

# Diversity of Ombudsmen in Asia

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## **Back to Roots: Tracing the Swedish Origin of Ombudsman Institutions Friday, June 12, 2009**

*Asia has embraced the ombudsman concept since the establishment of its first ombudsman office in the Indian province of Maharashtra in 1972, but it has not done so slavishly. It was not until the 1980s that federal or national ombudsmen began to appear on the Asian landscape, and the offices established since have taken many different forms. Each country or jurisdiction has selected those features that best serve its community. This address reviews the various types of ombudsman and supervisory agencies throughout Asia. In some multi-function offices, ombudsman functions risk being overshadowed by other functions, particularly if they are law-enforcement-related, like anti-corruption. Offices have varying degrees of independence – some report that they are treated essentially like government departments, while others enjoy a great deal of flexibility. Organizations like the IOI have an important role to play in sharing with our peers as we travel toward a common goal of better public administration, while differing in our choice of routes and the time it takes us to reach our goals.*

Asia has had a long history of trying to control the excesses of official actions and redress grievances against public authorities, starting with China's control system, which was instituted some 2,000 years ago. However, the modern concept of ombudsmanship has taken a long road to travel to the Far East.

After the establishment of the Swedish Ombudsman Office in 1809, and in the light of development of the ombudsman system in western countries, many in Asia started to clamor for similar institutions to be adopted in the region. In Hong Kong, as early as the 1960s, the HK Branch of Justice recommended "...a simple, inexpensive and effective machinery for safeguarding fundamental rights and freedoms and for enabling those who have suffered from violation of their rights to receive assistance in obtaining redress." In India in 1966, an Administrative Reforms Commission (ARC) recommended a two-tier system with a parliamentary commissioner (Lokpal) at the national level and provincial commissioners (Lokayukta) at the state level to redress people's grievances.

A number of countries then adopted the ombudsman idea and incorporated it into their constitutions. Pakistan's 1972 Interim Constitution first mooted the appointment of a federal ombudsman as well as provincial ombudsmen, but the idea was not pursued. In Thailand, 1974 saw the beginning of the spread of the idea, but it was not until 1991 that it was formally adopted in the constitution. Even that implementation did not take place until much later.

According to my research, the first ombudsman office established in Asia was in 1972 in the Indian province of Maharashtra. Since then, a dozen or so provincial ombudsmen offices have been established in India, but there is no uniform structure of the *Lokayukta* system. India also does not have a federal ombudsman, despite it being the first country in Asia that embraced the idea.

It was not until the 1980s that federal or national ombudsmen began to appear on the Asian landscape.

Pakistan was the first to adopt the classical ombudsman model at federal level. Against the backdrop of the court system being the only avenue open to the general public for seeking relief against the excesses by public agencies in administrative matters, and recognizing the difficulties faced by the citizen in going through the elaborate and expensive court process, the Pakistan government decided to set up the Office of the *Wafaqi Mohtasib*. This office would work as an administrative justice forum to deal with citizens' complaints and provide complainants with a quick and cheap alternative for the redress of their grievances.

Pakistan's Interim Constitution of 1972 first provided for the appointment of a federal ombudsman as well as provincial ombudsmen. But it was not until 1983 that the Office of the *Wafaqi Mohtasib* started functioning. Provincial ombudsmen have also been appointed in three of the four provinces, in Balochistan, Sindh and Punjab, as well as in Azad Jammu and Kashmir.

Other countries and jurisdictions followed suit. In 1988, Philippines established its Ombudsman Office. This was followed by Hong Kong (1989), South Korea (1994), Thailand (2000) and Indonesia (2000).

## Differences in the Ombudsman World

Beyond sharing a common purpose of redressing public complaints, Asian ombudsman offices are not at all homogeneous in terms of remit and organizational structure. A country's institutions reflect the state of its political, social, cultural and economic development. Hence, there cannot be a blueprint that fits all. Each country or jurisdiction must select those features that best serve its community. This was what happened in Asia, as in other regions.

Under the broad framework of the ombudsman institution, I would like to highlight just a few areas of differences among ombudsman offices in Asia.

