

BREAKOUT SESSION IV: Human rights based approach to the Ombudsman's work - part 2

Topic : **Multiple Functions of the Control Yuan's office to Effectively Protect Human Rights**

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Opening

Good afternoon, Honorable Chair, distinguished participants, ladies and gentlemen. My talk today discusses the functions of the Control Yuan, as the national Ombudsman office in Taiwan, in protecting human rights.

The Tide with Human Rights Protection

Human rights have become universal in recent years. Based on practical experience, a country must fulfill at least two prerequisites to realize human rights protection. The first is to establish norms by means of passing domestic human rights-related bills and ratifying the international human rights treaties. The other is to establish mechanisms, which involves setting up the institutions in charge of human rights implementation or monitoring. Since 2009, through enactment of enforcement acts, the ROC (Taiwan) has ratified the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Convention on the Rights of Persons with Disabilities (CRPD). This helps to align our human right norms with international standards.

As you know, in 1993 the United Nations adopted "the Paris Principles" to encourage, promote and assist countries to establish national human rights institutions. Those national human rights institutions should meet 6 criteria: (1) independence guaranteed by statute or constitution; (2) pluralism of members; (3) autonomy; (4) adequate powers of investigation; (5) sufficient resources; and (6) a broad mandate based on universal human rights. For more than a decade, some people in my country has been arguing that we should establish a national human rights commission so as to comply with the Paris Principles. Whenever they considered this issue, the functions of my Office, the Control Yuan, were discussed, because at present the Control Yuan plays a very important role in protecting human rights in Taiwan.

The Traditional Role and Functions of the Control Yuan

In as early as the Chin (246-206 B.C.) and Han (206 B.C.-220 A.D.) dynasties of ancient China, the Emperor assigned officials to exercise a systematic and permanent control of the imperial administration and its civilian employees. They also received petitions from the public for administrative injustices. This is the earliest Ombudsman model in ancient China that we follow to set up the Control Yuan.

Today the Republic of China (Taiwan) adopts a unique system of "checks and balances" between five powers at central government. Besides the executive, legislative, and judicial branches, two other branches, namely the examination and the control branches, are also established. These five branches are called the Yuans. In mandarin, Yuan refers to a "big house" or an "organization." The Examination Yuan is set up to ensure the quality of civil servants and various certified professionals, as well as the fairness of job opportunity. The Control Yuan, on the other hand, is originally set up to prevent corruption, and to promote good governance as well as the rule of law. It is of equal constitutional status with the other four branches.

The Constitution stipulates that the Control Yuan shall have 29 Members, including a President and a Vice President, and all of them shall serve a term of six years. They are nominated by the President of the Republic with the consent of the legislature. These Members can exercise their powers and duties independently, with some 450 staff providing administrative and investigative assistance.

As with most Ombudsman offices in the world, the Control Yuan deals with complaints filed by the general public against government's decisions, actions or omissions. Our role is to protect the people against violation of rights, abuse of powers, error, negligence, unfair decisions and maladministration, and to improve public administration as well as to make the government's actions more open and its administration more accountable to the public.

The statutory functions and powers of the Control Yuan provided for by the Constitution and other laws are as follows:

1. Investigation into maladministration;
2. Impeachment against civil servants who severely violate laws;
3. Censure against incompetent or negligent chief government officials;
4. Proposing corrective measures to rectify maladministration;
5. Making recommendations to government agencies for improving their defects or deficiency;
6. Keeping records of assets reported by civil servants;
7. Dealing with matters related to conflict of interest;
8. Dealing with matters related to political donations;
9. Invigilation; and
10. Audit of government expenditure.

The Multiple Functions of the Control Yuan to Effectively Protect Human Rights

Today Taiwan is committed to proactively fulfilling international human rights law obligation. Since 2000, the Control Yuan has set up a "Human Rights Protection Committee". The main functions of this Committee are to uncover and investigate cases involving human rights violations; to recommend appropriate acts concerning human rights; to monitor the implementation of international human rights norms by governments of different levels; to coordinate with human rights group domestically and internationally; to hold workshops on human rights matters; and to publish thematic human rights investigation reports.

As with most classical Ombudsman offices around the world, the Control Yuan exercises its power to investigate any wrong doings of government at all levels. Each year the Control Yuan receives about 15,000 cases of complaints lodged by the general public. Some of them can be investigated by Members on rotation after careful assessment and analysis by staff. The Control Yuan Members also can undertake own-motion investigation into government misconduct and systemic problems based on media coverage of events or other resources.

