

Research Awards on Comparative Studies of
Ombudsman Systems in Asia (I)

In Search of a Future Path for Macao's Ombudsman System —A Comparative Study of Ombudsman Systems in Asia

Macao 21st Century Legal Studies Association

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Commission Against Corruption of Macao



Macao Foundation

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Foreword

Originated from the supervisory system established in Sweden in early 18th century, over 200 years ago, ombudsman system has been developing rapidly over recent 30 years and adopted by over 120 countries and regions. Despite the differences in names, organizational structures and functions, the main purpose of the ombudsman systems is the same – to enhance the governance and safeguard people's legitimate rights.

At the same time, international and regional ombudsman organizations have been founded. Established in 1996, the Asian Ombudsman Association (AOA) is an independent, non-political, democratic and professional organization, of which Macao is one of the founding members. In response to the AOA's initiatives to facilitate the implementation and development of ombudsman system in Asia, in October 2006, the Commission Against Corruption of Macao and the Macao Foundation jointly carried out the Research Awards on Comparative Studies of Ombudsman Systems in Asia of which the Jury Penal was formed by the organizers and scholars.

Through awarding academic researches, the scheme encouraged scholars and experts to conduct comparative studies on the ombudsman systems of Macao and other countries and regions in Asia, to discuss how they coordinate with domestic legal systems in order to achieve better effect and to render suggestions for development and improvement. On the other hand, the implementation of the scheme can also enhance research on Macao's ombudsman system, playing a positive role in the advancement of governance of the Macao SAR Government.

In Search of a Future Path for Macao's Ombudsman System – A Comparative Study on Ombudsman Systems in Asia conducted by the Macao 21st Century Legal Studies Association is one of the subsidized research projects and the best research selected by the Jury Panel. By analysing the ombudsman systems of Macao, Japan and Taiwan, the research features not only review of the origin and development of ombudsman system, scope of power, structure and operation of relevant institutions and the development trend of the system in Asia but also valuable suggestions.

This research is thereby published in order to contribute to further development of ombudsman system in Asia and mark the new stage in academic study in this aspect in Macao.

Commission Against Corruption of Macao
Macao Foundation
September 2009



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Preface

Throughout the course of human evolution, people from different ages and regions have, in like manner, created their respective languages. Today, communication between peoples does not stop because of language differences.

In the course of civilization's advance, Chinese emperors as far back as the Qin and Han dynasties established the post of *Yushi Jianguan* to supervise their officials. In the early 18th Century, the King of Sweden established the entity of His Majesty's Supreme Ombudsman. In the 21st Century, supervisory systems and Ombudsman systems around the world see themselves reflected in each other.

As economies grow and rapidly develop, public awareness of the citizen's rights is raised, the demand for quality and efficiency of public administration increases, and causes governments in turn to pursue good governance. They are encouraged to reflect on how to harness the Ombudsman system in a way that enhances the protection of personal legal rights, and to intensify supervision of persons and institutions vested with public administrative authority in order to create a fair, just, open, and efficient social system – a challenge in itself to many countries and regions.

We have used the opportunity afforded by the Research Awards on Comparative Studies of the Ombudsman Systems in Asia – jointly sponsored by the Commission Against Corruption of Macao (CCAC) and the Macao Foundation – to make a preliminary comparative study of the Ombudsman systems of Macao, Taiwan and Japan, and present our thoughts on the promotion of Macao's future administrative supervision and integrity. Through our basic observations, we hope to encourage others to contribute to the building of both Macao's present and future.

We would like to express our gratitude to the CCAC and the Macao Foundation for the opportunity to participate in this research project, and extend our gratitude to the staff of the Control Yuan of Taiwan and the Administrative Evaluation Bureau of Japan's Ministry of Internal Affairs and Communications for their unstinting assistance in our field studies.

Our participating members were initially divided into five groups: the fundamental theory group was co-ordinated by Zheng Wei; the international organisations group was led by Li Hanlin; the Macao group was composed of Wang Wei, Lin Jiting and Zheng Huihong; the Taiwan group comprised Dai Bing, Cheng Xiangyang and Liang Jiehuan; and the Japan group was made up by Kang Wei, Yang Junlao and Tan Miaoli.

As the project progressed, some members withdrew for personal reasons. Du Zhaobing, on the other hand, had the opportunity to join us. There was also some movement between the groups as the interest of participating members shifted. All members, including those that arrived later and those that left early, have contributed to the content and detail of both the field studies and the report.

This report consists of six chapters: Chapter One – Methodological Approaches to Comparative Studies was written by Lin Jiting and Liang Jiehuan; Chapter Two – General Theories on Ombudsman System was authored by Zheng Wei and Li Hanlin; Chapter Three – Ombudsman System of Macao SAR was written by Lin Jiting, Du Zhaobing and Liang Jiehuan; Chapter Four – Supervisory System of Taiwan was written by Dai Bing and Cheng Xiangyang; Chapter Five – Ombudsman System of Japan, was drafted by Kang Wei and Tan Miaoli; and Chapter Six – Comparative Studies and Suggestions was prepared by Kang Wei.

We did not know each other until we undertook this research project but in the course of our participation we got to know each other better, in addition to rediscovering ourselves – a rare experience indeed.

We hereby submit our report *In Search of a Future Path for Macao's Ombudsman System: A Comparative Study of Ombudsman Systems in Asia* for criticism by the members of the Jury Panel of the Research Awards on Comparative Studies of Ombudsman Systems in Asia, to whom we extend our heartfelt thanks.

Kang Wei
President

Macao 21st Century Legal Studies Association
24th February 2008, Macao



Chapter 1

Methodological Approaches to Comparative Studies

1. Relationship between Good Governance and Ombudsman

1.1 Modern public administration

Supervisory systems have existed in China for more than two millennia, the first having been established in the Qin - Han period. In the West, supervisory systems can be traced back 200 years to the establishment of the Parliamentary Ombudsman in Sweden in 1809. However, it has primarily been in the past thirty years that supervisory systems have developed strongly around the world, with more than 120 countries and regions implementing such systems to date. The names and structures of these systems vary from jurisdiction to jurisdiction but their shared cornerstone is their authority to fulfil their duties independently and to receive complaints and appeals from the public. They are akin in that they safeguard human rights and employ essentially the same means to bring about honesty and observance of the law in government operations.

The Commission against Corruption of Macao (CCAC) – established under Article 59 of the *Basic Law of the Macao SAR* – came into being with the founding of the Macao SAR on 20th December 1999. In a manner conforming with ‘One Country, Two Systems’ and the fundamental principle of Macao being governed by the people of Macao – and taking into account Macao's social and political environment – the CCAC was charged with the two principal functions of fighting corruption and countering administrative violations of the law.

The CCAC is an independent public agency. It supervises the legality and rationality of administrative actions and reports improprieties and unjust actions on the part of government administration to the Macao SAR Chief Executive; alternatively, it proposes recommendations to the appropriate agency. Each year, CCAC receives a large volume of complaints. For the most part, it promptly deals with these via ‘informal intervention’. The work of the CCAC has greatly advanced since the handover, a fact that is plainly evident to the public.

Rapid economic development and the city's internationalisation have been accompanied by Macao residents' increasing expectations of their government. Incidents like the 2007 May 1 Workers Strike March and the corruption case involving former Secretary for Transport and Public Works Ao Man Long have only increased the sense of urgency, fuelling the impression that Macao has entered a period of social instability. This has given rise to increasing demands from society for administrative reform aimed at increasing public sector performance and for the Government to be more transparent and lawful in its public administration

activities. As traditional public administration has appeared incapable of satisfying the public's demands, the Government has put forth a series of reform measures in response and begun to conscientiously promote a new public administration rationale for viewing and evaluating public policy.

At the beginning of the 1980s, a wave of 'regulatory reform and innovation' swept the world. Inspired by the assertions of a school of thought known as New Public Management (NPM), successive Western nations conducted administrative reform and were swept up in the movement to reinvent government. The new view of public administration was rooted in the values of social equality and human rights that evolved during the late 1960s and early 1970s. It emphasised social justice, representativeness, responsiveness, participation and social responsibility. It advocated greater participation by citizens in the development, management and assessment of public services in order to ensure social justice. Public participation also induced government to attach importance to public perception and reaction. The underlying thought process of the new outlook cannot be said to have stressed methodology per se but put an emphasis rather on humanism. The role of public administrators was seen as providing efficient and equal services with an eye to the public's interest instead of their own. Public servants were no longer viewed as merely executors of fixed policy and decisions as they were in the fifties. On the contrary, their power was thought to derive precisely from the fact that they represented the public interest and provided the public with efficient and impartial services.

1.2 Administration concepts of Macao SAR Government

The concepts in question were fully reflected in the Chief Executive's 2007 Policy Address, as revealed in the following passage:

'For the next year, the Government, taking into consideration the continuity and adjustment of governance, will implement this strategic phase-by-phase conversion by initiating action in two areas; the one area being initiating the humanist, specialised portions of the main sectors, the promotion of an appropriate level of diversification of the economy as a whole, as well as the diversification of all categories of social enterprise; the second area being in-depth construction by proceeding along the dominant themes of public life and deeply investigating latent social conflicts, understanding their roots and various complex variables with the objective of promoting a just distribution of benefits and opportunities in society. In order to bring about a more profound optimisation of various social works, we will devote more energy to creating and increasing the various capacities and qualities of our society. We will promote ethical values and a universally meaningful humanist spirit at all levels of our work and activity; at the same time, we will strive to deepen administrative reform and social innovation. Always guided by the spirit of service to the public, we will create more



opportunities for citizens to achieve personal development and living conditions more agreeable for our population, and we will work to consolidate and expand the material and psychological basis for social harmony. In the area of public administration, we will continue to consolidate current reforms and deepen administrative infrastructure. Through reforms undertaken over the past few years, we have centralised various service structures and have replaced manual service methods with electronic technology, radically transforming the face of public service.

The Government, via the civil administration, has gained significant experience in consulting grass roots public opinion. Of these opinions, of particular innovativeness was (the suggestion) that high-level officials in the administration take the initiative to enter into a direct dialogue with citizens in order to hear their opinions.

Under the efficient operation of a centralised mechanism, the work of legal reform, in both quality and quantity, has entered a new phase. Through its legal affairs work, the Government has expanded transparency of governance and strengthened the administration's active acceptance of supervision by the Legislative Assembly and citizens.

Faced with the challenge of social change, the Government, in the coming year, will move more decidedly in a direction that is more fundamental, integral and in-depth in its efforts to advance the reform of public administration. It will reform the consultation mechanism, deepen the public administration's connections to society, and increase public input in policy measures.'

'People-oriented' concepts of administration are also in line with the national policies of the Central Government, as well as a new trend in modern public administration. The Report to the 16th National Congress of the CPC maintained that the comprehensive construction of a middle-class society depends on making society more harmonious, striving to bring about a situation in which all people contribute according to their ability, receive according to their needs, and co-exist in harmony. The construction of a harmonious society requires a completely new concept and mechanism but its core is 'people as the basis' and the requirement to reflect in actual work the deep emotional connection between the state and the people. Our current advocacy of service-oriented government seeks to provide the public with satisfactory service; whether the public is satisfied or not regarding the service the Government provides, approves of it or not, or embraces it or not, should be an important standard for assessing the quality of our work.

It was also pointed out recently in the U.S. Government's National Performance Review that 'an efficient government with an entrepreneurial spirit must uphold the principle of customer satisfaction. The government must do its utmost to listen through various channels to the voice of the public and make customer requirements the prime consideration in all operations.'

1.3 Protection of human rights

The Government, in the process of interacting with the public, must ensure the protection of the rights of the individual as provided under the basic law and the law. For this reason, the actions of public officials must be governed by administrative law and comply with proper legal procedure in order to avoid infringing the rights of the individual.

As early as 12th January 1993, Macao, following an official decision promulgated by the parliament of Portugal, decided that two international human rights conventions – the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* – would be extended for use in Macao. The *Basic Law of the Macao Special Administrative Region* (the *Basic Law*) also stipulates that the two aforementioned international covenants ‘as applied to Macao shall remain in force and shall be implemented through the laws of the Macao Special Administrative Region.’ With these two covenants – together with provisions on the protection of rights contained in Chapter 3 of the *Basic Law* – Macao has essentially established a legal system for protecting and maintaining the rights of citizens. Although, to date, Macao has not established a particular body responsible for promoting and protecting human rights (normally, such a body would be called the Human Rights Commission), the law confers a similar function upon Macao's Commission Against Corruption (CCAC). Through implementation of administrative measures, administrative supervision, investigation and public education, the CCAC can establish various systems for protecting and maintaining the rights of citizens. Clause 1d) of Article 3 of the Organisational Law of the Commission Against Corruption on prescribed functions states that the CCAC seeks to ‘promote the protection of rights, freedoms, safeguards and legitimate interests of the individual, and ensure, through the means referred to under Article 4 and other informal means, that the exercise of public powers abides by the criteria of justice, legality and efficiency.’

One way of responding to appeals from the public is to borrow the established Western function of the Ombudsman. Norwegian Parliamentary Ombudsman Arne Flifnet stated that the objective of establishing the Office of the Ombudsman is to ensure that public institutions do not treat individuals unfairly. For this reason, the spirit of the Ombudsman system can be seen to be essentially the same as that of the various international conventions that seek to protect the basic rights of the individual and prevent ‘unequal and unreasonable treatment by authorities’. For this reason, he concurs that the Ombudsman system is based on the same philosophy as the human rights conventions and that both the Ombudsman system and the conventions aim to protect the citizens and prevent unfair treatment by Government. Furthermore, because the Ombudsman is independent, it can effectively supervise the work of public agencies; correct, investigate or advise entities that conduct illegal or



unjust actions; and ensure that state institutions exercise their authority in a just and legal manner that guarantees the fundamental rights of the people. The Ombudsman system was first established in Sweden in 1809 and was later adopted by a gradual succession of countries.

In addition, the Ombudsman also offers its opinions and reasoning in its reports, explains what remedies it thinks need to be taken and provides explanations for recommendations. If it believes there has been a serious impropriety or injustice, the Ombudsman can submit a report to the Chief Executive stating its reasons and opinions. Additionally, if the Ombudsman thinks that any recommendation it has made has not been adequately addressed, it also has the authority to report directly to the Chief Executive.

1.4 Good governance

Rapid social and economic development in Macao in recent years has made public functions and public services a focal point of popular attention. With the general public calling for a 'big Government' to step forward and solve the living problems of citizens, this is a golden opportunity for the public administration sector to inform the public of its operational values. If the Government is incapable of truly understanding 'people-oriented' values, it will be incapable of properly integrating these values into its work. The result will be that the public service, in all its complexity and significance, will not be representative, responsive or impartial. We think that, internally, public administrators must seek objectives that promote the advancement of administration as well as inspire their employees to accurately and conscientiously perform their duties. Externally, public administrators need to ensure that the actions of the public administration are primarily aimed at satisfying the interests of the general public.

For this reason, we are of the opinion that the current administration should improve the present Ombudsman system and, in regard to the public's dissatisfaction towards the actions of the Government's administrative departments and its other designated public institutions that have a direct and important influence on the daily life of citizens, conduct investigations and produce reports, and conscientiously handle them to meet the aspirations of citizens. The primary function of the Office of the Ombudsman is to obtain justice for complainants that have been treated unfairly in situations of administrative impropriety. The current system of complaint referral implemented by the Commission Against Corruption will be changed to a more direct and user-friendly appeal system in which citizens can, at any time and place, submit a complaint to the Ombudsman. If the Ombudsman thinks that any person may have been treated unfairly due to maladministration, it also

has the authority to initiate an investigation; that is, to directly investigate. After completing such an investigation, the Ombudsman must report the results of the investigation to the senior officers of the institution in question.

Social harmony, stability and the quality of life of Macao's citizens are all dependent upon the quality of public services. For this reason, public servants must fulfil the promise of the public service as well as their obligation to citizens. In the civic humanist tradition, the Government is, in essence, 'the citizen's partner', and the public expects Government to pursue good governance. Recognising the importance of the general public is crucial for the public administration because if the administration functions poorly it could influence the authority of the Government and make the building of a harmonious society

2. Study of Macao's Ombudsman System

2.1 Study objectives

In order to act in harmony with the rapid social development that Macao has undergone in recent years, we think that merely continuing the knowledge and thinking of the Ombudsman system that existed before the handover and adding the modern equivalent of the function of the Ombudsman to existing watchdog agencies is far from sufficient to reflect and respond to the demands of modern society. The modern Ombudsman system should 'be an important mechanism for monitoring administration compliance with law, protecting the legal rights of citizens, reducing bureaucracy and promoting ongoing improvement of the operation of public administration. It is also an important indicator for measuring society's level of cultural enlightenment.' On the premise that human rights are protected and the legal rights and interests of the individual are not 'subjected to unjust or unreasonable treatment by authorities', the present study seeks to re-examine the implementation of the Ombudsman system in Macao and seek an Ombudsman system that corresponds to the history, culture and traditional thinking of Macao as well as its development needs. It also seeks to explore how to use this system to advance governance functions and maximise the system's effectiveness and adopt various methods to conduct widespread public promotion aimed at increasing and strengthening citizens' knowledge and awareness of the legal rights of the individual, their knowledge and use of the Ombudsman functions, thus encouraging them to become better citizens in general. Such promotion will also help spread the system to other Asian countries.



This report's research approach is primarily centred on the task of creating a harmonious society. Today, Macao's economic development has entered a new and historic period, and as society has developed, the knowledge and awareness that Macao residents possess regarding the protection of their rights has steadily increased. Taking this into account, it is important that we carefully reflect on whether the issue of administrative legality should be considered solely from the perspective of prevention of corruption and fraud and whether an Ombudsman system under a watchdog agency best responds to today's circumstances and the needs of future development.

To gain detailed insight into the Ombudsman system and how it is put into practice in various countries and regions, we set out to conduct a qualitative study complemented by quantitative research. We hope the recommendations resulting from this study will be of significance and value in the development of the Ombudsman system in Macao and its underlying theory.

2.2 Background to study

In order to study and analyse the Ombudsman System of the Macao SAR and its operation, we began to arrange and plan for this study on 15th February 2007. According to the report plan that we submitted to the Commission Against Corruption, research was conducted in three stages (the initial stage being from February to May, the middle stage from June to September, and the final stage from October until the following February). It took exactly one year to conduct the research and complete this report.

That the Ombudsman system progresses over time is a requirement of the Macao SAR Government; it is also the aspiration of the general public of Macao. An effective supervisory system will not only help ensure that the operations of the Government are legal and equitable but will increase the transparency and efficiency of government work and increase the Government's governing ability and competitiveness.

In the more than eight years since the founding of the Macao SAR, the CCAC has handled a large number of complaints from citizens and improved many of the Government's administrative processes, resulting in the administration of the Macao SAR functioning with greater legality and equitability. It has achieved definite results in promoting improvement in the efficiency of the Government administration and improvement of service quality.

However, faced with ever increasing expectations by the public towards Government work and

the rapid development of the Macao economy, we must study how to increase the role of the CCAC in supervising Government administration and how to harmonise Macao's supervisory system with development trends in administration supervision systems around the world.

2.3 Objectives of study and comparison

We think that continuing to operate based on the pre-handover understanding and views of the Ombudsman systems and adding the modern equivalent of the function of the Ombudsman to a watchdog agency is far from sufficient to reflect and respond to the demands of modern society. The modern Ombudsman system should 'be a key mechanism for monitoring whether Government administrations comply with law, for protecting the legal rights of citizens, for reducing bureaucracy and for promoting ongoing improvement of the operation of the public administration. It is also an important indicator for measuring a society's level of cultural enlightenment.' On the premise that human rights are protected and the legal rights and interests of the individual are not 'subjected to unjust or unreasonable treatment by authorities', the present study seeks to re-examine the implementation of the Ombudsman system in Macao and seek an Ombudsman system that corresponds to the history, culture and traditional thinking of Macao as well as its development needs. It also seeks to explore how to use this system to advance governance functions and how to maximise the system's effectiveness and adopt various methods to conduct widespread public promotion aimed at increasing and strengthening citizens' knowledge and consciousness of the legal rights of the individual as well as their knowledge and use of Ombudsman functions, and encourage them to become better citizens in general. Such promotion should also seek to promote the spread of the system in other Asian countries.

This report will conduct a study of the Ombudsman systems in Macao, Taiwan and Japan. It will analyse the characteristics of the Ombudsman systems in these countries and regions, including their position, methods, goals and achievements, and will study the relationship and interaction between these systems and other institutions as well as the degree to which citizens understand and make use of these systems. It will seek to gain a profound and comprehensive understanding of the study objective and, through comparative study, seek to understand the operation and practical use of our system in different historical and cultural contexts. Through this exploration of the strengths and weaknesses of systems employed elsewhere, our goal is to find the system that best serves Macao's needs.



We hope through this study report, therefore, to achieve such goals as continuing the improvement of government administrative processes and activities, heightening citizens' knowledge of guarantees and laws protecting their rights as individuals, and providing a theoretical basis for further local academic research into the subject.

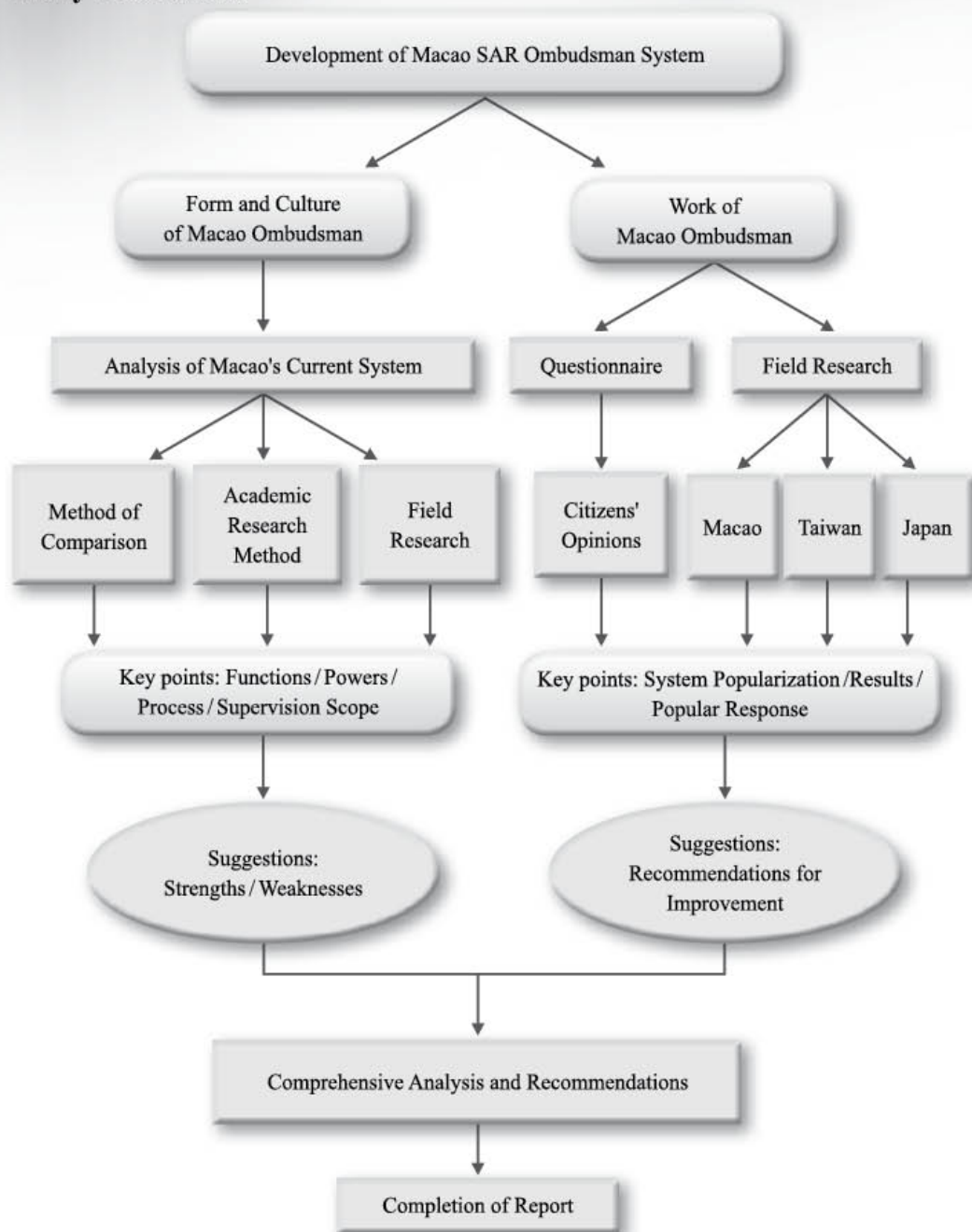
What needs to be explained here is that in the various regions of the world, Ombudsman systems are known by different names. In some places, the term 'Ombudsman System' is applied and the supervisory officials that are part of the system are called 'Ombudsman'. This is the case in Macao and another research subject of this report, Japan. Then there are jurisdictions where the term 'Supervisory System' is used, and the relevant supervisory official is called 'Auditor' or 'Controller', as is the case in another research subject of this report, Taiwan. However, regardless of what term is applied to the system, its properties and functions in different countries and regions are very similar.

2.4 Study framework

After the handover, the Macao SAR established the Commission Against Corruption (CCAC). Because Macao's legal roots lie in the legal system of Portugal, Macao's administrative supervision was strongly influenced by the supervisory system of Portugal. Compared with the administrative systems of various countries and regions in Asia such as Mainland China, Hong Kong and Taiwan, there exist several differences from the perspectives of both system and function. We feel that nine years after the return to Chinese sovereignty, conducting a review of the work of the Ombudsman function of the Commission Against Corruption (CCAC) is therefore fitting and necessary.

The research focus of this study is the forms and theory of Ombudsman administrative supervisory systems and the current state of the Ombudsman system of the Macao SAR. The form and history of the administrative supervisory systems of two Asian countries and regions (Japan and Taiwan) are supplementary considerations. It uses data regarding the work of the Macao SAR Commission Against Corruption and public opinion as a reference basis for establishing the study framework. We have ensured that the content and information combine theory and practice in order to provide a body of information that is of reference value for the development and reform of the Ombudsman system of the Macao SAR.

Study Framework





2.5 Study method

In order to more fully and accurately identify the fundamentals of the issue, this study report was primarily conducted according to the following study method: research method for the fundamental theory of law, comparative institutional law, documentary research method (including research methods for history, sociology and political science, as well as data and statistics), academic exchange, question surveys and field research.

(1) Research Method for Fundamental Theory of Law

Under the research method for the fundamental theory of law, we proceeded via qualitative study complemented by quantitative study; then, on the premise that we have a thorough understanding of the Ombudsman system and how it is put into practice in various countries and regions, we offered our recommendations in the hope that they will have a certain significance and value regarding the development of the Ombudsman system in Macao and its underlying theory.

(2) Comparative Institutional Law

We conducted research into the Ombudsman system models of Taiwan and Japan, including such aspects as their functions and structure, in order to understand the development of these systems in society. Furthermore, we analysed the characteristics of the Ombudsman systems in these countries and regions, including their position, underlying principles, methods, goals and achievements, in an effort to gain a comprehensive understanding of the study objectives and, through comparative study and exploration of the strengths and weaknesses of systems employed elsewhere, to understand the operation and practical use of the Ombudsman system in different historical and cultural contexts in order to seek the version that best serves our needs.

(3) Documentary Research Method (including research methods for history, sociology and political science plus data and statistics)

This includes the compilation of academic and theoretical materials and government statistics from Macao and other subject jurisdictions. In the process of collecting information, a focus was placed on the integrity and comprehensiveness of the information. We fully employed current sources of information such as the Internet and documentary and historical information. We also conducted field studies in the relevant countries and regions and sought meetings with individuals who perform Ombudsman functions in order to gain current, firsthand information regarding the operation and effects of the Ombudsman system in each country or region.

In the process of analysing the information, we first focused on observation of various social phenomena related to the Ombudsman system. We not only conducted a macroscopic observation of the entire public administration system but conducted a microscopic observation of the operation and influence of the Ombudsman system using individual case studies. Secondly, through the study of such aspects as history, law, ethno-cultural background, social environment and development of the study subjects, we sought the causes and influences of the formation and development of the Ombudsman systems, as well as the relationship and interaction between the various factors. As much as possible, we sought to offer a comprehensive explanation and thorough understanding of the operation of each Ombudsman system. Finally, by comparing the Ombudsman systems of different countries and regions, we sought to explore and discover the characteristics, experiences and lessons learned from each system, as well as less obvious factors that operate in their environment.

(4) Questionnaire

The level of knowledge that Macao citizens possess regarding the Ombudsman system was an important focus in our suggestions for improving Macao's Ombudsman system.

In the second half of 2007, our group conducted a questionnaire designed to assess the level of knowledge of the Ombudsman system of the Macao SAR. Through random sampling, it targeted Macao citizens and successfully obtained 500 response forms. Analysing the samples based on gender, age, education and other factors (see below), we obtained reference data of research value.



Data characteristics of 500 Survey Respondents

| Summary | | Individuals | Percentage |
|-----------------|-------------------------------|-------------|-------------|
| Gender | Male | 257 | 51% |
| | Female | 243 | 49% |
| | Total | 500 | 100% |
| Age Group | Under 20 | 25 | 5% |
| | 20 - 30 | 171 | 34% |
| | 31 - 45 | 260 | 52% |
| | Above 45 | 44 | 9% |
| | Total | 500 | 100% |
| Education Level | Primary school or below | 17 | 3% |
| | Secondary school | 183 | 37% |
| | College education | 112 | 22% |
| | University education or above | 188 | 38% |
| | Total | 500 | 100% |

(5) Field Study and Academic Exchange

In order to gain a deeper understanding of the Ombudsman systems and conduct a comparative study, the group travelled to Taiwan and Japan in May 2007 and January 2008 to conduct field studies and visit Ombudsman-related agencies. During this period, we visited local facilities and held forums with agency representatives, conducting detailed discussions regarding the respective Ombudsman system and obtaining a substantial amount of valuable opinion and information.

Furthermore, Macao's CCAC also invited our group to visit them and introduced their work to us.

Chapter 2

General Theories on Ombudsman System

1. Profile of Ombudsman System

1.1 Meaning of Ombudsman system

The Ombudsman system discussed in this study report is principally the Ombudsman system in common international use, or something approximating it, which is known as the 'supervision system'. The term 'Ombudsman' is an old Swedish word that can be translated into English as 'representative', and refers to a person responsible for protecting the rights of another person. The corresponding supervisory system often referred to as the 'Ombudsman system' also has its origins in Sweden.

The Swedish Parliamentary Ombudsmen – also referred to as the Ombudsmen of Justice – is chosen and appointed by the Swedish *Riksdag* and ensures that government agencies and their staff comply with the law and other regulations that govern their actions. It is the responsibility of the Ombudsman to ensure that government agencies and the courts follow the law. This responsibility is fulfilled by handling complaints and petitions submitted by the public. It assesses and investigates complaints and petitions from the public, monitors government agencies at various levels, and can independently initiate various forms of investigation in the course of its work. The Parliamentary Ombudsman can also visit different courts and government agencies to examine their work and independently decide what subjects merit investigation; furthermore, the Parliamentary Ombudsman can source investigation – worthy issues from news publications and television programmes ¹.

