered by the Court are not to be reviewed by the Council of State; however the losing party may move for reconsideration by the same chamber.

C. Subordinate Administrative Courts

In 1982 three laws established the first tier of administrative courts in Turkey on regional basis. Each judicial region comprises one or more provinces.

The courts founded at the regions are: Administrative Courts and Tax Courts, both are courts of first instance with general jurisdiction; and the Regional Administrative Court. The Administrative Courts review all administrative cases (action for annulment; full remedy action which are not within the jurisdiction of the Council of State) as a court of first instance or the Supreme Military Administrative Court. The same principle applies to Tax Courts which review only tax cases. Both courts are composed of three judges and decide by majority. Some minor cases prescribed in the organic law (No. 2576) however, are reviewed by a single judge. Judgements of three judge courts may be appealed before the Council of State, but judgements rendered by one-judge courts are only reviewed by the Regional Administrative Court.

Regional Administrative Courts, in addition to their role above mentioned, function as courts of conflict at the region and solve problems of competence, venue and matters of conjunction. These courts are composed of one Chief Judge and two judges and decide by majority.

All subordinate court judges are appointed, supervised, and promoted by the Supreme Council of Judges and Public Prosecutors.

3. Judicial Remedies

a- Action for Annulment

An action for annulment is the principal remedy against illegal administrative acts, regulations, and by Laws.

here the complainant seeks the annulment of the administrative act retroactively on the ground of its illegality.

In order to commence an action of annulment the plaintiff should have standing to sue, which means existence of an adverse effect of the decision reviewed on his interest. The decision of the Administration must be of executory nature and final, all administrative remedies must be exhausted, and a sixty-day time limit should not have expired.

Since the commencement of this type of action does not automatically suspend the legal effect of the act reviewed - except the tax cases - the plaintiff should request a stay order. The Constitution, in Article 125 has openly stated the requirements for the issuance of a stay order by the administrative court. If the implementation of an administrative act "would result in damages which are difficult or impossible to compensate, and at the same time this act is clearly unlawful, then a stay order may be decided upon by stating the reasons thereof." A stay order is a temporary remedy which has binding and restoring effect until the final decision is rendered.

The Administration must comply with court decisions and make all necessary and proper acts and actions within sixty days. Otherwise both the agency—and in a case of deliberate in execution the official concerned—will be liable for damages.

b- Full Remedy Action

A full remedy action may be brought by a complainant who alleges that the Administration has infringed some right of his thereby entitle him to compensation. This action is available not only for administrative acts, but for actions as well.

In order to commence a full remedy action the plaintiff should have standing to sue, which now means existence of concrete, personal actual damage arising from the act or action of the Administration. The beginning of the time limit for bringing the action differs according to the origin of the damage, depending whether it is an act or action.

Full remedy action is a suit where the "liability" of the Administration is reviewed; to decide in favour of the plaintiff, the court should either find a service fault committed by the Administration, or should base its judgement on the theory of liability without fault.

Cases of services fault involve some defect or failure in the establishment or operation of the public service in question. In other words, there is either nonfeasance, late-feasance, or malfeasance. Service fault also appears when mishandling of public affair has expressed itself in an illegal decision.

Liability without fault is a rapidly expanding ground for recovering damages in certain circumstances. According to this principle, what is done in the general interest, even if done lawfully, may give rise to a right to compensation when an exceptional burden falls on one particular person. Besides, the activities of the State, even when conducted without fault, may in certain circumstances constitute a risk. The fundamental principle of equity or social risk, all have been grounds for holding the Administration liable for damages caused by its acts or actions without fault.

As previously discussed, a combination of service fault and personal fault of an official of the Administration, results in Joint liability. The person aggrieved, however, must sue the Administration and collect damages. The Administration, in turn should sue the official before ordinary courts for the ultimate division of responsibility.

If we want to say something about "Regional Ombudsman's Union" which is considered to establish.

It is clear that Regional Ombudsman's Union will contribute a lot to regional peace and friendly relations between countries in the Region.

I think the practice at this matter will be more justifiable if countries would transmit their own experience to each other.

There is no doubt that it will be very useful for my country to join Regional Ombudsman's Union after amending our domestic law.

Thank you very much.

Annex: Concerned articles of Constitution of Turkey.

ALI YILMAZ

ARTICLE 74. Citizens have the right to apply in writing to the competent authorities and to the Turkish Grand National Assembly with regard to requests and complaints concerning themselves or the public.

The result of the application concerning himself shall be made known to the petitioner in writing.

The way of exercising this right shall be determined by law.

ARTICLE 98. The Turkish Grand National Assembly shall exercise its supervisory power by answers of questions. Parliamentary inquires, general debates, interpellation and Parliamentary investigations.

A question is a request for information addressed to the Prime Minister or ministers to be answered orally or in writing on behalf of the Council of Ministers.

A Parliamentary inquiry is an examination conducted to obtain information on a specific subject.

A general debate is the consideration of a specific subject relating to the community and the activities of the state at the plenary sessions of the Turkish Grand National Assembly.

The form of presentation, content, and scope of the motions concerning questions, Parliamentary inquiries and general debates, and the procedures for answering, debating and investigating them, shall be regulated by the Rules of Procedure.

ARTICLE 104. The President of the Republic is the Head of the State. In this capacity he shall represent the Republic of Turkey and the unity of the Turkish nation; he shall ensure the implementation of the constitution, and the regular and harmonious functioning of the organs of State.

To this end, the duties he shall perform, and the powers he shall exercise, in accordance with the conditions stipulated.

To proclaim martial law or state of emergency, and to issue decrees having force of law, in accordance with the decisions of the council of Ministers under his chairmanship.

To sign decrees.

To remit, on grounds of chronic illness, disability, or old age, all or part of the sentences imposed on certain individuals.

To appoint the members and the chairman of the State Supervisory Council.

To instruct the State Supervisory council to carry out enquiries, investigations and inspections.

To appoint the members of the Higher Education Council.

To appoint rectors of universities.

c) Those relating to judiciary:

To appoint the members of the Constitutional Court, one-fourth of the members of the Council of State, the Chief Public Prosecutor and the Deputy Chief public Prosecutor of the High Court of Appeals, the members of the Military High Court of Appeals, the members of the Supreme Military Administrative Court and the members of the Supreme Council of Judges and Public Prosecutors.

The President of the Republic shall also exercise powers of election and appointment, and perform the other duties conferred on him by the Constitution and laws.

In the relevant articles of the Constitution are as follows:

a) Those relating to legislation:

To deliver, if he deems it necessary, the opening address of the Turkish Grand National Assembly on the first day of the legislative year,

To summon the Turkish Grand national Assembly to meet, when necessary,

To promulgate laws,

To return laws to the Turkish Grand National Assembly to be reconsidered,

To submit to referendum, if he deems it necessary, legislation regarding the amendment of the Constitution.

To appeal to the Constitutional Court for the annulment in part or entirety of certain provisions laws, decrees having force of law, and the Rules of Procedure of the Turkish Grand National Assembly on the grounds that they are unconstitutional in form or in content,

To call new elections for the Turkish Grand national Assembly.

b) Those relating to the executive functions:

To appoint the Prime Minister and to accept his resignation,

To appoint and dismiss Ministers on the proposal of the Prime Minister.

To preside over the Council of Ministers or to call the Council of Ministers to meet under his chairmanship whenever he deems it necessary.

To accredit representatives of the Turkish State to foreign states and to receive the representatives of foreign states to the Republic of Turkey.

To ratify and promulgate international treaties,

To represent the Office of the Commander-in-Chief of the Turkish Armed Forces on behalf of the Turkish Grand National Assembly.

To appoint the chief of the General Staff,

To call the National Security Council to meet,

To preside over the National Security Council,

ARTICLE 125. Recourse to judicial review shall be open against all actions and acts of the administration.

The acts of the President of the Republic in his own competence, and the decisions of the Supreme Military Council are outside the scope of judicial review.

In suits filed against administrative acts, statute of limitations shall start from the date of written notification.

Judicial power is limited to the verification of the conformity of the actions and acts of the administration with law. No judicial ruling shall be passed which restricts the exercise of the executive function in accordance with the forms and principles prescribed by law, which has the quality of an administrative action and act, or which removes discretionary powers.

If the implementation of an administrative act would result in damages which are difficult or impossible to compensate, and at the same time this act is clearly unlawful, then a stay of execution may be decided upon, stating the reasons therefore.

The law may restrict the issuing of stay of execution orders in cases of state of emergency, martial law, mobilisation and state of war, and for reasons of national security, public order and public health.

The administration shall be liable to compensate for damages resulting from its actions and acts.

c) Organisation of the Administration:

Central Administration.

ARTICLE 129. Public servants and other public employees are obliged to carry out their duties within loyalty to the Constitution and the laws.

Public servants, other public employees and members of public professional organisations or their higher bodies shall not be subjected to disciplinary penalty without their being granted the right of defence.

Disciplinary decisions shall be subject to judicial review, with the exception of warnings and reprimands.

Provisions concerning the members of the Armed Forces, judges and prosecutors are reserved.

Actions for damages arising from faults committed by public servants and other public employees in the exercise of their duties shall be brought only against the administration in accordance with the procedure and conditions prescribed by law, and subject to recourse to them.

Prosecution of public servants and other public employees for alleged offences shall be subject, except in cases prescribed by law, to the permission of the administrative authority designated by law.

ARTICLE 159. The Supreme Council of Judges and Public Prosecutors shall be established and shall exercise its functions in accordance with the principles of the independence of the courts and the security of tenure of judges.

The President of the Council is the Minister of Justice. The under-secretary to the Minister of Justice shall be an ex-officio member of the Council. Three regular and three substitute members of the council shall be appointed by the President of the Republic for a term of four years from a list of three candidates nominated for each vacant office by the Plenary Assembly of the High Court of Appeals from among its own members and two regular and two substitute member shall be similarly appointed from a list of three candidates nominated for each vacant office by the Plenary Assembly of the Council of State. They may be re-elected at the end of their term of office. The Council shall elect a deputy president from among its elected regular members.

The Supreme Council of Judges and Public Prosecutors shall deal with the admission of judges and public prosecutors of courts of justice and of administrative courts into the profession, appointments, transfers to others posts, the delegation of temporary powers, promotion, and promotion to the first category, the allocation of posts, decisions concerning those whose continuation in the profession is found to be unsuitable the imposition of disciplinary penalties and removal from office. It shall take final decisions on proposals by the Ministry of Justice concerning the abolition of a court or an office of judge or public prosecutor, or changes in the jurisdiction a court. It shall also exercise the other functions given to it by the Constitution and laws.

There shall be no appeal to any judicial instance against the decisions of the Council.

The functioning of the Council and methods of performing its duties, the procedure governing election and working methods, the principles relating to the examination of objections within the Council shall be regulated by law.

The Minister of Justice is empowered to appoint judges and public prosecutors with their consent, to temporary or permanent functions in the central offices of the Ministry of Justice.

The Minister of Justice may, in cases where delay is deemed prejudicial, confer temporary powers on judges of public prosecutors to prevent the disruption of services, subject to the approval of the Supreme Council of Judges and Public Prosecutors at its first meeting thereafter.

IV. Audit Court.

ARTICLE 160. The Audit Court shall be charged with auditing, on behalf of the Turkish Grand National Assembly all the accounts relating to the revenue, expenditure any property of government departments financed by the general and subsidiary budgets, with taking final decisions on the acts and accounts of the responsible officials, and with exercising the functions required of it by law in matters of inquiry, auditing and judgement. Parties concerned may file a single request for reconsideration of a final decision of the Audit Court within fifteen days of the date of written notification of the decision. No applications for judicial review of such decisions shall be filed in administrative courts.