### **Jurisdiction**

Pakistan, Hong Kong, and Thailand are probably the closest adherents to the classical ombudsman model that started in Sweden. In other offices, ombudsman functions may be undertaken in conjunction with some other functions, such as anti-corruption and human rights protection. Clearly, such decisions were made based on what was best for a particular country. Whatever system is adopted, those responsible for the system operate as best they can.

But I have observed that in what I would call multi-function offices,<sup>1</sup> ombudsman functions risked being overshadowed by these other functions, particularly if they are law-enforcement-related, like anti-corruption. Given the great disparity in seriousness of consequence, this bias is perhaps inevitable. But I would urge the heads of such multi-function offices to be conscious of this unintended bias and work consciously to redress the imbalance within their organizations.

In terms of jurisdiction and powers, there are other areas of departure from what classical ombudsmen have generally accepted as their norm; for example, the power of direct investigation is not available in South Korea.

The Ombudsman of Philippines has concurrent disciplinary authority, as well as both investigative and prosecutorial functions. After concluding a preliminary investigation, the Philippines Ombudsman can file criminal charges directly in the appropriate court and pursue prosecutions through the judicial system.

### **Appointing Authority**

In the original Swedish model, Parliament is the appointing authority. In Asia, the appointing authority tends to be predominantly the head of state or its equivalent, whether it is the King, the President or the Chief Executive. Despite this, some jurisdictions have adopted measures to make the appointment process more transparent and open.

In Thailand, the King appoints the three Ombudsmen on the advice of the Senate and recommendation by a Selection Committee.<sup>2</sup>

In Hong Kong, the Ombudsman is appointed by the Chief Executive after an open recruitment exercise which is locally advertised and organized by an executive search firm. The application and selection process is overseen by a Selection Committee comprised of two unofficial members of the Executive Council, the Chairman of the Public Service Commission, and the Director of Administration.

### **Safeguards**

An ombudsman's credibility is underpinned by the public's perception of his independence. This is as much a matter of how independently the ombudsman operates, as the degree of independence allowed by the ombudsman system of his or her country. It would be fair to say that in the Asian region, where an

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<sup>1</sup> Macao's Commission Against Corruption has as its fourth statutory duty to "protect human rights, freedom and legitimate interests of individuals, as well as to uphold fairness, lawfulness and efficiency of the public administration." South Korea's Anti-Corruption & Civil Rights Commission, upon its establishment in 2008, merged 3 government organizations: The Ombudsman of Korea, the Korea Independent Commission against Corruption and Administrative Appeals Committee of the Ministry of Government Legislation.

<sup>2</sup> Comprising the President of the Supreme Court of Justice, The President of the Constitutional Court, the President of the Supreme Administrative Court, the President of the House of Representatives, the Leader of the Opposition in the House of Representative, a person selected at a general meeting of the Supreme Court of Justice; and a person selected at a general meeting of the Supreme Administrative Court.

ombudsman office has been set up as a statutory organization independent of the executive branch of government, most enjoy varying degrees of independence, particularly in investigations and other operational matters.

While the establishment of the office of ombudsman may not necessarily be enshrined in the country's constitution, nearly all offices in the region are statutory bodies with their jurisdiction, powers and, in some cases, their operational procedures prescribed by domestic legislation. They are also subjected to a requirement to report on the exercise of their powers.

Most ombudsmen are appointed for fixed terms, some renewable, some not. Most enjoy remuneration safeguards; they cannot be removed except for cause and even then, it can only be done with the endorsement of Parliament or its equivalent.

The internal administration of the ombudsman's own office is a different story. Some ombudsmen report that they are treated essentially like government departments, subject to the same financial and administrative control; some ombudsmen's offices are staffed by civil servants who have been seconded to them. Others enjoy a great deal of flexibility, with the ombudsman deciding on his own administrative and financial systems and more importantly, employing his own staff.

### **Fiscal Independence**

Financial well-being is another indication of institutional independence. The views of ombudsman offices in the region vary on whether they consider themselves adequately resourced. But all consider that their governments treat them at least as well as they treat government departments. Most offices in the region would appear to be bound by their governments' resource allocation procedure, having to negotiate their budget annually and being subject to government rules and regulations.