The Swedish Parliamentary Ombudsman is appointed by the *Riksdag* and represents the *Riksdag* in overseeing whether the public administration is complying with law. Its oversight scope includes the courts, government agencies and public servants. If when performing its oversight duties the Parliamentary Ombudsman discovers that a government official's actions constitute breach of law or dereliction of duty it can initiate legal prosecution; however, its key focus is the establishment of good governance as well as legal and disciplinary compliance. The main supervisory task and method of the Swedish Parliamentary Ombudsman is handling petitions from the public. When a citizen's rights are infringed upon by the government, the citizen can lodge an

1 See: *The Swedish Parliamentary Ombudsman*, Control Yuan International Affairs Committee, 2006, p. 5



appeal with the Parliamentary Ombudsman. The Parliamentary Ombudsman can independently exercise its right to investigate and review documents, and can also monitor any agency for the purpose of discovering illegal or improper circumstances and may announce recommendations, warnings and requests for improvement.

The 'Ombudsman' concept is referred to as *Provedor de Justiça* in Portugal, as *Defensor del Pueblo* in Spain, as *Mediateur de la Republique* in France, as *Difensore Civico* in Italy, as Parliamentary Commissioner in Great Britain, as *Protecteur des Citoyens* in Quebec, and as *Fiscal General* in Venezuela ². The titles given to the office in Chinese can be translated as Supervision Commissioner, Inspector, Ombudsman or Investigator, or even Mediator, Legislative Commissioner, People's Defender, Representative, and so on. Regardless of what the office is called, its basic meaning is an official that legally and independently exercises supervisory authority.

Naturally, because different countries and regions have different histories, cultures, traditions and political systems, the Ombudsman systems they design are also different. For example, there may be differences in the structure and powers of the appeal agency, the method through which the Ombudsman is appointed, the scope of its oversight and the process and method through which it exercises its authority. For this reason, the Ombudsman system of each country or region exhibits different features. The common characteristics of Ombudsman systems and other similar systems, however, generally fall into the following: 1) They are mechanisms for the supervision of power and primarily supervise administrative power; 2) the Ombudsman generally has a certain relative independence; and 3) they are the channel for redress in the event a citizen's rights are infringed upon.

With these features in mind, this report employs terms such as administrative complaint, Ombudsman, and Office of the Ombudsman but since the names used in the laws of the various countries or regions at the time the systems were established are not completely the same, in order to show due respect to the systems studied and to maintain objective reality in the details described, this report, in introducing corresponding systems or citing related material, will sometimes employ other terms (e.g.) Supervisory System, Inspector and Supervision Commissioner .

1.2 Main features of Ombudsman system

The main features of the Ombudsman system include the method of appointment, the duties and powers of the Ombudsman, its working procedures and its treatment of issues.

² See *The Ombudsman*, Menéres Pimentel, Macao Public Administration Magazine, Edition 23, 1994, no.1, p.175.

Ombudsman Generally Appointed

Because the organisation of Ombudsman agencies varies, the corresponding appointing body also varies. For example, in some jurisdictions the Ombudsman is appointed by the legislature, while in other jurisdictions it is appointed by the government. Once the Ombudsman is appointed, however, it generally conducts its function with a high degree of autonomy.

Functions of Ombudsman

Although not identical under the various types of Ombudsman systems, the functions of the Ombudsman generally centre on oversight of the activities of administrative agencies and public servants and ensuring that the fundamental rights of citizens are not infringed upon by public power. Of course, the Ombudsman of some countries and regions also monitors the activities of its judicial institutions.

Working Procedures of Ombudsman

Initially, the Ombudsman receives cases. The main sources of cases undertaken by the Office of the Ombudsman are complaints by the public and investigations initiated by the Office itself. When citizens submit complaints or reports, the Ombudsman, following verification of the case, primarily has three courses of action open to it: it can refuse to accept cases for which there is no adequate reason to proceed or that do not fall within its jurisdiction; matters that fall under the responsibility of another agency can be transferred to the competent agency; and complaints assessed to be justified can be accepted and an investigation initiated. The Ombudsman may also initiate an investigation in response to matters it uncovers through the media and other channels. Furthermore, the laws of some countries stipulate that the Ombudsman can, on its own initiative, conduct inspections of administrative agencies with the objective of discovering issues that require attention. Secondly, the Ombudsman files the case and initiates an investigation. Cases filed and investigated by the Ombudsman can be categorised into two: one type is cases stemming from citizens' complaints that have been found, following assessment, to fall within the jurisdiction of the Ombudsman; the second type are issues that the Ombudsman has uncovered via investigations initiated on its own and which it feels require filing and investigation. Lastly, the Ombudsman considers the case. Once a case has been investigated, it can generally be handled in four ways. The first option is to send back the complaint information. If the investigation leads the Ombudsman to the conclusion that the actions of the administrative agency were legal and fair, the Ombudsman can decide to return the complaint information to the complainant and explain its reasons for doing so. The second option is to make recommendations. If the Ombudsman feels



that the actions of the administrative agency or administrative staff were in some respect illegal or inappropriate it will make recommendations to the agency in question. For example, it may recommend that the administrative agency rescind an inappropriate administrative decision, pay compensation to a complainant or impose an administrative sanction upon certain officials. The third option is to put forward criticisms. In response to minor faults, the Ombudsman may opt to put forward criticisms of the agency or personnel in question in order to raise their awareness. In cases of refusal to correct error, the Ombudsman may also issue a public criticism in the press. The fourth option is to file an indictment. Under some systems, the Ombudsman has the authority to file an indictment in response to a serious breach of law or improper actions.

Other than filing an indictment, the opinions of the Ombudsman are generally not compulsorily enforced although the parties involved usually defer to and accept its opinions. It is herein that the effectiveness of the Ombudsman system lies (i.e.) that it is able to monitor administrative agencies and their staff, and correct harmful actions on the part of the administration. It is also precisely for this reason that there is a need to explore these systems.

2. History of Ombudsman System

The Ombudsman system (i.e.) the supervisory systems adopted by many countries or the Parliamentary Ombudsman of some Western countries, has its earliest roots in Sweden. For this reason, the model for the Ombudsman as it exists today in Western countries can be traced back to the Ombudsman of Justice (*Justitieombudsman*)³ established in Sweden in 1809. Sweden was the first country to create an Ombudsman system.

In fact, as early as 1713 King Karl XII of Sweden established the office of His Majesty's Supreme Ombudsman⁴. In 1709, war broke out between Sweden and Russia. When the war turned badly for the Swedes, Karl XII of Sweden retreated to Turkey and attempted to direct Swedish internal affairs from a distance. The political situation in Sweden was chaotic and bureaucratic corruption mounted by the day but Karl XII was too far away to promptly respond to incidents of bureaucratic abuse. For this reason he appointed a surrogate in 1713 to act as his pre-eminent representative in Sweden to oversee the judges and civil servants in order to ensure that they respected the law. The surrogate – titled His Majesty's Supreme Ombudsman – was empowered to initiate legal proceedings when necessary.

3 Chao Jung-yao: *Becoming International — International Participation, Exchange and Taking Root of the Control Yuan*, published by the Taiwan Control Yuan, 2005, p.1.

4 Translated by the Control Yuan International Affairs Committee: *The Swedish Parliamentary Ombudsmen*, 2006, p.1.

The system changed as the balance of power between the monarch and the *Riksdag* changed. The 1719 constitution and the constitutional amendment of the following year limited the monarch's power to a minimum and increased the voice of parliament. Sweden then experienced several decades of what can be considered a period of freedom under parliamentary rule. In 1766, the *Riksdag* elected for the first time the Chancellor of Justice as the most senior supervisory authority. In the 1772 Instrument of Government, however, the right to appoint the Chancellor of Justice again became the royal prerogative. Sweden then experienced a period of renewed autocratic rule lasting until 1809, when Gustaf Adolf IV, viewed as responsible for defeat in war, was forced to abdicate. Absolute monarchy was declared to be at an end and an age of constitutional democracy was ushered in.

Under Sweden's 1809 constitution, the system of government was changed from that of an autocratic monarchy to that of a constitutional monarchy. At the same time, the constitution divided power between the king and the *Riksdag*. The king was to appoint the Chancellor of Justice (in other words, the Royal Ombudsman) and the *Riksdag* was to appoint the Parliamentary Ombudsman. The creation of the Parliamentary Ombudsman marked the official birth of a supervisory agency completely independent of the executive. The *Rikstag's* adoption of the Act of Instruction to the Ombudsman in 1810 saw the official appointment of the Parliamentary Ombudsman. Under the constitution, the Parliamentary Ombudsman was primarily charged with the protection of the rights of citizens. Its principal duties were to represent the *Riksdag* in monitoring the application of the law by judges, administrative officials and public servants, as well as analysing the law and highlighting obscure areas of legislation. Its purpose was to recommend revisions in order to promote equality before the law and protect the rights of citizens and the public. The task of the Parliamentary Ombudsman was to initiate supervisory action and conduct enquiries into complaints by the public. Initially, complaints played a relatively insignificant part, however, and the role of the Parliamentary Ombudsman resembled that of a prosecutor. Cases filed by the Ombudsman were either shelved or failed to result in prosecution. In the first century of the existence of the Office of the Ombudsman, the total number of complaints amounted to some 8,000.⁵ Nor did the Ombudsman system attract much attention from other countries.

In the 19th Century, the Ombudsman system in the West experienced a protracted period of stalled development, and it was not until the early 20th Century that the Ombudsman concept spread to other northern European countries. In 1919, Finland broke away from Russian control, enacted a constitution and established the position of Ombudsman. Under the constitution, the Ombudsman was elected and appointed by the *Eduskunta*, or Finnish parliament. Its authority was similar to that of the Chancellor of Justice, and it independently exercised its duties. It received complaints from the public and had the authority to initiate legal proceedings against officials who broke the law.

5 See *The Swedish Parliamentary Ombudsmen*, Control Yuan International Affairs Committee, 2006, p.1-5.



Denmark revised its constitution in 1953, wherein it introduced the Ombudsman system and established the position of Ombudsman. In 1954, the Danish parliament, or *Folketing*, adopted the Ombudsman Act, under which the Ombudsman was officially titled the Parliamentary Ombudsman, which represented parliament in exercising administrative oversight over government officials and public servants. It also had the authority to address citizens' complaints against administrative agencies. Denmark's Ombudsman system was primarily administration-centred in its oversight and, at that time, administrative power was expanding dramatically in many countries and people were seeking mechanisms to control administrative power. Under such circumstances, therefore, Denmark's Ombudsman system was embraced more readily by other countries than the Swedish or Finnish systems, which were more judiciary-centred. The majority of Ombudsman systems that would be established later, therefore, would be administration-focused. In fact, Sweden's Ombudsman system also underwent change. Its role gradually became less punishment-focused and more oriented towards providing guidance and advice, meaning that Sweden's Ombudsman no longer merely played the role of public prosecutor.

In the 1960s, the Ombudsman system started to spread to countries outside northern Europe. In 1962, New Zealand passed the Parliamentary Commissioner (Ombudsman) Act, under which the Office of Ombudsman was established. New Zealand thereby became the first country outside northern Europe to establish the office of Ombudsman. After that, a succession of countries implemented the Ombudsman system, including Great Britain (1967), most provinces in Canada (1967), Tanzania (1968), Israel (1971), France (1973), Portugal (1975), Austria (1977), Puerto Rico (1977), Australia (state level, 1972-1979 / federal level, 1977), and Spain (1978). The Ombudsman system underwent vigorous development in all regions of the world. According to official statistics of the International Ombudsman Institute; in 1983, a total of 27 countries had established the office of Ombudsman at national or regional level, and as of the end of 2004 more than 121 countries had adopted the Ombudsman system.⁶

3. Theory of Ombudsman System

3.1 Corruption of power

'Corruption of power' refers to the use of public authority by its holders to gain personal benefits for themselves. Power in itself is partially coercive in nature, in that it has the ability to control,

⁶ See Chao Jung-yao, *Becoming International — International Participation, Exchange and Taking Root of the Control Yuan*, Published by Taiwan Control Yuan, 2005, p. 1-2.

influence and dictate. 'Power is the probability that one actor in a social relationship will be in a position to carry out his will despite resistance, regardless of the basis on which this probability rests.' ⁷ 'Power refers to the ability of its holder to force, on any basis, other people to yield to or comply with the holder's wishes.' ⁸ It is also precisely for this reason that power needs to be controlled. Power that is uncontrolled leads to the abuse of power.

A subordinate to the concept of power, public power is a distinct form of power that arose from the need to adapt to social life, satisfy society's needs and handle public affairs. As social interests diverged to a certain degree, the emergence of public power prevented structural division of society or social conflict and enabled society to integrate more compactly into a single entity. With regard to the objective of public power, it is to resolve contradictions and disputes between the individual and the group to which the individual belongs in order to satisfy the need of human society to exist and develop, and in order to protect the rights and interests of citizens. Public power represents the provision of an obligatory service. The abstract agent of the power (i.e.) government, is the provider of the service. The government is not an almighty ruler from heaven or the master over society but rather has the obligation to serve the people in the region under its jurisdiction. But for public power to fulfil its function and resolve disputes, it must be coercive. It is clear that from the moment public power emerges coercion becomes an indispensable element in its makeup. In modern society, the coercive force of public power is made legal and valid through law, after which the executor of public power is legally able to impose its will on the people.

Public power is an abstract and objective impersonal power but just as 'laws are not enough to govern a country', public power must still be implemented by individuals. Once power is implemented by ideological individuals possessing subjective initiative, it becomes impossible to prevent the individual's influence on that power. It is even possible for the power to be transformed into an individualised entitlement of that person; in other words, the individual holding the corresponding position is transformed from the executor of public power into the owner of public power. At that point, the legal obligation of the executor of public power to implement public power is transformed to the individual's entitlement to implement public power, or even an entitlement to be used at will by corresponding public servants.

In particular, public power is in practice more often than not manifested as the ability of the executor of public power to legally manage, use and dispose of rare resources publicly owned by

7 Max Weber: *Economy and Society (Volume 1)*, translated by Lin Rongyuan, The Commercial Press, 1997, p. 81.

8 Quoted from: Alan Bullock & Oliver Stallybrass, *Fontana Dictionary of Modern Thought*, translated by the Centre for Documentation and Information, Chinese Academy of Social Sciences, Beijing; Social Sciences Academic Press, 1988, p. 453.



society. The executor of public power has the obligation to administer society's publicly-owned rare resources according to relevant laws and regulations and has the obligation to allocate society's rare resources in an authoritative, just and legal manner. Since by definition society's rare resources are scarce, however, it is impossible to satisfy the demands of all parties. This gives rise to the situation in which some individuals benefit and others lose out. This causes some people, for their own benefit or even in order to gain privileges, to ingratiate themselves with the executor of public power, and causes the individual executing public power to receive illegitimate benefits. However, for the executors of public power to use that power to obtain private benefit deviates from the purpose of having public power protect public interests, and transforms the executors of public power from public servants of the people into the dominators of public power, resulting in the alienation of public power. The manifestation of this alienation of power is the illegitimate transfer of benefits from public ownership to private ownership – or corruption.

It is clear that public power plays an irreplaceable role in modern society but if power is alienated and employed for private benefit the result is corruption, which is detrimental to the public interest and which departs from the original intention behind the establishment of public power. Absolute power corrupts absolutely, and there is a common consensus among the world's citizens that limitations need to be put on power. In order to ensure the legal exercise of public power, therefore, it is necessary to construct an appropriate supervisory mechanism. Currently, various countries, both developed and developing, have steadily introduced new measures to improve their administrative supervisory systems. One such measure has been the introduction of the Ombudsman system, which has been implemented in an increasing number of countries.

3.2 Sovereignty of the people

The basic meaning of the 'sovereignty of the people' is that all power in the country belongs to the people. Strictly speaking, the concept of 'sovereignty of the people' was first put forth by the 18th Century French Enlightenment thinker Jean - Jacques Rousseau, who stated that in establishing the country the people established a contract and that they were the owners of state power. The state, in the interests of all the members of society, must possess 'widespread coercive power' and absolute authority in administering the members of society. This authority, when guided by the 'public will', is sovereignty. Rousseau, with natural rights and the social contract as his theoretical basis, believed that sovereignty was relinquished by the people to the body politic through the social contract and that it constituted an absolute power to administer the members of the body politic. For this reason, sovereignty can only belong to the people and the government is merely the executor of sovereignty. In other words, the people are the masters and the government and its official's public servants.

He pointed out that sovereignty of the people requires that legislative power belong to the people. Law is the manifestation of the state's will and an 'act of public will'. Therefore, sovereignty is actualised via legislative power. Sovereignty belongs to the people and the people not only have the right to make laws but the right to change laws. Once a law is established, all people must follow it. In response to those that do not abide by the law, the people must force them to comply.

Rousseau's theory of popular sovereignty says that sovereignty is inalienable and indivisible (i.e.) he rejects the representative system and asserts that sovereignty is supreme. Later thinkers, however, on the foundation of Rousseau's idea of sovereignty of the people, proposed the theory of national sovereignty, and from the theory of national sovereignty derived the representative system and the theory of the representative system. After more than two centuries of development by political scientists and legalists, particularly in many Western democratic countries with rich experience in political practice, the concept of the 'sovereignty of the people' has become the legal fountainhead in most democratic countries for the establishment of domestic law and 'national sovereignty', and has also gradually become a universal value. After World War II, 'because of the advancement of the democratic participation theory, the constitutions of capitalist countries all recognised the theory of the sovereignty of the people, and political systems based on the representative system became the basic avenue for implementing the theory of the sovereignty of the people. Governments produced through a legislature or popular election must be supervised by the legislature and the people, and the legislature and people must have the legal authority to recall government officials who are incompetent or abuse their authority. As people sought to more effectively supervise the activities of their governments, the Ombudsman system gradually spread from northern Europe to other European countries, and countries such as Israel and Tanzania, forming a unique method for supervising administrative agencies and administrative personnel.⁹

3.3 Restriction of power

The seeds of the theory of the separation of power can be traced to Aristotle's *Politics* but the separation of power as a systematic theory took shape in the 17th and 18th Century in the works of thinkers such as John Locke and Charles de Secondat, Baron de Montesquieu. The political systems of many countries were established using the theory of the separation of power as a guide. Although each has its unique characteristics, the mechanism of restriction is essentially the same: a legislature exercises legislative power by enacting laws in the name of public opinion; the government exercises administrative power by implementing laws enacted by the legislature; the courts exercise judicial power by applying the law and adjudicating over all disputes that arise in the process of implementing

9 Zhang Jiansheng: *Study of Administration Supervision*, People's Publishing House 2001, p.10.



the law. The three types of institutions each have their own function and constitute a check on each other, with the power of each restraining the power of the other two.

As society has developed, however, the functions of the administrative institutions of government have gradually expanded, and the administrative powers of government have gradually increased. Administrative power has an enormous influence on the politics, economics and culture of a society. This causes people to continue to strengthen the traditional mechanisms for supervising administrative power on the one hand – such as judicial review – and on the other hand to design mechanisms for conducting prior and real-time oversight of administrative power in order to strengthen restriction and supervision of administrative power, by standardizing the actualisation of administrative power, for example, through administrative procedural systems, and by employing power restriction mechanisms to reduce such phenomena as the abuse and alienation of power. Through legislative supervision, internal supervision in administrative agencies, judicial supervision and independent mechanisms, the supervision of administrative power is strengthened, and a supervisory system that functions at different levels and from different perspectives is formed.

To sum up, the Ombudsman system is an administrative supervisory system. Its emergence and development have a deep historical and social background and its theoretical basis includes limited government, the sovereignty of the people and the division of power.

4. Types of Ombudsman System

Since 1809, Sweden's Ombudsman system, which developed from the Parliamentary Ombudsman system, has experienced roughly 200 years of development and evolution. Today, the establishment of an Ombudsman system has become an international trend. Furthermore, the Ombudsman system is regarded as an important indicator of a nation's democratisation. To date, more than a hundred countries and regions have set up an Ombudsman system or similar system. Because the respective systems are influenced by such factors as the constitutional government system, history and culture, legal order and national conditions, however, the designs of the Ombudsman systems of different countries or regions vary somewhat in their structure, function and operation. However, all the differences essentially stem from the structure of the Ombudsman and the power with which it is endowed.

There are primarily two ways in which Ombudsman agencies are created. One way is through the constitution (i.e.) the constitution clearly defines the establishment and powers of the Ombudsman agency; one way is via the law (i.e.) a specialised law prescribes the creation of the

agency. Ombudsman agencies created through the constitution may to a certain degree be exempt from legislative influence but this is not the case for agencies established through a law, since the law, like any other, can be revised.

Regardless of whether or not they were established by constitution or law, Ombudsman agencies can be subordinate to parliament, a judicial body or an administrative body. They can also be relatively autonomous.

According to different standards, current Ombudsman systems can be divided into different types¹⁰:

- (1) Based on the entity they are subordinate to, they can be divided into Parliamentary Ombudsman, Independent Ombudsman and Administrative Ombudsman. A Parliamentary Ombudsman is subordinate to parliament and constitutes a means for parliament to supervise the administration. Globally, this is the most typical form of Ombudsman system, accounting for about two-thirds of supervisory systems.¹¹ An Independent Ombudsman is an Ombudsman agency that is independent from the administrative, legislative and judicial bodies, as is the case with Taiwan's Control Yuan. An Administrative Ombudsman is an Ombudsman system that is administered by the administration, and that supervises and inspects the administrative actions of the government and its officials. Some people feel that this type of Ombudsman agency cannot operate independently, is not a true supervisory system¹² and is not an administration Ombudsman which is the true sense of the word.
- (2) Based on whether they have regular or specialised functions, they can be divided into ordinary and specialised Ombudsman. The most common form of Ombudsman is the Parliamentary Ombudsman (i.e.) the Parliamentary Ombudsman represents the 'regular' Ombudsman. At the same time, because of the diversification of society, within the development of each country there is sometimes a certain domain that requires special attention and protection, and for this reason a specialised Ombudsman may be established (e.g.) there may be an Ombudsman for the police, military affairs or fair trade.

10 See Hwang, Yueh-chin: *Comparative Study of Supervisory Systems of Various Countries*, Hanlu Book & Publishing Co., 1998, p. 101-105; Hung Kuo-hsing: *Discussion of the Types of Supervisory Systems*, in *Government Audit Journal*, Volume 27, 2nd Edition, p. 100-107.

11 *Control Yuan International Affairs Committee, Summary of Work of Control Yuan International Affairs Committee - 1994 - 2001*, Control Yuan, January Edition, 2005, p. 150.

12 Hung Kuo-hsing: *Discussion of the Types of Supervisory Systems*, in *Government Audit Journal*, Volume 27, 2nd Edition, p. 104.



- (3) Based on the position of the Ombudsman agency in the constitutional government system, primarily the following exist: first, the 'system of separation of power' usually refers to Parliamentary Ombudsman created at parliamentary level in northern European countries and exercises authority separately from the administrative, legislative and judicial authority. Its significance lies in the separation and balance of power. Second, as a system for remedying the weaknesses of the litigation system. This can be divided into two situations. One is the British system, in which the function of the Ombudsman system compensates for weaknesses in the administrative litigation system. Another is the German system. Germany's administrative litigation institutions and constitutional litigation system were mature and well-developed but due to rapid expansion and complication of the administration, individual rights were sometimes infringed upon and the administrative relief channels were insufficient to provide protection. It was due to this situation that Germany's supervisory system was created so that external oversight of administrative power could be conducted via non-judicial means. Third, the system in which the Ombudsman function and the audit function are combined. In Israel, the State Auditor and Public Complaints Commissioner receive and handle complaints in addition to investigating incidents of administrative malfeasance or dereliction of duty. Globally, this system is very unusual. Fourth, the system in which the Ombudsman function and human rights function are combined. A product of democratisation, this new form of supervisory system (i.e.) a combination of human rights Ombudsman, Ombudsman for citizens' rights and hybrid Ombudsman, is often formed from the combination of the traditional Ombudsman agency and a human rights agency. This type of supervisory structure has been adopted more by countries in Central and Eastern Europe, Latin America and Asia Pacific.
- (4) Based on whether the Ombudsman system possesses coercive authority, systems are divided into Ombudsman systems with coercive authority and those without. 'Ombudsman systems with coercive authority' means that, following investigation, the measures taken employing the Ombudsman's authority are enforceable, and that the Ombudsman has the authority to initiate legal proceedings in response to malfeasance or dereliction of duty by officials, such as is the case in Sweden and Finland, or has the authority to propose impeachment, censure or other measures, such as in Taiwan. 'Ombudsman systems without coercive authority' means, following investigation, that the Ombudsman can only make recommendations, co-ordinate or resort to media or popular pressure but does not possess the authority to enforce its decisions. This is the case with the Ombudsman system in Denmark and most other Western nations.¹³

¹³ Hung Kuo-hsing: *Discussion of the Types of Supervisory Systems*, in *Government Audit Journal*, Volume 27, Edition 2, p. 106.

Obviously, there is crossover and overlapping in the above categories, which are based on different standards. Generally speaking, the most widespread Ombudsman structures are currently the Parliamentary Ombudsman and the specialised Ombudsman. The system adopted in many countries is where the Ombudsman belongs to parliament's Ombudsman mechanism. It is usually called the Parliamentary Ombudsman system and 'level-wise, authority-wise and function-wise is a genuine Ombudsman system'¹⁴. In addition, viewed from the perspective of development, the current international trend is for all Ombudsman systems to gradually move towards the Parliamentary Ombudsman model. Even so, because of the plurality of society and the need to respond to special needs there also some specialised Ombudsmen. Below, we will primarily conduct an analysis of these two types of Ombudsman systems.

4.1 Parliamentary Ombudsman (or Parliamentary Supervision Commissioner)

The Parliamentary Ombudsman system was created through the Swedish constitution and later copied and developed by many countries, in particular Northern European countries. At present, Ombudsman systems typically exhibit the following characteristics:

- (1) The Parliamentary Ombudsman is appointed by or with the approval of parliament, thus the Ombudsman is not an administrative official. The Ombudsman is responsible to parliament and submits an annual report to parliament.
- (2) The Parliamentary Ombudsman independently exercises its authority. Although the Parliamentary Ombudsman is appointed by parliament, once appointed it becomes a neutral oversight and investigatory official whose independence and independent exercise of its authority is guaranteed under the constitution or law and is not subject to parliamentary interference. Furthermore, in order to free the Ombudsman from apprehension and ensure that it can focus and feel at ease in its work, its term of office is usually quite long and renewable.
- (3) A Parliamentary Ombudsman can initiate an investigation based on the statements of concerned parties as well as on its own initiative. It can even initiate an investigation on the basis of a news report or hearsay.
- (4) The objective of establishing an Ombudsman system is to compensate for inadequacies in the separation of the three powers (i.e.) the system of checks and balances. Because of the development and increasing needs of society, the power of administrations is constantly

14 Hwang, Yueh-chin: *Comparative Study of Supervisory Systems of Various Countries*, Hanlu Book & Publishing Co., 1998, p. 101-102.



increasing. The balance of power under the checks-and-balances framework is insufficient to rein in administrative power, making the establishment of an Ombudsman system necessary. Some academics have described the authority of the Ombudsman as a 'fourth power' distinct from the three powers of the administration, executive and judiciary. For this reason, the Ombudsman is not normally conferred with coercive authority.

- (5) The Ombudsman's purview is primarily to investigate affairs. The effectiveness of the Ombudsman's work depends on the trust of the people as well as the respect and co-operation of the entities supervised. For this reason, the Ombudsman must maintain an objective stance and properly employ its resources as it verifies the facts. Only in this way can the Ombudsman's investigative activities and the resulting recommendations and advice be viewed as trustworthy and convincing.
- (6) The function of the Parliamentary Ombudsman is, in response to illegal or inappropriate administrative actions, to protect the interests of the people through non-judicial means that are direct, simple, rapid and economical.¹⁵

4.2 Specialised Ombudsman (or Specialised Supervision Commissioner)

The specialised Ombudsman evolved from increasing specialisation and plurality in society, and normally displays the following characteristics:

- (1) Very often, the specialised Ombudsman embarks upon a strong human rights agenda and employs international human rights conventions and charters as its guiding standards.
- (2) The target groups of a specialised Ombudsman – such as consumers, children or women – all fall within the scope of human rights protection. Consequently, the position of specialised Ombudsman is often occupied by an expert with specialist training.
- (3) The specialised Ombudsman is often appointed by the government but is different from the executive departments in the government organisation. The specialised Ombudsman's role is to oversee, assist and protect human rights. When necessary, some specialist Ombudsmen also perform the function of public procurator and can directly initiate legal proceedings through the courts.
- (4) Compared with the Parliamentary Ombudsman, which supervises the entire government administration, the supervisory duty of the specialist Ombudsman is simple and clearly

¹⁵ See Hwang, Yueh - chin: *Comparative Study of Supervisory Systems of Various Countries*, Hanlu Book & Publishing Co., 1998, p. 101-102.

defined. Its achievements are also comparatively obvious. In addition, the specialist Ombudsman format conforms to current trends in public opinion and professional norms. It is also precisely for this reason that many countries are increasingly establishing specialised Ombudsman agencies.¹⁶

Even though the Parliamentary Ombudsman and specialised Ombudsman differ in background, appointment method, supervision focus and authority, both enjoy a legal mandate to independently exercise their authority in investigating and conducting public oversight of supervised institutions in order to directly or indirectly achieve the goal of protecting human rights.

5. Functions of Ombudsman System

Although the Ombudsman systems of different countries and regions are not identical and the position and authority conferred upon the institution of Ombudsman by constitution or law also differ, the goals of the various forms of Ombudsman systems are nevertheless the same (i.e.) overseeing government administration, promoting good public administration and protecting human rights. Ombudsman systems have their commonality, therefore, with regard to function.

- (1) **Defending Human Rights, Upholding Social Justice.** Human rights have become a universal value pursued by the international community as well as the principal expression of modern democratic society. In 1991, the first International Workshop on National Institutions for the Promotion and Protection of Human Rights defined the internationally recognised Paris Principles, which proclaimed that the principal tasks of human rights organisations were to independently exercise their function and receive complaints from the people. Ombudsman institutions have frequently acted as implementers of international human rights law. The Ombudsman, by virtue of its autonomy, is often able to investigate lawbreaking, overturn false charges against individuals, and defend social justice, in order to ensure that the legal interests of citizens are not infringed upon.
- (2) **Maintaining Impartiality and Justness of the Law.** The Ombudsman is legally empowered to investigate, on its own initiative or in response to a request, cases of infringement of the rights and interests of citizens resulting from failure on the part of administrative institutions to follow proper procedure, or from their delaying or failing to process legal and reasonable applications by the public, or actions on their part that that are unreasonable, and even non-feasant or malfeasant. Based on its investigation

16 Zhou Yang Shan: *Oversight and Democracy*, Control Yuan, 2006, p.17-21.



and inspection, the Ombudsman issues an authoritative ruling, legal opinion or recommendation. It can require the investigated agency to correct or otherwise handle any problems uncovered. At the same time, if an investigation reveals that a complaint lacks factual basis or fails to conform to fact, the Ombudsman either rejects the report or publicly clarifies the actual facts. In this way, it functions to maintain the impartiality and justness of the law.