In the event of a dispute between the Council of State and the Audit Court concerning decisions on matters of taxation or similar financial obligations and duties, the decision of the Council of State shall take precedence.

The organisation, functioning and auditing procedure of the Audit Court, the qualifications, appointment, duties and powers, rights and obligations of its members, other matters relating to their personnel status, and the security of tenure of the President and members shall be regulated by law. The procedure for auditing, on behalf of the Turkish Grand National Assembly, of State property in possession of the Armed Forces shall be regulated by law in accordance with the principles of secrecy required by National Defence.

COUNTRY PAPER: **THE STATE OF KUWAIT**
PRESENTED BY: **MR FAISAL AL-GHAREEB, ASSISTANT UNDER-
SECRETARY, COUNCIL OF MINISTERS.**

Introduction

Modern state philosophy implies the interference in all aspects of concern to the citizens and carrying the responsibility of social and economic development. Therefore the number of administrative organs has thus increased dramatically and their functions have diversified intensely, consequently leading to a greater variety in their systems. This affected the performance of the administrative body as a whole and resulted in an increased number of complaints from the quality of services supplied by the administration.

Within the scope of Kuwait's efforts to establish justice, create a climate of freedom, and support equity, the *Diwan* aims at: studying societal phenomenon that may affect the administrative systems or its applications; suggesting means and remedies to treat these phenomenon; coordinating and cooperating with concerned administrative sectors for the sake of achieving the utmost level of development; and hence supplying the citizens with the best services possible.

Decree No. 82/1992 on the establishment of
**The Diwan of Following up the Performance of the
Administrative Body and Citizen Complaints**

After the legislative introduction, the decree states that:

Item 1

An independent *Diwan* is established. The *Diwan* is entitled "The *Diwan* of following-up the Performance of the Administrative Body and Citizen complaints". The *Diwan* is affiliated to the "Council of Ministers" and will be under the supervision of the Minister of State for Ministerial Council Affairs.

Item 2

The *Diwan* consists of the head of the *Diwan*, one deputy, two under-secretaries or more and a sufficient number of employees of various specialisations.

The head of the *Diwan* will hold the rank of a "Minister".

The head of the *Diwan*, the deputy and the under-secretary will be assigned by decree upon nomination by the Minister of State for Ministerial Council Affairs.

Item 3

The *Diwan* will be responsible for helping the administrative leadership in the sectors that are included in its domain by:

- ◆ Ensuring that the problems and complaints of the citizens are properly solved and intently followed up,
- ◆ Maintaining the standard of service and courteous treatment of the citizens;
- ◆ Following-up the general problems and coordinating the concerned and responsible sectors to gather data and collect necessary related information in order to achieve justice and implement equity between citizens, and offer equal opportunities for them;

Item 4

The responsibilities of the *Diwan* are:

- ◆ To ensure that the work in areas and sectors included in the domain of its supervision is carried out in compliance with the general policy of the state.
- ◆ To study complaints, reports and cases submitted by individuals or organisations or institutions as well as those cases in which it is informed by other means.
- ◆ To ensure the properness of application of laws or rules and regulations roster and that they oblige to the rules of justice and offer equal opportunities in servicing citizens;
- ◆ To investigate misconduct in work, service or production and to explore the defects in administrative, technical or financial systems that hinder the progress of public bodies, and to suggest feasible methods for treatment;

Item 5

The *Diwan* will carry out the responsibilities stated in the previous item through the organisation of one committee or more which will be approved by the Council of Ministers in due time. The committee is formed of five highly skilled and capable members, with enough experience in the field.

The committee will submit a report concerning its work to the head of the *Diwan* to take necessary action.

Item 6

The *Diwan* is empowered with the following capacities in order to fulfil its responsibilities:

1. Interview specialists and contact experienced personnel in all administrative sectors and elsewhere on points related to the issues under investigation or study.
2. Contact concerned authorities to obtain information, data and studies.
3. Review any document or report, and acquire a copy thereof—after obtaining the permission of the authorised minister.
4. Inform the administrative sectors of the facts revealed in issues in which the *Diwan* discovers a breachment of rules or regulations in order to carry out the suitable and necessary action.

Item 7

The legal faculties empowered to the *Diwan* do not—in any way—interfere with the authorities affiliated by law, rules or regulations to any other department or division in following-up its own conduct, monitor its work or inspect its complaints, or interrogate or question its own employees or those responsible for public service.

Item 8

The domain of the *Diwan* includes:

1. Governmental organisations,
2. Public organisations and foundations.

Courts and organisations of jurisdiction and their supporting bodies, Defence, Police departments and National Guard are not included in the domain of the *Diwan*.

Item 9

The *Diwan* is not allowed to study any dispute that is simultaneously investigated by judicial authorities or investigate in a court judgement which has been already taken. The same applies to cases and disputes which encompass confidential documents related to state security or of military nature.

If the *Diwan* obtains any information of that nature, it must transfer it to the legally responsible departments.

Nevertheless, the *Diwan* may investigate the forthcoming responsibilities in cases in which a final court verdict has already been reached. The *Diwan* is also held accountable for investigating the responsibilities in cases and disputes in which the court judgement revealed that there were faults in the conduct of the administrative sectors.

Item 10

If it is proved to the *Diwan* that the work in any section is not carried out in accordance with the general policy of the state, or that the rules or regulations are not being applied properly, or it is discovered that there are defects or faults in the administrative or financial systems that impede the flow of work, the head of the *Diwan* should inform the responsible Minister of the misconduct or defaults and of suggestions of treatment.

Item 11

If the *Diwan* reveals that there are cases which necessitate investigation and the formulation of penalties, it must notify the responsible administrative sector of the case. This sector has to inform the *Diwan* of the actions taken in this respect.

Item 12

After finishing the study of any complaint or claim or public case; the *Diwan* prepares a justified report of its views. A copy of this report is sent to the relevant administrative sector. This sector must inform the *Diwan* of the actions taken in accordance with what came in the report within thirty days from notification. The head of the *Diwan* may ask Minister of state for Ministerial Affairs to include the subject on the agenda of the Council of Ministers, if it deems that the actions taken by the administrative sector are not enough.

Item 13

The *Diwan* may employ the help of any specialist from a governmental body, or from outside expertise, in matters related to its work.

Item 14

The head of the *Diwan* will issue a roster organising the work of the *Diwan*.

Item 15

The *Diwan* submits to the Council of Ministers a semi-annual report on its achievements.

If it proves necessary, the *Diwan* may submit reports — through its Minister — to the Council of Minister. These reports include suggestions for work improvements, causes of defects, revealed vital complaints, breachments discovered, studies conducted and actions taken.

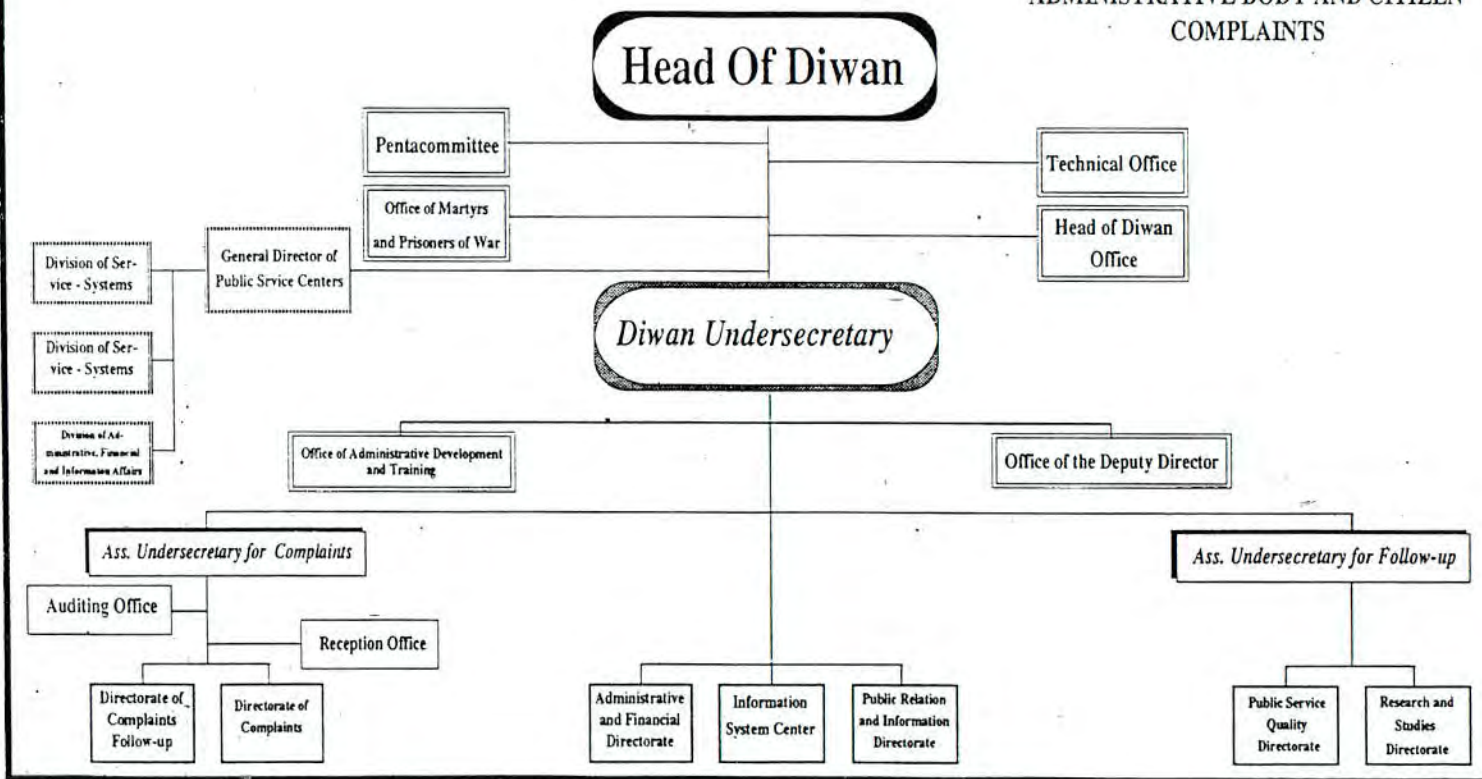
Item 16

Every Minister, each in his concern — must execute this decree and is enforced from the date of issue and published in the official journal.

Amir of Kuwait-Jaber Al-Ahmed Al-Sabah

Organization Chart

COUNCIL OF MINISTERS
DIWAN OF FOLLOWING UP THE
PERFORMANCE OF THE
ADMINISTRATIVE BODY AND CITIZEN
COMPLAINTS



COUNTRY PAPER: **MALAYSIA**

PRESENTED BY: **MR MUHAMMAD ALI YOUSAF, DEPUTY
DIRECTOR GENERAL, PUBLIC COMPLAINTS
BUREAU, PRIME MINISTER'S DEPARTMENT.**

Mr. Chairman and fellow delegates,

On behalf of the Public Complaints Bureau of Malaysia, I would like to extend our thanks to the Ombudsman of Islamic Republic of Pakistan for inviting Malaysian Public Complaints Bureau to attend this conference. As for me, I am indeed honoured and privileged to be here amongst a gathering of very distinguished delegates that are assembled in this beautiful city of Islamabad to share and exchange views on how best we could do our jobs of redressing grievances of the public in our respective country.