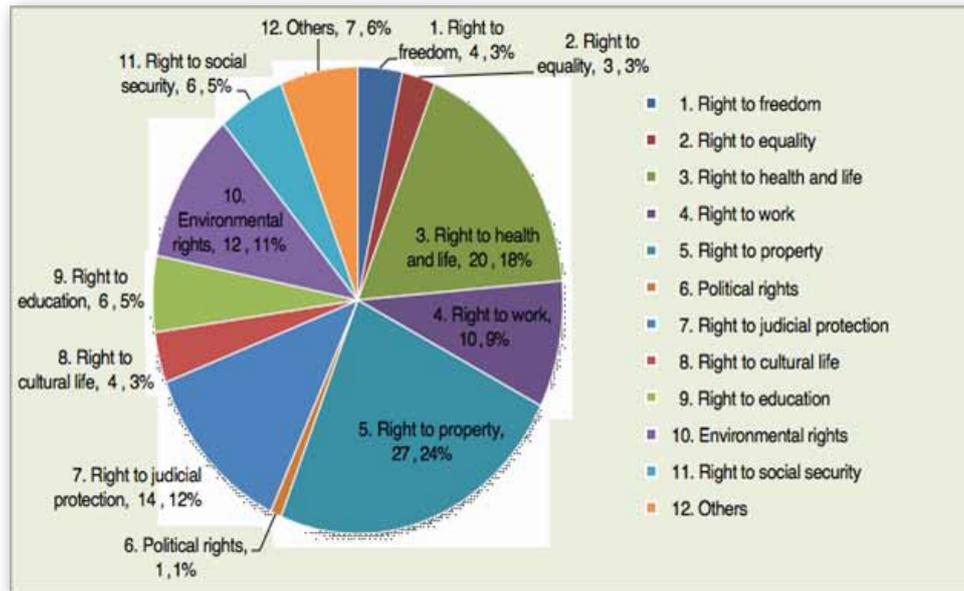
In 2015, the Control Yuan completed 210 investigative reports. Among them, 114 cases were related to human rights issues, accounting for 54.3%. The following table and pie chart show the distribution of human rights issues of those cases.

Human Rights Investigations Completed by the Control Yuan in 2015

Nature of Case	Investigations Completed	
	2015 (January-December)	
	No. of Cases	Percentage (%)
Total	210	100.0%
Non-human-rights investigations	96	45.7%
Human rights investigations	114	54.3%
1. Right to freedom	4	1.9%
2. Right to equality	3	1.4%
3. Right to health and life	20	9.5%
4. Right to work	10	4.8%
5. Right to property	27	12.9%
6. Political rights	1	0.5%
7. Right to judicial protection	14	6.6%
8. Right to cultural life	4	1.9%
9. Right to education	6	2.9%
10. Environmental rights	12	5.7%
11. Right to social security	6	2.9%
12. Others	7	3.3%

Source: The Control Yuan

The Category Distribution of Human Rights Investigations



A de facto Protector of Human Rights with a Unique Function

Most of human rights violations are government-related, and many of the Ombudsman offices investigate complaints of human rights arising from maladministration or misconduct of government departments. When government agencies do not exercise their powers properly, it is possible to violate human rights. Sometimes the government agencies might infringe the human rights directly, and very often the government agencies are inactive to human rights abuse. The so-called the “third generation of human rights” or “collective rights” involve economic, social, cultural, as well as development rights, and the realization of those rights requires government’s proactive and positive conduct or intervention. Therefore by supervising the government’s conduct, the Control Yuan can help protect basic individual human rights and promote collective rights.

As the Control Yuan is derived from a traditional system that has been implemented since ancient China, it is entitled to fulfill a special duty -- to initiate impeachment against any civil servants who severely violate laws, despite the fact that it does not very often undertake alternative dispute resolution through mediation, conciliation or negotiation, as many other Ombudsman offices do.

The initiation of this procedure requires at least two Control Yuan Members acting together. All impeachment cases shall be kept confidential until they are referred to the Public Functionary Disciplinary Sanction Commission under the Judicial Yuan for decisions. The most severe punishment by the Disciplinary Commission is dismissal or removal from offices.

In 2015, 14 cases of impeachment were brought for deliberation by panel. 13 of them were justified and referred for disciplinary actions, while one was being rejected. Of these 13 cases, a total of 31 public officers were impeached: 28 being civil and 3 military personnel, with more than half of them being high ranking senior officers.

Case Studies

The following are two recent cases that illustrate how the Control Yuan exercise the unique power of impeachment to effectively enhance human rights protection.

Selected Case 1:

Abuse in Juvenile Reform Schools (Case No. 1040830925)

In February 2013, a teenage boy died of Sepsis caused by suppurated organs in the chest and abdomen during his enrollment for correctional education at Taoyuan Reform School of the Ministry of Justice (hereinafter as “the School”). There were signs of torture and excessive discipline. Large areas of bruising, skin tears and blisters were found on the boy’s right chest and under his armpit. The School denied allegations of torture, telling the boy’s family that he died of sudden death as a result of over scratching. The Taoyuan District Prosecutors Office conducted an investigation that went on over a year but could not determine the cause of death. The prosecutor closed the administrative case file. After widespread media attention, the case sparked a wave of public outcry, drawing attention to the human rights of delinquent juveniles. Later on, Changhua Reform School, another juvenile correctional facility, was reported to have abused its students by forcing them wear handcuffs and leg irons. There were also reports of students being handcuffed to outdoor laundry racks and in the corridors for as long as thirteen hours. In another incident, the Changhua Reform School put a student in solitary confinement for one year and five months and claimed it was for assessment purposes.