- (3) **Provide a Basis for Improving Legislation.** Many Ombudsman agencies are often required to submit annual work reports to parliament. Through its annual work report to parliament and the routine recommendations it submits to administrative agencies, the Ombudsman provides feedback and issues opinions that provide a basis for the formulation of laws by the legislative body and the formulation of policy by the executive. It also acts as a safeguard against inconsistencies in the legal system and plays a role in improving and strengthening the country's legal system.
- (4) **Promote Good Public Administration.** In modern society, the functions of government are constantly increasing and the ranks of the public servants are continually expanding. This makes it difficult to avoid poor administration and inconsistency in government enforcement of the law. However, the administration's internal supervisory mechanism is sometimes incapable of effectively fulfilling its supervisory function. The Ombudsman can use non-judicial means to conduct external supervision of administrative authority and, through investigation, uncover problems. In particular, the Ombudsman does not pass judgment from a traditional perspective on deficiencies in administrative actions but rather attempts to understand the cause of the problem and offer recommendations and advice to the administrative agencies in order to prevent a recurrence of similar behaviour and thereby effectively correct and prevent improper behaviour by administrative agencies and increase the efficiency of the administration. The Ombudsman can seek to improve public administration by targeting its efforts at areas such as the moral standards of public administration, work procedures of administrative institutions and the policies and conventional practices shaping daily operations.
- (5) **Preventing Corruption of Authority.** Any authority not subject to oversight can become corrupt, thus the strengthened supervision of today's growing administrations is indispensable. The transparency and openness with which the Ombudsman exercises its authority serves to alert and warn officials that they must cautiously and conscientiously perform their functions and must not abuse their power or engage in corruption.

(6) Enhance Communication and Understanding between Administration and Public.

Normally, the Ombudsman is legally empowered to receive complaints from the public and initiate investigations. It can also decide to conduct a review of a specific system and, following an investigation or review, identify problems to the government and offer opinions and recommendations. Governments normally attach importance to the Ombudsman's opinions. They frequently accept the advice offered and make adjustments to the relevant work process in order to provide a more satisfactory service to society. Conversely, when the Ombudsman in the course of its investigation clarifies how a complaint is unfounded in part or in whole, it helps advance the complainant's understanding of the administrative agency in question. In other words, the Ombudsman can to a certain degree become a bridge for strengthening communication between the administrative agency and the public.

6. Differences between Ombudsman System and other Supervisory Systems

Under the system of checks and balances currently in place in many countries, supervision of the administration, generally speaking, can be the role of a legislative institution, a judicial institution or an administrative institution. Even though the Ombudsman may be subordinate to parliament or the judiciary, or may be comparatively independent, it primarily supervises administrative institutions and their employees. However, the Ombudsman is different from other supervisory systems.

6.1 Differences between Ombudsman system and parliamentary supervisory systems

Regardless of what system and form of government a country adopts, 'parliament' generally refers to the legislative body of a country or region. Within the framework of the system of checks and balances, in particular, under the principle of the divisions of the three powers, parliament exercises oversight of the administrative power. However, the agent, method, procedure and result of parliamentary oversight are different from those of the Ombudsman's oversight.

- (1) Parliamentary supervision primarily consists of oversight of the government as a whole by a parliament of legislators.** Ombudsman supervision, on the other hand, even if it is conducted by an Ombudsman subordinate to and representing parliament, generally consists of oversight of the actions of the administrative institutions and their employees.



(2) **Method of supervision different.** Even though the legislative body of each country or region differs in its purview and method of supervision, generally speaking, the methods of parliamentary supervision are as follows:

- i) **Budgetary power.** Budgetary power is an important power that legislative bodies possess for controlling the government. By exercising budgetary power, parliament is able to control government expenditure and revenue.
- ii) **Enquiry.** Enquiry refers to the power of members of parliament to enquire into government decisions or other government-related matters. When such enquiries are made, the relevant administrator or executive personnel must provide a response and explanation. Of course, parliamentary powers of enquiry vary in scope from country to country but are all essentially a method for supervising government.
- iii) **Investigation.** The parliaments of some countries and regions possess investigative authority. Examples of such countries include the United States, Germany, and Italy. Investigation primarily consists of parliament organising an investigative committee in response to a particular government-related problem.
- iv) **Vote of no confidence.** In countries practicing the parliamentary system, the government must maintain the confidence of parliament. If confidence is lost, the government collectively resigns or parliament is dissolved by the President (or equivalent), following which a general election is held.
- v) **Impeachment.** The parliaments of some countries have the power to impeach the head of government or government officials.

The Ombudsman does not have this power. As outlined above, the Ombudsman's supervision primarily consists of conducting investigations in response to complaints from the public or initiating investigations of its own, and resolving problem based on its findings.

- (3) **Parliamentary supervision is primarily directed towards administrative power, with the objective being to check this power; Ombudsman system is primarily directed toward the specific work of administrative institutions, and its normal procedure following its investigation is to offer opinion, recommendations or criticism. In some countries, the Ombudsman can also file an indictment.**

6.2 Differences between Ombudsman Supervision and judiciary supervision

Judiciary supervision (i.e.) the supervision of administrative institutions by judicial institutions, primarily refers to judicial institutions exercising judicial authority to conduct legal oversight of the activities of administrative power. The supervision of administrative institutions by the judiciary is

realised through the hearing of individual cases, and is primarily manifested by judicial examination of constitutional violation and administrative litigation. As for the differences between judicial supervision and the Ombudsman system, they are primarily reflected in the following areas:

- (1) Judicial supervision and supervision by the Ombudsman are both directed towards individual cases but based on the procedural principle of 'no trial without complaint' supervising judiciary bodies can only initiate action after an interested party lodges a complaint. Under no circumstance can judicial bodies initiate investigations on their own with the objective of making a case. The Ombudsman, in contrast, can actively seek out issues and initiate investigations.
- (2) Supervision by the judiciary seeks to monitor if administrative actions breach the constitution or law, and does not seek to enquire into routine improprieties committed by administrative institutions or their officials. Supervision by the Ombudsman more often than not involves 'minor offences' that do not imply legal liability or those that are simply administrative improprieties. In response to offences that often lie in the grey area between mistake and crime, the Ombudsman issues offending officials with a warning and cautions them that they must follow the law and disciplinary regulations or be subject to legal and disciplinary punishment.
- (3) Judicial supervision is conducted via administrative litigation and constitutional hearing. In modern countries under the rule of law, regardless of how much their political systems differ, constitutionally they all reflect to some degree the separation of powers and the principle of checks and balances, and in this way constitute the basic model for the building of the state power relationship. In the allocation of power, the judiciary is normally assigned the function of maintaining the constitution and the law. In its relation to the administration, the judiciary functions as a check on administrative power by examining whether administrative actions breach the constitution or the law. By contrast, the supervision of the Ombudsman is directed at administrative actions it finds problematic and towards which it decides to initiate an investigation.
- (4) The result of judicial supervision is to bind judgements on whether administrative actions breach the constitution or law; an investigation by the Ombudsman generally results in non-binding recommendations or criticism. The work of the Ombudsman is primarily to issue warnings and reprimand government officials.



6.3 Differences between supervision by Ombudsman and internal administrative supervision

Supervision in administrative agencies is primarily internal. The agency in charge of supervision supervises whether other administrative agencies exercise their authority in accordance with the law. From the perspective of legal significance, internal supervision in an administrative agency is the administration agency's mechanism for self-correction.

The hierarchical structure of administrative institutions determines that superior organs have a certain supervisory role regarding subordinate organs, as do all organs towards their subordinate functional departments. However, the internal supervision in administrative agencies under discussion here is supervision by special organisations with supervisory functions established within administrative agencies.

Although the structure of administrative organisations varies from country to country, with the needs that accompany social development administrations have become increasingly powerful and administrative personnel greater in number, making the supervision of administrative power a common issue for all countries. How countries have dealt with this issue has varied. Great Britain, for example, has established administrative tribunals that, through the adjudication of administrative disputes, protect the rights and interests of citizens and oversee administrative organs. Great Britain has also established a system for preventing official corruption. The United States, with the Ethics in Government Act of 1978, established the Office of Government Ethics under the Office of Personnel Management to conduct supervision of government officials. Under the provisions of the Inspector General Act of 1978, offices of inspectors and general offices were created in important departments of the federal government and given the task of examining the daily operation of their assigned department. France, which uses civil law, has created the administrative court, which is an internal supervisory organ of the administration. In addition, France has also created the institution of Mediator of the French Republic to oversee the propriety of government actions and offer recommendations regarding the actions of administrative agencies,¹⁷ and so on.

The special supervisory bodies established internally by administrative agencies oversee the actions of the administrative agencies and their employees but differ from the Ombudsman in that they are the administrative agencies' internal supervision, while supervision by the Ombudsman is external. From the perspective of effective supervision, the external supervision provided by the Ombudsman carries more public trust and credibility.

17 Zhang Jiansheng: *Study of Administration Supervision*, People's Publishing House, 2001, p. 176-179.

7. International Ombudsman Organisations and Development

7.1 International Ombudsman Institute (IOI)

The International Ombudsman Institute was established in 1978. Its headquarters is located at the Faculty of Law of the University of Alberta in Canada, with the university providing facilities and administrative support. As an international NGO, the IOI has the following primary objectives:

- (1) Advocates Ombudsman concept, advances Ombudsman system, and promotes its development around the world;
- (2) Formulates and conducts information exchange programme plus global Ombudsman experience-exchange programme to promote improvement of professional skills of Ombudsman personnel via co-operation;
- (3) Provides support for autonomous activities of Ombudsman personnel and promotes mutual understanding and assistance between members;
- (4) Formulates and implements education programme for Ombudsman, its staff and other related personnel;
- (5) Encourages and supports investigation and research into Ombudsman system;
- (6) Collects, stores and transmits information and research material regarding Ombudsman system;
- (7) Provides scholarships and research grants seeking to extend financial assistance to researchers from around the world in order to encourage development of Ombudsman concept and research into Ombudsman system;
- (8) Prepares, organises and arranges international Ombudsman symposiums.

Currently, this organisation has more than 100 member countries. It has a 15-member board of directors, with ten of the members representing five continents and the remaining five acting as ex-officio members. Currently, member countries are divided by geographical location into five regions – Africa, Asia, Australia and the Pacific, the Caribbean and Latin America, Europe and North America.

The IOI is managed by a board of directors comprising representatives of member countries. Members of the board of directors represent the five regions and are elected by the member countries of each of their respective regions. The number of board members from each region is determined



by the total number of member countries in the region. Usually, between three and four members are appointed from a single region. The current membership of the board of directors includes Eduardo Rene Mondino (Argentina), Gord Button (Canada), Riitta-Leena Paunio (Finland), Sekara Sam Mafisa (Lesotho), Javed Sadiq Malik (Pakistan), Ila Geno (Papau New Guinea), Rafael Ribo (Spain) and Cheong U (Macao SAR).

The executive of the board of directors consists of a President, Vice President, Treasurer and Secretary elected by the board. Currently, William Angrick (Ohio, USA) acts as President, Tom Frawley (Northern Ireland) is Vice President, David Percy, Q.C. (Canada) is Treasurer, and Alice Yuen Ying Tai (Hong Kong SAR) is Secretary. In addition, each region elects a Vice President.

The activities of the International Ombudsman Institute generally include meetings of the board of directors, annual meetings and work forums to promote communication and information exchange between members, popularise the Ombudsman concept and improve the quality of the Ombudsman's work.

Annual conferences are held once every four years. eight conferences have been held to date, as follows:

- (1) First Annual Conference – Edmonton, Canada (1978);
- (2) Second Annual Conference – Jerusalem, Israel (1980);
- (3) Third Annual Conference – Stockholm, Sweden (1984);
- (4) Fourth Annual Conference – Canberra, Australia (1988);
- (5) Fifth Annual Conference – Vienna, Austria (1992);
- (6) Sixth Annual Conference – Buenos Aires, Argentina (1996);
- (7) Seventh Annual Conference – Durban, South Africa (2000);
- (8) Eighth Annual Conference – Quebec City, Canada (2004).

In response to developments in the Ombudsman system and changes in circumstances, the IOI also organises seminars on an irregular basis. The seminars are primarily targeted at personnel involved in Ombudsman work and seek to help them improve their job capabilities. Individual regions also host regional seminars and meetings to promote the Ombudsman concept and improve its implementation.

The members of the board of directors provide recommendations and support to newly established Ombudsman offices in any country and also provide recommendations and support to countries planning to establish an Ombudsman's office.

In addition to these activities, the IOI also publishes various regular and ad hoc publications, of which regular bulletins and yearbooks are the primary literature. From time to time, it also publishes various articles, research reports, and so on. These activities have played a positive role in the communication and transmission of Ombudsman-related information.

7.2 Asian Ombudsman Association (AOA)

The idea of creating a community of Asian Ombudsman was proposed in 1992 at the Fifth Annual Conference of the International Ombudsman Institute in Vienna, in Austria. At the time, regional Ombudsman associations had been established in Europe, Australia and the Pacific, North America, Latin America and Africa, but Asia – which comprises 65% of the global population – lacked a regional Ombudsman organisation. This was not at all commensurate with Asia's important geographical location or its rapidly expanding economies. At the same time, many Asian countries had already set up Ombudsman systems and had gained abundant experience in their function, while other Asian countries were moving quickly to establish Ombudsman systems of their own. As a result, there was a need for communication and co-operation between Asian countries that practised Ombudsman systems. In 1995, at a meeting of the board of directors of the International Ombudsman Institute, it was again stressed that Asia should organise a regional body. With the support of the government of the People's Republic of China, the Pakistani Ombudsman at the time, Wafaqi Mohtasib, undertook to move the project forward.

In 1996, Pakistan hosted the First Asian Ombudsman Conference, which was attended by 40 representatives of Ombudsman organisations from 18 countries and regions. The theme of the conference was to spread the Ombudsman concept and explore the possibility of establishing an Asian Ombudsman association. Eventually, the conference achieved its stated objectives and was very successful. Despite the differences in ethnicity, religion, culture, political system and level of development that existed between the various countries and regions, the conference reached a unanimous consensus and the Asian Ombudsman Association was founded on 16th April 1996 in Islamabad, in Pakistan. The conference also agreed to establish a preparatory committee that would draft the Association bylaws. It then elected the Pakistan Ombudsman as convenor and China, Iran, Hong Kong SAR, South Korea and Sri Lanka as committee members. The association's headquarters were established in Islamabad.



The Asian Ombudsman Association is an independent, non-governmental professional organisation. Its principal objectives are to:

- (1) Advance Ombudsman concept and encourage its development in Asia;
- (2) Encourage and support relevant research;
- (3) Organise training and educational programmes for Ombudsman organisations in region;
- (4) Provide scholarships, bursaries and other forms of economic assistance to those researching Ombudsman system;
- (5) Collect, store and transmit information and research material related to Ombudsman system;
- (6) Facilitate exchange of information and experience between Ombudsman organisations throughout region;
- (7) Prepare and organise regular meetings of Ombudsman from various countries and regions in Asia.

The organisational structure of the Asian Ombudsman Association includes a general assembly and a board of directors. The board of directors is elected by the general assembly and includes a President, Vice President, Treasurer, Secretary and five other members.

Since its foundation, the Asian Ombudsman Association has held nine meetings of the general assembly, as follows:

- (1) First Meeting of General Assembly – Islamabad, Pakistan (1996);
- (2) Second Meeting of General Assembly – Seoul, South Korea (1997);
- (3) Third Meeting of General Assembly – Macao, China (1998);
- (4) Fourth Meeting of General Assembly – Tehran, Iran (1999);
- (5) Fifth Meeting of General Assembly – Manila, Philippines (2000);
- (6) Sixth Meeting of General Assembly – Tokyo, Japan (2001);
- (7) Seventh Meeting of General Assembly – Beijing, China (2002);
- (8) Eighth Meeting of General Assembly – Seoul, South Korea (2004);
- (9) Ninth Meeting of General Assembly – Hong Kong, China (2005);
- (10) Hanoi, Vietnam (2007).

The Second Meeting of the General Assembly in Seoul in 1997 was attended by 50 representatives from 21 countries as well as representatives from international Ombudsman organisations. Subjects deliberated at the meeting included Association bylaws, the Association's name, the venue of the next meeting and other issues.

In May 1998, the Third Meeting of the General Assembly was held in Macao, and approved the Asian Ombudsman Association bylaws. It also elected Pakistan Ombudsman (Retired) Abdul Shakurul Salam as Association President, Sri Lanka Ombudsman Bertram Bastiampillai as Vice President, South Korea Ombudsman Chu Kwang Ill as Treasurer, Hong Kong Ombudsman Andrew So as Secretary, and representatives of China, Macao SAR, Iran, Japan and the Philippines as members of the board of directors. Discussion at the meeting also focused on three special topics: first, the responsibility of the Ombudsman to create a balanced and favourable environment for citizens; second, the responsibility of the Ombudsman to mediate disputes between citizens and government; and third, the responsibilities of the Ombudsman to promote economic development and guarantee social welfare.

During the meeting, Macao signed a total of ten technical co-operation agreements with such countries and regions as Pakistan, the Netherlands, New Zealand, Quebec, Papua New Guinea and Mozambique.

At the Fourth Meeting of the General Assembly in Tehran, in Iran, in 1999, more than 100 representatives from 27 countries and regions attended. Meeting participants submitted more than 140 articles and academic papers to the assembly. The general assembly split into four working committees, in which each group discussed one of four topics:

- (1) Causes and effects of maladministration and methods of preventing violation of regulations by government administrations;
- (2) Role of Ombudsman in protecting rights and interests of citizens;
- (3) Government role in supervision of actions of administrative agencies and their implementation of law;
- (4) Investigations into complaints and their legal, administrative and social effects.

The general assembly made a declaration stating its conclusions regarding required action:

In the area of education, to educate the public; to construct a suitable culture pertaining to investigation and supervision; to integrate supervision-related content into different levels of academic course; to teach public servants the observance of law and cultivate their sense of



responsibility; to establish a training centre; based on its important significance, designate 1999 as 'Year of the Ombudsman and Training'; and award scholarships to experts and members of Ombudsman organisations.

In the area of information exchange, to establish an Ombudsman database at the location of the Secretary, systematically classify information, and provide service to members of the Asian Ombudsman Association; conduct widespread research aimed at discovering alternative investigative and supervisory processes; expand the exchange of information and experience between members with the objective of combating administrative corruption, in particular, combating complicated networks of relationships; conclude bilateral or multilateral agreements on the exchange of required information between Ombudsman organisations.

In the area of cultivating a culture of investigation, employ the media to increase the public's knowledge of the legal function and position of the Ombudsman; select an appropriate model and strategy for a culture of individual and social oversight.

The meeting of the general assembly submitted the following recommendations: the Ombudsman must be autonomous and there should be guarantees that the Ombudsman's recommendations are implemented; reduce the time of individual work processes and the time spent investigating and handling complaints; research should be conducted into the legal obstructions to conducting investigations and an appropriate strategy proposed; co-operation should be continued in countering administrative persecution and injustice—in particular, in the area of combating financial corruption.

At the Fifth Meeting of the General Assembly held in Manila, in the Philippines, in 2000, 31 representatives from 19 countries attended. The meeting discussed important issues through such means as academic treatise, research reports and topical discussion.

In the area of the Ombudsman and the economy, it was recommended that the Ombudsman system in Asian countries be expanded into the economic sphere; economic decision-making should be more transparent; contacts and a network should be established between Ombudsman agencies and economic entities; the Asian Ombudsman Association should study the successes of Ombudsman agencies to provide a foundation for improving work processes and formulating policy objectives.

In the area of the Ombudsman and politics, it was recommended that: the position of the Ombudsman be strengthened in order to guarantee a proper balance in the nation's power structure; maintain the high ethical dignity of the Ombudsman and its sense of justice in order to counteract political influence and premeditated attacks designed to create confusion within the Ombudsman

agency; strengthen the support of private entities such as NGOs, student and youth organisations and other organisations by recognising the support they have given to the campaign for good government; as a whole, strengthen the ethical consciousness of society, government and its members.

In the area of the Ombudsman and the judiciary, it was recommended that the Ombudsman and judicial agencies co-ordinate their work in order to promote transparency and a sense of responsibility; at the same time, they should not hinder each other's autonomy.

In the area of the Ombudsman and civil society, it was recommended: the Ombudsman must have a clear mandate; to respond to the aspirations of the people, it must be independent of the government system; in carrying out its functions, the Ombudsman should possess adequate latitude; in implementing its authority, it should have adequate resources.

In the area of international co-operation and Asian Ombudsman, it was proposed: that an anti-corruption law conforming to international standards be formulated; an international criminal court be created to try corrupt individuals as well as fugitives from justice; technicians be hired to supervise co-operation between Ombudsman in Asia, North America and other continents; media co-operation with other countries be promoted; successful experience in the sphere of anti-corruption efforts should be communicated and exchanged.

In addition, the meeting elected new members to the board of directors. Pakistan's Ombudsman was re-elected as President, and Iran's Ombudsman was elected Vice President. Due to retirement, the Sri Lankan Ombudsman resigned from the position of Vice President and member of the board of directors. The Malaysian Ombudsman was elected a member of the board of directors.

The meeting also passed resolutions on: encouraging other Asian countries to establish an Ombudsman agency; accepting Thailand and Indonesia as new members; in line with available funding, creating an information centre and a research group; requesting members to regularly submit summary reports to the information centre; providing scholarships to experts and service personnel dealing with complaints from the public; association personnel appointments; and association membership fees.

In June 2001, the Sixth Meeting of the General Assembly of the Asian Ombudsman Association was held in Tokyo, Japan. Nearly 50 representatives from 14 countries and regions participated in the meeting. The International Ombudsman Institute also sent representatives. The theme of the meeting was 'The Asian Ombudsman of the 21st Century'. The objective of the meeting was to conduct a retrospective survey of past ideas pertaining to the Ombudsman in Asia and discuss how in the future the various countries and regions could co-operate, taking into consideration the



unique characteristics of their respective Ombudsman. Meeting participants were divided into three discussion forums, in which thorough discussions on the following three topics took place:

- (1) History and Development of Ombudsman System in Asia;
- (2) Asian Ombudsman: Reality and Ideal;
- (3) Asian Ombudsman: Characteristics and Co-operation.

In May 2002, the Seventh Meeting of the General Assembly of the Asian Ombudsman Association was held in Beijing, in China. The objective of the meeting was to initiate discussion, exchange viewpoints and increase understanding and friendship between members in an effort to promote the development of the Association. The theme of the meeting was 'Implementing Effective Supervision, Bringing about Good Government'. The general assembly was divided into three groups, discussing 'The Ombudsman and Government Honesty', 'The Role of the Ombudsman in Improving Public Administration' and 'International Exchange and Co-operation'.

Meeting participants submitted academic papers to the general assembly and conducted a constructive, meaningful discussion on the role of the Ombudsman in controlling corruption and promoting good government.

In April 2004, the Eighth Conference of the Asian Ombudsman Association was held in Seoul, in South Korea. 68 representatives from 25 countries and regions attended the meeting. The main theme of the meeting was 'The Ombudsman and the Strengthening of Civil Rights in Asia'.

The following topics were deliberated:

- (1) 'Government - Citizen Relationship: What do citizens want from their government? What do citizens want the Ombudsman to do?'
- (2) 'Role of the Ombudsman in Protecting Civil Rights'.
- (3) 'The Ombudsman and Citizen Participation'.

Dr. Cheong U, Commissioner, Commission Against Corruption, Macao SAR, delivered a speech entitled 'The Relationship Between Government and Citizen: What does the Citizen Expect from Government? What does the Citizen Expect from the Ombudsman?'

During the General Assembly session, members of the Board of Directors were elected: Pakistan Ombudsman Imtiaz Ahmad Sahibzada was elected President; Philippines Ombudsman Simeon Marcelo was elected Vice President; Alice Tai Yuen - ying, Ombudsman, Hong Kong SAR was elected to the position of Secretary; Cho Young-Hoang, Ombudsman, South Korea was elected Treasurer. The five newly appointed members of the board were: Li Zhilun, Minister, Ministry of Supervision,

People's Republic of China; Sayyid Ebrahim Ra'isee, Head of the General Inspection Organisation of Iran; Masashi Tamura, Director General, Administrative Evaluation Bureau, Japan; Cheong U, Commissioner Against Corruption, Macao SAR; and Datuk Haji Mahadi bin Haji Arshad, Director General of the Public Complaints Bureau, Malaysia.

From November to December 2005, the ninth meeting was held in Hong Kong SAR, China. The main theme of the meeting was 'developing the Ombudsman organisation,' and was divided into several topics:

(1) Relationship with government and other institutions

Autonomy is a core value of the Ombudsman system. It can be translated into functional autonomy of the institution and the autonomy of the individual. From necessity, the Ombudsman must work together and come into contact with the government and other institutions, such as parliament. The Ombudsman's style will influence the efficiency of its work. In the political and cultural environment of different societies, how is the Ombudsman's style manifested? What can we learn from the experience of other Ombudsmen?

(2) Measuring efficiency of Ombudsman organisation

Who supervises the 'gatekeeper'? While Ombudsman agencies actively watch for the shortcomings of government, society and even the economy, how can we guarantee that the Ombudsman itself is operating properly? Who ensures that it is on its toes?

(3) Raising public awareness

How does the Ombudsman publicise its services? What are its goals in such publicity efforts? How can public awareness be measured? How do we assess publicity?

(4) Freedom of information laws provide public with right to obtain information held by public authorities

This enables the public to fully understand government departments and government policies and decisions that influence the individual and society. At the same time, it also helps ensure that improper action on the part of public officials and public agencies are revealed. In this regard, some countries have conferred upon the Ombudsman the corresponding rights of inspection and investigation. What significance does this seemingly supplemental authority have toward the Ombudsman's normal authority to investigate improper administrative actions? For countries that have not adopted such a measure but are moving in this direction, does it have any obvious failings that need to be addressed?

(5) Development of Special Ombudsman, Industry Ombudsman, and relationship to Ombudsman

Initially, the concept of the Ombudsman was limited to public administration but with the privatisation of public services an increasing number of Ombudsman-type organisations are coming



into existence in non-traditional domains: the private domain has produced the Special Ombudsman and the Industry Ombudsman. Although similarly named, their operating modes differ greatly from that of the traditional Ombudsman. What are the characteristics of this evolution in different regions? What are the key points of conflict?

The meeting was divided into six groups that discussed these questions.

In April 2007, the Tenth General Assembly Meeting of the Asian Ombudsman Association was held in Hanoi, Vietnam. More than 20 delegations from around the world attended the event. Several resolutions were adopted, and matters related to the holding of the annual meeting in 2009 were discussed. A new board of directors was also elected: Javed Sadiq Malik, Pakistan Ombudsman, was elected President; Merceditas N. Gutierrez, Philippines Ombudsman, was elected Vice President; Alice Tai Yuen-ying, Hong Kong SAR Ombudsman, was elected Secretary; Song Chul-ho, South Korea Ombudsman, was elected Treasurer. The newly elected members were: Li Zhilun, Minister, Ministry of Supervision, People's Republic of China; Justice Mohammad Niazi Head, General Inspection Organisation, Islamic Republic of Iran; Satoshi Kumagai, Director General, Administrative Evaluation Bureau, Japan; Dr. Chua Hong Teck, Director General, Public Complaints Bureau, Malaysia; Poonsup Piya-Anant, Ombudsman, Thailand; Dr. Cheong U, Commissioner, Commission Against Corruption, Macao, was also elected to the position of Auditor of the Association.

Dr. Cheong U, representing the Macao SAR Commission Against Corruption, delivered a speech entitled 'The Role of the Ombudsman in Combating Corruption'. Through examples of cases handled in recent years by the Commission Against Corruption, Dr. Cheong U explained how the work of the Ombudsman can effectively prevent and combat corruption.

In addition to the general assembly meetings described above, the Asian Ombudsman Association convened a number of other meetings. These included:

In 1997, the By-laws Preparation Committee met in Islamabad. Representatives from China, Pakistan, Iran, Sri Lanka, South Korea and Hong Kong participated in the meeting in which the association's bylaws were discussed. The draft of the bylaws was approved at the general assembly meeting in Macao in 1998.

In 2000, a meeting of the board of directors was held in Islamabad.

In 2001, a meeting of the board of directors was held in Tokyo.

In April 2002, the preparatory meeting for the Seventh General Assembly Meeting was held in response to an invitation from the Minister of Supervision of the People's Republic of China.

In May 2002, a meeting of the board of directors was held in Beijing. The meeting ratified several resolutions related to the bylaws of the Asian Ombudsman Association as well as several appointments.

In October 2003, a meeting of the board of directors was held in Macao. At that meeting, in addition to accepting new members, the board adopted the following resolutions:

- (1) Promotion of research grants for individuals intending to research Ombudsman system;
- (2) Efforts to be made to expand membership sphere;
- (3) Comprehensive information management system to be created to facilitate collection of information from member countries, and to facilitate exchange of information for research and development in this domain;
- (4) Work of Ombudsman and similar organisations to be more effective and reliable; member countries to encourage such organisations to be more autonomous;
- (5) Awareness of Ombudsman's effectiveness and usefulness to be implanted in public consciousness.

At this meeting, the discussion topics for the next general assembly meeting were also decided.

In April 2004, a meeting of the board of directors was held in Seoul, in South Korea. At that meeting, matters discussed included the acceptance of new members and election of a new board of directors.

In 2005, a meeting of the board of directors was held in Hong Kong, in China. At the meeting, matters related to the operation of the Association and the convening of future meetings were discussed. In addition, research topics to be selected by the members were proposed, including:

- (1) Guaranteeing autonomy of Ombudsman (Pakistan);
- (2) Administrative arrangements for increasing autonomy of Ombudsman (Hong Kong);
- (3) Strengthening investigative function of Ombudsman and means of causing government agencies to accept recommendations from Ombudsman (South Korea);
- (4) How administrative supervisory agencies (Ombudsman agencies) can protect rights and interests of public (People's Republic of China);



- (5) Role of Ombudsman in advancing rights of citizens (Iran);
- (6) Ombudsman as a tool for good government (Japan);
- (7) Ombudsman and government honesty (Macao);
- (8) Role of Ombudsman organisation in promoting good government and providing public services (Malaysia).

In November 2006, a meeting of the board of directors was convened in Islamabad. In addition to operational matters, members reported on progress of research topics allotted at the previous meeting.

In April 2007, a board of directors meeting in conjunction with the Tenth General Assembly Meeting was held in Hanoi, in Vietnam. Several resolutions related to operational concerns were adopted and follow-up was conducted on member progress on assigned research topics.

The work content of each annual meeting, board meeting and discussion seminar held by the International Ombudsman Institute and the Asian Ombudsman Association includes a summary of the implementation of practices by the Ombudsman around the world so that future work can be planned. In addition, publications related to the two associations, such as collections of articles, research reports, yearbooks and bulletins, all help in the theoretical development and in-depth implementation of the Ombudsman system in improving public administration management systems around the world, and in the legal realisation of the fundamental individual rights of all mankind.