Public Complaints Bureau (PCB)

1. In Malaysia, managing of public complaints is being handled by the Public Complaints Bureau of the Prime Minister's Department. PCB was established in July 1971 with the main objective of "to assist the public who are aggrieved with the public service machinery and to take remedial action towards redressing complaints that are justified and to utilise complaints as an input for government agencies to improve accountability, quality and productivity in the public service".
2. PCB derives its power from the Development Administration Circular No. 4 of 1992. PCB is designated as the centre for public complaints with responsibilities and functions as follows:
 - a) to receive public complaints on government administrative actions which are alleged to be unfair, against the existing laws and regulations including misconduct, misappropriation, abuse of power, maladministration and the like,
 - b) to investigate public complaints which are deemed to be valid,
 - c) to report the outcome of investigations and make recommendations to the Permanent Committee on Public Complaints (PCPC) and the relevant authorities,
 - d) to forward the decisions of PCPC to Ministries, Federal Departments/Federal Statutory Bodies/ Local Authorities/ Agencies concerned for the purpose of corrective actions,

- e) to monitor the corrective actions taken by Ministries/Federal Department/Federal statutory Bodies/ Local Authorities/Agencies concerned and subsequently submit such feedback to the PCPC.

3. **Permanent Committee on Public Complaints (PCPC):**

3.1 PCPC is chaired by the Chief Secretary to the Government and members of the committee are:

- a) The Director General of the Public Services Department.
- b) The Director General of the Anti Corruption Agency,
- c) The Senior Deputy Secretary- General, Prime Minister's Department.
- d) The Director General of the Malaysian Administrative Modernisation and Management Planning Unit of the Prime Ministers Department (MAMPU).

3.2 PCPC has the following terms of reference:

- a) to formulate policies on the system of managing public complaints,
- b) to consider and make decisions on reports/ cases submitted by the Public Complaints Bureau on Public complaints.
- c) to direct Secretaries General of Ministries/ Heads of Federal Departments/Heads of Statutory Authorities/ Heads of Local Authorities/ Heads of Agencies concerned to attend meetings of PCPC to explain specific cases/complaints,
- d) to direct Ministries/Federal Departments/ Local Authorities/Agencies concerned to take remedial actions to resolve complaints referred to them.

3.3 Each member of the PCPC occupies important post which is armed with certain administrative powers. The Chief Secretary to the Government is the chairman of the Civil Service Promotion Board, while the Public Services Director General is the Chairman of the Civil Service Disciplinary Board. The Director General of Anti Corruption Agency can investigate any case involving corruption and the Director General of MAMPU is responsible for administrative improvements of the civil service. The membership of these heads of agencies in PCPC is to ensure that all government agencies provide

full cooperation to the system of management of public complaints and to resolve all complaints effectively and speedily.

4. The PCPC deliberates and decides on each and every working paper tabled by Public Complaints Bureau (PCB). The Director General of Public Services will take follow-up action on cases regarding neglect, delays and abuse of power of officers. The Director General of the Anti Corruption Agency will take the necessary action on cases where there is suspicious of corruption. The Director General of MAMPU would handle cases where systemic weakness and work procedures are identified.

4. Public Complaints Help to Improve the Quality of Public Service

- 4.1 “Public complaints” is defined in the Development Administration Circular No. 4 of 1992 as complaints made by the public on their dissatisfaction towards any administrative action that is unjust, not in accordance with existing laws and regulations and the like against governments agencies. (government agencies include all government administration including agencies that have been privatised) Public complaints, however, does not include subject matters relating to government policies and those they are within the ambit of the Anti Corruption Agency, the Legal Aid Bureau, Special Cabinet Committee on Government Administration and the Public Accounts Committee.
- 4.2 The government acknowledges that members of the public, who utilise the services of government agencies, are the best qualified persons to evaluate and provide feedback on quality of public service. As customers, the public can evaluate the performance of any agency from the view of services rendered, on facilities provided, clear signage, waiting time, courtesy accorded, fulfilment of the agencies Clients Charter and so on. Members of the public who have frequent contact with government agencies are encouraged to discharge their civic responsibility by providing objective feedbacks on the quality of services received. The public is encouraged to assess the quality of services given by agencies by forwarding feedback on particular department if the services rendered is unsatisfactory. Complaints from the public are deemed as positive feedback which can help to improve the quality of the public service.
- 4.3 In 1995 PCB handled 4,573 complaints as compared to 4902 in 1994. The types of complaints include delays in carrying out official duties, unfair decision or action , lack of public services or utilities,

inadequate or bias rules and procedures, abuses of power, misconduct of public servants, inefficiencies of public servant and failure to enforce regulations and laws. Based on the cases investigated by PCB, the PCPC recommended that disciplinary action to be taken against 7 governments servants who had been negligent or had abused their powers while carrying out their duties in 1994 and against 8 officers in 1995.

5. Client's Charter

In Malaysia the Client's Charter is a must for all public sector agencies. It is a written commitment made by an agency to its customers. It is an assurance, commitments or guarantee of service based on quality standards set by the agency. It spells out the rights of a customer and the agencies service recovery mechanism should it fail to fulfil its pledges. It also spell out clearly what are the services rendered, the time frame for the completion of a job and, in certain cases the cost elements is also included. The aim of the Client's Charter is to provide total customer satisfactions. Together with the charter agencies are also required to display the work flow diagrams or charts to indicate time taken for each step of work. With this customers will know when the services targets fall short and it is their democratic right to complain and when the service recovery system fails to work at the agency concerned, the customers can seek redressal of their grievances from the Public Complaints Bureau (PCB). The Charter, as such, motivates agencies to set higher level of achievement as failure to meet the pledges would certainly impair the image of the agency.

6. Forwarding of Complaints and Circuit Programme

The circuit programme provides members of the public the opportunity to forward their complaints directly to officers of the Public Complaints Bureau (PCB) who will have one-day stations in smaller towns and in rural areas. In 1994 and 1995, PCB has visited 165 Stations and received 907 complaints for investigation. The public could also forward their complaints by:

- i) Writing to PCB using Post Box No. 9000, Kuala Lumpur or to PCB's Regional Offices,
- ii) Coming personally to PCB Headquarters in Kuala Lumpur or its Regional Offices in Penang, Johore Bharu and Kuala Trengganu; and
- iii) Using telephone and fax machine. Phone No: 2910033, Fax No: 2933-034

COUNTRY PAPER: **MACAU**

PRESENTED BY: **MR LUIS DE MENDONCA FREITAS, HIGH COMMISSIONER, HIGH COMMISSION AGAINST CORRUPTION AND ADMINISTRATIVE ILLEGALITY.**

Macau is a Chinese Territory located on the Pearl River Delta at a distance of around seventy kilometres from Hong Kong and one hundred and fifty kilometres from Canton.

Around four hundred thousand people live in an area covering a mere 20 km which has been under Portuguese administration for almost four hundred and fifty years.

Throughout the highs and lows of its history, Macau adopted the role of go-between two different worlds. This link in economic, cultural and social exchange explains the markedly plural nature of its population. In Macau there are different kinds of language, different educational systems, different religions, different traditions, different architectural styles, different customs and, as a result of all of these, different mentalities. This social and cultural pluralism is one of the basic features in Macau's identity.

Under the terms of a 1987 agreement between Portugal and China, the administration of the territory shall revert to the People's Republic of China on 20 December 1999. For the fifty years following this date, however, Macau shall have the status of a special administrative region with independent legislative, executive and judicial powers. It shall maintain its laws and the way of life of the population basically unchanged. This is the materialisation of the policy of "one country, two systems" that enshrined in the Constitution of the People's Republic of China.

The future Basic Law of the Special Administrative Region of Macau, approved by the People's Republic of China, expressly enshrines the maintenance of Macau's way of life and all the rights and freedoms of its inhabitants. Such as personal freedoms, the freedom of expression, press, meeting, association, movement, migration, strikes, choice of profession, academic research, religion and belief, communication and the right to private property, etc. are all included. It should be pointed out that this law also guarantees that the International Covenant on Economic, Social and Cultural Rights, and the most important International Labour Conventions will also be applied in Macau.

During this transition period, much has been done to strengthen the values which single out and define Macau identity. Portugal is responsible for providing Macau's Public Administration with the conditions that allow it to continue not only

as an agent stimulating social and economic development within the territory, but also as an agent which can apply and consolidate the foundations of a State of Law in the territory.

Exemption, sobriety, honesty, transparency, competence and respect for the legally protected rights and interests of its citizens are qualities that the Public Administration should maintain.

It was in this context that the High Commission against Corruption and Administrative Illegality was created in July 1990 to protect the rights and legitimate interests of Macau's inhabitants. The High Commission is a public body with one difference: it is independent. It is a high authority within the administration, independent from both the Administration and the Courts. Its object is to receive complaints from private individuals concerning the behaviour of public bodies. It uses its authority and powers of persuasion to lead public bodies to make reparations for any injustice or illegal act that they may have committed, or to alter decisions based on bad management that they may have taken.

Although this office also pursues the public interest in other ways, such as preventing or repressing corruption or fraud by employees of public bodies and their agents, the High Commission was created after the model of the ombudsman — an institution of Nordic origin also known as “Mediateur” in France, “Protecteur des Citoyens” in Quebec, “Difensore Civico” in some regions of Italy and “Defensor del Pueblo” in Spain. All these terms reflect, according to the feelings of the various peoples, the essence of its duties: to promote the effective exercise of citizens' legally protected rights; freedoms, safeguards and interests.

This is a universal model, whose limitless essence is dominated by the ideas of Justice and Good, eternal human concerns. In the face of the new challenges brought by a world in constant change, these institutions have been playing an increasingly relevant role regardless of geographical location or political regime, so long as there is democracy. The historical links and the fraternal cultural encounter for which Macau has long been the stage have meant that the same basic set of values and principles which led to the creation of the Ombudsman have been implanted here. It is our hope that Macau's Public Administration will continue to recognise the inherent value of this institution after 1999.

In order to protect the legitimate rights, freedoms, safeguards and interests of Macau's people, the High Commission has a broad range of powers permitting it to:

- ◆ assess the legality and justice of administrative acts or procedures concerning private individuals;
- ◆ supervise the lawfulness and administrative correctness of acts involving property interests;

- ◆ denounce the relevant bodies for punitive actions and punish signs of breaches of which it becomes aware;
- ◆ supervise the progress of any case dealt with by the relevant bodies with powers to deal with disciplinary or criminal proceedings;
- ◆ propose to the Governor or the Legislative Assembly that the unconstitutionality or illegality of norms affecting people's legitimate rights, freedoms, safeguards or interests be examined;
- ◆ propose to the Governor or the Legislative Assembly that legislative measures be taken to improve the operations of public departments and enhance respect for administrative legality;
- ◆ propose to the Governor that administrative measures be taken with a view to improving public services;
- ◆ cooperate with the relevant bodies and public departments to find the most suitable solutions for protecting people's legitimate interests and to enhance administrative action;
- ◆ to publicise, in the media, its acts in pursuing its goals.

Access to the High Commission is guaranteed to everybody, either individually or in a group, and also to public or private collective persons. Any private individual may make a complaint about any illegal or unfair act, or about any anomaly in the running of a public department. The High Commission may also, on its own initiative, open an investigation of facts of which it has learned in any way. Public bodies should also inform the High Commission of any criminal or disciplinary infraction of which they have knowledge, and of the final decisions of any cases.

Complaints or denunciations should be submitted personally and directly to the High Commission in a written document which does not have to conform to any special form or specific procedure. This document is addressed to the High Commissioner and submitted to the High Commission by post, telegraph, telex, fax or any other means of communication. There is also a 24-hour hotline.