The Control Yuan launched an investigation and found that the boy was subject to harsh treatment by his superintendent and instructors during his enrollment at the Taoyuan Reform School. He was sent to live alone in an independent unit even when his physical condition had deteriorated to the point that he was unable to care for himself. He went into a shock in the final hour before his death. The staff member of the School failed to transport the boy to the hospital for timely treatment. He died en route to the hospital. Meanwhile, there were reports of abuse at the Changhua Reform School reflect long-term human rights abuse by the juvenile correctional facilities in Taiwan, in violation of Article 10 of the International Covenant on Civil and Political Rights and Article 19 of the Convention on Children’s Rights.

The Control Yuan issued an impeachment against former headmaster of the Taoyuan Reform School, Chiu-Lan Lin, former director of discipline, Li-Chong Chen, director of hygiene, Hui-Mei Ho, and headmaster of the Changhua Reform School, Yi-Pong Chan. The Control Yuan also issued a corrective measure to the Executive Yuan, the Agency of Corrections of the Ministry of Justice, Taoyuan Reform School, and Changhua Reform School for rectification. The investigation also points to systemic flaws in juvenile correction and calls for the Ministry of Justice, the Agency of Corrections, Ministry of Health and Welfare, and the Department of Juvenile and Family at the Judicial Yuan to make improvements. It is hoped that the Control Yuan’s investigation report will compel the government to improve upon existing correctional education and facilitate children’s return to the community as soon as possible. The Public Functionary Disciplinary Sanction Commission has demoted the headmasters of the two schools in pay rate by one tier of rate each and the director of discipline of Taoyuan Reform School by two tiers of rate, and issued a demerit to the director of hygiene of Taoyuan Reform School.

Selected Case 2:

Death of Army Corporal Exposes Human Rights Abuse in the Military (Case Number: 1030830891)

Chung-chiu Hung was serving in the 542nd Brigade in Hsinchu and had been set to be discharged on 6 July 2013. He was caught bringing a smart phone with built-in camera and an mp3 player onto his military base and was sent to solitary confinement for detention from 28 June to 4 July. On 3 July, Hung was rushed to the hospital for emergency treatment after allegedly being ordered to perform strenuous exercise drills. He died on July 4th. Questions surrounding Hung’s torture and abuse prior to his death have sparked nationwide debate and concern over human rights issues in Taiwan’s military. The incident has led to two mass protests (known as the “White Shirt Movement”) launched by a civil group called “Citizen 1985”. In a mere three days, the “Code of Court Martial Procedure” was amended, transferring jurisdiction of some military criminal cases to the civilian judiciary during peacetime.

The Control Yuan launched an investigation and found the following wrongful acts by the military units:

1. Lack of legal understanding and human rights awareness, negligence of law and order, and failure to follow due process when placing Hung in detention as punishment
2. Poorly setup interior of the detention room, the under qualified supervisor, and lack of discipline and on-the-job training for military personnel.

The Control Yuan recommended that the Ministry of National Defense and the Army Command Headquarters take corrective measures and consider possible punishment against those related officers implicated with negligence. The Control Yuan also impeached the 542nd Brigade Major General Wei-chih Shen, Commander Colonel Chiang-chung Ho, and the 269th Brigade Major Fan-Han Yang.

In response, the Ministry of National Defense reviewed their existing facilities and made the following improvements to safeguard human rights and uphold discipline:

1. Completed the renovation of fourteen solitary confinement rooms and improved on the old facilities;
2. Launched a project to ensure staff sufficiency at the solitary confinement unit;
3. Mandated record keeping for every single use of solitary confinement as punishment; and
4. Adopted the "Daily Schedule and Plans at the Solitary Confinement," which specifies routines and schedules during time in solitary confinement.

Conclusion

Human rights protection is a developing theme that has engaged strongly with governments worldwide as there is always a higher expectation for the public sector that they will respect, promote and protect human rights. It will take a concerted effort across different public agencies to properly address this theme and its issues. Despite the differences among nations in history, political and legal systems, and priorities in human rights protection that result in NHRIs under different names and models, the Ombudsman office is one that helps to make it happen by playing a very important and effective role. In doing what it does best: dealing independently and impartially with the public's complaints against government, it can effectively protect human rights without altering the fundamental nature of the Ombudsman's role.