Chapter 3

Ombudsman System of Macao SAR

1. Historical Development of Ombudsman System of Macao SAR

On 20th December 1999, with Macao's return from Portuguese Government administration to Chinese sovereignty, the Macao Special Administrative Region was established. Under the principles of 'One country, two systems' and 'Macao people governing Macao', as provided by the *Basic Law of the Macao Special Administrative Region*, the entity performing the Ombudsman function also underwent certain changes. For this reason, we can divide the historical development of Macao's Ombudsman system into two periods, with 20th December 1999 – the date of the handover – the point of demarcation.

The history of Macao's Ombudsman system can be traced to the Portuguese administration governing Macao in the early 1990s. Macao's Portuguese government, responding to appeals from the public, established the High Commission Against Corruption and Administrative Illegality (ACCCIA) to combat these offences in 1990 in accordance with Law No. 11/90/M. The High Commission Against Corruption and Administrative Illegality can be considered the forerunner to the Commission Against Corruption (CCAC) of Macao, and was an important part of Macao's Ombudsman system prior to the handover.

Following Macao's return to Chinese sovereignty, the Commission Against Corruption was created under the provisions of Article 59 of the *Basic Law of the Macao Special Administrative Region*. The Commission Against Corruption of Macao is an independent public organisation. In addition to performing its function of combating corruption by public servants, it is also responsible for assuring that the basic rights and interests of citizens are not infringed upon by illegal actions by the government or administrative organisations. It also receives administrative complaints and exercises administrative supervision.

Because of the fundamental kinship between the legal systems of Macao and Portugal, the Ombudsman system of Portugal has had an important influence on the evolution of the Ombudsman system currently employed in Macao. For this reason, we should briefly describe Portugal's Ombudsman system and analyse its influence on Macao's Ombudsman system in the future.



1.1 Portugal's Ombudsman system

The agency in Portugal responsible for receiving administrative complaints is the Ombudsman Office, or *Provedor de Justiça* in Portuguese. Established in 1975, its legal standing was recognised in Portugal's constitution in 1976¹⁸ and legally established by Law No. 212/75 of April 1976. More than thirty years have passed since its establishment. For this reason, Portugal can be considered a forerunner among nations with regard to the adoption of the Ombudsman system.

Portugal's recognition of the Ombudsman system through constitutional law is without a doubt an additional guarantee of the basic rights of citizens as provided under the constitution. Conversely, it also establishes the Ombudsman system as constitutionally indispensable.

(1) Powers of Portugal's Ombudsman

- i) Protect and promote legal rights, freedoms, guarantees and interests of citizens;¹⁹
- ii) Prevent and redress injustices²⁰.

We can understand, therefore, that the *raison d'être* and function of Portugal's Ombudsman differs from those of Portugal's Prosecutor's Office. In addition to its power to initiate judicial prosecution, this body exercises a legal supervisory function in the course of certain judicial processes. Portugal's Ombudsman, on the other hand, is more weighted toward protecting and promoting the legal rights, freedoms, safeguards and interests of citizens.

With regard to its duty of preventing and remedying injustices, including recommendations regarding the prevention of illegal behaviour and possible revisions, when it foresees that a certain situation could produce infringement of the legally - protected rights and interests of citizens, Portugal's Ombudsman should notify the relevant administrative agency and propose its recommendations on improving the operation of government institutions or, alternatively, point out deficiencies in legislation and propose to legislators potential revisions of current laws that, in accordance with the principles of justice and legality, would help protect the rights and interests of citizens.

18 Article 23 of the *Portuguese Constitution* states: '(1) Citizens may present complaints concerning actions or omissions on the part of the public authorities to the Ombudsman who examine them without power of decision and makes such recommendations to the appropriate organs as are necessary in order to prevent or make good injustice. (2) The activities of the Ombudsman are independent of any acts of grace or legal remedies provided for in the Constitution and law. (3) The Ombudsman is an independent organ appointed by the Assembly of the Republic. (4) The organs and officials of the Public Administration are required to co-operate with the Ombudsman for the conducting of its functions.

19 Clause 1 of Article 1 of Law No. 9/91 dated 9th April 1991.

20 Clause 1 of Article 23 of *Portuguese Constitution*.

According to the *Statute of the Portuguese Ombudsman*,²¹ Clause 1 of Article 1 stipulates that the Ombudsman, through informal means, ensures that the state institution's exercise of authority is just and legal.

(2) Portuguese Ombudsman's object of supervision

Article 23 of the Portuguese Constitution states that the objective of the Ombudsman's supervision is the curtailment of government power. Here, the concept of 'government' includes national, regional and local government, the armed forces, public institutions, state owned enterprises, state-controlled enterprises, enterprises to which the state has granted special powers, and enterprises that develop national assets.²²

Additionally, according to Article 22 of the *Statute of the Portuguese Ombudsman*, the Ombudsman can supervise the administrative activities of judiciary institutions, and can even ask for intervention by the High Judicial Council, the High Council of Public Prosecution and the High Council of the Administrative and Fiscal Courts.

Generally speaking, the Ombudsman is responsible for monitoring the work of state institutions and identifying negligence and careless mistakes in their work with regard to the protection and promotion of the legal rights, freedoms, safeguards and interests of citizens. In addition, the task of supervising state institutions is not limited to the activities of government departments but includes reviewing institutions' formulation of contracts, guidelines and other legally valid regulatory actions.

(3) Powers of Portuguese Ombudsman

In performing the duties conferred upon it by law, the Ombudsman has the right to exercise the following powers:

- issue recommendations;
- issue requests to the constitutional court to conduct judicial reviews of constitutionality;
- submit reports to parliament, in specific annual reports.

The Portuguese Ombudsman's intervention is primarily focused on submitting recommendations. As stated in Article 23 of the Constitution, the Ombudsman submits recommendations to the appropriate organ in order to prevent or make good injustice.

Recommendations may concern different issues and can be categorised as normative or non-normative recommendations. The objective of normative recommendation is to change or repeal unjust articles in legislation or laws and regulations or, as is most often the case, to change or repeal

21 Approved by Law No. 9/91 dated 9th April 1991, modified by Law No. 30/96 dated 14th August 1996.

22 Article 3 of *Statute of Portuguese Ombudsman*.



the relevant interpretations. For this reason, according to Clause 1b) of Article 20 of the *Statute of the Portuguese Ombudsman*, the laws confer upon the Ombudsman the authority to make recommendations regarding the draft of new laws.

Regarding actual illegalities or injustices, the Ombudsman may, in regard to illegal or unjust actions on the part of administrative bodies, propose abolishment or make other recommendations, its objective being to help reparation where interests have been damaged, or at least help improve service quality. Under Clauses 2 and 3 of Article 38 of the *Statute of the Portuguese Ombudsman*, the body to which the Ombudsman addresses a recommendation shall, within 60 days upon receipt of the request, inform the Ombudsman of its position on the issue. If the recommendation is not accepted, the Ombudsman's intervention can continue. Under Clauses 4 and 5 of Article 38 of the *Statute of the Portuguese Ombudsman*, the Ombudsman can, based on its understanding of the situation, present the matter to a competent superior or the national assembly. Under certain circumstances, public opinion plays a decisive role, particularly when the Ombudsman's recommendations are widely reported by the news media.

Regarding requests to the Constitutional Court for supervision of constitutionality, Clause 2d) of Article 281 of the Portuguese Constitution stipulates that the Ombudsman is entitled to request the Constitutional Court to pass generally binding rulings on the constitutionality or illegality of a provision.

The power to request the Constitutional Court to conduct constitutional supervision is a fundamental characteristic of the Portuguese Ombudsman, and it is likewise a characteristic of Spain's Ombudsman (*Defensor del Pueblo*). It is precisely because the Ombudsman is conferred with this power that its function as the entity of defence for constitution is confirmed.

Regarding the presentation of annual reports to the National Assembly, the report describes the activities of the Ombudsman. Following assessment by the Commission for Constitutional Affairs, Rights, Liberties and Guarantees, it is submitted to the general assembly of the Portuguese National Assembly for discussion and published in the National Assembly newspaper (*Diário da Assembleia da República*). In the report, the Ombudsman draws attention to various issues and thereby ignites widespread discussion.

1.2 High Commission Against Corruption and Administrative Illegality (ACCCIA)²³

The Commission Against Corruption (CCAC) is the agency in Macao responsible for fighting corruption and receiving administrative complaints. Its predecessor is the High Commission Against Corruption and Administrative Illegality (ACCCIA).

(1) Historical Background of Establishment of ACCCIA

The ACCCIA was established in 1990. Law No. 11/90/M dated 10th September 1990 stipulated the establishment of the High Commission Against Corruption and Administrative Illegality in Macao. The formulation of the law can be traced back to the 1970s and 80s and the influence of the Independent Commission Against Corruption (ICAC) in neighbouring Hong Kong, an organisation that since its foundation had achieved striking results. Furthermore, at the time Macao had long been plagued by suspicions that its public service was riddled with corruption and administrative infringements. These doubts gave rise to strident calls from Macao's citizens for the formation of a specialised ICAC-type body.

The legislative concept at the time was that in order to conform to Macao's actual circumstances and the fervent longing Macao society had held for years, it would be necessary to confer a series of powers upon a special independent body in order to facilitate the effective eradication of corruption and maintenance of administrative legality.

The ACCCIA was an entity that appeared only after it was fought for by constant appeals and every type of effort by the people of Macao. Its creation only emerged after a tumultuous 17-year process and primarily targeted corruption and illegality inside the government. Its objective was to fight corruption and administrative illegality.

In 1975, Governor José Eduardo Garcia Leandro, in response to the corruption in Macao society at the time, advocated the creation of an anti-corruption agency that would specifically counter corruption. About 1986, influenced by the success of Hong Kong's ICAC in fighting corruption, there was a widespread and sustained call from Macao society for the creation of an anti-corruption agency to tackle the escalating problem of corruption. In 1987, the Legislative Assembly formulated the Corruption Penal System, a special anti-corruption law. In 1990, the Legislative Assembly passed laws defining the powers of the ACCCIA. In 1991, Macao Governor Vasco Rocha Vieira nominated Justice

23 Refer to website of Commission Against Corruption of Macao SAR: www.ccac.org.mo.



Jorge Alberto Aragao Seia from Portugal as the first High Commissioner of the ACCCIA. In 1992, the Legislative Assembly approved the Organisational Law of the ACCCIA. In March 1992, with the Organisational Law in place, the ACCCIA formally began recruiting staff and functioning. In other words, it took Macao 17 years to form its own organisation dedicated exclusively to combating corruption.

In order to better conform to Macao's actual circumstances and scale, the objective behind the establishment of ACCCIA was to confer upon ACCCIA a series of broad powers to enable it to stamp out corruption and maintain administrative legality.

Fighting Corruption and Administrative Illegality

On the surface, these two activities appear separate but in reality there are commonalities between them. This is because corruption and fraud, in most circumstances, arise out of complicated, bureaucratic administrative mechanisms that are procedurally riddled with defects and redundancies. This results in obstacles to a rapid response to requests from those being governed.

The most important part of the duties of the ACCCIA was to initiate activities aimed at preventing corruption and fraud, and in response to these crimes to conduct all types of preliminary trials that do not directly affect basic rights. Secondly, ACCCIA was to advance the protection of individual rights, freedoms, safeguards and legitimate interests, and recommend legislation or administrative measures to simplify bureaucratic procedures, thus helping to eliminate unethical behaviour and administrative defects, and eliminate factors that conducive to illegal or ethically reproachable actions.

At the time, ACCCIA was an entity equivalent to the office of an Under Secretary (today's Secretary) with operational independence from the administrative system headed by the Governor. However, ACCCIA was neither a judicial nor procurator-like authority. It was not directed by the Governor or the Legislative Assembly. It can be said that ACCCIA was a comparatively independent unit.

The ACCCIA's most senior official was the High Commissioner. The appointment of the High Commissioner and the conferring of authority upon him was the responsibility of the Governor—but the Governor was required to consult with the Legislative Assembly in advance. Furthermore, the term of office of the High Commissioner was four years, which might be renewed twice provided that each term lasted only two years. In other words, the shortest term of service of a High Commissioner was four years, and the longest eight.

(2) Duties of High Commission Against Corruption and Administrative Illegality

Article 1 of Law No. 11/90/M established the High Commission Against Corruption and Administrative Illegality (ACCCIA), or *Serviço de Alto Comissário* (SAC), as it was called in Portuguese. Article 2 of that law stipulated that the ACCCIA was a fully autonomous public organisation that was not bound by any orders or direction, and was only required to act in accordance with the law.

The ACCCIA was not only responsible for exercising authority over administrative complaints. Its functions also included preventing and combating corruption and fraud. In addition to the scope of public entity functions clearly stipulated in Clause 2 of Article 3 of the aforementioned law, the statutory responsibilities of ACCCIA also included:

- i) Initiating actions to deter corruption and fraud;
- ii) Conducting preliminary trials where corruption or fraud was committed by senior personnel and staff of public entities, provided that the preliminary trial would not directly involve the basic rights of residents, would comply with criminal procedure law, and would not obstruct the actions of other bodies empowered to act in relation to the matter in question;
- iii) Conducting preliminary trials of persons committing criminal acts as defined under the laws governing elections on the basis that the preliminary trial did not directly involve the basic rights of residents, would comply with criminal procedure law and would not obstruct the actions of other bodies empowered to act in relation to the matter in question;
- iv) Advancing the protection of rights, freedoms, guarantees and legitimate interests of individuals, and through informal means ensure the impartiality, legality and efficiency of public administration.

Additionally, corruption and fraud on the part of enterprises engaged in or operating common property, enterprises with special authorisation to provide public services, monopoly business companies, credit institutions and their staff, were also subject to preliminary trial by the ACCCIA.

(3) Powers of ACCCIA

To perform the aforementioned statutory responsibilities, ACCCIA was accorded the following powers:

- i) Investigation into any findings or news relating to facts, which may give rise to justified suspicion regarding the carrying out of acts of corruption or fraud, of crimes against public property, abuse of public functions, acts harmful to the public interest and crimes as defined under the Election Law; and conducting all investigations and preliminary trial considered necessary to perform its responsibilities;



- ii) Under circumstances where prior notification was not necessary, conduct visual inspection of all and any public entities, review documents, collect accounts from the officials and staff of organisations, and request information deemed appropriate;
- iii) Instigation and request for special investigations, in - depth investigations, investigative measures or other actions in order to facilitate clarification of the legality of administrative actions and procedures within the scope of public entities and private relationships;
- iv) Assure normalisation and administrative correctness of actions involving property benefits;
- v) Report evidence of illegal actions to entity authorised to initiate disciplinary procedures;
- vi) Maintain vigilance regarding process of any actions by entities authorised to initiate or implement penal or disciplinary procedures;
- vii) Inform Governor and Legislative Assembly of results of investigations and notify both regarding actions of individuals holding high political office, including individuals within ACCCIA;
- viii) Make recommendations to Governor or Legislative Assembly in order to promote increased discussion of any unconstitutional or illegal aspects of regulations influencing individual rights, freedoms, safeguards and legitimate interests;
- ix) Recommend adoption of legislative measures by Legislative Assembly or Governor in order to facilitate improvement of organisation operation and compliance with administrative legality and in particular to eliminate factors giving rise to corruption, illegal handling of affairs, or actions that are ethically reproachable.

In addition, ACCCIA had the power to:

- recommend to the Governor that administrative measures be taken to improve the functioning of public bodies;
- directly advise competent bodies, with the aim of correcting illegal or unjust administrative actions;
- broadcast its position to society regarding incidents that it had brought to light during the course of its investigations, including incidents involving corruption or fraudulent actions, crimes against common property, abuse of public position, actions damaging public interest or involving crimes specified under Election Law;
- highlight flaws and omissions discovered in law, and offer advice to facilitate interpretation, revision and repeal of laws, as well as recommend formulation of new laws;
- co - operate with competent bodies and departments in doing everything possible to seek most appropriate solution in order to facilitate successful safeguarding of just interests of citizens and improve administration functions.

In order to ensure its own accountability and enhance transparency, ACCCIA was to submit an annual report of activities to the Governor and Legislative Assembly on 31st March every year and publicise the report through legally-stipulated means.

1.3 Macao SAR establishes Commission Against Corruption (CCAC)

From the establishment of the Macao SAR on 20th December 1999, and under the provisions of Article 59 of the *Basic Law of the Macao Special Administrative Region*, the Commission Against Corruption (CCAC) was established and made independent from the government in order to ensure that the basic rights and interests of citizens were not infringed upon by illegal actions on the part of government or administrative organisations, and in order to provide an entity for handling administrative complaints. The performance of the Ombudsman function in the Macao SAR is primarily the responsibility of the CCAC.

The authority of the Commission Against Corruption resides in the Commissioner Against Corruption. He or she exercises all the legal authority of the CCAC, is nominated by the Chief Executive, and is appointed by the Central People's Government. The Commissioner Against Corruption is responsible to the Chief Executive and is a principal official in the SAR government. The Commissioner Against Corruption, as a political appointee, has a term of office that usually corresponds to the term of office of the current Chief Executive. The appointment is extended each year via an administrative order by the Chief Executive. However, the Commissioner Against Corruption can be removed from his or her position under three circumstances. These are, if the Commissioner is notified of a decision of definitive criminal accusation or of a decision fixing a date for a court hearing, in case of *mens rea*; following recommendation of the Commissioner's removal by the Chief Executive to the Central People's Government; or the Commissioner renounces his post in a written request addressed to the Chief Executive. The position of the Commissioner Against Corruption corresponds to that of a Secretary and the Commissioner also enjoys the authority and treatment of a Secretary. Remuneration and conditions of appointment associated with the position are determined by the Chief Executive.

The Commissioner Against Corruption is responsible to the Chief Executive, who is the SAR's most senior official but the Chief Executive does not influence the Commissioner's autonomy in his work. The relationship between them is not one of superior and subordinate²⁴ but is a supervisory relationship between delegating and delegated bodies. The Chief Executive cannot order the

24 *New Theories in Macao Law*, Volume 1, Liu Gaolong, Zhao Guoqiang, Lok Wai Kin, Fan Jianhong, Macao Foundation, 2005, p.172, footnote 43.



Commissioner Against Corruption to investigate or cease investigating a matter but can monitor whether the Commissioner is legally performing his or her function.²⁵

CCAC is not a component of the administration's institutional system but rather is independent of the government. In addition to legally fulfilling its function of preventing and fighting corruption, it assumes the task of monitoring the legality of the activities of administrative agencies as well as the task of handling administrative complaints. In this way, CCAC is not an entity whose sole function is to handle administrative complaints.

2. Powers and Structure of Ombudsman Functionary Body of MSAR

2.1 Powers of Commission Against Corruption of Macao SAR

The Commission Against Corruption is an independent public body outside the institutional structure of the Macao Government which, in addition to handling cases involving corruption, is responsible for receiving and conducting administrative complaints while operating under the director responsibility system. CCAC has functional, administrative, financial and patrimonial autonomy.

(1) Duties of Commission Against Corruption

In August 2000, the *Legislative Assembly* passed the Organisational Law of the Commission Against Corruption (Law No. 10/2000). The Commission's authority was expanded to include detainment, conducting searches of property, seeking individuals, arrest and carrying arms. Investigators were also given the status of criminal police in a reflection of the SAR Government's determination to stamp out corruption and strictly enforce clean government.

The provisions of Law No. 10/2000 specify the main duties of the Commission Against Corruption as follows:

- i) Taking action for prevention of corruption or fraud;
- ii) Conducting investigations and enquiries with regard to acts of corruption or fraud practised by public servants, with due respect to penal procedure legislation, and of any powers vested by law to other bodies;

²⁵ *General Works on the Basic Law*, Lok Wai Kin, Macao Foundation, p.171.

- iii) Conducting investigations and enquiries with regard to acts of corruption and fraud practised in relation to electoral registration and to the election of members of the institutions of the Macao Special Administrative Region, with due respect to penal procedure legislation, and of any powers vested by law to other bodies;
- iv) Promoting the protection of rights, freedoms, safeguards and legitimate interests of individuals, and ensuring, through other informal means, that the exercise of public power abides by criteria of justice, legality and efficiency.

The above provisions indicate that the duties of the Commission Against Corruption are primarily manifested in two areas: i) conducting investigations and enquiries into corruption and crime; ii) assuming responsibility for handling administrative complaints.

On 21st August 2000, the Chief Executive promulgated Administrative Regulation No. 31/2000, providing the CCAC with a complete organisational framework and increasing the manpower resources available to it. The regulation stated that in addition to being a unit that performed an anti-corruption function, the CCAC would have an Ombudsman Bureau. This bureau would be responsible for receiving, analysing and handling complaints of administrative illegality, redressing illegal or unjust administrative actions, and conducting research and making recommendations with the objective of simplifying administrative procedures and improving the operation of public agencies; conduct research and analysis into beneficial methods of preventing and checking administrative illegality, corruption and fraud by public servants.

CCAC is not a component part of the administrative institutional system. It is an independent public body that possesses administrative, financial and patrimonial autonomy.

(2) Powers of Commission Against Corruption of Macao SAR

With regard to its anti-corruption work, the objective of the Commission's investigations is to ascertain whether sufficient proof exists of crimes against public property, abuse of public position, actions damaging to the public interest, or acts of corruption and fraud practiced in relation to electoral registration and elections, and then, after thorough investigation of the facts, to report to the agency authorised to take disciplinary action. The legal task of assessing whether an action constitutes a crime is left to the courts, which issues legally valid judgements.

With regard to administrative complaints, administrative improprieties involving public administration do not always reach the level where they constitute a breach of the law and fall within the jurisdiction of the courts, but the impropriety or irrationality of such



administrative procedures or actions can still infringe upon the rights, freedoms, safeguards or legitimate interests of citizens. CCAC provides a channel for administrative complaint, enabling remedy for the legitimate grievances of citizens.

CCAC powers are specified as follows:

(1) Inquiry Power

Following the establishment of the SAR, CCAC became, in addition to the Public Prosecutor's Office, pre-trial judge and criminal organs, an additional investigative body within the judicial system empowered to conduct inquiries. The Organisational Law of the Commission Against Corruption confers upon the Commissioner Against Corruption and the Deputy Commissioner the status of criminal police authority.²⁶ In addition, chief personnel, advisors and technical advisors of the Commission, in the exercise of their function, have the status of authority agent and, when legally delegated the authority, are regarded as a criminal police authority with the power to direct inquiries. When personnel conduct an inquiry, they possess the status of a criminal police body.²⁷ The Commission's inquiries are led by the Commissioner Against Corruption. Where crimes fall within the Commission's jurisdiction – such as corruption and bribery – Commission staff can directly conduct an inquiry without having to obtain authorisation from a judicial authority (e.g.) the Public Prosecutions Office. When necessary, Commission staff may hold, use and carry a weapon.²⁸ The Commission may take all actions and measures, including searches and arrests, that the Public Prosecutor's Office is empowered to conduct, including the autonomous collection of evidence.²⁹ The scope of inquiry is not bound by the doctrine of privacy, and is not limited to the facts related by the involved parties. Upon thoroughly investigating the evidence of a crime, the Commission will report any findings of illegal acts to the authorities with disciplinary powers.³⁰ It can be seen that the law confers Commission personnel with powerful investigative authority. This provides a strong guarantee that the Commission will be able to perform its duties.

(2) Investigative Power

The Commission initiates investigations in response to complaints or reports from citizens. It can also open a case on its own and investigate illegalities and administrative improprieties within the scope of its responsibilities. All legal persons or natural persons are duty-bound to co-operate with the Commission as long as this does not interfere with their rights and legitimate interests.³¹ Unless protected by a special law, such as the Law of Protection of Personal Data (Privacy Law) or by the confidentiality of matters related to national defence, diplomatic relations or national security, the obligation of confidentiality is rescinded.³² When conducting an investigation, the Commission has

26 Clause 3 of Article 11 of Organisational Law of Commission Against Corruption.

27 Article 31 of Organisational Law of Commission Against Corruption.

28 Article 36 of Organisation Law of Commission Against Corruption.

29 Article 11 of Organisational Law of Commission Against Corruption.

30 Clause 6 of Article 4 of Organisational Law of Commission Against Corruption.

31 Article 5 of Organisational Law of Commission Against Corruption.

32 Article 8 of Organisational Law of Commission Against Corruption.

the authority to conduct any legal investigative measures regarding the administrative body, public institution or autonomous body being investigated, including using information technology to collect relevant information, freely entering any office area, and interviewing related personnel. Investigated public entities have a special obligation to co-operate and must, in response to a demand by the Commission and with regard to the powers of the respective entities, conduct internal investigations, enquiries, comprehensive investigations, authentication, analyses and other measures.³³ If the bodies under investigation refuse to conduct the required action, they can be accused of disobedience or aggravated disobedience.³⁴

(3) Power to Recommend

The Commission Against Corruption, based on conclusions resulting from its investigations, presents recommendations or advice to relevant agencies and public officers on how to correct illegal or improper action and how to indemnify an individual who incurs damages as a result of illegal or improper action. For example, the Commission may recommend to the agency in question that it improve its working method or operational model, and may also suggest concrete steps that can be taken to achieve such improvement. In the process of handling cases, the Commission may discover that a current law or regulation is defect. When this happens, the Commission has the authority to issue a recommendation or advise improvement. Recommendations and advice can be presented to the Chief Executive or can be directly presented to the agency in question. When laws and regulations do not fall within the legislative jurisdiction of the Legislative Assembly, the Commission may produce a report explaining the Commission's position and submit it directly to the Chief Executive.³⁵ The Commission is a third party separate from administrative institutions and can provide objective and fair opinions without prejudice. The administrative authorities normally reflect carefully on the resolutions and opinions presented by the Commission.

(4) Power to Publicise Investigation Conclusions

Anti-corruption law confers upon the Commission Against Corruption the obligation of confidentiality. It must maintain the confidentiality of matters it gains knowledge of in the course of exercising its authority. However, not all matters have to be kept confidential, and whether these matters are made public is determined by the Commissioner Against Corruption. Deputy Commissioners and support personnel, on the other hand, have an absolute obligation to maintain confidentiality. When a criminal or disciplinary process results in a criminal sentence or punishment, the Commission may, in the interests of prevention, make the relevant matters and decisions public.³⁶ In actual practice, the Commission can also, according to the public interest or educational needs, and without disclosing the identities of the individuals involved, use a suitable method to make public its investigative conclusions. The Commission can also make public its examination reports on operations of administrative authority or on legal systems; it can also make them public through its own annual work report or other suitable method.

33 Article 6 of Organisational Law of Commission Against Corruption.

34 Article 14 of Organisational Law of Commission Against Corruption.

35 Clauses 9-12 of Article 4 of Organisational Law of Commission Against Corruption.

36 Clause 5 of Article 2 of Organisational Law of Commission Against Corruption.



(5) Power to Report

The Commission Against Corruption compiles reports on various specific situations: first, before 31st March every year, it submits an annual work report for the previous year to the Chief Executive. This report summarises the work and activities of the Commission for the entire year. The annual report must be published in the Official Gazette of the Macao SAR.³⁷ Second, recommendations or advice proposing the formulation, interpretation, revision or repeal of laws or regulations must be made in a report submitted to the Chief Executive.³⁸ Third, upon conclusion of an investigation, the principle results of the investigation should be communicated to the Chief Executive. Fourth, the actions of principal officials, members of the Legislative Assembly, members of consultative councils, officers of the court or the Public Prosecutions Office and other individuals under the jurisdiction of the Commission should be communicated to the Chief Executive.³⁹

(6) Power to Supervise Property Entitlements

The property declaration system provided under Law No. 11/2003 requires that all public officers and political officeholders must legally declare property and wealth. The Commission Against Corruption supervises the normality and administrative correctness of actions involving property interests.⁴⁰

2.2 Organisational Structure of Commission Against Corruption of Macao SAR

Administrative Regulation No. 31 of 21st August 2000 endowed the CCAC with a more or less complete organisational structure.

Under administrative regulation *Organisation and Operation of the Commission Against Corruption*, the internal organisational structure of the CCAC is led by the Commissioner Against Corruption and two Deputy Commissioners at the top, with subordinate departments that include the Cabinet of the Commissioner, the Anti-Corruption Bureau and the Ombudsman Bureau. The two Deputy Commissioners hold ex officio positions of the directors of the Anti-corruption Bureau and Ombudsman Bureau of the CCAC. The Cabinet of Commissioner pertains directly to the Commissioner and assists the fulfilment of his or her duties, which further comprises the General Affairs Department, Community Relations Department, and Information Centre. The General Affairs Department is responsible for the management of administration, finance and human

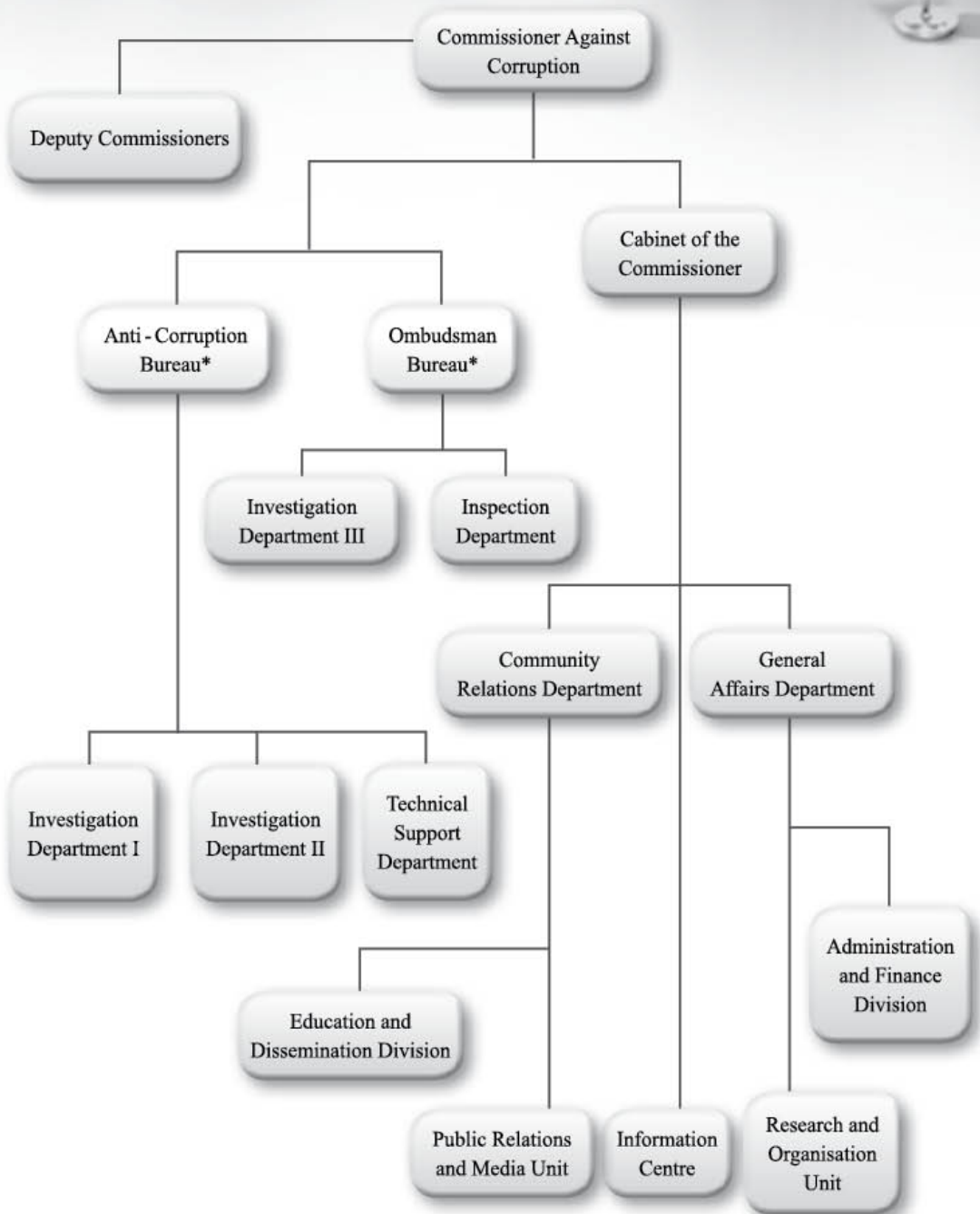
37 Article 15 of Organisational Law of Commission Against Corruption.