After receiving a complaint, the High Commission opens a preliminary investigation to determine whether or not the matter is to be dealt with. If it is accepted, the necessary steps are then taken to clarify the facts. The High Commission can use the following measures for doing this: inquiries, investigations, inspections, interrogations, hearings and the examination of documents. It may also notify the relevant bodies to provide clarification on the matter, request public bodies to provide necessary cooperation in resolving the complaint, and examine the legality and regularity of the administrative procedure leading to the decision which is the cause of the complaint.

In order to protect and safeguard the legality and justice of decisions taken by the Administration, the High Commissioner can use the following measures:

- ◆ recommend to the relevant body that it make reparations for the illegal or unjust act, by modifying, cancelling or revoking its actions;
- ◆ recommend to the relevant administrative authorities criteria for the correct interpretation of legal norms;
- ◆ propose the evaluation of whether norms are unconstitutional or illegal;
- ◆ point out to the relevant organs any legislation that is missing or insufficient;
- ◆ suggest the drafting of new legislation;
- ◆ suggest the adoption of administrative measures which could simplify administrative procedures and bureaucratic circuits;
- ◆ inform the person making the complaint of the method or approach he should adopt in order to have a right recognised, an interest protected or damage made good;
- ◆ clarify to the person making the complaint, or to the public in general, any acts concerning the management of public affairs brought to light by the complaint or about which there is any doubt;
- ◆ use the media as a final method for responding to public opinion, both for providing information about any unresolved situation of injustice, and for publicising letters, reports or official memoranda concerning cases in which no reparation has been made for an offence committed.

As we can see, the High Commissioner has no decision-making powers. He cannot order, decide or impose. However, he can make recommendations, suggestions, criticisms and comments. He can also encourage, inspect and spread information. Through his independence, he can play an informal control of acts practised by the Administration's organs, as a mediator in conflicts between these and citizens, as a promoter of reforms aimed at safeguarding legality, transparency and justice in relations between the Administration and those under it.

His power and legitimacy derive from his ability to carry out efficient, and publicly recognised actions aimed at creating better conditions for quality, quick and fair behaviour on the part of the Administration, and at making relations between the Administration and Macau's citizens closer and more humane.

COUNTRY PAPER: **THE PEOPLE'S REPUBLIC OF CHINA**
PRESENTED BY: **MR. ZUO LIANBI, VICE MINISTER OF**
 SUPERVISION.

Your Excellency,

Mr. A. S. Salam,

Respected Ombudsman of Pakistan,

Respected Colleagues and Friends,

Ladies and Gentlemen,

First of all, I wish to have the honour, on behalf of the Ministry of Supervision of China and in my own name, to extend our warmest congratulations to the holding of this conference, express our highly appreciation to His Excellency Mr. Salam for all the efforts he has made for it and express our heartfelt thanks to his good office for providing us and to our colleagues from Asian countries and regions and from other parts of the world this valuably opportunity to get together and exchange ideas and experiences in our work, and forester friendship between us. It is my belief that, through this conference, the friendly relations between us will surely be further promoted.

Now, I would like to make a brief introduction on the supervisory system of China and its work.

1. The Chinese Supervisory System

Since the very beginning of the founding of new China, the Chinese government, in pursuing its fundamental aim of serving the people wholeheartedly, has always been making the promotion of honest and accountable administration and fostering industriousness in governance as one of our major tasks in the construction of the government organs. In order to strengthen the administrative supervision on the government organs and their personnel, the first supervisory organisation—the People's Supervisory Commission—was established as early as in October 1949 under the state Government Administration Council just following the founding of the People's Republic of China, which was replaced by the Ministry of Supervision in 1954, as a result of the change of the Government Administration Council into the State Council. In 1959, the Ministry was abolished due to the restructuring of the state administration system. The practices of the state's development demonstrated that, to keep the government organs and their personnel to be honest and clean, while constantly attaching great importance to the ideological education, to establish and improve the national supervisory organs and give a full opportunity to play their role is of key importance. So, in 1986, a resolution on the re-establishment of the Ministry

of Supervision was passed by the Standing Committee of the National People's Congress. And in 1987, the Ministry was formally re-established.

As stipulated in the Constitution of the People's Republic of China, the State Council assumes the responsibility to lead and govern the administrative supervision of the nation. The Ministry of Supervision, under the leadership of the premier, is the nation's supreme administrative supervisory body. The main functions of it are to supervise the government organs and their personnel, according to the laws, regulations and policies, to see that they perform their official duties honestly, accountably and industriously and abide the laws and disciplines. The Ministry and other supervisory bodies at various levels under the Ministry exercise their functions independently, and shall not be subject to any interference from other administrative organs, public organisations or individuals. The minister of supervision is a member of the State Council who is nominated by the premier and appointed by the state president with the approval of the National People's Congress, while the ministry's nature, its system of leadership, scope of jurisdiction, duties and responsibilities as well as limits of power and institutional set-ups have been specified in the "Regulations for Administrative Supervision in the People's Republic of China promulgated by the State Council.

The Ministry of Supervision is empowered by law to inspect, investigate, recommendation and to impose administrative penalties directly.

Supervision of the Ministry of Supervision are, those under the departments under the State Council and their personnel, the heads of provincial governments and officials of state-owned enterprises and institutions immediately under the central government who are appointed by the corresponding administrative organs. When necessary, the Ministry can handle matters that are within the jurisdiction of the lower supervisory organs. The specific functions of the Ministry are, to supervise and inspect the implementation, by those to be supervised, of state policies, laws, decrees, national economic and social development plans as well as the decisions and orders promulgated by State Council; to investigate and handle cases of violation of state laws, decrees, and breach of administrative disciplines and mete out disciplinary punishments; to study and examine the policies or regulations made by all the departments under the State Council and the local governments and put forward recommendations for revision or amendments accordingly; and to fulfil other tasks assigned by the State Council.

Presently, the Ministry of Supervision is composed of 23 offices and departments with a 1000 odd staff.

Empowered by the State Council and the "Regulations for Administrative Supervision in the People's Republic of China", the Ministry has set up 50 branch offices in other ministries and commissions under the State Council. And special su-

pervisory organs in governments from the provincial level down to the county level have all been established.

In order to bring into full play of the role of public scrutiny upon the state administrative organs and their personnel, the Ministry has specially invited a certain number of scholars, experts, democratic party members and personages of non-party affiliation to be part-time supervisors.

2. International Exchange and Cooperation Within the Administrative Supervision Field.

In the world today to fight against corruption is a common subject facing all countries in the world. Therefore, it is necessary for our colleagues from various countries and regions to discuss and exchange ways and experiences and strengthen international co-operation. The Ministry of Supervision of the People's Republic of China attached importance to absorbing and learning from the successful experiences and practices in this regard in other countries and regions. We have established and developed friendly ties with more than 70 countries in the world and have studied the administrative supervision systems in over 40 countries as well as their experiences in fighting against corruption and encouraging honest governance. We have the feeling that the exchange and co-operation with our colleagues world-wide is necessary and helpful.

Hereby, I would like to mention one of the Conference programmes, the Establishment of the "Asian Ombudsman Association". Before that, I would like to express our sincere appreciation to His Excellency Mr. Salam and his good office again for their initiation and consultations they did with various countries and regions of Asia. The Ministry of Supervision of China takes it a very positive and valuable initiation. We highly appreciate it and would like to render our active support by making for its finality establishment through friendly discussions and joint efforts with our Asian colleagues and friends. We believe that the establishment of "Asian Ombudsman Association" will surely make positive contributions in promoting the friendly exchanges and cooperations amongst the supervisory organs of various Asian countries and regions and pushing forward the development of supervisory work in each other's countries and regions.

I wish the Conference a complete success.

Thank you.

COUNTRY PAPER: **THE REPUBLIC OF IRAQ**
PRESENTED BY: **DR ALI ABDUL KAREEM AL-NIJAI, DIRECTOR**
 GENERAL, MINISTRY OF JUSTICE.

ADMINISTRATIVE JUDICIARY IN IRAQ

Excellency the Chairman.

Ladies and Gentlemen.

Assalam-o-Alaikum

First of all, allow me to express my sincere gratitude to the people and government of the Islamic Republic of Pakistan for inviting my delegation to participate in the First Asian Ombudsman Conference. I also avail myself of this opportunity to extend our sincere thanks and appreciation for the warm hospitality accorded to us and the excellent arrangements to make this Conference a success.

2. It provides us a unique opportunity to benefit from the valuable experience of the participating countries, in general, and from that of Pakistan, in particular which they have gained in providing justice and relief to the aggrieved, through the Ombudsman's office and similar institutions. The experience of Iraq in this field was earlier based on a single and unified judicial system, through which was ensured effective implementation of the law of the state. Now Iraq has adopted rather dual judicial system, namely "Ordinary Judicial System" and "Administrative Judicial System". I would like to confine myself to the Administrative Judiciary which is concerned with the redressal of complaints of the citizens. This Administrative Judiciary may, otherwise, be called as the Institution of Ombudsman, as it has been protected and provided for by the law of the Consultative Assembly of the State. Its jurisdiction and scope covers the control and check on the decisions, decrees and orders issued by the government officials, functionaries and departments towards and against the citizens. For instance, the decisions by the government functionaries and departments for illegal detention of citizens, unjustified possession of the property of others and the cases of exploitation are taken up by this system and proper redressal is provided. However, the Administrative Judiciary is not authorised to interfere in the affairs of the Sovereignty. The Administrative judiciary is authorised:-

Firstly: To examine and determine whether the grievances or complaints by the citizens are valid or not.

Secondly: To abrogate the decisions and decrees of the government functionaries and officials against the citizens, if found justified.

Thirdly: To amend the decisions or orders against the interests of common people.

Fourthly: To issue orders for proper compensation to public, resulting in the abrogation of unjustified decisions, if so required by the plaintiff.

4. The court of Administrative Judiciary in Iraq functions under the supervision of the General Authority of the Consultative Assembly of the State. This authority has the jurisdiction of the Supreme Court. The General Authority consists of its President, two Vice-Presidents and a minimum number of twelve advisors. They render judgements with majority vote. These advisors are appointed from amongst the judges of first class, Director Generals of the Ministry of Law and Justice, the Attorney-Generals and Professors of law colleges.

5. Through this way and system, grievances of the citizens are redressed and implementation of the State-Law is ensured in letter and spirit. However, the complaints and petitions under trial and consideration at the ordinary or general courts are not entertained by this system or what we call the Administrative Judiciary in Iraq.

6. At the end allow me to once again thank you, Excellency, and honourable colleagues for your patient listening.

Thank you.

COUNTRY PAPER: THE REPUBLIC OF MALDIVES
PRESENTED BY: SHAIKH HUSSAIN YOOSUF, DIRECTOR GENERAL
OF JUDICIAL AFFAIRS OF THE MINISTRY OF
JUSTICE AND ISLAMIC AFFAIRS, MALDIVES.

With the name of Allah, the most Gracious and the most Merciful.

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

All praise belongs to Allah, Lord of the universe.

الحمد لله رب العالمین

Mr. Mohtasib and distinguished participants:

جناب محاسب اور معزز حاضرین

Assalam-o-Alaikum. May peace and blessings of Allah unto thee!

السلام علیکم ورحمۃ اللہ وبرکاتہ

1. I feel happy to convey that because of excellent arrangements I felt no trouble from travelling from Karachi to Islamabad, I am deeply grateful to the organisers and specially of the Government of Pakistan that they arranged this Conference. They drew the attention to the redressal of the grievance of the people and also persuaded the Asian nations towards this end.