There are, however, a couple of notable exceptions. Thailand and Hong Kong do not have to undergo annual budget negotiations with government. In Thailand, the Ombudsmen submit their annual budget to Parliament through the cabinet. The cabinet can only comment on the proposed budget, with the final decision resting with Parliament's Budget Scrutinizing Committee.

Hong Kong has even neater financial arrangements. Since 2001, the office's funding has been simply linked to the consumer price index. There is no need for annual budget negotiations and the Ombudsman is able to accumulate a reserve out of savings to fund the future development of the office. The reserve is a tangible safeguard for the independence of the Ombudsman system in Hong Kong. To date, the Ombudsman has built up a reserve of the some US\$32.5 million, equivalent to more than three years' operating costs.

### **Political Independence**

Apart from being institutionally and financially independent, ombudsmen must also be politically independent. Political interference or influence can come from various quarters. Government officials or politicians may seek to influence the ombudsman in the performance of his duties. Conversely, an

ombudsman perceived as being too cozy with the administration risks having his credibility undermined.

Whether or not an ombudsman is susceptible to political interference and, more importantly, whether or not he succumbs to such interference are questions of reality and perception. There is no easy answer – it depends on the soundness of both the system itself and the people appointed to guide and operate that system. This question is not unique to any particular region, but applicable to all.

Some jurisdictions have tried to provide safeguards to insulate office-holders from the perception of seeking political favors, e.g., by stipulating non-renewable terms,<sup>3</sup> or by imposing restrictions on post-appointment activities. In the Philippines, the 1987 constitution provides that the Ombudsman and his deputies shall not be qualified to run for any office in the election immediately succeeding their term as ombudsmen.

## Specialized Ombudsmen

Specialized ombudsmen are not yet a predominant feature in Asia. They exist only in a handful of countries. Pakistan has appointed ombudsmen for insurance, taxation and banking. Sri Lanka also has similar offices for insurance and banking. So far, specialized ombudsmen in Asia seem to be public sector ombudsmen created by domestic legislation and publicly funded, rather than creations of the industries they oversee, as seems to be common in other regions. More recently, a couple of jurisdictions in the region, such as Hong Kong and Taiwan, have floated the idea of establishing financial services ombudsmen to target malpractices in the financial industry that are perceived to be inadequately addressed under existing systems.

## Other Supervisory Agencies

So far, I have canvassed ombudsmen in the Asian region. The picture would not be complete without a quick survey of those other supervisory organs which perform administrative oversight functions but do not call themselves ombudsman offices.

My introduction is not intended to be an exhaustive survey of all the supervisory agencies in Asia. By highlighting the key features of a few of the more significant offices, I hope to illustrate the diversity of the non-ombudsman supervisory and oversight bodies that exist within Asia.

In so doing, I hasten to add that there is no particular significance to the order of my introduction, nor am I expressing any value judgment on the relative merits of these different systems of supervision.

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<sup>3</sup> Thailand, Pakistan.

## **China**

In China, the Ministry of Supervision is charged with monitoring the enforcement of laws and regulations as well as government decisions and decrees by government departments, state-owned enterprises and institutions directly under the Central Government. It does so through “supervisory organs” at provincial and local levels. Supervisory organs are empowered by law to do inspections and investigations and make recommendations as well as to impose administrative sanctions. The law requires supervisory personnel to operate independently and not be influenced by government departments, enterprises or any other persons.

Supervisory organs may, based on investigation findings, make recommendations to set aside or rectify official actions that violate the laws or state policies and impair the collective interests of citizens or inappropriate decisions relating to employment. Important supervisory decisions or recommendations made by supervisory organs are to be reported to the government at the corresponding level and to the supervisory organ at the next higher level for approval. Important decisions or recommendations made by the Ministry of Supervision shall be reported to the State Council for approval.

Departments or officials can challenge such supervisory decisions or recommendations by applying for re-examination within 15 days. If no re-examination or appeal is initiated, the departments or officials concerned have to report to the supervisory organ on how the recommendations have been followed.