38 Clause 9 of Article 4 of Organisational Law of Commission Against Corruption.

39 Clause 8 of Article 4 of Organisational Law of Commission Against Corruption.

40 Clause 5 of Article 4 of Organisational Law of Commission Against Corruption.

resources and conducting research. It comprises the Administration and Finance Division and the Research and Organisation Unit. The Community Relations Department is responsible for works related to promotion, education and public relations. It oversees the Education and Dissemination Division and the Public Relations and Media Unit. The Information Centre provides IT support, assists in investigation and improves the internal operation of the CCAC. The Anti-Corruption Bureau comprises Investigation Departments I and II and the Technical Support Department. The Ombudsman Bureau under the CCAC deals with administrative complaints through Investigation Department III and the Inspection Department. The Investigation Department III is mainly structured to receive complaints, rectify and propose recommendations, acts of infringement or malfeasance and urge the competent authority to conduct the necessary disciplinary procedures and follow up the procedures for the purpose of verifying acts of infringement. The Inspection Department functions to study measures for the purpose of improving the operation of administrative procedures and public departments; advise and propose recommendations regarding deficiencies in regulations and systems; study measures to prevent and curb acts of corruption and fraud committed by civil servants; handle works of property declaration; study the legitimacy of regulations that affect the rights, freedoms, protection or legitimate interests of individuals; and facilitate improvement of administrative procedures, enhance administrative efficiency and ensure administrative legality in public departments.



* The Deputy Commissioner is inherently designated as the director of the bureau.

3. Operation of Ombudsman System of MSAR

The Commission Against Corruption has two main functions – the combat of corruption and receiving of administrative complaints – and its authority is fairly broad in jurisdictional scope. For matters falling within its remit, the Commission can directly receive complaints from citizens and launch investigations unilaterally. The Commission investigates and gathers evidence in cases of corruption and fraudulence by personnel of the administration, public corporations and other public institutions; for example, public officials⁴¹, including staff of administrative institutions up to senior administrative officials, principal officials, members of the Legislative Assembly, members of the Advisory Committee, officers of the courts and the Public Prosecutor's Office, Commissioners Against Corruption, senior officials in municipal government agencies, as well as corrupt and fraudulent acts by the senior personnel and staff of public corporations and other public entities and public enterprises, and acts of corruption and fraud practised in relation to electoral registration and elections. This includes corrupt or fraudulent activities on the part of fiduciary institutions, which also fall within the Commission's jurisdiction. Although the authority of the Commission Against Corruption is broad in scope, it does not conduct investigations when the matter in question falls outside the Commission's scope of authority, does not involve corruption or is not supported by sufficient information. In such circumstances, the Commission will, based on an informed decision, reject the case. If the Commission feels that the matter in question can be addressed through other legal means, the Commission can suggest alternative methods for complaint, appeal, opposition or judicial redress. Upon gaining the approval of the concerned party, the Commission can either refer the matter in question to a competent entity for follow up or handle the matter through informal intervention.

3.1 Scope of Ombudsman system

The Ombudsman Bureau under the Commission Against Corruption is the agency in Macao SAR responsible for implementing the Ombudsman system. Its function is to actively monitor whether the SAR Government administers according to law, ensures that citizens receive legal, fair and equitable treatment at all levels in their contact with government, and promotes transparency and efficiency in the work of all public agencies and institutions.

Following the establishment of the Macao SAR, the Commission Against Corruption was established. An independent body, it was given the function of Ombudsman to combat corruption and administrative illegality.

41 See Article 336 of *Penal Code*.



Macao's Ombudsman system primarily includes administrative improprieties involving public administration. Sometimes the actions in question do not reach the level where they constitute breach of law, or fall within the jurisdiction of the courts, but the impropriety or irrationality of such administrative procedures or actions can still infringe upon the rights, freedoms, safeguards or legitimate interests of citizens. The CCAC provides a channel for administrative complaint enabling remedy for the legitimate grievances of citizens.

Data from the Commission Against Corruption indicates that complaints related to the Ombudsman primarily involve frontline government agencies whose work is closely linked to people's livelihood; for example, in the areas of healthcare, municipal affairs, engineering, public security, education and taxes. It is because these areas are closely tied to the vital interests of citizens that they frequently give rise to conflict.

3.2 Work and process model of Ombudsman system

The work of the Ombudsman Bureau under the Commission Against Corruption consists of investigation, research and examination. The Bureau conducts investigations into complaints of administrative illegality and administrative impropriety on the part of public agencies or institutions in question and, through various forms of intervention, seeks to correct illegal or improper behaviour. The Bureau's examination can be divided into examination of legal systems and operations. The two functions of investigation and examination complement each other. Through the former, it is possible to quickly and efficiently respond to citizens' complaints, while the latter helps the comprehensive promotion of improved services and operations by government agencies and institutions, thereby putting lawful administration fully into effect.

(1) Investigation

Investigations are conducted into complaints of administrative illegality and administrative impropriety on the part of the public agencies or institutions in question and, through various forms of intervention, ultimately seek to correct illegal or improper behaviour.

When the Commission Against Corruption receives a citizen's complaint it conducts a careful preliminary analysis; based on the issues of the problem, it takes corresponding action.

According to operating procedure, the person involved can complain or submit reports directly to the Commission; that is, there is no requirement that the complaint or report be transmitted or referred by any organisation or group. After the Commission Against Corruption receives a case, it will conduct an analysis of its content. If the conditions for initiating an investigation are present – that is, if the matter in question falls within the Commission's remit, involves corruption, and is supported by sufficient information – the Commission will then conduct an investigation and preliminary assessment. Most cases are relatively simple and involve legal misinterpretation or procedural error. When the Commission completes its analysis, it offers clarification to the complainant and provides assistance in resolving the matter being complained about.⁴²

Criminal cases that have undergone preliminary assessment and have been found to merit investigation are sent to the appropriate department for investigation, upon completion of which a conclusion is made regarding whether to keep the case on file or refer it to the Public Prosecutions Office.

When analysis leads to the conclusion that a case warrants administrative complaint, the case is handled using diverse methods based on its specific nature; for example, it may be handled through informal intervention or by referral.

'Informal intervention' refers to the Commission Against Corruption promptly entering into dialogue – including by telephone or informal meeting – with the government agency that is the subject of the complaint, and encourages it to understand the problem and quickly correct any related processes not yet completed. In this way, the dispute between the agency and the public can be resolved in the fastest and most resource-efficient manner. Judging from past cases, it is clear that contacting government agencies through informal intervention is a very successful method as it enables prompt resolution of issues of personal concern to the complainants. The administrative agency can use the dialogue with the Commission as an opportunity to understand and reflect on the factors involved in the issue and swiftly correct relevant practices. In this way, disputes underlying individual cases can be effectively resolved, which also clearly reveals the mediation role of the Ombudsman Bureau.

Information from the Commission Against Corruption indicates that the Commission has employed this method on several occasions to smoothly resolve various issues,

⁴² In 2005, cases of this type constituted approximately 81.8% of completed cases. Refer to 2005 Annual Report of Commission Against Corruption of Macao, p.22, table 10.



including cases involving contract provisions, disciplinary procedures, licence tags and employee rights and benefits.

‘Referral of complaint’ is a practice whereby the Commission, seeing that a citizen's problem should first be handled by the agency being complained about or that the agency has not yet completed its treatment of the issue, refers the problem to the corresponding agency for handling. The Commission does this with a view towards quick resolution and results, and only upon receiving the permission of the complainant. It then actively follows up on whether the agency in question takes remedial measures or appropriate steps for resolution. If the resolution proposed is appropriate and the complainant's rights and legitimate interests have been protected, the Commission will close the file. If the resolution proposed by the agency is unreasonable or unfair the Commission will conduct a formal investigation and issue advice if necessary.

Several years of experience and the opinion of various government agencies indicate that promptly putting a case on file immediately upon receiving a complaint is not the only option or most ideal method especially when the agency that the citizen is complaining about is still handling the complaint, or when the agency in question possesses greater conditions for directly handling the problem. An example would be when the complainant has provided the Commission with insufficient information, and the agency being complained about has more detailed information; in such a situation, referral of the complaint proves more effective.

Some agencies that have been the subject of a complaint have their own complaint mechanism in place. After the Commission obtains the permission of the complainant, therefore, it will ‘refer the complaint’ to the agency in question and make every effort to allow the complainant to actively follow up within the scope of its function. The advantage of this is that it can be used as an opportunity to improve weaker aspects of the agency's operation. It also helps prevent the occurrence of similar problems in the future, which in turn reduces government expenditure required to handle such complaints.

Once the agency responds to the Commission and provides it with information, the Commission analyses the information. If it concludes that the agency's action was not illegal or improper, it communicates its findings to the complainant. Conversely, if the Commission finds evidence of illegality or impropriety, it will follow up or open a file.

In addition, the Commission Against Corruption also engages in ‘active intervention’ – this refers to the Commission Against Corruption regularly monitoring various information

channels such as newspaper reports, and upon discovering a breach of law, an unfair decision, unreasonable delay or other irregularity, immediately contacts the corresponding agency to seek improvement in the shortest time possible.

The above methods constitute an 'investigative modality for unfilled cases' used to handle complaints. The distinguishing characteristic of these methods is that they do not require time-consuming investigation formalities but afford direct dialogue with the corresponding agency. This results in a significant reduction in the volume of documentation exchanged and enables greater possibility of a quick and effective resolution to the problem. Even more important is that the administrative agency is immediately made aware of the existence of the problem and implements a remedy and improvements on its own initiative. Case histories illustrate that a diversified and flexible resolution mechanism is clearly helpful in making administrative complaints more effective.

Where 'referral of complaint' and 'informal intervention' are inappropriate but complaints merit pursuing, the Commission Against Corruption will open a case file and follow up as well as notify the complainant of the file number and methods for contacting the case officer.

After the Commission has conducted a preliminary assessment of received complaints or facts of which it has become aware, if it finds evidence of administrative illegality or administrative impropriety it opens a case file and then proceeds to investigate and collect evidence. When decisions are legal, but unreasonable, unfair or late; or when the complainant's legitimate interests or expectations still require defending, or when using informal avenues of intervention are inappropriate for correcting the mistake in question – for example, when there is a need to explain the legal or technical issues of a complicated case – the Commission also issues advice or a recommendation to the agency in question.

The Commission, based on the conclusions arrived at from its investigation, presents recommendations or advice to the relevant agency and public officers on how to correct illegal or improper action and how to remedy the situation on behalf of the individual who incurred damages as a result of the illegal or improper action. For example, the Commission may recommend to the agency in question that it improve its working method



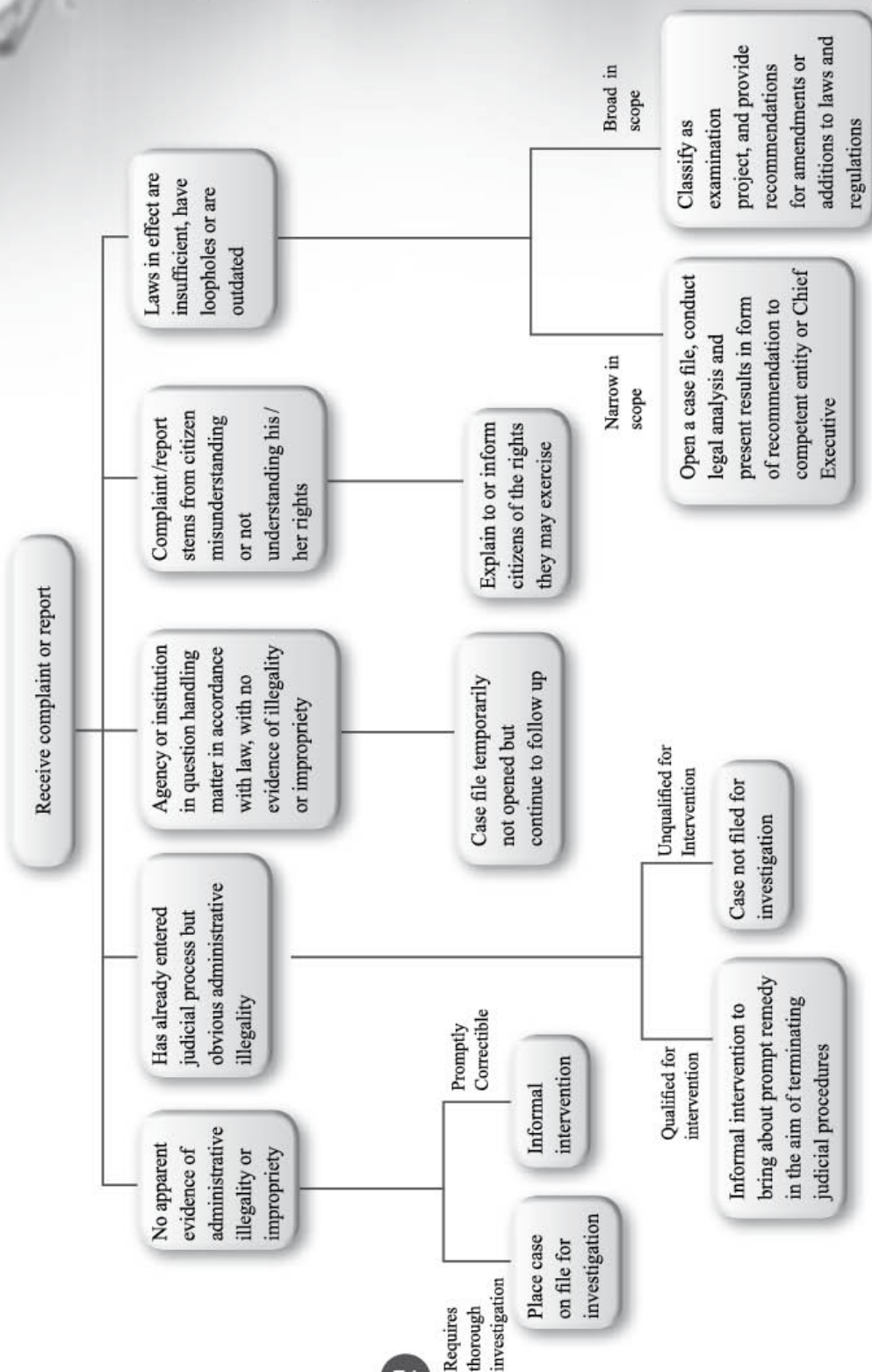
or operational model, and may also indicate concrete steps that can be taken to achieve improvement. The Commission, in the process of handling cases, may discover that a current law or regulation has a defect. When this happens, the Commission has the authority to issue a recommendation or advice for improvement. The recommendations and advice may be presented to the Chief Executive or directly presented to the agency in question. However, when a law and regulation fall within the legislative jurisdiction of the Legislative Assembly, the Commission must produce a report explaining the Commission's position and submit it directly to the Chief Executive. The Commission is a third party separate from administrative institutions, and can provide objective and fair opinions without prejudice. The administrative authorities usually reflect carefully on the resolutions and opinions presented by the Commission.

Usually, after the administrative authorities being complained about receive the advice or recommendation, the large majority will actively co-operate in taking the necessary steps. Once the Commission's advice has been accepted, the individual case in question will be closed and the complainant notified. If the agency in question does not accept the Commission's advice or recommendation, it must provide the Commission with a well-founded response within 90 days. The Commission may, based on circumstances, reiterate its standpoint to a superior agency or the head of a supervisory agency, or may even submit a report to the Chief Executive, or make its standpoint public, so that it can be openly assessed through public opinion.

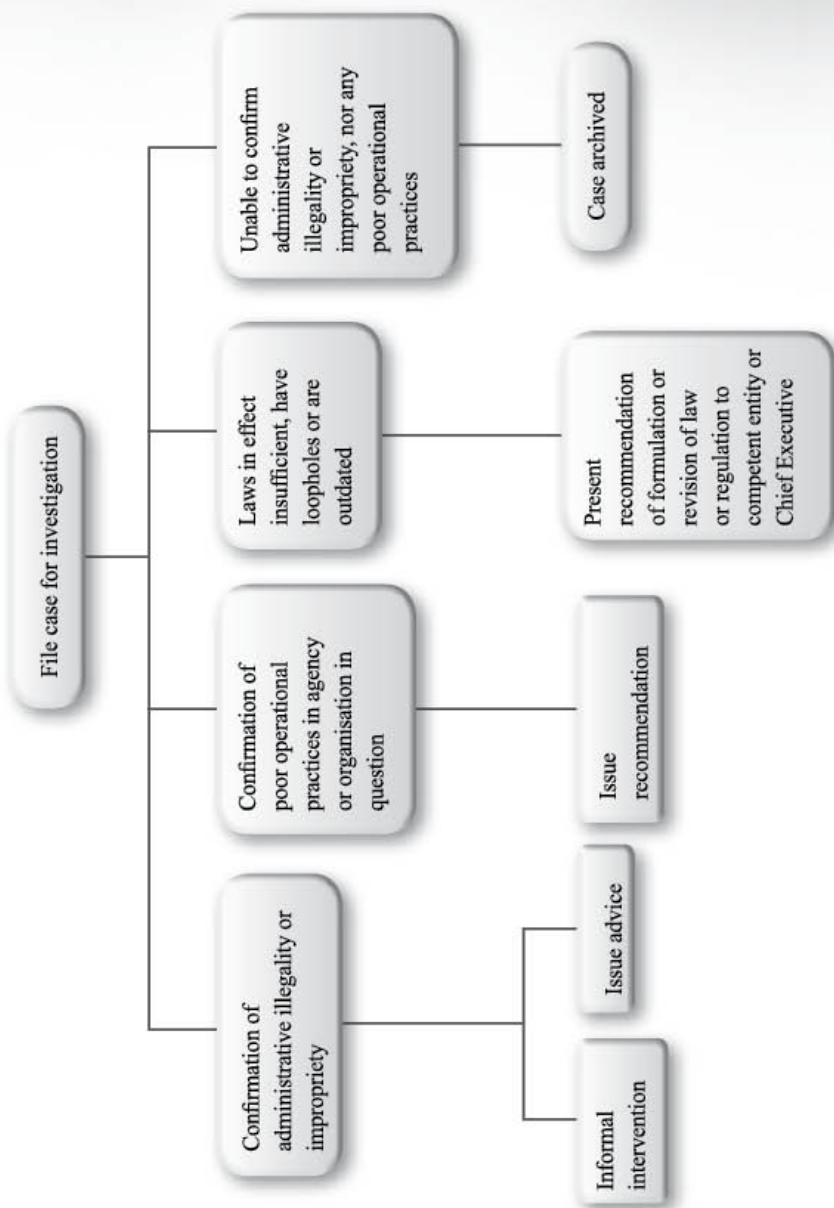
Although a case is filed and investigated, even the Commissioner Against Corruption does not have the authority to annul or alter the decision made by the administrative agency. The Commission can only conduct indirect supervision and correction through such methods as investigative reports, advice or recommendations.

In response to fundamental problems for which intervention on a case by case basis offers little chance of remedy, the Commission follows up by conducting an examination of the system or operation.

Flowchart: Prior to Filing a Case for Investigation



Flowchart: After Filing Case for Investigation



Case Analysis

A complainant submitted a complaint to the Commission Against Corruption stating that at 8:40 a.m. on the 10th of a certain month in 2000, a police officer issued him with a fine for a driving infraction and instructed him to pay the fine within fifteen days (i.e.) by 8:40 a.m. on the 25th. The complainant paid the fine on the 24th, the day before the deadline but was later summoned to appear in court.

Looking into the incident, the Commission Against Corruption discovered that there were two principle problems: first, the party in question paid the fine within the payment deadline stated on the fine and had been issued a receipt but the police officer that received the fine payment failed to close the case file, after which another police officer failed to verify whether the fine payment procedures had been completed and sent the file to the court as a minor criminal case, causing the complainant's rights and interests to be prejudiced.

Conversely, the person who committed the infraction as indicated on the fine must pay the fine within fifteen days, according to Clause 1 of Article 80 of the Traffic Code (*Regulamento do Código da Estrada*). The Public Security Police Force (PSPF) calculated the deadline from the time of the occurrence of the incident, so it specified that the complainant should pay the fine before 8:40 a.m. on the 25th. On the 25th, however, due to carelessness in their work, the police mistakenly concluded that the complainant had not paid the fine on time and forwarded the file to the court. However, according to Clause b) of Article 272 of the Civil Code, 'when calculating the deadline, the day in which the event actually occurs is not calculated, and the deadline is the 24 hours of the last day; when calculating the deadline in hours, the hour in which the event occurs is not calculated, and the deadline is the 60 minutes of the last hour.' For this reason, the Commission Against Corruption was of the opinion that in handling this case the Public Security Police Force (PSPF) had mistakenly calculated the last day for payment as being one day earlier than it should have been. The PSPF should only, on the 26th, due to the failure to pay the fine (in reality, the complainant had paid on the 24th), forward the file to the court. Although the court cancelled the case, the complainant had nevertheless incurred expenses.

For this reason, the Commission recommended that the Public Security Police Force acknowledge to the complainant that its procedures were improperly implemented, and should caution its staff that breach of the obligations associated with their post could lead to disciplinary action. When calculating the deadline for fine payment as described in Clause 1



of Article 80 of the *Traffic Code*, it is required to strictly comply with relevant provisions of the *Civil Code*.

The Commission's advice was accepted by the Public Security Police Force.

(2) Research and Examination

Investigation is an important part of protecting the legitimate rights and interests of citizens but relying solely on investigation to motivate government agencies and public institutions to administer in accordance with the law is still insufficient, especially when the core of the issue in question lies in the fact that a law in effect has a loophole or is insufficient, contradictory or outdated. When issues are broad in scope, it is necessary to view them from an overall, comprehensive perspective when seeking a solution. For this reason, the Ombudsman work of the Commission Against Corruption also includes research and examination.

First, it includes research and examination of the system in order to detect whether problems exist in the implementation of the current legal system. In particular, it conducts research into problems that give rise to a large number of complaints or reports, and such problems as incorrect implementation by government agencies as a result of flaws in the legal system. Such research includes gathering the opinions of agencies and organisations, and referring to related domestic and foreign laws before proposing the best solutions for problems in order to help implement 'administration by law' and increase the operational efficiency and transparency of administration.

Second, research includes co-operating with various government agencies and institutions, dispatching personnel to conduct on-site observation of their administrative operations and, on the basis of consensuses reached by the two sides, seeking strategies for improvement, and striving to effectively improve administrative operations, improve transparency, and eradicate any inducement to corruption. The advantage of on-site observation is the opportunity of understanding issues from a citizen's perspective as well as fully understanding the problems and difficulties in administrative operations from the agency or organisation's perspective. Combining the opinions of both sides makes for a more accurate pinpointing of the problem and from there a more effective proposal for improving public service.

3.3 Independence and procedural autonomy of Ombudsman system

The Ombudsman activities of the Commission Against Corruption are independent and procedurally autonomous⁴³. This is manifested when the Commission receives complaints or information about crimes. It launches investigations on its own initiative and does not need to receive the approval of any organisation, nor does it need to inform any organisation. Enquiries and investigations launched by the Commission are procedurally autonomous from all statutory channels of administrative complaint and judicial dispute, and are not governed by other legal provisions regarding the final nature of certain decisions. At the same time, the various remedial processes that interested parties initiate with administrative or judicial institutions are not terminated or interrupted for any period because the Commission initiates its procedures.

If interested parties do not accept the advice or recommendations, or the Commission is unable to fully resolve the complaint in question according to the current mechanism, the Commission's authority terminates at that point and the citizen can opt to exert pressure on the agency being complained about by appealing to public opinion in the hope of changing the agency's decision.

4. Relationship and Co-operation between MSAR and International Ombudsman Organisations

4.1 Participation of Macao SAR in international Ombudsman activities

In 1997, prior to the handover, Macao joined the International Ombudsman Institute (IOI) but its most significant activities have all been conducted since the handover, and include:

- (1) In 2000, Macao SAR Commissioner Against Corruption Cheong U attended the annual convention held in Durban, in South Africa, and was elected to the board of directors.
- (2) In the latter half of 2001, the Commissioner Against Corruption attended the meeting of the board of directors of the International Ombudsman Institute in Seoul, in the Republic of Korea, and was elected President of the body's financial supervision committee.
- (3) In October 2002, the Commissioner Against Corruption attended the meeting of the board of directors of the International Ombudsman Institute held in Tunis, in Tunisia.

43 Articles 9 - 10 of Organisational Law of Commission Against Corruption.



- (4) In September 2003, a representative of the Commission Against Corruption attended the 21st meeting of the Australasia & Pacific branch region of the International Ombudsman Institute in Papua New Guinea.
- (5) In October 2003, the Commissioner Against Corruption attended a meeting of the board of directors of the International Ombudsman Institute held in Canada.
- (6) In September 2004, the Commissioner Against Corruption attended a meeting of the board of directors and Eighth Annual Conference of International Ombudsman Institute held in Canada, and was elected to another term as member of the board of directors.
- (7) In February 2005, a representative of the Commission Against Corruption attended the 22nd meeting of the Australasia & Pacific branch region of the International Ombudsman Institute in Wellington, in New Zealand.
- (8) In November 2005, the Commissioner Against Corruption attended the meeting of the International Ombudsman Institute held in Saint Jean's, in Antigua and Bermuda.

In addition, Former IOI President and Former New Zealand Ombudsman Brian Elwood visited Macao and the Macao SAR Commission Against Corruption in August, 2004.

To sum up, the Commission Against Corruption of Macao SAR has attended meetings of the IOI board of directors on five occasions, general assembly meetings on two occasions, and Australasia - Pacific regional meetings on two occasions. It is currently a member of the board of directors of the IOI.

4.2 Participation of Macao SAR in Asian Ombudsman Association (AOA) activities

Macao joined the Asian Ombudsman Association before the handover. In May 1998, Macao hosted the Third Meeting of the General Assembly of the Asian Ombudsman Association. The meeting saw the passing of the Asian Ombudsman Association bylaws and Macao's election to the board of directors. The meeting also elected Pakistani Ombudsman (Retd.) Abdul Shakurul Salam as Association President; Sri Lankan Ombudsman Bertram Bastiampillai as Vice President; South Korea Ombudsman Chu Kwang Ill as Treasurer, and Hong Kong Ombudsman Andrew So as Secretary. China, Iran, Japan and the Philippines, together with Macao, were also elected to the board of directors. During the meeting, Macao signed a total of ten technical co-operation

agreements with such countries and regions as Pakistan, the Netherlands, New Zealand, Quebec, Papua New Guinea, and Mozambique. It can be said that from very early on Macao has been an active participant of the Asian Ombudsman Association and has focused on initiating and expanding co-operation in the realm of Ombudsman work with other countries and regions.

Since the handover, Macao has participated more frequently in the various activities of this organisation, including:

In February 2000, representatives of the Commission Against Corruption of Macao SAR attended a meeting of the board of directors of the Asian Ombudsman Association held in Islamabad, in Pakistan. The Macao delegation attracted much attention. Pakistani supreme court justices, President Musharraf and administrative officials met with members of the delegation, who gave an account of Macao's handover, and expressed their opinions regarding building clean government and their strong desire for international co-operation.

- (1) In June 2001, representatives of the Commission Against Corruption of Macao SAR attended general assembly and board of directors' meetings of the Asian Ombudsman Association in Tokyo, in Japan.
- (2) In May 2002, representatives of the Commission Against Corruption of Macao SAR attended the Seventh General Assembly Meeting of the Asian Ombudsman Association in Beijing, in China.
- (3) In October 2003, Macao hosted a meeting of the board of directors of the Asian Ombudsman Association. The two-day meeting was held in the conference hall of the Cultural Centre, with almost thirty delegates from eight countries attending, including AOA President Sahibzada Farooq Ali and the Secretary (Hong Kong), Treasurer (Korea) and five other members (China, Japan, China Macao, Malaysia and the Philippines) of the board of directors. The meeting considered how to advance the work of the Ombudsman and further spread the Ombudsman system. In addition, attendees also exchanged opinions on how to strengthen the role of the Association in Asia, and discussed such matters as how to promote co-operation between members. During the meeting, Chief Executive Edmund Ho Hao Wah met with and hosted a banquet for members of the board of directors. The various delegations also visited the Civic and Municipal Affairs Bureau of the Macao SAR. The meeting strengthened contact and exchange between attendees, and also provided various countries with the opportunity to understand the administrative operations of the Macao government.
- (4) In April 2004, the Commissioner Against Corruption travelled to South Korea to attend



the Eighth General Assembly Meeting of the Asian Ombudsman Association. He was re-elected to the board of directors at the meeting.

- (5) In November and December 2005, representatives from the Commission Against Corruption of Macao SAR attended the Ninth General Assembly Meeting and meeting of the board of directors of the Asian Ombudsman Association held in Hong Kong, China. From 1st to 3rd December 2005, a total of 22 representatives from member states of the Asian Ombudsman Association visited Macao. The representatives – from South Korea, India, Pakistan, Papua New Guinea, Malaysia, Iran and Australia – were received by the Commission Against Corruption of Macao SAR.
- (6) In April 2007, Commissioner Against Corruption Cheong U and an accompanying delegation participated in the meeting of the board of directors and Tenth General Assembly Meeting held in Hanoi, in Vietnam.

To sum up, the Commission Against Corruption of Macao SAR has participated in AOA general assembly meetings on six occasions, and meetings of the board of directors of the AOA on five occasions. The Commission Against Corruption currently occupies the post of Auditor of the Association.

5. Characteristics of Ombudsman System of MSAR and Comparison with ‘Ombudsman’

The main function of the administration appeal system known as the ‘Ombudsman’ is to investigate whether government actions are illegal or unfair and to supervise the work of the government. The term ‘Ombudsman’ is usually translated into Chinese as 監察專員 (Supervision Commissioner), 監察使 (Inspector), 申訴專員 (Ombudsman) or 調查官 (Investigator). Regardless of what the office is called, its basic meaning is an official that legally and independently exercises supervisory authority.

Naturally, because countries and regions have different histories, cultures, traditions and political systems, the Ombudsman systems they design also differ. For example, there may be differences in the structure and powers of the Ombudsman agency, the method by which the Ombudsman is appointed, the scope of its oversight and the processes and methods through which

it exercises its authority. For this reason, the Ombudsman system of each country or region exhibits different features.