۱- میں یہ بات بتاتے ہوئے خوشی محسوس کرتا ہوں کہ انتظامیہ کی بہترین انتظام کی بناء پر میں نے اپنا کراچی سے اسلام آباد تک کا سفر میں کسی قسم کی تکلیف محسوس نہیں کی اور اس پر میں انتظامیہ کا تہ دل سے شکر گزار ہوں اور خاص طور پر حکومت پاکستان کا کہ انہوں نے اس کانفرنس کا انتظام کیا اور لوگوں کو حسب سے عوام کی شکایات دور کرنے کی طرف توجہ دی اور ایشیا کی قوموں کو اس کی ترغیب بھی دی۔

2. There is no doubt that with highlighting the redressal measures of Asian nations great help it will be for overcoming the difficulties and problems.

۲- اس میں کوئی شک نہیں کہ اس کے ذریعے ایشیا کے ممالک میں جب کے جو طور طریقے ہیں وہ متعارف ہو کر مشکلات اور مسائل حل کرنے میں ایک دوسرے کو مدد ملے گی۔

3. I can confidently say that with this meeting brotherly relations between Maldives and Pakistan will further be strengthened.

۳- اور میں پورے وثوق سے کہہ سکتا ہوں کہ اس دعوت سے مالدیپ اور پاکستان کے درمیان اخوة کا سلسلہ زیادہ مضبوط ہو گا۔

4. Although in my country Maldives there is no such permanent institute but to some extent there is arrangement. As you would be aware that Maldives comprises of over one thousand islands but only 202 are inhabited. These comprises 19 provinces. Each province has a Chief who acts as an Incharge of the area.
5. President has further established an office in each island to which people can complain and their grievances redressed. This is addition to courts where people can have recourse. Further at the Male, the Capital there is an organisation which sends officials to islands to inquire into the matter.
6. In the end I thank the distinguished guests and especially the organiser of the Conference and Government of Pakistan that they saw good of others for which they organised this Conference.
7. I hope that by this way especially Maldives and generally Asian countries will be benefited by the participation.
- ۴- ہمارے بلک (مالدیپ) میں اگرچہ اس کا مستقل کوئی ادارہ ابھی تک قائم نہیں ہوئے، لیکن کافی حد تک اس کا اہتمام ضرور ہے۔ جیسا کہ آپ کو معلوم ہو گا کہ مالدیپ ایک ایسے ملک ہیں، جو کہ ایک ہزار سے زائد جزیرے پر مشتمل ہیں، لیکن ان میں صرف ۲۰۲ جزیرے آباد ہیں اور یہ ۲۰۲ جزیرے ۱۹ پروفنٹس پر مشتمل ہیں۔ اور ہر ایک پروفنٹس میں ایک چیف، جو کہ ہر ایک جزیرے کی انچارج کی حیثیت سے کام کرتے ہیں، مقرر ہیں۔
- ۵- اور پریزیڈنٹ نے صرف اسی پر اکتفاء نہیں کیا بلکہ ہر ایک جزیرے میں ایک آفس قائم کیا جس کے ذریعے سے بھی عوام کے شکایتیں سنی جاتی ہے اور ان کے مسائل حل کیے جاتے ہیں۔ باوجود اس کے کہ ہر ایک جزیرے میں ایک عدالت بھی ہوتے ہیں اور اس میں بھی لوگوں کے فیصلے ہوا کرتے ہیں۔ اور اس کے علاوہ ”مائلے“ (دارالحکومت) میں ایک ایسا وزارہ ہے جو ان سب جزیرے سے متعلق ہیں، جو مسائل کی تحقیقات کے لیے لوگ بھیجتے رہتے ہیں۔
- ۶- آخر میں میں معزز شرکاء کا شکر گزار ہوں اور خصوصاً اس کانفرنس کی انتظامیہ کا اور حکومت پاکستان کا کہ انہوں نے اس میں دوسروں کی بھلائی دیکھا اور اس کا بہترین انتظام کیا۔
- ۷- اور میں امید کرتا ہوں کہ اس کے ذریعے خصوصاً مالدیپ میں اور عموماً ایشیا کے ممالک میں اس کا فائدہ ضرور پہنچے گا۔

COUNTRY PAPER: ISLAMIC REPUBLIC OF PAKISTAN
PRESENTED BY: MR. JUSTICE (RTD) ABDUL SHAKURUL SALAM,
 OMBUDSMAN.

OMBUDSMAN IN PAKISTAN:

BRIEF ACCOUNT

CONCEPTUAL EVOLUTION: A perennial problem of rulers has been that they have to rule through men and have to keep populace satisfied. While ruling they find that their instruments or instrumentalities grow too powerful and throw them overboard or these oppress the people so much that the latter throw the gambit and revolt. To meet either of the eventualities or to lessen the possibility, one of the methods employed over the ages has been to appoint some one or create an institution to keep the ruling elite on line and within the parameters of their authority, and at the same time allow people to complain against their excesses for redressal. In the dynastic rule of China, a set of officials were appointed to look after the ruling elite for the twin purpose of keeping them on rails and redressing the grievances of people arising from their oppressive rule. On the other side of the world in Rome, Censors were elected with the dual purpose in mind. They would examine the performance of the State officials and hear complaints of people against them to set the wrong right.

At the dawn of Islam, the Holy Quran laid special emphasis on accountability here and hereafter. The Prophet Muhammad (PBUH) established the practice of accountability or *hisab* and allowed all to question the action or conduct of anybody in authority. His successors followed the tradition.

A typical example of accountability and answerability by the ruler can be quoted here. The Second Khalifa (Caliph) of Islam Hazrat Umar Bin Khattab (RA) appeared to lead the prayers and stood on the rostrum. He was questioned about the shirt he was wearing. The questioner stated that everybody was given a piece of cloth, including the Khalifa and the shirt he was wearing could not be made with that one piece, as he was a very tall man. The person asked him as to how he got the extra cloth? The Khalifa explained that the extra length of cloth was given to him by his son from his share. So, the accountability of the Head of the State was established and publicly acknowledged.

Concomitant was the other principle of *adl* and *Ihsan*, justice and generosity — not only in adjudicatory matters but in all dealings, public or private. The interaction of the two principles led to the establishment of an institution that if anybody felt aggrieved of an action of a public authority he could go to that institution and complain about the wrong done to him. after enquiry, it would be set aright and grievance redressed.

In the Ottoman Empire, such an institution was named as '*Mazalim*' Court where people could go to complain against officials for violation of their rights, or oppression by State functionaries. This institution would enquire into the matter and grant relief to the aggrieved persons. The institution functioned so effectively for years that people would have no grievance against the State or its officials which would go unredressed.

Strange are affairs of man. Sometimes in the beginning of the eighteenth century, King Charles-XII of Sweden had to spend a period of exile in Turkey. He saw the institution to which the ordinary people could go for redressal of their grievances against the State functionaries. He realised that if ordinary people's grievances were readily redressed, they were less prone to rebel. On his restoration, King Charles XII established the first Ombudsman's like office in Sweden in 1718. This was an institution similar to what the King had seen during his exile in Turkey — an institution to which the citizens could complain against the royal officials and after investigation the grievances could be redressed. This has been noted by Prof. Dr. Victor Pickl of Austria. The office changed its name from time to time. It was in 1809 that the first proper Ombudsman was appointed by the Swedish Parliament on adoption of the Constitution. The Ombudsman idea was accepted in the other Scandinavian countries i.e. Finland in 1920 and Denmark in 1955. Sweden and Norway appointed Ombudsman for the armed forces as well.

The concept was picked up across the world by New Zealand which appointed the first Ombudsman in 1962. Back to Europe, the office was established in the United Kingdom under the Parliamentary Commissioner Act of 1967.

The institution of Ombudsman is now accepted as an important and very useful part of a democratic society. Institutions of Ombudsmen with different nomenclature are functioning around the world at various levels. These operate over Federal, Provincial, Local or Municipal areas. These are also established for special purposes like Hospitals, Education, Prisons, Press etc.

STATUTORY PROVISION: The Constitution of Pakistan provides for an Ombudsman on the Federal List who is appointed on the advice of the Prime Minister by the President. Having approval of both the Heads of the Government and the State he discharges his duties without any fear or favour. He is removable only by judicial impeachment. The issue of appointing Provincial Ombudsmen is left to the Provincial Legislatures.

The Office of Ombudsman was established under the 'Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983' (President's Order No.1 of 1983). Article 9 of the said Order provides that Ombudsman may, on a complaint by any aggrieved person, on a reference by the President, the Federal Council or the National Assembly, as the case may be, or on a motion of the Supreme Court or a

High Court made during the course of any proceedings before it or of his own motion, undertake any investigation into any allegation of maladministration on the part of any Agency or any of its officers or employees, except when the matter is *subjudice*, relates to the external affairs of Pakistan or to the defence of Pakistan. Vide Article 2(2), maladministration includes: "(i) a decision, process, recommendation, act of omission or commission which: (a) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is *bonafide* and for valid reasons; or (b) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory; or (c) is based on irrelevant grounds; or (d) involves the exercise of powers or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favouritism, nepotism and administrative excesses; and (ii) neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities." The Agency is defined under Article 2(1) to mean "a Ministry, Division, Department, Commission or office of the Federal Government or statutory corporation or other institution established or controlled by the Federal Government but does not include the Supreme Court, the Supreme Judicial Council, the Federal Shariat Court or a High Court." Under Article 3(3), the Ombudsman is to perform his functions and exercise his powers "independently of the executive" and "all executive authorities throughout Pakistan shall act in aid of the Mohtasib".

Recommendations of the Ombudsman are required to be implemented or reasons for non-compliance are to be given under Article 11(2). In case of defiance, the matter can be reported to the President under Article 11(5) read with Article 12. The defiance of recommendations can attract punitive action for the defaulting functionaries. The recalcitrant can also be punished under the provisions for contempt of court vide Article 16. Article 33 authorises the Ombudsman notwithstanding anything in the Order, to informally conciliate, amicably resolve, settle or ameliorate any grievance without legal formalities. Under Article 29, "no court or other authority shall have jurisdiction (i) to question the validity of any action taken, or intended to be taken, or order made, or anything done or purporting to have been taken, made or done under this Order; or (ii) to grant an injunction or stay or to make any interim order in relation to any proceedings before, or anything done or intended to be done or purporting to have been done by, or under the orders or at the instance of the Mohtasib". Under Article 32, any person aggrieved by a decision or order of Mohtasib, may within thirty days, make a representation to the President who may pass such order as he may deem fit. This right is for a person who has not been granted relief by the Mohtasib for any limitation of law or otherwise. The President may grant him relief in his discretion. However, this right of representation cannot be evoked by any Agency defined in Article 2(1) which is expressly barred by Article 29 aforementioned to question any action taken or order made by the Mohtasib under the Order.

PRESIDENT'S DIRECTIVE: On 20th September, 1990, the President issued the directive that the Ombudsman's institution has been established to render inexpensive and speedy justice to the poor and downtrodden citizens, aggrieved or affected by the act of maladministration of the Federal Agencies. So, to ensure that relief is provided to the common man against the excesses and acts of maladministration of the Federal Government Functionaries, Recommendations/ Findings of the Wafaqi Mohtasib (Ombudsman) should be implemented within the stipulated time. All Federal Agencies were urged to extend full co-operation to the Ombudsman for carrying out his functions smoothly in accordance with the requirements of law.

PRIME MINISTER'S DIRECTIVE: On 14th November, 1995, the Prime Minister of Pakistan directed all Federal Agencies to strictly follow, both in letter and spirit, the directions of the President, and in future compliance should be made promptly in respect of the cases involving pensions, gratuities or other benefits arising on retirement; for giving preference in employment to the widow or children of deceased/retired employees in grade 1 to 11 as per relevant recruitment rules; for appointment of women against their reserved quota; medical expenses; insurance claims; utility bills; compensation or remission allowed to widows, orphans, invalids or incapacitated persons where the amount is not more than Rs. .5 million in an individual case and is permissible under the law.