## **Iran**

In Iran, administrative oversight is the responsibility of the judicial branch of the government. This task is carried out by the Government Inspection Organization (GIO), an affiliated organization constituted under the supervision of the judicial branch. The head of GIO is appointed by the head of the judiciary from among the religious judges or judges of certain senior judicial ranks. The GIO is authorized to proclaim the violation of laws, financial abuses, maladministration, corruption or any injustices of public officials, and to refer the inspection report to the relevant judicial and disciplinary authorities for prosecution and punishment. It acts on complaints. In the course of an investigation, if it comes across maladministration, violation of rights, inequity, corruption or injustice, the GIO will request the competent authority to suspend the action and discipline violators. It has the power to recommend corrective measures and to suggest plans to related ministries and organizations and it is accountable to the head of the judiciary.

## **Japan**

Japan has no parliamentary ombudsman system, but a rather unique administrative counseling system for which the Ministry of Internal Affairs & Communications (MIC) is responsible. Under this system, a body of administrative counselors discharges functions similar to those of ombudsmen in other

countries. Under administrative counseling, field officers of MIC and administrative counselors throughout Japan receive citizens' complaints about the actions of government agencies and act as mediators to bring matters to satisfactory conclusions. Administrative counselors are knowledgeable local people, highly respected in the community and interested in improving public administration. There are about 5,000 administrative counselors who serve in an honorary capacity – at least one for each city, town or village.

Alongside administrative counselors, the Administrative Grievance Resolution Promotion Council advises the Minister of MIC on the more complex or technical complaints where there are no obvious or easy solutions. The council's 7 experts from different fields of expertise state their opinion on administrative complaints and advise the Minister on what they consider to be fair and just solutions to disputes. The council's opinion forms the basis for mediation between the aggrieved citizen and the relevant government ministries. There are also 12 regional councils that advise regional directors of the MIC on complaints from the regions.

### **Malaysia**

In Malaysia, the cabinet decided as late as June 2006 that the ombudsman institution was not suitable for their country – but instead, they adopted ombudsman-like concepts to improve the Public Complaints Bureau and turn it into an effective and reliable public complaints management system. The Public Complaints Bureau is an office within the Prime Minister's Department. It receives and investigates complaints about alleged maladministration by the government, makes recommendations and monitors implementation of corrective actions by relevant authorities in order to improve public service. In Malaysia, the Chief Secretary chairs a high-powered Permanent Committee on Public Complaints to “consider and make decisions on reports/cases submitted by the Bureau” and “direct the heads of the departments concerned to take remedial actions of the complaints referred to them.” The Director General of the Public Complaints Bureau is secretary of that committee. I have noticed that from news reports in the past couple of weeks there have been renewed calls in Malaysia for establishing an ombudsman system, but clearly the road to ombudsmanship in Malaysia will be a long one.

### **Vietnam**

In Vietnam, administrative oversight is provided by inspectorate agencies. According to its 2004 Law on Inspection, state inspection is the work of administrative agencies which review and assess the performance of agencies, organizations and individuals under its authority in the implementation of policies, laws and duties. The Government Inspectorate is directly involved in the formulation of legal normative documents on inspection, complaints, denunciative settlement and anti-corruption, which it can submit to the competent authority or promulgate them itself. It seeks to prevent, detect and deal with violations; to uncover gaps and overlaps in administrative mechanisms, policies and laws and make recommendations to competent authorities for

improvement; to foster active efforts, enhance effectiveness and efficiency of administration; and to protect the interests of the state as well as the legitimate rights and interests of agencies, organizations and individuals.

## Conclusion

It is difficult to give a topic like “Diversity of Ombudsman in Asia” in the depth and breadth it deserves in such a brief speech. I have chosen a broad-brush treatment of the topic, picking on a few issues of importance.

I hope my introduction has provided a glimpse of the development of ombudsmanship in Asia in the past 20 odd years. Clearly Asia has embraced the ombudsman concept, but it has not done so slavishly.

I see us all as travelers on the same road towards a common goal of better public administration, but we differ in our choice of routes and the time it takes us to reach our goals. In this regard, associations like the IOI have an important role to play. Through professional associations and conferences like this one, we can take comfort in the knowledge that we do not travel alone. Through sharing with our peers, we learn to recognize the signposts earlier travelers have left on the journey to guide us in the hope that we do not waste our energy or get lost.