However, Ombudsman systems and other similar systems generally exhibit the following common characteristics: 1. They are mechanisms for the supervision of power and primarily conduct supervision of administrative power; 2. They generally have a certain relative independence; 3. They are the channel of redress should a citizen's rights be infringed upon.

Without doubt, the Commission Against Corruption, in accordance with the authority conferred upon it by law, fully manifests the characteristics ascribed above to Ombudsman systems, especially in regard to supervision of the SAR government, the functional autonomy afforded it under the Basic Law and its functions that include assuring that individual rights, freedoms, safeguards and legitimate interests are protected.

Owing to the uniqueness of Macao's social environment and legal system, its Ombudsman system, compared to other Ombudsman systems that fall under the definition of 'Ombudsman', displays its own special traits. These can be analysed from the following perspectives:

5.1 Constitutional position

There are primarily two ways in which Ombudsman agencies are created. One way is through the constitution; that is, the constitution clearly defines the establishment and powers of the Ombudsman agency; one way is through the law, that is, a specialised law prescribes the creation of the agency. Ombudsman agencies created through the constitution may, to a certain degree, be exempt from legislative influence but this is not the case for agencies established by law since the law, like any other, can be revised.

Under the provisions of Article 59 of the *Basic Law of the Macao Special Administrative Region*, Macao's Commission Against Corruption was created under legal documents that are constitutional in character, as well as through Law No. 10/2000, and the Organisational Law of the Commission Against Corruption, while Administrative Regulation No. 31/2000 sanctions the organisational and operational system of the Commission Against Corruption.

5.2 Creation of Ombudsman

The Ombudsman is generally appointed. Furthermore, because the organisation of Ombudsman agencies varies the appointing body also varies. For example, in some jurisdictions the Ombudsman



is appointed by the legislature. Once the Ombudsman is appointed, however, it generally conducts its functions with a high degree of autonomy.

Under the provisions of Clause 6 of Article 50 of the *Basic Law of the Macao Special Administrative Region*, the Commissioner Against Corruption is nominated by the Chief Executive and is appointed by the Central People's Government. The Commissioner Against Corruption is a principle official of the Macao SAR Government and is responsible to the Chief Executive. It conducts its work independently.

5.3 Independent work model

Under the systems of different countries, the manner in which the Ombudsman independently exercises its functions takes different forms. For example, a Parliamentary Ombudsman is subordinate to parliament and constitutes a means for parliament to supervise the administration. Globally, this is the most typical form of Ombudsman system, accounting for about two-thirds of supervisory systems. An Independent Ombudsman is an Ombudsman agency that is independent from the administrative, legislative and judicial bodies.

Macao's ombudsman system possesses a supervisory character and is set apart by design (i.e.) the supervisory body is independent of the executive, legislative and judicial branches of government and monitors the work of the Government. In Macao, the Commissioner Against Corruption is nominated by the Chief Executive in his capacity as most senior official of the SAR, and the Commissioner reports to the Chief Executive, while conducting work independently.

5.4 Functions of Ombudsman

Although not identical under the various types of Ombudsman system, the functions of the Ombudsman generally revolve around oversight of the activities of administrative agencies and public servants to ensure that the fundamental rights of citizens are not infringed upon by public power. Of course, the Ombudsman of some countries and regions also monitors the activities of the judicial institutions.

Macao's Commission Against Corruption, in addition to assuming the normal duties of an Ombudsman—such as supervising the activities of administrative bodies and their staff and ensuring that the fundamental rights of citizens are not infringed upon by public power—initiates and conducts actions to prevent corruption and fraudulent behaviour. It investigates, with due respect to penal procedure legislation, corrupt and fraudulent acts by public servants, and conducts

investigations and enquiries with regard to acts of corruption and fraud practised in relation to electoral registration and in regard to the elections of members of the institutions of the Macao Special Administrative Region, with due respect to the penal procedure legislation.

5.5 Working procedures of Ombudsman

First, the Ombudsman receives cases. The primary sources of cases undertaken by the Office of the Ombudsman are complaints by the public and investigations initiated by the office itself. When citizens submit complaints or reports, the Ombudsman, following verification of the case, primarily has three courses of action open to it – it can refuse to accept cases for which there does not exist adequate reason to proceed or that do not fall within its jurisdiction; matters that fall under the responsibility of another agency can be transferred to the competent agency; and complaints assessed to be justified can be accepted and an investigation initiated.

The Ombudsman may also initiate an investigation in response to matters it discovers through the media and other channels. Furthermore, the laws of some countries stipulate that the Ombudsman can, on its own initiative, conduct inspections of administrative agencies to discover issues requiring attention.

Secondly, the Ombudsman files cases and initiates investigations. Once a case has been investigated, it can generally be handled in one of four ways. The first option is to send back the complaint information. If the investigation leads the Ombudsman to the conclusion that the actions of the administrative agency were legal and fair, the Ombudsman can decide to return the complaint information to the complaining citizen and explain its reasons for doing so. The second option is to make recommendations. If the Ombudsman feels that the actions of the administrative agency or administrative staff were in some respect illegal or inappropriate, it will make recommendations to the agency in question. For example, it may recommend that the administrative agency rescind the inappropriate administrative decision or pay compensation to the complainant or impose an administrative sanction upon certain officials. The third option is to forward criticism. The Ombudsman may, in response to minor faults, opt to submit criticism of the agency or personnel in question in order to raise their awareness. In cases of refusal to correct error, the Ombudsman may issue a public criticism in the press. The fourth option is to file an indictment. Under some systems, the Ombudsman has the authority to file an indictment in response to serious breaches of law or improper actions.



Basically, the work flow of the Ombudsman of the Commission Against Corruption is similar to that of an ordinary Ombudsman – following investigation, it provides recommendations or advice regarding circumstances in which the government is breaching the law, accurately pinpoints the core of the problem, then provides the government with a solution or method that conforms to legal principle. The advice and recommendations issued by the Commission Against Corruption are not binding but are still generally recognised and accepted by the agencies in question.

If the advice or recommendations are not accepted, however, or the Commission is unable to fully resolve the complaint in question according to the current mechanism the Commission's authority terminates at that point and the citizen can opt to exert pressure on the agency being complained about by appealing to public opinion in the hope of reversing the agency's decision. The Commission Against Corruption does not have the power to publicly criticise or accuse.

6. Statistics Regarding Operations of Ombudsman System of MSAR

The Commission Against Corruption, which was established after the handover with the founding of the Macao Special Administrative Region, has to date been in operation for more than nine years. Information on the Commission Against Corruption, with regard to Ombudsman activities, reveals the following statistical profile. (The figures below primarily relate to Ombudsman investigations. Through these figures, we can analyse the knowledge and usage rate of citizens regarding the Ombudsman system).

6.1 2000

(1) Overall figures (inc. complaints of corruption and administrative breach of law)

The Commission Against Corruption received a total of 978 complaints, more than twice the number received in 1999 (393). Of the 978 complaints, some 934, more than 95.5%, were reported by citizens. Of these, 542 complaints were anonymous or accompanied by a request that the complainant's name remain confidential. The number of cases referred or reported by public institutions increased from 11 in 1999 to 39 in 2000.

(2) Number of Cases Received in 2000 by Source

| Case Source | Cases | Percentage |
|---|------------|-------------|
| Referred/reported by media | 2 | 0.20% |
| Initiated by CCAC | 3 | 0.31% |
| Referred/reported/requested by public institution | 39 | 3.99% |
| Anonymous or requested anonymity | 542 | 55.42% |
| Name provided or willing to provide personal data | 392 | 40.08% |
| Total | 978 | 100% |

In 2000, a total of 135 case files were opened; 783 cases did not qualify for initiating investigation; the remaining 60 cases were referred to other departments.

(3) Number of Cases Received in 2000 by Handling Method

| Handling Method | Cases | Percentage |
|---------------------------------|------------|-------------|
| Qualified for investigation | 135 | 14% |
| Not qualified for investigation | 783 | 80% |
| Referred to other departments | 60 | 6% |
| Total | 978 | 100% |

Of 135 cases, 83 were criminal and 52 were administrative complaints.

(4) Case Statistics for Administrative Complaints

Among the issues involved in the 52 case files opened in 2000, those involving insufficient knowledge of the legal systems of public services (the rights and interests, positions and part-time jobs of public employees) resulting in inappropriate implementation accounted for more than one third of all cases.



Types of Administrative Complaints

| Issues Involved | | Cases |
|---------------------------|---|-------|
| Civil servant - related | Recruitment, promotion, retirement and related issues | 12 |
| | Employee rights and benefits | 7 |
| | Part - time jobs | 2 |
| | Social Security Fund contributions | 1 |
| Construction - related | Payment and tendering procedures of public work | 6 |
| | Illegal construction | 3 |
| Business issues | Unlicensed operations | 3 |
| | Illegal operations | 1 |
| | Flawed inspection work | 1 |
| Medical issues | Drug advertisements | 1 |
| | Medical responsibility | 1 |
| Fine / penalty issues | | 2 |
| Administrative procedures | | 3 |
| Other | Failure on part of private organisation to make contributory payments to Social Security Fund for employees | 1 |
| | Illegal transactions involving ships, passports or apartments | 1 |
| | Renewal of licence and mailing | 1 |
| | Proper regulations and personnel regime | 1 |
| | Counterfeit goods | 1 |
| | Prosecution | 1 |
| | Concession of property and services | 1 |
| | Improper tax treatment | 1 |
| | Improper law enforcement | 1 |
| Total | | 52 |

In 2000, 44 recommendations and suggestions (35 recommendations and 9 suggestions) were issued to involved agencies in relation to 38 individual cases. The Commission Against Corruption received 34 replies, of which only three refused acceptance, which represents an acceptance rate of over 90%. This indicates that the Commission successfully identified the crux of the problems and provided solutions that conformed to legal principle as recognised and accepted by the agencies in question.

The issues addressed by the recommendations and suggestions were similar to those in previous years; for example, civil service jobs, administrative procedures, and so on. A considerable number of cases related to the tendering procedures of government projects and formalities for levying fines.

6.2 2001

(1) Overall figures (inc. complaints of corruption and administrative breach of law)

The Commission Against Corruption received a total of 1,265 complaints, representing an increase of almost 30% over the 978 cases received in 2000. Of this total, 1,214 complaints, or more than 96%, were submitted by citizens. Anonymous complaints or complaints accompanied by the request that the complainant's identity be kept confidential accounted for 813 of the 1,214 complaints. A total of 32 cases were referred or reported by public organisations.

(2) Number of Cases Received in 2001 by Source

| Case Source | Cases | Percentage |
|---|--------------|-------------|
| Referred/reported by media | 6 | 0.5% |
| Initiated by CCAC | 13 | 1.0% |
| Referred/reported/requested by public institution | 32 | 2.5% |
| Anonymous or requested anonymity | 813 | 64.3% |
| Name provided or willing to provide personal data | 401 | 31.7% |
| Total | 1,265 | 100% |



In 2001, a total of 134 case files were opened; 1,062 cases did not qualify for initiating an investigation; the remaining 64 cases were referred to other departments, while five cases were handled through informal channels.

(3) Number of Cases Received in 2001 by Handling Method

| Handling Method | Cases | Percentage |
|---------------------------------|--------------|-------------|
| Qualified for investigation | 134 | 10.6% |
| Not qualified for investigation | 1,062 | 84% |
| Referred to other departments | 64 | 5% |
| Handled by informal channels | 5 | 0.4% |
| Total | 1,265 | 100% |

Of 135 cases, 83 were criminal and 52 were administrative complaints.

(4) Case Statistics for Administrative Complaint

Among the complaints and reports received by the Commission Against Corruption in 2001, 164 fell within the category of administrative complaint, including 102 signed complaints and 57 that were anonymous or in which anonymity was requested; four complaints were referred by other departments or organisations. In addition, one case was transferred from the Anti-Corruption Bureau.

From the figures below, it can be seen that the complaints and reports embraced several areas, with problems related to the legal systems of public services being greatest in number (49 cases), followed by improper administration (30 cases), improper law enforcement (12 cases), and illegal construction (12 cases).

Types of Administrative Complaints

| Issues Involved | | Cases |
|--------------------------|--|------------|
| Civil servant -related | Conduct | 25 |
| | Employee rights and benefits | 19 |
| | Recruitment | 14 |
| | Requisition of staff from other government departments | 1 |
| Improper procedure | | 30 |
| Improper law enforcement | | 12 |
| Illegal construction | | 3 |
| Handling of complaints | | 10 |
| Illegal operations | | 10 |
| Procurement procedures | | 8 |
| Operation of pharmacies | | 4 |
| Levying of fines | | 3 |
| Taxation | | 3 |
| Others | | 3 |
| Beyond powers of CCAC | Within judicial area | 3 |
| | Private sector | 6 |
| Total | | 164 |

In 2001, 27 recommendations were issued to agencies involved. Of these, the CCAC received 20 (74%) responses; 18 (90%) of them were accepted and two were rejected.



6.3 2002

(1) Overall figures (inc. complaints of corruption and administrative breach of law)

The Commission Against Corruption received a total of 1,116 complaints, 12% less than the 1,265 received in 2001. When categorised according to source, reports submitted by citizens continued to constitute the majority, totalling 1,078, or more than 96%. Of these, anonymous complaints or complaints accompanied with requests of anonymity accounted for 708 cases. A total of 28 cases were referred or reported by public organisations.

(2) Number of Cases Received in 2002 by Source

| Case Source | Cases | Percentage |
|---|--------------|-------------|
| Referred/reported by media | 2 | 0.2% |
| Initiated by CCAC | 8 | 0.7% |
| Referred/reported/requested by public institution | 28 | 2.5% |
| Anonymous or requested anonymity | 708 | 63.4% |
| Name provided or willing to provide personal data | 370 | 33.2% |
| Total | 1,116 | 100% |

In 2002, 131 cases, or 11.7% of the total number of cases that year, resulted in investigations being opened; 917 cases qualified for initiating an investigation; 59 cases were referred to other departments, and nine cases were handled through informal channels.

(3) Number of Cases Received in 2002 by Handling Issue Method

| Handling Method | Cases | Percentage |
|-----------------------------------|--------------|-------------|
| Qualified for investigation | 131 | 11.7% |
| Not qualified for investigation | 917 | 82.2% |
| Referred to other departments | 59 | 5.3% |
| Handled through informal channels | 9 | 0.8% |
| Total | 1,116 | 100% |

(4) Case Statistics for Administrative Complaint

Among the complaints and reports received by the Commission Against Corruption in 2002, 192 fell within the category of administrative complaint. From the figures below, it can be seen that the subject matter of complaints and reports covered several areas, with problems related to the legal systems of public services being greatest in number (63 cases), followed by illegal construction (28 cases) and improper administration (27 cases).

Types of Administrative Complaints

| Issues Involved | Cases |
|---|------------|
| Civil servant - related (Conduct, recusation, rights and interests and appointment) | 63 |
| Illegal construction | 28 |
| Improper procedure | 27 |
| Illegal operations | 9 |
| Supervision of economic housing | 9 |
| Procurement procedures | 8 |
| Handling of complaints | 7 |
| Improper law enforcement | 6 |
| Medical accidents | 6 |
| Others | 25 |
| Beyond powers of CCAC (Private sector or judicial matters) | 4 |
| Total | 192 |

In 2002, 11 recommendations and 8 suggestions were passed to departments involved. Almost all recommendations were accepted while one was partially accepted. The eight suggestions relating to improvement on operations and revision of laws and regulations involved the medium and long-term plans of administrative reform of government, which the Commission Against Corruption continued to follow up in 2003.



6.4 2003

(1) Overall figures (inc. complaints of corruption and administrative breach of law)

The Commission Against Corruption received a total of 1,077 complaints, 3% less than the 1,116 received in 2002. When categorised according to source, reports submitted by citizens continued to constitute the majority, totalling 1,026 or more than 95.3%. Anonymous complaints or complaints accompanied by requests that the complainant's identity be kept confidential accounted for 663 of the 1,026 complaints. A total of 41 cases were referred or reported by public organisations.

(2) Number of Cases Received in 2003 by Source

| Case Source | Cases | Percentage |
|---|--------------|-------------|
| Referred/reported by media | 2 | 0.2% |
| Initiated by CCAC | 8 | 0.7% |
| Referred/reported/requested by public institution | 41 | 3.8% |
| Anonymous or requested anonymity | 663 | 61.4% |
| Name provided or willing to provide personal data | 363 | 33.7% |
| Total | 1,077 | 100% |

In 2003, a total of 90 case files, or 8.4% of cases received, were opened; 333 cases did not qualify for initiating investigation; the remaining 28 cases were referred to other departments, with 626 cases handled through informal channels.

(3) Number of Cases Received in 2003 by Handling Method

| Handling Method | Cases | Percentage |
|-----------------------------------|--------------|-------------|
| Qualified for investigation | 90 | 8.4% |
| Not qualified for investigation | 333 | 30.9% |
| Referred to other departments | 28 | 2.6% |
| Handled through informal channels | 626 | 58.1% |
| Total | 1,077 | 100% |

(4) Case Statistics for Administrative Complaint

Among the complaints and reports received by the Commission Against Corruption in 2003, some 232 fell within the category of administrative complaint. From the figures below, it can be seen that the complaints and reports covered several areas, with problems related to the legal systems of public services being greatest in number (78 cases), followed by procedural irregularities (37 cases) and illegal construction (24 cases).

Types of Administrative Complaints

| Issues Involved | Cases |
|--|------------|
| Legal systems of public services (Conduct of personnel, recruitment, rights and interests, and recusation) | 78 |
| Improper procedure | 37 |
| Illegal construction | 24 |
| Handling of complaints | 20 |
| Improper law enforcement | 13 |
| Taxation | 6 |
| Investment residency | 6 |
| Illegal operations | 5 |
| Procurement procedures | 5 |
| Others | 27 |
| Beyond powers of CCAC (Private sector or judicial matters) | 11 |
| Total | 232 |

In 2003, some 27 recommendations for improving operations were issued to departments involved, all of which were accepted. In addition, four recommendations regarding improvements to weak areas in the legal system were issued.



6.5 2004

(1) Overall figures (inc. complaints of corruption and administrative breach of law)

The Commission Against Corruption received a total of 1,277 complaints, 200 more cases than the 1,077 cases received in 2003. When categorised according to source, reports submitted by citizens continued to constitute the majority, totalling 1,159 or more than 94.5%. Anonymous complaints or complaints accompanied by requests that the complainant's identity be kept confidential accounted for 661 of the 1,026 complaints. A total of 44 cases were referred or reported by public organisations.

(2) Number of Cases Received in 2004 by Source

| Case Source | Cases | Percentage |
|---|--------------|-------------|
| Referred/reported by media | 3 | 0.2% |
| Initiated by CCAC | 21 | 1.7% |
| Referred/reported/requested by public institution | 44 | 3.6% |
| Anonymous or requested anonymity | 661 | 53.9% |
| Name provided or willing to provide personal data | 498 | 40.6% |
| Total | 1,277 | 100% |

In 2004, 76 cases, or 6.4% of the total number of cases that year, resulted in investigations being opened; 708 cases did not qualify for initiating investigation; the remaining 81 cases were referred to other departments, while 362 cases were handled through informal channels.

(3) Number of Cases Received in 2004 by Handling Method

| Handling Method | Cases | Percentage |
|-----------------------------------|--------------|-------------|
| Qualified for investigation | 76 | 6.2% |
| Not qualified for investigation | 708 | 57.7% |
| Referred to other departments | 81 | 6.6% |
| Handled through informal channels | 362 | 29.5% |
| Total | 1,277 | 100% |

(4) Case Statistics for Administrative Complaint

Among the complaints and reports received by the Commission Against Corruption in 2004, some 311 fell within the category of administrative complaint. From the figures below, it can be seen that the complaints and reports covered several areas, with problems related to the legal systems of public services the greatest in number (91 cases), followed by municipal government (48 cases), and illegal construction works (31 cases).

Types of Administrative Complaints

| Issues Involved | Cases |
|---|------------|
| Legal systems of public service systems (Conduct of personnel, recruitment, rights and interest, conflict of interest and discipline) | 91 |
| Civic affairs | 48 |
| Illegal construction | 31 |
| Medical and healthcare issues | 15 |
| Traffic offences | 14 |
| Wage disputes | 12 |
| Improper law enforcement | 9 |
| Education | 6 |
| Other improper procedures | 68 |
| Beyond powers of CCAC (Private sector or judicial matters) | 17 |
| Total | 311 |

In 2004, two recommendations and ten suggestions for operational improvement were issued to departments involved.



6.6 2005

(1) Overall figures (inc. complaints of corruption and administrative breach of law)

The Commission Against Corruption received a total of 1,109 complaints, approximately 9.6% less than in 2004. When categorised according to source, reports submitted by citizens continued to constitute the majority, totalling 1,053 or more than 94.9%. Anonymous complaints or complaints accompanied with the request that the complainant's identity be kept confidential accounted for 650 of the 1,053 complaints. A total of 45 cases were referred or reported by public organisations.

(2) Number of Cases Received in 2005 by Source

| Case Source | Cases | Percentage |
|---|--------------|-------------|
| Referred/reported by media | 0 | 0% |
| Initiated by CCAC | 11 | 1% |
| Referred/reported/requested by public institution | 45 | 4.1% |
| Anonymous or requested anonymity | 650 | 58.6% |
| Name provided or willing to provide personal data | 403 | 36.6% |
| Total | 1,109 | 100% |

In 2005, 70 cases, or 6.3% of the total number of cases that year, resulted in investigations being opened; 714 cases did not qualify for initiating an investigation; the remaining 39 cases were referred to other departments, while 286 cases were handled through informal channels.

(3) Number of Cases Received in 2005 by Handling Method

| Handling Method | Cases | Percentage |
|-----------------------------------|--------------|-------------|
| Qualified for investigation | 70 | 6.3% |
| Not qualified for investigation | 714 | 64.4% |
| Referred to other departments | 39 | 3.5% |
| Handled through informal channels | 286 | 25.8% |
| Total | 1,109 | 100% |

4) Case Statistics for Administrative Complaint

Among the complaints and reports received by the Commission Against Corruption in 2005, 220 fell within the category of administrative complaint. From the figures below, it can be seen that the complaints and reports covered several areas, with problems related to the legal systems of public services the greatest in number (74 cases), followed by civic affairs (33 cases), and illegal constructions (30 cases).

Type of Administrative Complaint

| Issues Involved | Cases |
|--|------------|
| Legal systems of public services (Rights and interests, recruitment, internal management, discipline and abuse of power) | 74 |
| Civic affairs | 33 |
| Illegal construction | 30 |
| Education, medical and healthcare issues | 8 |
| Traffic offences | 5 |
| Insurance | 5 |
| Public procurement | 5 |
| Other improper procedures | 56 |
| Beyond powers of CCAC (Private sector or judicial matters) | 4 |
| Total | 220 |

In 2005, two recommendations and suggestions were issued to departments involved.

6.7 2006

(1) Overall figures (inc. complaints of corruption and administrative breach of law)

The Commission Against Corruption received a total of 840 complaints, 24.3% less than the 1,109 complaints received in 2005 and a sharp decline of 43% from 2004. Of these 840 complaints, administrative complaints accounted for 254.



Of the 840 complaints submitted, 772 cases, or 91.9%, were reported by citizens; 52% were anonymous or requested anonymity. A total of 42 cases were referred or reported by public organisations.

(2) Number of Cases Received in 2006 by Source

| Case Source | Cases | Percentage |
|---|------------|-------------|
| Referred/reported by media | 0 | 0% |
| Initiated by CCAC | 26 | 3.1% |
| Referred/reported/requested by public institution | 42 | 5% |
| Anonymous or requested anonymity | 437 | 52% |
| Name provided or willing to provide personal data | 335 | 39.9% |
| Total | 840 | 100% |

Of the 840 complaints submitted, some 460 cases did not qualify for initiating an investigation; the remaining 380 cases were handled by investigation, referral to other departments or informal intervention.

(3) Number of Cases Received in 2006 by Handling Method

| Handling Method | Cases | Percentage |
|---------------------------------|------------|-------------|
| Qualified for investigation | 57 | 6.8% |
| Referred to other departments | 31 | 3.7% |
| Handled through informal means | 292 | 34.8% |
| Not qualified for investigation | 460 | 54.8% |
| Total | 840 | 100% |

Of 57 cases filed by the Commission Against Corruption in 2006, 54 involved criminal cases and three were administrative complaints.

(4) Case Statistics for Administrative Complaint

In 2006, the CCAC received 254 administrative complaints, with a large number involving the legal systems of public services, civic affairs and illegal construction.

Types of Administrative Complaints

| Issues Involved | Cases |
|--|------------|
| Legal systems of public services (Rights and interests, recruitment, internal management, discipline and abuse of power) | 87 |
| Civic affairs | 36 |
| Illegal construction | 33 |
| Traffic offences | 16 |
| Public procurement | 8 |
| Social housing/economic housing | 7 |
| Occupational safety and health | 7 |
| Insurance | 4 |
| Other improper procedures | 54 |
| Beyond powers of CCAC | 2 |
| Total | 254 |

In 2006, the Commission Against Corruption completed investigations in three administrative complaints and issued related recommendations and suggestions. The cases involved 'The academic qualifications verification scheme and the appointment of a disciplinary procedure pre-examiner for recruitment purposes'; the 'absence of pregnant public servants resulting from prenatal care/checkups'; and 'The Stipulations of juvenile responsibility for violations of law in the General Regulations for Public Areas'.



6.8 Statistical summary (2000 - 2006)

(1) Comparison of cases received, 2000-2006 (inc. complaints of corruption and administrative breach of law)

| Case Source | | 2000 | | 2001 | | 2002 | | 2003 | | 2004 | | 2005 | | 2006 | |
|---|---|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|------|-------|
| Reports from citizens | Anonymous or requested anonymity | 542 | 55.4% | 813 | 64.3% | 708 | 63.4% | 663 | 61.6% | 661 | 53.9% | 650 | 58.6% | 437 | 52.0% |
| | Name provided or willing to provide personal data | 392 | 40.1% | 401 | 31.7% | 370 | 33.2% | 363 | 33.7% | 498 | 40.6% | 403 | 36.6% | 335 | 39.9% |
| Referred/reported/requested by public institution | | 39 | 4.0% | 32 | 2.5% | 28 | 2.5% | 41 | 3.8% | 44 | 3.6% | 45 | 4.1% | 42 | 5% |
| Referred/reported by media | | 2 | 0.2% | 6 | 0.5% | 2 | 0.2% | 2 | 0.2% | 3 | 0.2% | 0 | 0% | 0 | 0% |
| Initiated by CCAC | | 3 | 0.3% | 13 | 1.0% | 8 | 0.7% | 8 | 0.7% | 21 | 1.7% | 11 | 1.0% | 26 | 3.1% |
| Total | | 978 | | 1,265 | | 1,116 | | 1,077 | | 1,227 | | 1,109 | | 840 | |

(by source)

7. Analysis of Questionnaire Regarding Work of Ombudsman of Macao SAR

7.1 Basic information

(1) Study background

In order to study and analyse the Ombudsman System of Macao SAR and its operation, in the second half of 2007 our group began to make arrangements and plan for this study. In addition to analysing the numerical data contained in the annual reports of the Commission Against Corruption, we also designed a questionnaire in order to gain an understanding,

through random sampling, of the public's knowledge of the Ombudsman's work and, based on the results, to offer our opinion on how to act in concert with social development. We also sought to analyse how to rapidly respond to citizens' appeals in future Ombudsman work, and how the Commission Against Corruption could conform to the public's aspirations through its Ombudsman functions. We felt that, in addition to studying Macao's Ombudsman system from an academic or theoretical perspective, we could view the subject matter from the citizens' perspective through a careful and direct gathering of popular opinion in what would constitute a complementary method to research and analysis.

(2) Study objectives

With the intent of probing problems existing in Macao's Ombudsman system, we define the objectives of the current study and established the following subjects as research topics:

- i) Macao citizens' knowledge of Ombudsman system;
- ii) Usage rate of Macao's Ombudsman system;
- iii) Effects of Macao's Ombudsman system.

In the second half of 2007, our group conducted a question survey designed to assess the level of knowledge of the Ombudsman system of the Macao SAR. Using random sampling, we targeted all citizens (including public servants, students, white-collar workers, homemakers, youths, etc.), and successfully obtained 500 valid response forms. Analysing the samples based on gender, age, education and other factors (see image below), we obtained reference data of research value.

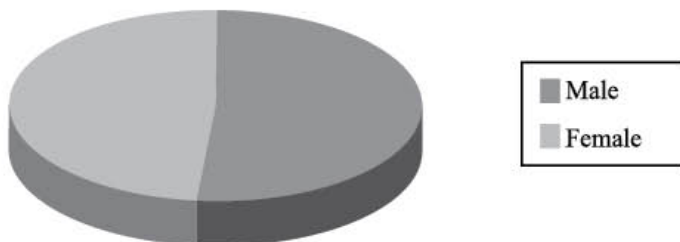


Data characteristics of 500 Survey Respondents

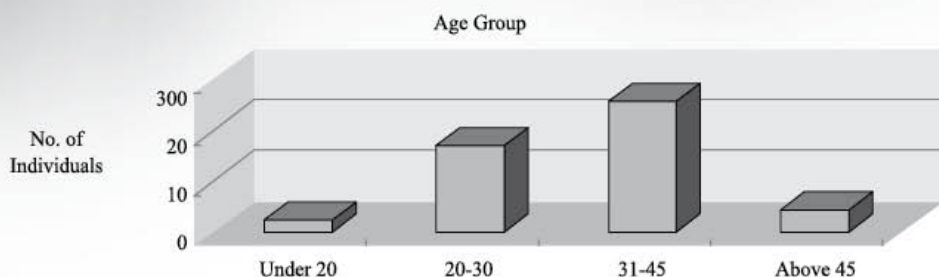
| | Summary | Individuals | Percentage |
|-----------------|-------------------------------|-------------|-------------|
| Gender | Male | 257 | 51% |
| | Female | 243 | 49% |
| | Total | 500 | 100% |
| Age Group | Under 20 | 25 | 5% |
| | 20-30 | 171 | 34% |
| | 31-45 | 260 | 52% |
| | Above 45 | 44 | 9% |
| | Total | 500 | 100% |
| Education Level | Primary school or below | 17 | 3% |
| | Secondary school | 183 | 37% |
| | College education | 112 | 22% |
| | University education or above | 188 | 38% |
| | Total | 500 | 100% |

Gender Ratio of Questionnaire Respondents

Percentage of Male and Female Respondents



Percentage Breakdown of Respondent Age Group



The above figures reveal that males and females are equally represented among the questionnaire respondents; 34% were between 20 and 30 years old and 52% were between 31 and 45 years old. Most respondents were students or employed persons, and have regular contact with government agencies. Some 37% of respondents had a secondary school education, while 22% had a college education and 38% had a university degree or above. Essentially, based on the even distribution of the gender, age and education level of the respondents, we feel that the questionnaire results reflect certain general phenomena.