ORGANISATION AND SYSTEM: The Ombudsman, has its Headquarters Office at Islamabad and also Regional Offices in the capitals of the four Provinces of Pakistan i.e. Punjab at Lahore, Sindh at Karachi, NWFP at Peshawar and Baluchistan at Quetta. These offices have been manned by selection of officers from the Government, retired Judges of the High Courts or senior retired public servants who had the aptitude and experience to redress the grievances of people. At the moment they are 50 in number.

A person aggrieved needs only send an application in any language pointing out his grievance. It is examined by the registrar and the Director General. If it has no substance at all or totally without jurisdiction, it is proposed to be rejected for final order of an officer. Otherwise, it is sent to the Investigating Officer to probe the facts, call for report from the Agency concerned, hear the parties if necessary and recommend relief as far as permissible under the law. The findings and Recommendations are put up to the Ombudsman. On his approval and under his signature, these are then issued.

The Findings and recommendations of the Ombudsman are invariably implemented and seldom delayed beyond the prescribed time. Most of the time all the authorities and others carry out the recommendations quite promptly. Even in matters where the jurisdiction of Ombudsman does not extend, like the Provincial field and local bodies etc., when the matter is taken up informally for settlement under Article

33 of P.O. I of 1983, the authorities co-operate, send report, and care for the recommendations.

EFFICACY: The job has been done with dedication and diligence and innumerable people have been granted relief. It is for this reason that more and more people approach the Ombudsman for solution of their problems. Even when no relief can be granted, the aggrieved person is, at least, explained the position and is so solaced. This is no mean a service.

It is common knowledge that people suffer in silence and can hardly bear their burden. Some of it is on account of poverty, illiteracy or ignorance. But their life can be a lot lightened, if the people who rule over them can envisage their problems, feel the miseries, and try to do what they can. Even if they were to listen to their woes, much can be done with a will. Inaccessibility and apathy have led the people to lose confidence. The modern States' field of operation is so vast that the moment a child is born, he/she is required to be registered with a public authority, for what is called birth certificate. When a person dies, the fact is to be reported by the bereaved again, to an authority. All his or her life, he/she is never free of the control and dependence on the State. Its officials after few years of the feel of authority become remote and insensitive. When approached for resolution of a problem, the first reaction is that relief is not possible because of this rule or that. If a moment were to be spared to 'think' what can be done, the law or the rule would guide to the solution because these were there for the benefit of the people, not to thwart their expectations and aspirations.

Against this background, Ombudsman's Organisation is a boon for poor people. It investigates his complaint and helps in redressing his grievances. Even though it may be a drop in the ocean and its activities not dramatic, yet bit by bit it can encompass a vast area. No body is unaware that the problems are many and of colossal magnitude. More efforts are needed.

The moment ordinary grievances of the people arising in day to day living are resolved/redressed, efforts would be made for making suggestions to improve the functioning of the Governmental institutions so that those dealing with the people act quickly, efficiently and honestly in accordance with law, equity and good conscience.

PERFORMANCE DURING 1995: The year marks the 13th year of the establishment of Ombudsman institution in Pakistan. In 16,057 cases grievances were redressed whereas 2,827 were rejected as having no merits and 21,477 were disposed of at the preliminary stage. Thus, the total disposal was 40,361 at the close of the year 1995.

COUNTRY PAPER: **AZAD JAMMU & KASHMIR - PAKISTAN**
PRESENTED BY: **CHIEF JUSTICE (RTD) RAJA MUHAMMAD**
 KHURSHID KHAN, OMBUDSMAN.

Mr. President, distinguished guests, ladies and gentlemen;

It is a unique privilege for me to address distinguished guests attending this function regarding Ombudsman institute and its working in my region i.e. Azad Jammu and Kashmir, a thin slice of the old Jammu and Kashmir State.

The State of Azad Jammu and Kashmir came into being on 24th of October, 1947 in consequence of armed revolt against the ruler by the Muslims, who had been denied fundamental rights, social justice and freedom of thought by the then ruler, Maharaja Hari Singh and his predecessors.

Ladies and gentlemen,

Ombudsman in its literal meaning stands for a person who represents and protects the interest of a person or persons. It conveys the sense of a grievance redressal agency which investigates and rectifies the effects caused by maladministration done to a citizen by a government functionary or agency. According to the British Encyclopaedia, Ombudsman is a legislative Commissioner for investigating citizens' complaints of bureaucratic abuse. It is true that the office of modern Ombudsman originated in Sweden in 1809 but there is no gain-saying the fact that the Ombudsman's concept dates back to the origins of Islam. The Holy Prophet (P.B.U.H.) himself acted as a Mohtasib. He used to inspect market places to check prices and quality of goods, rectify moral wrongs and ensure observance of social justice and equality to the citizens of the state. Thus Holy Prophet Muhammad (P.B.U.H.) was the first Ombudsman of the world. In this regard, it will not be out of place to quote an extract from the report of D.G. of the Austrian Ombudsman's office.

Institution to investigate complaints can only be seen in the context of public administration; hence their history is also the history of public administration as a whole. It goes back to the "Quran" in the "Quran" itself the term "administration" is not used but under many of its verses the principles of a political and administrative systems are expounded. Justice is one of the basic principles of Islamic ideology. Not only the rulers are responsible for it, but the exercise of justice is a task for the whole Muslim community and needs to be practised without regard to social status, race or religions or creed of the person concerned. Among Greeks and Romans, on the other hand, sharp distinctions were drawn between different persons and organisations in whom rights were vested.

Before the times of Prophet Muhammad (P.B.U.H.) there was no administration in the proper sense in many tribes. There was only simple administrative

system. There was nothing like the organisational structure of the Romans. It was the Prophet Muhammad (P.B.U.H.) who first introduced administrative authorities. He appointed governors of the provinces, judges and tax collectors. They were all accountable to the Prophet (P.B.U.H.) we have no reports of complaints about these institutions. As an essential principle of government and administration the Prophet (P.B.U.H.) bequeathed trust, justice and effectiveness as well as combination of authority with responsibility. An interesting fact in this context is that the institution of "Hisbah" and its functions was also adopted by the crusaders in Jerusalem. They even used the Arab word, Mohtasib although they changed it into "Mathesep". The practice of entrusting higher judges with function of handling complaints has been retained to the present day. Under Turkish rule it was the "Qadi-al-Qudat" i.e. the judge of judges who occupied this office. In Saudi Arabia, the members of Board of Grievances enjoy judicial privileges and in fact have the status of Supreme Court Judges. Thus it will be seen that the concept of Ombudsman owes its existence to Muslims.

In my State i.e. the State of Azad Jammu and Kashmir the Office of Ombudsman was established in September 1991, through an ordinance. Prior to this, the government had, from time to time taken number of steps to redress the grievances of the public. A chronological accounts of these steps is as under:-

1. Anti-corruption department was established since the inception of the Azad Jammu and Kashmir Government during the year 1947.
2. Constitution of screening committees in 1958 to check and redress the excesses done to the common man through maladministration.
3. An Ombudsman was appointed during the year 1972 but this appointment could not materialise due to non-availability of funds.
4. Efficiency and discipline rules were introduced during the year 1977, these rules are still in vogue.
5. Constitution of Enquiry Commission in 1978.
6. Formation of Vigilance Commission in 1979.
7. Establishment of Prime Minister's Inspection Team in 1980-81.

The above mentioned steps taken by the government were appreciated but these steps could not achieve the desired results for the main reason that the findings of the bodies were recommendatory in nature and normally the executive authorities sat over the recommendations. Thus the entire exercise was an exercise in futility. It was only during the year 1991 that the government of Azad Jammu and Kashmir through an Ordinance established the Office of Ombudsman in the territory on the lines of Ombudsman institution in Pakistan. The Ordinance was converted as an Act

of the Assembly in the year 1992 by the legislative Assembly of Azad Jammu and Kashmir.

The salient features of the office are:-

- i) Independence of the institution from Executive.
- ii) Informal procedure and easy accessibility to the public.
- iii) Free and prompt services to the citizens.

Main points of the Ombudsman Act, 1992 are as under:-

Section 3. Appointment of Mohtasib.— (1) There shall be a Mohtasib (Ombudsman), who shall be appointed by the President.

(2) Before entering upon office, the Mohtasib shall take an oath before the President in the form set out in the First Schedule.

(3) The Mohtasib shall, in all matters, perform his functions and exercise his powers fairly, honestly, diligently and independently of the Executive; and all executive authorities throughout Azad Jammu and Kashmir shall act in aid of the Mohtasib.

Section 9. Jurisdiction, Functions and Powers of the Mohtasib.— (1) The Mohtasib may on a complaint by and aggrieved person, on a reference by the President, the Azad Jammu and Kashmir Council or the Assembly, as the case may be, or on a motion of the Supreme Court or a High Court made during the course of any proceedings before it or of his own motion, undertake any investigation into any allegation of maladministration on the part of any Agency or any of its officers or employees;

Provided that the Mohtasib shall not have any jurisdiction to investigate or inquire into any matters which—

- (a) are *subjudice* before a court of competent jurisdiction or judicial tribunal or board in Azad Jammu and Kashmir on the date of the receipt of a complaint, reference or motion by him; or
- (b) relate to the external affairs of Pakistan or the relations or dealings of Pakistan with any foreign state or government; or
- (c) relate to, or are connected with, the defence of Pakistan or Azad Kashmir or any part thereof, the military, naval and air Forces of Pakistan, or the matters covered by the laws relating to those Forces.

(2) Notwithstanding anything contained in sub-section (1), the Mohtasib shall not accept for investigation any complaint by or on behalf of a public servant or functionary concerning any matter relating to the Agency in which he is, or has, been working in respect of any personal grievance relating to his service therein.

(3) For carrying out the objective of this Act and, in particular for ascertaining the root causes of corrupt practices and injustice, the Mohtasib may arrange for studies to be made or research to be conducted and may recommend appropriate steps for their eradication.

Section 10. Procedure and Evidence.— (1) A complaint shall be made on solemn affirmation or oath and in writing addressed to the Mohtasib by the person aggrieved or, in the case of his death, by his legal representative and may be lodged in person at the office or handed over to the Mohtasib in person or sent by any other means of communication to the office.

(2) No anonymous or pseudonymous complaints shall be entertained.

(3) A complaint shall be made not later than three months from the day on which the person aggrieved first had the notice of the matter alleged in the complaint, but the Mohtasib may conduct an investigation pursuant to a complaint which is not within time if he considers that there are special circumstances which make it proper for him to do so.

(4) Where the Mohtasib proposes to conduct an investigation he shall issue to the principal officer of the Agency concerned, and to any other person who is alleged in the complaint to have taken or authorised the action complained of a notice calling upon him to meet the allegations contained in the complaint, including rebuttal;

Provided that the Mohtasib may proceed with the investigation if no response to the notice is received by him from such principal officer or other person within 30 days of the receipt of the notice or within such longer period as may have been allowed by the Mohtasib.

(5) Every investigation shall be conducted in private, but the Mohtasib may adopt such procedure as he considers appropriate for such investigation and he may obtain information from such persons and in such manner and make such inquiries as he thinks fit.

(6) A person shall be entitled to appear in person or be represented before the Mohtasib.

(7) The Mohtasib shall, in accordance with the rules made under this Act pay expenses and allowances to any person who attends or furnishes information for the purposes of an investigation.

(8) The conduct of an investigation shall not affect any action taken by the Agency concerned or any power or duty of that Agency to take further action with respect to any matter subject to the investigation.

(9) For the purposes of an investigation under this Act the Mohtasib may require any officer or member of the Agency concerned to furnish any information or to produce any document which in the opinion of the Mohtasib is relevant and helpful in the conduct of the investigation, and there shall be no obligation to maintain secrecy in respect of disclosure of any information or document for the purposes of such investigation;

Provided that the President may, in his discretion, on grounds of its being a State secret, allow claim of privilege with respect to any information or document.

(10) In any case where the Mohtasib decides not to conduct an investigation, he shall send to the complainant a statement of his reasons for not conducting the investigation.

(11) Save as provided in this Act the Mohtasib shall regulate the procedure for the conduct of business or the exercise of powers under this Act.

Section 11. Recommendations for Implementation.— (1) If, after having considered a matter on his own motion or on a complaint or on a reference by the President, the Azad Jammu and Kashmir Council or the Assembly, or on a motion by the Supreme Court or a High Court, as the case may be, the Mohtasib is of the opinion that the matter considered amounts to maladministration, he shall communicate his findings to the Agency concerned:-

- (a) to consider the matter further;
- (b) to modify or cancel the decision, process, recommendation, act or omission;
- (c) to explain more fully the act or decision in question;
- (d) to take disciplinary action against any public servant of any Agency under the relevant laws applicable to him;
- (e) to dispose of the matter or case within a specified time;
- (f) to take action on his findings and recommendation to improve the working and efficiency of the Agency within a specified time: or

- (g) to take any other step specified by the Mohtasib.
- (2) The Agency shall, within such time as may be specified by the Mohtasib, inform him about the action taken on his recommendations or the reasons for not complying with the same.
- (3) If any case where the Mohtasib has considered a matter, or conducted an investigation, on a complaint or on a reference by the President, the Azad Jammu and Kashmir Council or the Legislative Assembly or on a motion by the Supreme court or a High Court, the Mohtasib shall forward a copy of the communication received by him from the Agency in pursuance of sub-section (2) to the complainant or as the case may be, the President, the Azad Jammu and Kashmir Council, the Assembly the Supreme Court or the High Court.
- (4) If, after conducting an investigation, it appears to the Mohtasib that an injustice has been caused to the person aggrieved in consequence or mal-administration and that the injustice has not been or will not be remedied he may, if he thinks fit, lay a special report on the case before the President.
- (5) If the Agency concerned does not comply with the recommendations of the Mohtasib or does not give reasons to the satisfaction of the Mohtasib for non-compliance, it shall be treated as "Defiance of Recommendations" and shall be dealt with as hereinafter provided.

Section 12. Defiance of Recommendations.— (1) If there is a "Defiance of recommendations by the public servant in any Agency with regard to the implementation of a recommendation given by the Mohtasib, the Mohtasib may refer the matter to the President who may, in his discretion, direct the Agency to implement the recommendation and inform the Mohtasib accordingly.

- (2) In each instance of "Defiance of Recommendations" report by the Mohtasib shall become a part of the personal file or character roll of the public servant primarily responsible for the defiance;

Provided that the public servant concerned had been granted an opportunity to be heard in the matter.

Section 13. Reference by Mohtasib.— Where during or after an inspection or an investigation, the Mohtasib is satisfied that any person is guilty of any allegations as referred to in sub-section (1) of section 9, the Mohtasib may refer the case to the concerned authority for appropriate corrective or disciplinary action, or both corrective and disciplinary action, and the said authority shall inform the Mohtasib within 30 days of receipt of reference of the action taken. If no information is received within this period, the Mohta-

sib may bring the matter to the notice of the President for such action as he may deem fit.

Section 14. Powers of the Mohtasib.— (1) The Mohtasib shall, for the purposes of this act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, (Act V of 1908), in respect of the following matters, namely:-

- (a) Summoning and enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents;
- (c) receiving evidence on affidavits; and
- (d) issuing commission for the examination of witnesses.

(2) The Mohtasib shall have the power to require any person to furnish information on such points or matters as, in the opinion of the Mohtasib, may be useful for, or relevant to, the subject matter of any inspection or investigation.

(3) The powers referred to in sub-section (1) may be exercised by the Mohtasib or any person authorised in writing by the Mohtasib in this behalf while carrying out an inspection or investigation under the provisions of this Act.

(4) Where the Mohtasib finds the complaint referred to in clause (1) of Section 9 to be false, frivolous or vexatious, he may award reasonable compensation to the Agency, public servant or other functionary against whom the complaint was made and the amount of such compensation shall be recoverable from the complainant as an arrears of land revenue;

Provided that the award of compensation under this sub-section shall not debar the aggrieved person from seeking civil and criminal remedy.

(5) If any Agency, public servant or other functionary fails to comply with a direction of the Mohtasib, he may, in addition to taking other action under this Act, refer the matter to the appropriate authority for taking disciplinary action against the person who disregarded the direction of the Mohtasib.

(6) If the Mohtasib has reason to believe that any public servant or other functionary has acted in a manner warranting criminal or disciplinary proceedings against him, he may refer the matter to the appropriate authority for necessary action to be taken within the time specified by the Mohtasib.

(7) The staff and the nominees of the office may be commissioned by the Mohtasib to administer oaths for the purposes of this Act and to attest

various affidavits, affirmations or declarations which shall be admitted in evidence in all proceedings under this Act, without proof of the signature or seal or official character of such person.

Section 32. Representation to President.— Any person aggrieved by a decision or order of the Mohtasib may, within 30 days of the decision or order, make a representation to the President, who may pass such order thereon as he may deem fit.

Section 36. Act to override other laws.— The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.

The basic idea of having this Institution in Azad Jammu and Kashmir is to prevent the abuses of authority by the public functionaries. The law also gives powers to the Ombudsman to redress individual grievances arising out of bad administration due to inadequate procedures and administrative excesses. The findings and recommendations are always implemented. It is true, that the Ombudsman cannot interfere in policy matters of the government, but the powers given to him gives him ample opportunity to stream line the government policy, towards correct direction in the interest of good administration and fair play.

Sir,

The Ombudsman concept has become so popular all over the world that at present about 40-50 countries have adopted this system to redress the grievances of their citizens. Many countries have even gone for special interest Ombudsman such for Health, Prison, Local Bodies, Education, Taxation etc. Because of world wide acceptance and recognition of this system, it was felt in 1970 to institutionalise this institution in the various countries of the world. It is a fact that Ombudsman Associations are successfully working in almost all the regions of the world. The European Ombudsman Association, the American Ombudsman Association are working successfully by way of sharing experiences and pooling resources for their common benefits. Even the African countries have established their own Ombudsman association. It is really sad there is no regional association of Ombudsman in the Asian countries. Some of the Asian countries have even no Ombudsman Association of their own. I feel that there is dire need for a association at Asia level. I would suggest the name of Mr. Justice (Retd) Abdul Shakurul Salam, as the convenor of the association.

Thanks,

COUNTRY PAPER: **THE PROVINCE OF SINDH - PAKISTAN**
PRESENTED BY: **MR JUSTICE (RETD) SALAHUDDIN MIRZA,**
 OMBUDSMAN.

Mr. Justice (Rtd) Abdul Shakurul Salam, Federal Ombudsman of Pakistan, Hon'ble delegates from People's Republic of China, Sri Lanka, Maldives, Philippines, Sudan, Australia, Hong Kong, Iran, Iraq, Japan, Jordan, Korea, Kuwait, Macau, Malaysia, Turkey and Yemen.

I consider it a great privilege that I have been invited to address this august and distinguished gathering. Credit must go to our Federal Ombudsman who gave a concrete shape to the idea floated by his predecessor Mr. Justice (Rtd) Syed Usman Ali Shah for organising the First Asian Ombudsmen Conference which we are all attending today here in Islamabad.

2. Although in Pakistan the Institution of Ombudsman was established at the Federal level in 1983, it was created in the Province of Sindh in May 1991 through the promulgation of an Ordinance by the Governor of Sindh which was later incorporated into an Act of Provincial Legislature on 25th September 1991 under the title of "Establishment of the Office of Ombudsman for the Province of Sindh Act 1991" and which was assented to by the Governor of the Province on 23rd January 1992 and notified on the same day as Sindh Act 1 of 1992. This enactment follows the pattern of the Federal Ombudsman's Ordinance 1983 and therefore the institution of the Provincial Ombudsman shares almost all the pleasant as well as unpleasant experiences with the Federal Institution in its working and approach and implementation of its decisions.

3. I had assumed the office of Provincial Ombudsman for Sindh after my retirement from the High Court on 22nd September 1995 and during the last 6½ months that I am here I have keenly watched the performance of this institution and its impact on the Government functionaries who, over the years, have degenerated and grown oblivious to the problems of the masses. You have already partly heard the views of the Honourable Federal Ombudsman Justice Abdul Shakurul Salam about the changes brought by the Ombudsman at the Federal level and the relief granted by the Federal Ombudsman to the needy and the weak and I believe he shall throw some further light on the subject in his concluding address and I shall therefore be brief in this regard lest I should be guilty of repetition. I would only say that my experience at the provincial level is not that much optimistic and the reason appears to be that this Institution, being so young in the province, has not yet found roots in the system.

4. Our modus operandi in dealing with the complaints is that we seek comments from the government departments against whom complaints are received and thereafter we hold hearings in which the complainants and the representatives of the concerned departments are called and the problems are discussed and then the deci-

sions are given. The Ombudsman has a team of officers to assist him. The complaints are initially dealt with by them and they submit the case to the Ombudsman after completing the enquiry and with a brief note of their investigative efforts. The Ombudsman then examines the case and if he finds it necessary to hear the parties anew, they are recalled for a final hearing. Sometimes we find that a third party is going to be affected if the grievance of a complainant is redressed and his prayer is allowed. There is no specific provision in the law to call and hear such third party but I have now directed that following the age-old dictum that no one should be condemned unheard, such third parties should also be called.

5. As the preamble of the Act say, the Ombudsman besides making investigation, is also required to diagnose the causes of mal-administration in the Agencies. Section 9 sub section (3) of the Ombudsman's Act, 1991, requires him to conduct studies in respect of such activities of the Agency where corruption, nepotism, exploitation and high-handedness have taken deep roots to the great harassment of the general public. This institution has so far conducted two studies on the working and mal-practices of the Building Control Authority and on the rampant financial indiscipline of the Local Bodies in Sindh. Recently we have conducted an in-depth inquiry into the foundation and structural failure of the new University Campus in Khairpur District on the reference received from Governor of Sindh and our report is under consideration of the Cabinet.

6. Ombudsman is appointed by the Governor of the Province for a 4-year term but he is not eligible for extension or re-appointment or for holding any office of profit in the service of Pakistan before the expiry of two years after he ceases to hold the office of Ombudsman. Nor is he eligible for election to either Provincial or Federal Legislature for a period of two years from the date he ceases to hold the office of Ombudsman. The Ombudsman has been given all the powers to punish for his contempt which are available to the High Court under the Contempt of Court Act.

7. Friends and fellow delegates! admittedly Ombudsman is armed with a good deal of powers under the Act; yet to effectively deal with various facets of mal-administration, Ombudsman needs to be strengthened especially in the sector of implementation of his decisions in letter and spirit. The Act presents Ombudsman as the "upholder of equity". Discrimination in any form is alien to him. His task of overseeing the wranglings and misconduct of the negligent but powerful government functionaries is by itself a tight-rope walking. Perhaps my colleagues in the Secretariat of Wafaqi Mohtasib and in the Secretariat of Azad Kashmir will agree that the Ombudsman's Act needs certain modifications and amendments to transform this institution into a "Real Protector of the Rights of the People." The very fact that the Ombudsman's decision on a complaint against the mal-administration of a Government Department is termed as "Recommendation" in the Act, takes away the required punch and teeth needed to put the wayward departments on the right track. I

had realised this position within a couple of months after taking over as Ombudsman and had undertaken the task, with the help of my officers, of suggesting amendments to the piece of law under which this institution is created. The exercise is now over and the draft of the amendments is receiving final touches and shall be shortly submitted to the Governor and the Chief Executive of the Province for their consideration. Even so, however, the very existence of the Ombudsman has to some extent discouraged and hampered perverse by arbitrary actions of the bureaucracy. They now know that any one irrespective of his status in life, can invite the intervention of the Ombudsman without undergoing the ordeal of going through the legal formalities normally required to file a suit in a Court of Law.