7.2 Respondents' opinions regarding Ombudsman system

(1) Respondents' opinions of government work

| Have you ever been unfairly treated by Macao Government? | | Individuals | Percentage |
|---|-------------------|-------------|-------------|
| No | | 270 | 54% |
| Yes | 1-3 times | 177 | 35% |
| | 4-5 times | 20 | 4% |
| | More than 5 times | 30 | 6% |
| Did not respond | | 3 | 1% |
| Total | | 500 | 100% |
| Do you think internal departmental procedures or measures of Macao Government are fair? | | Individuals | Percentage |
| Yes | | 125 | 25% |
| No | | 372 | 74% |
| Did not respond | | 3 | 1% |
| Total | | 500 | 100% |

Opinions of Respondents with Different Education Levels Regarding Government Work

| Education Level | | Primary school or below | | Secondary school | | College | | University or above | |
|--|-------------|-------------------------|-------------|------------------|-------------|------------|-------------|---------------------|-------------|
| Opinions | Individuals | Percentage | Individuals | Percentage | Individuals | Percentage | Individuals | Percentage | Individuals |
| Have you ever been unfairly treated by Macao Government? | Yes | 5 | 29% | 72 | 39% | 44 | 39% | 106 | 56% |
| | No | 12 | 71% | 111 | 61% | 66 | 59% | 81 | 43% |
| Did not respond | 0 | 0% | 0 | 0% | 2 | 2% | 1 | 1% | 3 |
| Total | | 17 | 100% | 183 | 100% | 112 | 100% | 188 | 100% |
| Do you think that internal departmental procedures or measures of Macao Government are fair? | Yes | 8 | 47% | 51 | 28% | 32 | 29% | 34 | 18% |
| | No | 9 | 53% | 131 | 72% | 80 | 71% | 152 | 81% |
| Did not respond | 0 | 0% | 1 | 1% | 0 | 0% | 2 | 1% | 3 |
| Total | | 17 | 100% | 183 | 100% | 112 | 100% | 188 | 100% |
| | | | | | | | | | 500 |



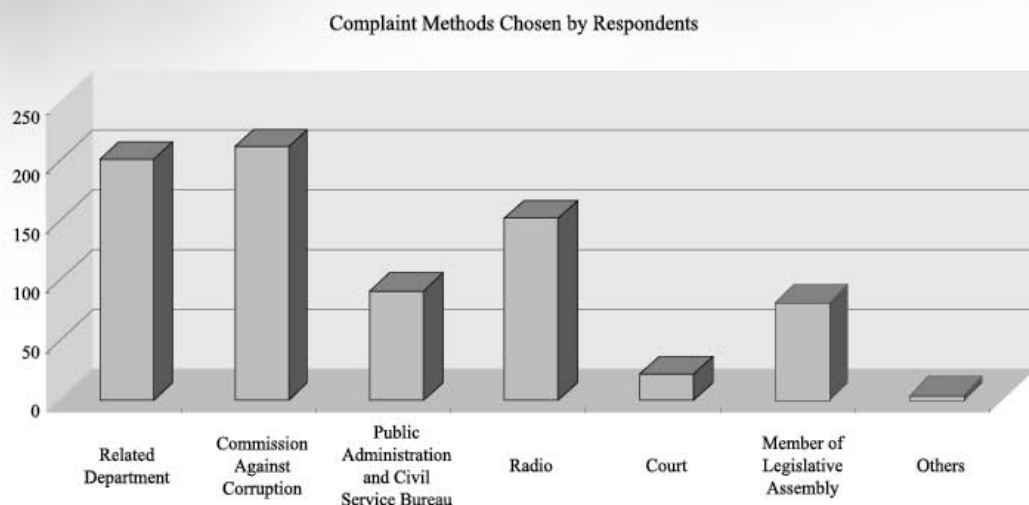
Since the handover, the reports of the Commission Against Corruption reflect that the number of administrative complaints received in 2006 was 15.5% higher than in 2005. Likewise, the 753 requests for help and consultation represented a 24% increase year on year. Such figures indicate that the work of the Commission has gained recognition among the public. As such, there is a greater willingness on the part of the public to submit complaints when confronted with unfair actions by the government and to request assistance or information.

The information in the figures above reveal that more than half (54%) of the respondents had never received unfair treatment by the Macao Government. However, almost 75% of respondents felt that the internal procedures and measures of departments of the government were unfair. This figure clearly indicates that a large majority of citizens, despite never having been unfairly treated by the Macao Government, nevertheless still hold the subjective opinion that the internal processes of the Macao Government are unfair (particularly the 20-30 and 31-45 age groups). It is accurate to say, therefore, that the public has lost confidence in the fairness of government work and measures.

Respondents' Opinions on Choice of Complaint Method
(More than one choice permissible)

| Complaint method | Respondents | Percentage |
|--|-------------|-------------|
| Related department | 201 | 26% |
| Commission Against Corruption | 211 | 28% |
| Public Administration and Civil Service Bureau | 91 | 12% |
| Radio | 152 | 20% |
| Court | 22 | 3% |
| Member of Legislative Assembly | 81 | 11% |
| Others | 4 | 1% |
| Total | 762 | 100% |

Respondents' Chosen Method of Complaint (Percentage)



The figures indicate that the most frequent channel for citizens to submit a complaint is via the Commission Against Corruption, which accounts for 28% of responses, and reflects the growing recognition by citizens of the work of the Commission over the years. When citizens are unjustly treated by the government, the Commission Against Corruption is the primary method chosen by citizens, followed by complaining to a related department and by complaining to a radio station, which respectively accounted for 26% and 20%. Most worthy of note is that the number of respondents that said they would complain to a radio station was 8% higher than the number that said they would direct their complaint to the Public Administration and Civil Service Bureau.



Complaint Methods Chosen by Respondents (by Age)

| Age | Under 20 | | 20-30 | | 31-45 | | Over 45 | | |
|--|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|------------|
| Opinions | Individuals | Percentage | Individuals | Percentage | Individuals | Percentage | Individuals | Percentage | Total |
| Related department | 8 | 25% | 74 | 28% | 110 | 26% | 9 | 18% | 201 |
| Commission Against Corruption | 7 | 22% | 64 | 24% | 123 | 30% | 17 | 33% | 211 |
| Public Administration and Civil Service Bureau | 3 | 9% | 37 | 14% | 47 | 11% | 4 | 8% | 91 |
| Radio | 9 | 28% | 51 | 19% | 77 | 19% | 15 | 29% | 152 |
| Court | 1 | 3% | 6 | 2% | 13 | 3% | 2 | 4% | 22 |
| Member of Legislative Assembly | 4 | 13% | 29 | 11% | 44 | 11% | 4 | 8% | 81 |
| Others | 0 | 0% | 2 | 1% | 2 | 0% | 0 | 0% | 4 |
| Total | 32 | 100% | 263 | 100% | 416 | 100% | 51 | 100% | 762 |

The figures above reveal that complaining to the Commission Against Corruption was the option most frequently chosen in the '20-30', '31-45' and 'above 45' age groups, with that option being chosen by 24%, 30% and 33% of respondents from those age groups, respectively. By contrast, the most frequent choice in the under-20 category was a radio station, which was selected by 28% of respondents.

Complaint Methods Chosen by Respondents (by Education Level)

| Education level | Primary school or below | | Secondary school | | College | | University or above | | |
|--|-------------------------|-------------|------------------|-------------|-------------|-------------|---------------------|-------------|------------|
| Opinions | Individuals | Percentage | Individuals | Percentage | Individuals | Percentage | Individuals | Percentage | Total |
| Related department | 4 | 25% | 52 | 22% | 49 | 28% | 96 | 29% | 201 |
| Commission Against Corruption | 0 | 0% | 77 | 33% | 42 | 24% | 92 | 27% | 211 |
| Public Administration and Civil Service Bureau | 5 | 31% | 16 | 7% | 21 | 12% | 49 | 15% | 91 |
| Radio | 5 | 31% | 58 | 25% | 35 | 20% | 54 | 16% | 152 |
| Court | 0 | 0% | 10 | 4% | 3 | 2% | 9 | 3% | 22 |
| Member of Legislative Assembly | 2 | 13% | 18 | 8% | 26 | 15% | 35 | 10% | 81 |
| Others | 0 | 0% | 4 | 2% | 0 | 0% | 0 | 0% | 4 |
| Total | 16 | 100% | 235 | 100% | 176 | 100% | 335 | 100% | 762 |

The figures above reveal the Commission Against Corruption was the most frequent choice of individuals in the 'Secondary school' category, 33% of which said they would complain to the Commission. Among individuals in the 'College' and 'University or above' categories, the most frequent choice was to directly complain to a relevant department; that option was chosen by 28% and 29% of individuals in those categories, respectively. By contrast, the Public Administration and Civil Service Bureau and radio were the most frequent choices among individuals in the 'Primary school or below' category, with each option being chosen by 31%.

The above figures reveal that the 'Under 20' and 'Primary school or below' categories were least likely to direct a complaint to the Commission Against Corruption. The data indicates that the 'Under 20' and 'Primary school or below' categories do not have sufficient knowledge of the Commission Against Corruption.



**Respondents' Opinions on whether
Complaints will be Handled Fairly by Department in Question**

| Do you think you will receive fair treatment if you complain to department itself? | Respondents | Percentage |
|--|-------------|-------------|
| Yes | 177 | 35% |
| No | 312 | 62% |
| Did not respond | 11 | 2% |
| Total | 500 | 100% |

**Respondents' Opinions on whether Complaints
will be Handled Fairly by Department in Question (Percentage)**



The data reveals that more than half of respondents (62%) thought that addressing a complaint directly to the department in question would not result in fair treatment, while 2% of respondents chose not to answer this question. This data indicates that respondents were not sufficiently confident they would receive fair treatment by addressing a complaint through the department's own complaint mechanism. This may stem from society's lack of trust in the government's self-monitoring mechanisms, and reflects the necessity of external supervision of government work as well as the need for the government to strengthen the public's trust in government work.

(2) Respondents' opinions regarding work of Commission Against Corruption

Data on Individuals Submitting Complaint to Commission Against Corruption

| Have you submitted a complaint to CCAC? | | Respondents | Percentage |
|---|-------------------|-------------|------------|
| No | | 458 | 92% |
| Yes | 1 - 3 times | 33 | 7% |
| | 4 - 5 times | 6 | 1% |
| | More than 5 times | 0 | 0% |
| Did not respond | | 3 | 1% |
| Total | | 500 | 100% |

An analysis of the data reveals that 28% of respondents said they would address a complaint to the Commission Against Corruption. However, 92% said they had never complained to the Commission, while only 8% said they had complained to the Commission. Of the latter category, 7% had submitted a complaint to the Commission between one and three times; 1% had submitted a complaint four or five times; and 1% did not respond to the question. The data indicates that, perhaps in part due to eight years of hard work by the Commission, the government's procedures and measures have improved. In addition, most respondents are essentially informed that the Commission Against Corruption acts as a main channel for submitting complaints about government.

Methods Preferred by Citizens to Submit Complaint to Commission Against Corruption (More than one choice permissible)

| | Respondents | Percentage |
|---------------------|-------------|------------|
| In person | 132 | 24% |
| In writing | 156 | 28% |
| E - mail | 128 | 23% |
| Telephone | 141 | 25% |
| Total | 557 | 100% |
| Signed or anonymous | Respondents | Percentage |
| signed | 137 | 41% |
| anonymous | 194 | 59% |
| Total | 331 | 100% |



The data shows that the method that respondents chose to address complaints to the Commission Against Corruption were very evenly distributed. The most frequently chosen option was 'writing', which was chosen by 28% of respondents; this was followed by 'telephone' at 25%, 'in person' at 24% and email at 23%. However, more than half of respondents (59%) said they would opt to make complaints anonymously, reflecting insufficient confidence on the part of respondents in the confidentiality of complaints submitted to the Commission.

Methods Preferred by Different Age Groups to Submit Complaint to Commission Against Corruption

| Age | | Under 20 | | 20-30 | | 31-45 | | Over 45 | |
|---|-----------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Opinions | | Individuals | Percentage | Individuals | Percentage | Individuals | Percentage | Individuals | Percentage |
| Have you submitted a complaint to CCAC? | Yes | 1 | 4% | 11 | 6% | 22 | 8% | 5 | 11% |
| | No | 24 | 96% | 159 | 93% | 236 | 91% | 39 | 89% |
| | Did not respond | 0 | 0% | 1 | 1% | 2 | 1% | 0 | 0% |
| Total | | 25 | 100% | 171 | 100% | 260 | 100% | 44 | 100% |
| Method preferred | In person | 5 | 19% | 48 | 25% | 60 | 21% | 19 | 41% |
| | In writing | 4 | 16% | 47 | 24% | 93 | 32% | 12 | 26% |
| | Email | 11 | 42% | 55 | 28% | 59 | 20% | 3 | 7% |
| | Telephone | 6 | 23% | 45 | 23% | 78 | 27% | 12 | 26% |
| Subtotal | | 26 | 100% | 195 | 100% | 290 | 100% | 46 | 100% |
| Signed or anonymous | Signed | 6 | 50% | 42 | 40% | 74 | 40% | 15 | 54% |
| | Anonymous | 6 | 50% | 64 | 60% | 111 | 60% | 13 | 46% |

The data reveals that email was most frequently chosen by age groups of 'Under 20' and '20-30', respectively 42% and 28%. This conforms to the trend in which young people in modern society prefer to use the Internet. 32% of the '31-45' age group chose the method of 'writing' while 41% of the 'over 45' age group preferred to report complaints 'in person'.

The 'Under 20' category was evenly split with regard to whether 'Signed' or 'Anonymous' complaints were preferable, with each of those options being selected by 50%. Among the '20-30' age group and the '31-45' age group, 60% of respondents selected 'Anonymous', while 54% of the 'over 45' age group preferred to submit a 'signed' complaint.

Methods Preferred to Submit Complaint to Commission Against Corruption (by Education Level)

| Education level | | Primary school or below | | Secondary school | | College | | University or higher | |
|---------------------------------------|-----------------|-------------------------|------------|------------------|------------|-------------|------------|----------------------|------------|
| Opinions | | Individuals | Percentage | Individuals | Percentage | Individuals | Percentage | Individuals | Percentage |
| Have you submitted complaint to CCAC? | Yes | 0 | 0% | 19 | 10% | 9 | 8% | 11 | 6% |
| | No | 17 | 100% | 163 | 89% | 103 | 92% | 175 | 93% |
| | Did not respond | 0 | 0% | 1 | 1% | 0 | 0% | 2 | 1% |
| Total | | 17 | 100% | 183 | 100% | 112 | 100% | 188 | 100% |
| Method preferred | In person | 4 | 23.5% | 65 | 34% | 34 | 27% | 29 | 13% |
| | In writing | 4 | 23.5% | 36 | 18% | 33 | 27% | 83 | 37% |
| | Email | 1 | 6% | 39 | 20% | 24 | 19% | 64 | 29% |
| | Telephone | 8 | 47% | 54 | 28% | 33 | 27% | 46 | 21% |
| Subtotal | | 17 | 100% | 194 | 100% | 124 | 100% | 222 | 100% |
| Signed or anonymous | Signed | 4 | 44% | 63 | 56% | 23 | 34% | 47 | 33% |
| | Anonymous | 5 | 56% | 50 | 44% | 45 | 66% | 94 | 67% |

The data in the above figure reveals that among the individuals in the 'Primary school or below' education level category the 'Telephone' was the most frequently selected option, representing 47% in that category. Individuals in the 'Secondary school' and 'College' category most frequently opted for 'In person' as their preferred means; representing 34% and 27% of respondents in those two categories, respectively. Among the 'University or higher' category, the most frequent choice was 'In writing', which was selected by 37% of respondents in that category.

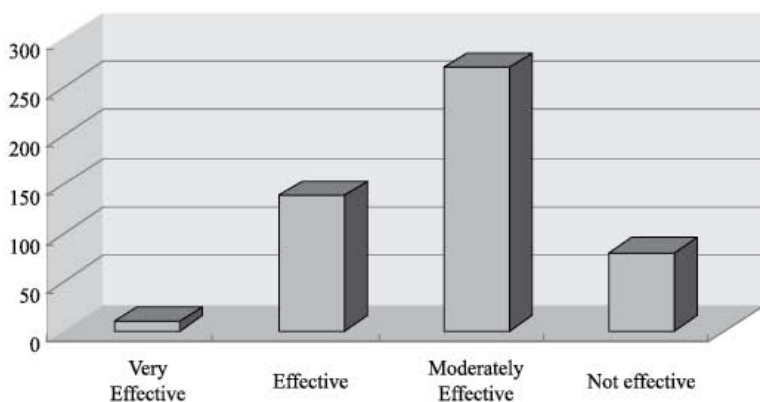
'Anonymous' was the most frequent type of complaint in the 'Primary school or below', 'College' and 'University or above' categories. That option was selected by 19%, 23% and 26% of individuals in those groups, respectively. Among individuals in the 'Secretary school' category, 'Signed' was the most frequent choice, at 21%.



**Respondents' Opinions on Effectiveness
of Submitting Complaints to Commission Against Corruption**

| Is complaining to CCAC effective? | Respondents | Percentage |
|-----------------------------------|-------------|-------------|
| Very effective | 9 | 2% |
| Effective | 139 | 28% |
| Moderately effective | 270 | 54% |
| Not effective | 80 | 16% |
| Did not respond | 2 | 0% |
| Total | 500 | 100% |

**Respondents' Opinions on Effectiveness
of Submitting Complaints to Commission Against Corruption**



The statistics show that 54% of respondents think that submitting complaints to the Commission Against Corruption is moderately effective, 28% think it is effective, 2% think it is very effective, while 16% percent think it is ineffective. Two respondents did not answer. In all, more than 80% of respondents volunteered a positive response to the work of the Commission. These statistics indicate that the public's attitude towards the effectiveness of the work of the Commission is essentially positive.

Opinions Regarding Effectiveness of Submitting Complaints to CCAC (by Age Group)

| Age | Under 20 | | 20-30 | | 31-45 | | Over 45 | | |
|----------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|------------|
| Opinions | Individuals | Percentage | Individuals | Percentage | Individuals | Percentage | Individuals | Percentage | Total |
| Very effective | 2 | 8% | 2 | 1% | 4 | 2% | 1 | 2% | 9 |
| Effective | 8 | 32% | 50 | 29% | 72 | 28% | 9 | 20% | 139 |
| Moderately effective | 11 | 44% | 90 | 53% | 145 | 56% | 24 | 55% | 270 |
| Not effective | 4 | 16% | 29 | 17% | 37 | 14% | 10 | 23% | 80 |
| Did not respond | 0 | 0% | 0 | 0% | 2 | 1% | 0 | 0% | 2 |
| Total | 25 | 100% | 171 | 100% | 260 | 100% | 44 | 100% | 500 |

The data reveals that in the 'under 20', '20-30', '31-45' and 'over 45' groups the most frequent opinion was that submitting a complaint to the Commission Against Corruption is only moderately effective. This opinion was held by 44%, 53%, 56% and 55% of the respondents in those groups, respectively. Although this opinion is positive, it shows that there is still room for improvement in the work of the Commission.



**Respondents' Opinions of Effectiveness of
Submitting Complaints to Commission Against Corruption (by Education Level)**

| Education level | Primary school or below | | Secondary school | | College | | University or above | | Total |
|----------------------|-------------------------|-------------|------------------|-------------|-------------|-------------|---------------------|-------------|------------|
| | Individuals | Percentage | Individuals | Percentage | Individuals | Percentage | Individuals | Percentage | |
| Very effective | 1 | 6% | 5 | 3% | 3 | 3% | 0 | 0% | 9 |
| Effective | 6 | 35% | 55 | 30% | 32 | 29% | 46 | 24% | 139 |
| Moderately effective | 4 | 24% | 94 | 51% | 61 | 54% | 111 | 59% | 270 |
| Noteffective | 6 | 35% | 28 | 15% | 16 | 14% | 30 | 16% | 80 |
| Did not respond | 0 | 0% | 1 | 1% | 0 | 0% | 1% | 1% | 2 |
| Total | 17 | 100% | 183 | 100% | 112 | 100% | 188 | 100% | 500 |

The data reveals that the predominant feeling among the 'Secondary school', 'College' and 'University or above' categories was that submitting a complaint to the Commission Against Corruption was moderately effective. That answer was selected by 51%, 54% and 59% of the individuals in those groups, respectively. Among the 'Primary school or below' category, submitting a complaint to the Commission was considered 'Effective' or 'Ineffective' by 35%, while 24% said that it was of 'Moderate effectiveness'.

Respondents' Opinions Regarding Promotional Activities and Ombudsman System of Commission Against Corruption

| | Sufficient | Percentage | Somewhat adequate | Percentage | Insufficient | Percentage | Did not respond | Percentage |
|--|------------|------------|-------------------|------------|--------------|------------|-----------------|------------|
| Promotion of Ombudsman system | 26 | 5% | 205 | 41% | 255 | 51% | 14 | 3% |
| | Yes | | Percentage | | No | Percentage | Did not respond | Percentage |
| Does Ombudsman system need to be improved? | 419 | | 84% | | 70 | 14% | 11 | 2% |

The data reveals that more than half (51%) of respondents think that the Commission Against Corruption's activities to promote the Ombudsman system are insufficient, while 41% think they are somewhat adequate and 5% think they are sufficient. Some 3% of respondents declined to answer this question. The Commission Against Corruption has the dual functions of countering corruption and administrative illegality, and the data above indicates that the Commission's anti-corruption function has been more strongly promoted to the public than the function of countering administrative illegality, and that the image of combating corruption is clearer than that of fighting administrative illegality. Furthermore, 84% of respondents think that there is still room for improvement in the Commission's implementation of the Ombudsman system.

(3) Respondents' knowledge of Ombudsman system of Macao

Respondents' Knowledge of Ombudsman System of Macao

| | Yes | % | No | % | Did not respond | Percentage | Total |
|-----------------------------------|-----|-----|-----|-----|-----------------|------------|-------|
| Understand Macao Ombudsman system | 96 | 20% | 402 | 80% | 2 | 0% | 500 |
| Understand the term 'Ombudsman' | 30 | 6% | 457 | 91% | 13 | 3% | 500 |



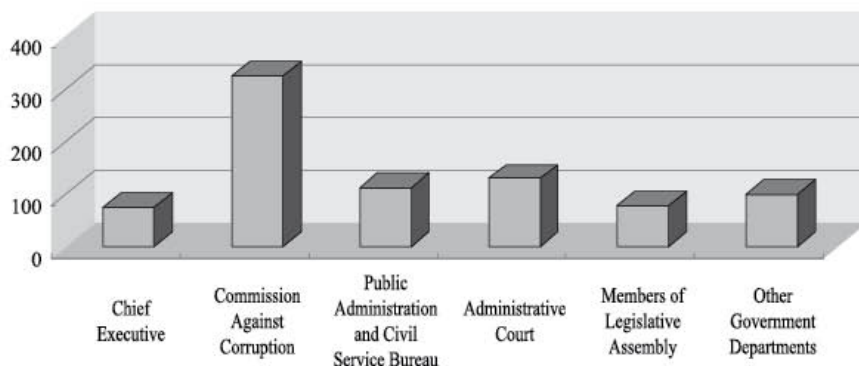
The above data reveals that 80% of respondents do not understand the Macao Ombudsman system, and that 91% of respondents do not know the word 'Ombudsman'.

Here, we can summarise that of the 500 respondents, 37% had a secondary school education, 22% had a college education and 38% had a university education or above. That means that more than 50% of the respondents had 'college' or 'university or above' education, but still 80% of them did not understand Macao's Ombudsman system and 91% did not know the word 'Ombudsman'. This indicates that respondents have a severely limited knowledge of Macao's Ombudsman system.

**Departments that Respondents think can Conduct Ombudsman Function
(multiple answers permissible)**

| | Individuals | Percentage |
|--|-------------|-------------|
| Chief Executive | 76 | 9% |
| Commission Against Corruption | 328 | 40% |
| Public Administration and Civil Service Bureau | 113 | 14% |
| Administrative Court | 131 | 16% |
| Members of Legislative Assembly | 79 | 10% |
| Other Government Departments | 101 | 12% |
| Total | 828 | 100% |

Departments that Respondents think can conduct ombudsman function (Percentage)



The data in the table above shows that 40% of respondents, the highest percentage, feel that the Commission Against Corruption is the organisation that conducts the Ombudsman function. This was followed by the Administrative Court, the Public Administration and Civil Service Bureau and members of the Legislative Assembly, which constituted 16%, 14% and 10%, respectively. Although most of the respondents knew that the Commission Against Corruption can investigate administrative complaints, more than 25% still thought that the Administrative Court and members of the Legislative Assembly were the organisations that investigated administrative complaints. This indicates that respondents did not have a clear concept and sufficient knowledge of the Ombudsman system.

8. Conclusion - Strengths and Shortcomings of Macao SAR Ombudsman System

Eighteen years have passed since the establishment of the High Commission Against Corruption and Administrative Illegality (ACCCIA) in 1990, and nine years have passed since the establishment of the Commission Against Corruption. During this period, Macao's social and political environment has undergone significant change. Under the current Ombudsman system, combined with the results of the work of the Commission Against Corruption and the knowledge of citizens regarding the work of the Ombudsman, we can, at the system level and at the implementation level, arrive at certain conclusions:

8.1 Independent execution of duties

The Ombudsman system of Macao inherited some of the characteristics of the Portuguese Ombudsman system and operates independently as provided under the provisions of the Basic Law of the Macao Special Administrative Region. The Commission Against Corruption of Macao, in contrast with its predecessor – the High Commission Against Corruption and Administrative Illegality—possesses a legal position conferred upon it by law. Conducting supervision of administrative bodies and acting as a supervisor outside the administrative power is in conformity with the basic concept of the Ombudsman system. The organisation of the Commission Against Corruption gives full play to the characteristics of the Ombudsman system and meets the basic requirements of a modern Ombudsman system.



8.2 Functions of Ombudsman

Although the functions of the Ombudsman may differ somewhat under the different types of Ombudsman systems, in general their function encompasses supervision of the activities of administrative bodies and their staff to ensure that the fundamental rights of citizens are not infringed upon by public power.

Macao's Commission Against Corruption essentially conforms to the feature of Ombudsman system but besides having the normal functions of an Ombudsman such as supervising the activities of administrative bodies and their staff and ensuring that the fundamental rights of citizens are not infringed upon by public power, it initiates and conducts actions to prevent corruption and fraudulent behaviour and investigates, with due respect to penal procedure legislation, corrupt and fraudulent acts by public servants. It undertakes investigations and enquiries with regard to acts of corruption and fraud practised in relation to electoral registration and pertaining to the elections of members of the institutions of the Macao Special Administrative Region, with due respect to the penal procedure legislation. We understand that administrative illegality is frequently tied to corruption on the part of public officials; however, analysed from an overall perspective, the Ombudsman function of the Commission Against Corruption does not stand out; that is to say, in Macao's Ombudsman system there does not exist one sole entity whose sole function is purely to supervise the activities of administrative bodies and their staff to ensure that the fundamental rights of citizens are not infringed upon by public power.

In addition, according to current international trends, the protection of human rights has become a universal value pursued by the international community as well as the principal expression of modern democratic society. The Ombudsman system, besides conducting administrative supervision and guaranteeing the legality of government work, seeks to constantly strengthen the role of Ombudsman in the protection of human rights, as stated in the internationally recognised Paris Principles. Defined in 1991 at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights, they proclaimed that the principal task of human rights organisations was to independently exercise their function and receive complaints from the people. Macao's Commission Against Corruption has not given prominence to this aspect of its work; in particular, in the area of protecting human rights, it has not played the role that it should have.

8.3 Supervisory authority and capability

Although the recommendations and suggestions of the Commission Against Corruption are not binding, judging from several years of data regarding the Commission's work as well as the opinions of citizens, the Commission has nevertheless basically achieved the task of maintaining the fairness and justness of the law in correcting illegal actions by the government. In other words, the work of the Commission has essentially achieved positive results.

Each year, the Commission adeptly handles a large volume of complaints from citizens. It is legally empowered to investigate, on its own initiative or in response to a request, cases of infringement upon the rights and interests of citizens resulting from failure on the part of administrative institutions to follow proper procedure, or from their delaying or failing to process legal and reasonable applications by the public, or actions on their part that are unreasonable, and even malfeasant. It provides legal opinions and recommendations, and can ask the investigated agency to correct or otherwise resolve any problems that are discovered.

At the same time, if an investigation reveals that a complaint lacks factual basis or fails to conform to fact, the Commission can either reject the complaint or openly report the details of the case in a public announcement. In this way, it maintains the impartiality and justness of the law.

In addition, the Commission's administrative supervision helps improve the management capabilities of public administration. The functions of the Macao Government are constantly increasing and the ranks of its public servants continually expanding. This makes it difficult to avoid poor administration and inconsistency in government enforcement of the law. However, the administration's internal supervisory mechanism is sometimes incapable of effectively fulfilling its supervisory function, thus the Commission Against Corruption that executes external oversight of administrative power via non-judicial means can discover problems through investigation. In particular, when the Commission Against Corruption has understood the causes of problems, it offers recommendations and advice to the administrative agencies so that similar actions can be avoided in the future. This effectively corrects and prevents improper behaviour by administrative agencies and increases the efficiency of the administration.



In its Ombudsman work, the Commission Against Corruption improves the public administration in respect of the moral standards of the public administration, the work procedures of administrative institutions as well as the daily operations and policies of administration.

8.4 Communication with citizens and public promotion

The Commission Against Corruption has the legal authority to investigate complaints received from the public, or to initiate reviews of specific systems. Through its work, the Commission can identify problems in operations in government and provide related recommendations and opinions, assisting, in this way, the government to provide society with a more satisfactory service.

On the other hand, when the Ombudsman in the course of investigation clarifies how a complaint is unfounded in part or in whole, it helps advance the complainant's comprehension of the administrative agency in question. Through its explanations to the public, it helps further knowledge and understanding of the government's work and reduces the public's misunderstanding about what the government does. In other words, the Ombudsman can to a certain degree become a bridge for strengthening communication between the administrative agency and the public, and enhance communication and understanding between the administration and the public. In addition, through effective promotion in the community, it can enable the public to understand their rights and interests, and effectively prevent and correct illegal behaviour by government that harms its citizens.

Chapter 4

Supervisory System of Taiwan

1. History and Development of Taiwan's Supervisory System

1.1 History of Taiwan's Control Yuan ⁴⁴ (1925 - 1992)

(1) Period of quasi-judicial organs (1925 - 1947)

The history of Taiwan's Control Yuan can be traced to the period of the Guangzhou National Government of the Kuomintang. At the time, the constitution of the Republic of China was based on the 'five-power constitution' introduced by Dr. Sun Yat-sen, who drew on the Western system of checks and balances between legislative, executive and judiciary powers, and added branches corresponding to imperial China's Yushi Jianguan (Censorate) system and the civil service examination system. In addition to the administrative, legislative and judicial branches of government, the Kuomintang Government also exercised a supervisory branch and an examination branch. The supervisory branch closely imitated the role of the pre-Republic Yushi Jianguan system, under which censors supervised all other officials, and 'remonstrance officials' monitored the emperor.