8. I am confident that if the institution of Ombudsman is given sufficient powers and freedom and is given the respect that is due to it and is not considered by the bureaucracy as a nuisance but is regarded as an arm in aid of the executive, a process of accountability will be generated which will surely arrest the downward trend in the efficiency and morality of our service structure. Already, the quick relief provided in some of the cases has gone a long way to create some confidence in the common man as to the efficacy of this institution. The bureaucracy sitting on a higher pedestal is beyond the reach of common man. It is thus a matter of great satisfaction to a common man that the system has provided him a forum where a head of a government department is obliged to face the aggrieved and to explain and prove the *raison-detre* of their actions.

9. This institution, even in its present unsatisfactory condition, has not only provided relief in individual grievances but has also taken cognisance of matters of general public interest where guide-lines have been furnished to the government departments and their subordinate officers to streamline their working so as to narrow down the area of discretion and discrimination.

10. I am not aware how in other countries the finance is provided for Ombudsman, but here the Ombudsman is dependent on the Finance Department for his budget but the Finance Department is one of the government departments over which the Ombudsman sits as a watch-dog and against which he hears complaints and quite often gives decisions against it. Ombudsman therefore needs to be made independent of the finance Department as far as his financial needs are concerned.

11. I am sure, Sir, that this Conference will enable us all to look into the ways and means to improve our respective institutions. I hope that this Regional Conference shall only be the first of its kind and such Conferences shall be held at regular intervals and by rotation in the capitals of the countries of the region where the Institution of Ombudsman has been established.

12. I also hope that some tangible decisions will be taken at this forum regarding the formation of "Asian Ombudsman's Association" on the pattern of American Om-

budsman's Association, European Ombudsman's Institute, Australasia Ombudsman's Association and South African Ombudsman's Institute which all are playing a useful role in their respective regions in redressing the grievances of the masses against the mal-administration of governmental agencies and in creating respect for basic human rights and in creating awareness of administrative accountability. The need for a formal Association at the Asian level can not be over-estimated. Formation of such Association is essential for achieving the following objectives and benefits:

- ◆ Sharing of experiences and ideas.
- ◆ Pooling of Resources.
- ◆ Exchange of information of mutual benefits among the Regional Institutions.
- ◆ Training and research facilities.

13. Once it is agreed that Asian Ombudsmen Association should be formed, it should not be difficult to mutually agree on some suitable place for housing its head-quarter.

14. I would give some facts and figures as regards complaints, their disposal and the outcome of the Appeals filed before the Governor.

STATEMENT NO. 1

Showing Position of the Institution of Complaints Received During September, 1991 to 15th March, 1996.

S. No.	Description	No. of Complaints
1.	Total No. of Complaints received since Sept. 1991.	36,410
2.	Total No. of Complaints Admitted for regular Investigation.	12,261
3.	Total No. of Complaints forwarded to Federal Government Agencies for want of Jurisdiction.	3,598
4.	Total No. of Complaints not admitted for Technical reasons/Anonymous/Pseudonymous	10,089
5.	Total No. of Cases forwarded to the Provincial Agencies for necessary appropriate actions.	3,367
6.	Total No. of Complaints under scrutiny/correspondence with applicants/complainants.	63
7.	Total No. of Complaints where advice is tendered to the Complainant.	7,032

STATEMENT NO. 2**Showing Disposal of the Admitted Complaints
During September, 1991 to 15th March, 1996.**

S. No.	Description	Number	Percentage
(i)	No. of Complaints admitted for regular Investigation.	12,261	
(ii)	No. of Complaints decided.	10,385	85% (of the total Complaints)
(a)	No. of Complaints in which redressal has been given.	7,539	73% (of the decided Complaints)
(b)	No. of Complaints rejected.	2,846	27% (of the decided Complaints)
(iii)	No. of Complaints under process of investigation.	1,876	15% (of the total admitted Complaints.

STATEMENT NO. 3**Showing Disposal of Review Petitions
During September, 1991 to 15th March, 1996.**

S. No.	Description	Numbers
(i)	No. of Review Petitions filed and admitted for consideration	369
(ii)	No. of Review Petitions disposed of.	366
(a)	Relief Provided after Review.	105
(b)	Review Petitions Rejected.	261
(iii)	No. of Review Petitions under process/Investigation.	3

STATEMENT NO. 4

**Showing Disposal of Representations filed with Governor
of Sindh against the orders/decisions of Ombudsman
During September, 1991 to 15th March, 1996.**

S. No.	Description	No. of Cases	Remarks
1.	No. of Representations filed before Governor of Sindh U/S 32 of the Sindh Ombudsman's Act, 1991.	87	
2.	No. of Representations decided by Governor of Sindh.	74	
	(a) No. of Representations upheld (order of Ombudsman modified).	01	Order modified as per advice of the Ombudsman given in the comments.
	(b) No. of Representations Rejected.	73	
3.	No. of Representations under process/scrutiny in the Governor's Secretariat.	13	

LIST OF DELEGATES

S.No.	Country	Name & Designation of the Delegates
1.	Australia	Mr. Peter Boyce, Ombudsman, Northern Territory
2.	China	Mr. Zuo Lianbi, Chinese Vice Minister of Supervision Mr. Zhang Mingquan, Director General Mr. Chang Keren, Director General Mr. Cui Guohua, Division Chief Mr. Ding Gang, Secretary
3.	Hong Kong	Mr. Andrew So, OBE, JP, Commissioner for Administrative Complaints Mr. Alec P M Kwong
4.	Iran	Hojetoleslam Syed Ibrahim Raisi, Head of General Inspection Organisation Mr. Waliullah Khubre, Deputy for General Affairs Mr. Hameed Reza Saranji, Legal Expert Mr. Mohammad Hasan Ziafar, Secretary, IHRC Mr. Qamoos, Representative of M/O Foreign Affairs
5.	Iraq	Dr. Ali Abdul Kareem Al Nijaidi, Director General, Ministry of Justice Mr. Nabeel Abdullah Al-Janabi, Minister, (Diplomatic Rank) Ministry of Foreign Affairs
6.	Japan	Mr. Hisao Tsukamoto, Deputy for Director General of Administrative Inspection Bureau
7.	Jordan	Dr. Abed Ali Shakhaneh, President, Bureau of Administrative Inspection and Control
8.	Korea	Mr. Dae Kyn SHIN, Ombudsman Mr. Jun Ho Do, Investigator Mr. Kyung Yeul LEE, Investigator Mr. Hyoung Woo YOU Mr. Jin Woo SHIN Mr. Young Min CHOI Mr. Sung-han Lee, Director
9.	Kuwait	Mr. Faisal Al Ghareeb, Asstt. Under-Secretary, Council of Ministers Mr. Ahmed Ali Rashid Al-Rumaihi, Legal Adviser Mrs. Aziza A.R. Al O Qaili, Head of Section of Following up Department
10.	Macau	Mr. Luis de Mendonca Freitas, High Commissioner against Corruption and Administrative Illegality Mr. Lino Jose B.R. Ribeiro, Deputy High Commissioner

S.No.	Country	Name & Designation of the Delegates
11.	Malaysia	Mr. Muhammad Ali Yousaf, Deputy Director General, Public Complaints Bureau, Prime Ministers Department
12.	Maldives	Shaikh Hussain Yoosuf, Director General of Judicial Affairs of the Ministry of Justice and Islamic Affairs
13.	Philippines	Mr. Arturo C. Mojica, Deputy Ombudsman
14.	Sri Lanka	Professor Bertram Bastiampillai, Parliamentary Commissioner for Administration
15.	Sudan	Dr. Barakat Musa El-Hawati President, Public Control and Administrative Evaluation Bureau (Ombudsman)
16.	Turkey	Mr. Justice Ali Yilmaz, Examining Judge, International Law and Foreign Relations, Ministry of Justice
17.	Yemen	Dr. Mohammad Al-Iryani, Chairman, Central Organisation for Control and Audit Mr. Abdellah Al-Maqalih, Director General
18.	Pakistan	Mr. Justice (Rtd) Abdul Shakurul Salam, Ombudsman
19.	Azad Jammu & Kashmir, Pakistan	Chief Justice (Rtd) Raja Muhammad Khurshid Khan, Ombudsman, Azad Jammu & Kashmir
20.	Sindh, Pakistan	Mr. Justice (Rtd) Salahuddin Mirza, Provincial Ombudsman, Sindh

PROGRAMME

Monday, April 15, 1996	
	INAUGURAL SESSION
0915 hrs	Delegates and guests to be seated
0930 hrs	Arrival of the Chief Guest
0931 hrs	Recitation from the Holy Quran
0934 hrs	Welcome by Mr. Justice (Rtd) Abdul Shakurul Salam, Wafaqi Mohtasib (Ombudsman), Islamic Republic of Pakistan
0940 hrs	Inaugural address by H.E. Mohtarma Benazir Bhutto, Prime Minister, Islamic Republic of Pakistan
0955 hrs	Response on behalf of delegates by Mr. Zuo Lianbi, Vice Minister of Supervision, People's Republic of China
1000 hrs	Refreshments
	Departure of the Chief Guest
1030 hrs	FIRST SESSION
	Presentations:
	The Democratic Socialist Republic of Sri Lanka
	Hong Kong
	The Republic of Philippines
	The Republic of Sudan
	The Republic of Korea
	The Hashemite Kingdom of Jordan
	The Republic of Yemen
1230 hrs	Quiet Lunch
1410 hrs	Departure for Aiwan-e-Sadr
1430 hrs	Call on H.E. Mr. Farooq Ahmed Khan Leghari, the President of the Islamic Republic of Pakistan
1530 hrs	SECOND SESSION
	Presentations:
	Northern Territory of Australia
	Japan
	The Islamic Republic of Iran
	The Republic of Turkey
	The State of Kuwait
	Malaysia
	Macau
1730 hrs	Refreshments
2000 hrs	Banquet by Mr. Justice (Rtd) Abdul Shakurul Salam, Wafaqi Mohtasib (Ombudsman), Islamic Republic of Pakistan

Tuesday, April 16, 1996	
0900 hrs	<p>THIRD SESSION</p> <p>Presentations:</p> <p>The People's Republic of China</p> <p>The Republic of Iraq</p> <p>The Republic of Maldives</p> <p>Islamic Republic of Pakistan</p> <p>Azad Jammu & Kashmir, Pakistan</p> <p>Sindh, Pakistan</p>
1030 hrs	Refreshments
1100 hrs	<p>FOURTH SESSION</p> <p>Formation of Asian Ombudsman Association</p> <p>Winding up by</p> <p>Mr. Justice (Rtd) Abdul Shakurul Salam,</p> <p>Wafaqi Mohtasib (Ombudsman), Islamic Republic of Pakistan</p>
1230 hrs	Quiet Lunch
1800 hrs	Briefing for Press Media
1900 hrs	Refreshments
2030 hrs	Dinner by Prof. N. D. Khan, Minister for Law, Justice and Parliamentary Affairs, Islamic Republic of Pakistan