The years 1925 to 1928 were a formative period for the Control Yuan. In June 1925, the Political Committee of the Kuomintang Central Executive Committee adopted a resolution to establish a supervisory body. In July of the same year, the Guangzhou National Government was established. It promulgated the *Organic Law of the Control Yuan* and on 1st August the Control Yuan was formally established.

The function of the Control Yuan of this period was to supervise the actions of officials of the administrative and judicial organs of the Kuomintang Government. It was responsible for monitoring officials and auditing post and telecommunications, transport, taxation and currency, as well as for investigations and inspections. It had unlimited access to the official correspondence and account books of all government bodies and could investigate at any time when it suspected a breach of law or duty. It also had the power to hear petitions from the public and directly rectify the illegal actions of officials, as well as initiate legal action in response to breaches of law or duty by officials. From October 1926, the Control Yuan also gained the authority to hear cases of dereliction of duty and to reprimand and punish officials.

44 *The Past, Present and Future of Taiwan's Control Yuan*, Zhou Shengchun, Zhu Dan, Journal of Zhejiang University, Volume 8, 3rd Edition, September 1994, p.60 - 64



Following the foundation of the Republic of China, the government in Beijing, referring to the division of the branches of government as implemented in Western nations, gave parliament the power of impeachment. With the completion of the Northern Expedition in 1928, the country was united and the Kuomintang Government began implementing the five-power constitution. In February 1928, it established an Auditing Yuan. In February 1931, the Control Yuan was established and the Auditing Yuan was downgraded to the Ministry of Audit and was subordinated to the Control Yuan, which became the highest supervisory organ of the national government.

The years from 1928 to 1947 were a period of gradual formation and maturation for the Control Yuan. After Zhang Xueliang of Manchuria declared unification with the Nationalist Government in 1928 – an event commonly known as the Flag Changing in the North-east – a period of stable government ensued. In October of that year, the Central Standing Committee of the Kuomintang promulgated the *Organic Law of the National Government of the Republic of China*, which stipulated that the Control Yuan was the highest supervisory organ in the ‘Five Yuan branch system’ and that it was subject to oversight and guidance from the people and orders from the National Government.

At its head, the Control Yuan had a president that managed the overall affairs of the body. Initially, the President of the Control Yuan was appointed and dismissed by the National Government based on the recommendation of the Chairman of the National Government and was directly responsible to that person. From 1931 to 1943, during which period Chiang Kai-shek was not the Chairman of the National Government, the President of the Control Yuan was appointed and recalled by the Central Executive Committee of the Kuomintang and was responsible to it. Internally, the Control Yuan formed a Control Yuan Plenary Meeting comprising a supervisory committee chaired by the President. The Control Yuan divided the country into supervisory districts, each assigned with a supervisor that toured the district conducting supervisory activities. The Ministry of Audit came under the Control Yuan. During this period, the powers of the Control Yuan included impeachment, censure, audit, inspection, recommendation and the submission of proposals on matters within the sphere of its functions in the Legislative Yuan.

With regard to its nature, position, area of supervision, recruitment of personnel and acquisition of powers, the Control Yuan was an internal government organ between 1925 and 1947 that was the highest supervisory authority exercising supervision over administrative, judicial and other bodies.

It was a direct offspring of Dr. Sun Yat-sen's theories of the four powers of the people—the right to vote, the power to recall, the power to change old laws and the power to create new laws—and five branches of government. Essentially, however, its foundation was still profoundly rooted in the society of that time. The Qing and Warlord governments had been toppled one after the other but the old feudal influences remained strong. With the tradition of autocratic rule still difficult to eradicate, democratic political systems could not emerge to play their role in the effective supervision of the government. But since effective supervision of the government is a constant requirement, the only feasible option was to temporarily continue to use the old methods; that is, to set up such institutions as the Supreme Censor, Censorate and Central Supervisory Office, the Control Yuan, in supervising the various government agencies and their staff.

(2) Control Yuan as representative body and quasi-judicial organ (1947–1992)

The Constitution of the Republic of China promulgated in 1947 contained new provisions regarding the nature, position, recruitment of personnel, area of supervision and powers of the Control Yuan. The constitution was also formulated based on the political theory of Dr. Sun Yat-sen. Under its provisions, the Control Yuan continued to be the country's highest supervisory body but at the same time, under Interpretation No. 76 of the Justices of the Constitutional Court, the National Assembly, the Legislative Yuan and the Control Yuan, were jointly the equivalent of a 'Congress' as found in democratic countries. This made the Control Yuan one part of the nation's 'Congress'. In addition to the legal powers of impeachment, audit, censure and investigation, the Control Yuan gained two new political powers. The first was the power to propose corrective measures. Under the new constitutional provision, the Control Yuan could propose corrective measures directly to the Executive Yuan or its subordinate organs and public servants for improvement after these measures were examined and passed by the relevant committees of the Control Yuan. The second additional power was that of consent.

The Control Yuan, as the highest supervisory organ and a part of 'Congress', was a central government body representing voters and the popular will through its exercise of the supervision of government agencies and their staff, personnel, assets, and administration, and other legally stipulated matters. Its object of supervision had expanded to include the head of state—the President—and Vice President, and virtually included all government agencies and all levels of officialdom. The scope of supervision of the Control Yuan not only included the office of the President, the Executive Yuan, the Judicial Yuan and the Examination Yuan, as well as the civil servants attached to them (for example, personnel



appointed by judges) but could supervise staff of the Legislative Yuan and the National Assembly, as well as the staff of publicly-operated organisations, publicly-owned institutions and other personnel appointed by the government. The Control Yuan also had the authority to audit or investigate the operating expenses of the Legislative Yuan, National Assembly and regional assemblies, and could receive accusations from normal citizens against military personnel as well as complaints from rank-and-file soldiers or lower-ranking officers regarding unfair treatment.

The promulgation and implementation of the constitution described above resulted in the Control Yuan changing from a quasi-judicial body into a quasi-judicial and central representative body. As a result, the Control Yuan entered a new stage of development. However, the *Temporary Provisions Effective during the Period of National Mobilisation for Suppression of the Communist Rebellion* passed in 1948 and the *Order of Martial Law* issued in 1949 again made the Control Yuan's constitutionally designated status as representative body and a part of the nation's congressional structure largely legal and theoretical, with minimal basis in reality. This incongruity between name and reality would remain in place until 1986.

1.2 Current state of development of Taiwan's Control Yuan (1992 - 1994)

In May 1992, Taiwan's Provisional National Assembly approved constitutional amendments that changed the Control Yuan's nature, position, powers and recruitment of personnel. The revised constitution stipulated that the Control Yuan no longer had power of consent and that its political authority was greatly reduced. Members as well as the President and Vice President of the Control Yuan would no longer be elected through indirect elections but would be nominated by the President and appointed via the approval of the National Assembly. The Control Yuan would also only be able to instigate impeachment of the President with great difficulty, subject to substantial influence by the President. Members of the Control Yuan lost the special privilege of not being held responsible outside the Yuan for opinions expressed or votes cast in the Yuan, which means they lost their right to immunity of speech. They also lost the privilege—except in cases of *flagrante delicto*—of being arrested or detained only with the permission of the Control Yuan. The amended provisions also required that the members of the Control Yuan be above party politics and affiliation and independently exercise their authority in accordance with law. This indicates that the Control Yuan was evolving from a representative and quasi-judicial body into a judicial body. After 1992, the evolution of the Control Yuan was closely tied to the development of social and political institutions. As Taiwan gradually developed towards parliamentarianism, the checks and balances function of the various legislative bodies, in particular the Legislative Yuan, with respect to the executive bodies gradually strengthened. With the *Sixth*

Constitutional Amendment in April 2000, the nomination of members of the Control Yuan was made the responsibility of the President, with the Legislative Yuan exercising power of consent. At the same time, the power to impeach the President and Vice President was transferred from the Control Yuan to the Legislative Yuan. In the final constitutional amendment (7th constitutional amendment), the power to impeach the President and the Vice President were changed to 'The grand justices of the Judicial Yuan shall, in addition to discharging their duties in accordance with Article 78 of the *Constitution*, form a Constitutional Court to adjudicate matters relating to the impeachment of the President or the Vice President, and the dissolution of unconstitutional political parties.' This steady revision of the constitution reveals that the primary objective was to expand the powers of the presidency and limit the supervisory powers of the Control Yuan by constantly strengthening presidential powers and decreasing legislative power, which can be seen in a series of constitutional amendments that rescinded the Control Yuan's supervision over the President. This further increased the influence of the President by entitling the President to nominate members of the Control Yuan, rather than having them nominated by municipal and provincial assembly elections, rescinded the special privileges of the members of the Control Yuan and abrogated the Control Yuan's power of consent over appointments, with nominations made instead by the President and approved by the Legislative Yuan.

Owing to limitations stemming from economic and political conditions in Taiwan, Taiwan has not fully realised Western-style parliamentary democracy and the supervision of government is still far from being sufficiently robust. The Control Yuan therefore still has a vital role to play and would seem for the moment to be irreplaceable. For this reason, the fact that the Control Yuan was transformed from a representative and quasi-judicial body into a judicial body instead of being eliminated is fully understandable. However, although the Control Yuan's position following Taiwan's constitutional revisions was generally referred to as being that of a quasi-judicial body, 'quasi-judicial body' designates an independent council possessing judicial authority. This is inconsistent with the characteristics of the Control Yuan. It is precisely for this reason that the Control Yuan's own description of itself states, 'the Control Yuan is not a quasi-judicial organisation. Generally speaking, the term 'quasi-judicial organisation' refers to an administrative organisation of consultation that in addition to its administrative power possesses incomplete judicial power, such as the rental and tenancy mediation committee of a township or a county'. According to the *Farmland Rent Reduction Statute*, all disputes about farmland rents must be mediated first by a township rental and tenancy committee. If the township committee fails to reach a settlement, the case should be referred to the county committee for continuing mediation. Only when the dispute cannot be settled by mediation, can it be referred to a judicial organisation for resolution. If the mediation succeeds, the settlement is as valid as a verdict passed down by a court, so the dispute over private rights can be declared settled. Therefore, such rental and tenancy committees are what we mean by the term 'quasi-judicial organisations'. 'Similarly, the mediation committees of



townships are also quasi-judicial organisations. But the Control Yuan is the highest supervisory body of the nation and exercises the powers of supervision provided by the constitution and related laws. It is neither an organisation of joint consultation, nor does it possess incomplete judicial power. Consequently, the Control Yuan is not a quasi-judicial organisation'.⁴⁵

2. Current Structure and Operational Mechanism of Taiwan's Control Yuan

2.1 Organisational Structure of Taiwan's Control Yuan

The organisational norms of Taiwan's Control Yuan are primarily laid out in Taiwan's constitution, constitutional amendments, the *Organic Law of the Control Yuan* and other relevant laws, while the supervisory authority of the Control Yuan is primarily exercised through its members. Under current laws, the Control Yuan has 29 members, including a President and Vice President, all of whom have a term of office of six years and are nominated by the President, with the consent of the Legislative Yuan.⁴⁶ In addition, the President takes charge of the affairs of the Control Yuan and supervises subordinate organisations. The Vice President acts in the place of the President if the President is unable to exercise his or her office.⁴⁷

Requirement for members of the Control Yuan: Members of the Control Yuan must be at least 35 years of age and possess one of the following qualifications:

- (1) Have served more than one term as member of the National Assembly or more than two terms as member of a provincial or municipal assembly, and have an outstanding reputation.
- (2) Have served more than ten years as an official of the judiciary, have served as a judicial officer in a judicial organisation higher than the High Court or the High Prosecutor's Office, and have outstanding achievements.
- (3) Have served as a public servant for more than ten years and have outstanding achievements.
- (4) Have served as a university professor for more than ten years and have an outstanding reputation.

⁴⁵ Refer to website of Control Yuan of Taiwan: The Control Yuan Q & A.

Website address: http://www.cy.gov.tw/businessqa/businessqa_15.asp?bar1=12&bar2=2.

⁴⁶ Clause 2 of Article 7 of *Additional Articles of the Constitution*.

⁴⁷ Article 6 of *Organic Law of Control Yuan*

- (5) Have passed the senior qualification examination for professional and technical personnel, have practised in the profession for more than fifteen years, and have an outstanding reputation.
- (6) Be incorruptible, have rich political experience or have managed news or cultural enterprises, and have an outstanding reputation.

The term of the service of the members of the Control Yuan ends on the day the succeeding members of the Control Yuan assume office.⁴⁸

According to relevant laws, members of the Control Yuan are not permitted to concurrently hold any other public office or engage in any profession.⁴⁹ They must also be beyond party affiliation and independently exercise their powers and discharge their responsibilities in accordance with the law.⁵⁰ In exercising their duties, the members of the Control Yuan shall, in certain special situations, voluntarily recuse themselves or be legally required to recuse themselves.⁵¹ In addition, under the provisions of the 1992 constitutional amendments, members of the Control Yuan do not possess the status of legislative representatives, and their rights to immunity of speech and immunity from arrest were also rescinded.

2.2 Operational model of Control Yuan

(1) Control Yuan Plenary Meeting

According to the *Organic Law of the Control Yuan and Rules for Meetings of the Control Yuan*, the Control Yuan meeting is formed by the President, Vice President and all the members of the Control Yuan and is convened monthly by the President.⁵² Extraordinary meetings may be convened under the direction of the President or upon the proposal of at least a quarter of the members, and shall be chaired by the President.⁵³ The Vice President

48 Clause 1 of Article 3 of *Organic Law of Control Yuan*.

49 Article 103 of *Taiwan Constitution*; Articles 14-15 of *Public Service Act*.

50 Clause 2 of Article 7 of *Additional Articles of the Constitution*.

51 Article 113 of *Control Law*; Article 3 of *Enforcement Rules of Control Law*; Articles 14-17 of *Public Service Act*; Articles 4-6 of *Act on Recusal of Public Servants Due to Conflict of Interest*.

52 Article 7 of *Organic Law of Control Yuan*, 'The Control Yuan meeting is formed by the President, Vice President and all the members of the Control Yuan and is chaired by the President of the Control Yuan'. Article 2 of *Rules for Meetings of the Control Yuan*, 'The Control Yuan meeting (hereafter referred to as the meeting of the Yuan), in accordance with Article 7 of the *Organic Law of Control Yuan*, is formed by the President, Vice President and all members of the Control Yuan.

53 Article 4 of *Rules for Meetings of the Control Yuan*. Meetings of the Yuan are held each month. If the President or a quarter of the members feel it is necessary, an extraordinary meeting may be held.



acts as chairperson if the President is unable to attend; if the Vice President is unable to attend, the members in attendance jointly select one member to act as chairperson.⁵⁴ A quorum for a Yuan meeting is half of the membership.⁵⁵ Proposals must be submitted in writing.⁵⁶ An extempore motion may be tabled if it is seconded by two members or more, and motions are carried on a simple majority of members present. An annual meeting is held within two months after the year end to review the work done in the year and the performance of the government.⁵⁷

According to the provisions of Rules for Meetings of the Control Yuan, the following matters should be addressed at Control Yuan Plenary Meetings:

- i) Draft laws to be submitted to the Legislative Yuan;
- ii) Matters concerning Control Law and ordinances to be reviewed;
- iii) Auditing reports on budget accounts of national and local governments under deliberation;
- iv) Study and improvement concerning powers of impeachment, censure and audit;
- v) Study and improvement of corrective measures to be tabled;
- vi) Committee reports;
- vii) Matters passed down by President of Yuan;
- viii) Matters raised by members of Yuan, and;
- ix) Other important matters.⁵⁸

(2) Secretary General

The Secretary General, under the orders of the President, directs the routine operations of the Yuan as well as the command and supervision of its staff. Under the Secretary General, there is a Deputy Secretary General (grade level 14) who, on the orders of the President, helps the Secretary General conduct his or her duties.⁵⁹

- (3) Control Yuan consists of Department of Supervisory Operations, Department of Supervisory Investigation, Department of Asset Disclosures by Public Servants, Department of Secretariat, General Planning Office, and Information Office.

⁵⁴ Article 6 of *Rules for Meetings of Control Yuan*.

⁵⁵ Article 5 of *Rules for Meetings of Control Yuan*.

⁵⁶ Article 10 of *Rules for Meetings of Control Yuan*.

⁵⁷ Article 5 of *Rules for Meetings of Control Yuan*.

⁵⁸ Article 3 of *Rules for Meetings of Control Yuan*.

⁵⁹ Article 9 of *Organic Law of Control Yuan*.

These departments and offices, which may be subdivided, supervise the following:

- i) Affairs related to receiving, processing and submitting of proposals for petitions filed by people;
- ii) Affairs related to censure and impeachment;
- iii) Affairs related to investigation and joint investigation;
- iv) Affairs related to asset reports filed by public servants;
- v) Affairs related to meeting minutes, editing and issuing of gazettes;
- vi) Affairs related to receiving, maintaining and delivering documents and using seals;
- vii) Affairs related to treasury and general business;
- viii) Affairs related to drawing up of general plans, research, development, and evaluation;
- ix) Affairs related to planning and management of information systems;
Affairs related to co-ordination, liaison and news releases;
- x) Affairs concerning other related matters.⁶⁰

In addition, the Control Yuan has established, under the Department of Supervisory Investigation, the positions of investigation officials, investigation specialists and investigators, who, under the command of the Secretary General, help members of the Control Yuan exercise their supervisory powers. These investigation personnel are allocated by educational background, experience, ability and speciality into five groups - namely, the internal and minority nationality group; the judicial, prison administration, police, fire control and asset disclosure group; the financial and economic group; the communication and procurement group; and the diplomatic, overseas Chinese, national defence, intelligence, education and culture group. According to their speciality and function, these groups assist members of the Control Yuan in their investigations.

- (4) The Control Yuan also has an accounting office, a statistics office, a personnel office and an ethics office, which each discharge their respective duties according to law. The accounting office, statistics office personnel office and ethics office each has one director. Additional necessary personnel are provided within the limits stipulated in the *Organic Law of the Control Yuan*.⁶¹
- (5) Committees

Article 96 of Taiwan's constitution provides that the Control Yuan may, taking into account the work of the Executive Yuan and its various ministries and commissions, establish a certain number of committees to look into their activities with a view to ascertaining whether or not they are guilty of violation of the law or neglect of duty.

60 Article 10 of *Organic Law of Control Yuan*; Articles 9, 11 - 16 of *Directives for Operational Procedure of Control Yuan*.

61 Article 13 of *Organic Law of Control Yuan*; Articles 17 - 20 of *Directives for Operational Procedure of Control Yuan*.



According to Article 2 of the organic law of the committees of the Control Yuan, the Control Yuan has currently established the following seven committees:

- i) Committee on Internal and Minority Nationality Affairs is responsible for supervising Ministry of the Interior; Mainland Affairs Council, Executive Yuan; Central Election Commission; Consumer Protection Commission, Executive Yuan; Council of Indigenous Peoples, Executive Yuan; Coast Guard Administration, Executive Yuan; Council for Hakka Affairs, Executive Yuan; and Mongolian & Tibetan Affairs Commission.
- ii) Committee on Foreign and Overseas Chinese Affairs responsible for supervising Ministry of Foreign Affairs and Overseas Compatriot Affairs Commission.
- iii) Committee on National Defence and Intelligence Affairs responsible for supervision of Ministry of National Defence (with exception of Bureau of Military Justice), National Security Bureau and Veterans Affairs Commission of Executive Yuan.
- iv) Committee on Financial and Economic Affairs responsible for supervising Ministry of Finance; Central Bank of Republic of China (Taiwan); Central Mint; Central Engraving and Printing Plant; Directorate-General of Budget, Accounting and Statistics, Executive Yuan; Ministry of Economic Affairs; Council for Economic Planning and Development, Executive Yuan; Fair Trade Commission, Executive Yuan; Council of Agriculture, Executive Yuan; Council of Labour Affairs, Executive Yuan; Environmental Protection Administration, Executive Yuan; and Department of Health, Executive Yuan.
- v) Committee on Educational and Cultural Affairs responsible for supervising Ministry of Education; Council for Cultural Affairs, Executive Yuan; National Palace Museum; National Science Council, The Executive Yuan; Government Information Office, Executive Yuan; National Youth Commission, Executive Yuan; Central Personnel Administration Executive Yuan; Research, Development and Evaluation Commission, Executive Yuan; Atomic Energy Council, Executive Yuan; and Sports Affairs Council, Executive Yuan.
- vi) The Committee on Communication and Procurement Affairs is responsible for supervising Ministry of Transportation and Communications, and Public Construction Commission, Executive Yuan.
- vii) Committee on Judicial and Prison Administration Affairs responsible for supervising Ministry of Justice and Bureau of Military Justice, Ministry of National Defence.

Matters discussed by committees include:

- i) Matters assigned by Control Yuan meeting;
- ii) Matters tabled by committee members;
- iii) Matters referred by other committees;
- iv) Matters assigned by President of Yuan.⁶²

62 Article 5 of *Organic Law for Various Committees in Control Yuan*.

The committees are organised by Control Yuan members. Each member can join no more than three committees but can participate in other committees as a non-voting member. A committee cannot comprise more than 14 members,⁶³ who should elect a convener from among themselves to handle the committee's day to day business⁶⁴. The members of a committee are called into session by the convener, who serves as chairperson. An extraordinary meeting may be held upon the proposal of at least three members⁶⁵. A joint session may be held to handle a case that involves two or more committees if the relevant committee conveners agree.⁶⁶

Each committee is staffed by two secretaries, two or three administrative assistants, and one clerk. The support staff of each committee are to be transferred by the Yuan President in consideration of the workload of the committee.⁶⁷

The Control Yuan has also established the following five special committees:

- i) Committee on Statutory Studies;
- ii) Committee on Consultation;
- iii) Committee on Discipline for Control Yuan Members;
- iv) Committee on Anti - corruption;
- v) Committee on Human Rights Protection.⁶⁸

With the exception of the Committee on Consultation, the special committees are organised by members of the Control Yuan. They are charged with the study of supervisory statutes, deliberation on disciplinary cases involving members of the Control Yuan, making recommendations regarding investigations into human rights infractions, deliberation on investigations related to human rights, deliberation on punishment related to property declarations by public servants, deliberation on matters related to public servants recusing themselves due to conflict of interest, and the study of human rights guarantees. Each of these special committees has a secretary, and supporting staff are assigned by the Control Yuan as necessary.

Clause 3 of Article 52 of the *Petition Law* provides that the Control Yuan shall set up a committee for the deliberation of petitions. In addition, Article 2 of the *Organic*

63 Article 3 of *Organic Law for Various Committees in Control Yuan*.

64 Article 4 of *Organic Law for Various Committees in Control Yuan*.

65 Article 2 of *Procedural Regulations for Various Committees in Control Yuan*.

66 Article 8 of *Organic Law for Various Committees in Control Yuan*.

67 Article 9 of *Organic Law for Various Committees in Control Yuan*.

68 Clause 3 in Article 2 of *Organic Law for Various Committees in Control Yuan*.



Regulations of the Petition Deliberation Committee of the Control Yuan provides that this committee shall have nine to 13 members with the Vice President of the Control Yuan serving as ex officio member and chairperson. At least half of the committee members are recruited by the Control Yuan President from among impartial personalities, scholars, or specialists in society. The rest are recruited by the President from among members other than those that have served on the committee that handles property declarations from public servants in order to handle petitions on punishment related to assets declarations. The committee has an executive secretary, and other necessary posts are filled by Control Yuan employees concurrently.

(6) Ministry of Audit

Article 104 of Taiwan's constitution states, 'In the Control Yuan, there shall be an Auditor General who shall be nominated and, with the consent of the Legislative Yuan, appointed by the President'. The Auditor General, under the direction of the President of the Control Yuan, is responsible for the overall administration of the ministry and supervises its personnel and subordinate agencies⁶⁹. The Ministry of Audit has one or two Deputy Auditors General to assist the Auditor General in administering the ministry's affairs.⁷⁰ The Ministry of Audit comprises five departments. The First Department supervises the auditing of general public affairs, the Second Department audits national defence expenditure, the Third Department is responsible for auditing special public affairs, the Fourth Department supervises the auditing of state-run corporations and government-owned business organisations, and the Fifth Department is responsible for auditing financial affairs and has under it a re-examination office in charge of reviewing auditing cases and supervising the audit affairs of local government. The ministry also maintains under its direct control the offices of secretarial affairs, general affairs, accounting, statistics, and personnel to fulfil their respective duties.⁷¹

The ministry has established an audit department in every province and provincial-level city, and an audit office in every county and county-level city to audit local governments and their subordinate organisations. The auditing department or office may also audit central government organisations in their area if authorised to do so by the Ministry of Audit. An auditing department or office is also established in specific public organisations, public business organisations and public corporations to audit these organisations.⁷²

69 Article 4-5 of *Organic Law of Control Yuan*; Articles 4 of *Organic Law of Ministry of Audit*.

70 Article 7 of *Organic Law of Ministry of Audit*.

71 Article 6 of *Organic Law of Ministry of Audit*.

72 Article 14 of *Organic Law of Ministry of Audit*.

Currently, the audit system dealing with local government auditing affairs consists of the subordinate agencies of the Ministry of Audit, such as departments of audit in Taipei City and Kaohsiung City, and 20 audit offices in Taiwan province including Keelung City (which also supervises the Kinmen County and Lienchiang County and their auditing affairs), Taipei County, Ilan County, Taoyuan County, Hsinchu County, Hsinchu City, Miaoli County, Taichung County, Taichung City, Chianghua County, Nantou County, Yunlin County, Chiayi County, Chiayi City, Tainan County, Tainan City (also supervises Penhu County in Taiwan Province and its auditing affairs), Kaohsiung County, Pingtung County, Hualien County and Taitung County.

3. Powers and Functions of Control Yuan

3.1 Powers of Control Yuan ⁷³

The Control Yuan, as part of the five-power system, is Taiwan's highest supervisory body.⁷⁴ It is independent of the administrative authority, legislative authority, judicial authority and examination authority, and independently exercises supervisory authority.

Under Article 95, 96 and 97 of the current constitution, and Article 7 of the Additional Articles of the Constitution, the Control Yuan has the authority to impeach, censure, correct, audit and investigate. Under the Control Law, the Control Yuan and its members are entitled to receive written complaints from the public and members may also conduct circuit supervision of regions. Under the *Examination Invigilation Act*, when the government conducts examinations, with the exception of qualification examinations, the Examination Yuan or the testing body should ask the Control Yuan to supply an invigilator.

73 Between 1991 and 2005, Taiwan conducted seven individual stages of constitutional reform. Among the current additional articles to the constitution, those related to the Control Yuan are primarily the following: First, the Control Yuan's consent authority over the members of the Examination Yuan and judges of the Judicial Yuan was rescinded and transferred to the Legislative Yuan. Second, the Control Yuan's impeachment authority toward the president and vice-president was rescinded and transferred to the Legislative Yuan. On the other hand, the increased number of Control Yuan members became themselves subject to impeachment by the Control Yuan. Third, the process for exercising impeachment authority was changed so that three members or more could motion for impeachment and nine members or less were required to review and approve it.

74 Interpretation No. 76 dated April 8, 1957 by the Justices of the Constitutional Court, Judicial Yuan, states that jointly, the National Assembly, Legislative Yuan and Judicial Yuan are the equivalent of the congress in a democratic country. However, Article 15 of the *Additional Articles of the Constitution* dated May 28, 1992 and Interpretation No. 325 dated July 23, 1993 by the Justices of the Constitutional Court stipulate that the Control Yuan is the highest supervisory body and it no longer a representative body.



According to Articles 2 and 4 of the *Act on Property-Declaration by Public Servants*, the President and Vice President, the presidents and vice president of the five yuans, officers of political affairs; senior advisors, policy consultants, and strategy consultants of the Office of the President that are gainful positions; Governors above village (town, city) level elected pursuant to law; and legislators/councillors of the Legislative Yuan/Councils above county (city) level must submit a property declaration to the Control Yuan. Clause 2 of Article 10 of *Act on Recusal of Public Servants Due to Conflicts of Interest* states that the Control Yuan is the organisation in which personnel receive reports of public servant recusal because of conflict of interest. Article 4 of the Political Donations Act states that the Control Yuan receives declarations of political donations.⁷⁵

As described above, the Control Yuan has impeachment, censure and audit authority. It can also put forth motions for corrective measures, receive petitions from the public, conduct circuit supervision, investigate, invigilate, accept disclosures from public servants, and accept and audit political donation declarations. The exercise of these powers begins with investigation and ends with a motion for corrective measures, impeachment or censure.⁷⁶

3.2 Functions of Control Yuan

(1) Acceptance of Petitions

Members of the Control Yuan exercise investigative authority, and their investigations primarily stem from petitions by the public. According to the relevant regulations, the Control Yuan and its members are entitled to receive written complaints from the public.⁷⁷ As petitions are the primary sources for the exercise of control functions and powers, anyone who has detected malfeasance of public servants at central or local level government, or has found a violation of law by the Executive Yuan and its subordinate agencies in government work and public facilities, is entitled to petition or lay accusations before the Control Yuan or its members by submitting a detailed account of facts and related data.⁷⁸ To receive petitions from the public, the Control Yuan has established petition-submission centres to accept and hear petitions from the public.⁷⁹

⁷⁵ *Work Progress Report of Control Yuan*, Control Yuan, Feb. 2007 Edition, p.2.

⁷⁶ Refer to website of Control Yuan of Taiwan: www.cy.gov.tw

⁷⁷ Article 4 of *Control Law*.

⁷⁸ *Brief Report on Work of Control Yuan*, Control Yuan, Feb. 2007, p.2.

⁷⁹ *Theory and Practice of Supervision Right*, Li Shen-yi, Control Yuan, May 2005, Second Edition, p.61.

When a petition is received by the Control Yuan from a member of the public, the petition is reviewed by a member of the Control Yuan who has been assigned the task for that day based on the daily rotation of members assigned to the duty. The member on duty shall, based on the facts contained in a written complaint, decide whether to refer it to the member in charge of investigation, commission the relevant organisation or its superior organisation to investigate, or send a letter to the relevant organisation requesting the submission of additional information, or request the opinion of a committee member handling investigations, or send it for study, or refer it to the corresponding committee, or take other appropriate measures. If the case does not fall within the jurisdiction of the Control Yuan, the complaint is rejected. After processing, the Department of Supervisory Operation of the Control Yuan will make a reply to the petitioner unless the petition is anonymous, lacks substance, or is a petition that has been rejected and raised again without the support of new evidence.⁸⁰

(2) Investigative authority

Articles 95 and 96 of Taiwan's constitution provide the Control Yuan with the power of investigation, which is the linchpin of the powers of control, since it is through investigation that it is possible to uncover details and proof of legal infractions or breach of duty by public servants or administrative agencies, which in turn form the basis of impeachment, censure and corrective measures. The Control Yuan exercises its power of investigation in the following ways: assign a member or members to undertake the investigation, enable its members to investigate on their own motion, or commission an organisation to do so.⁸¹ If a violation of law or misconduct is established, the original investigating member or other members shall initiate a proposal for impeachment or censure. If the case is not too serious, a committee may empower the related organisation to punish the violator directly. If the Control Yuan finds that the Executive Yuan or one of its subordinate organs has done something wrong or any of its measures runs counter to the law, it may propose corrective measures to urge the related organisation to correct itself.⁸²

Objects and scope of investigative authority: (1) National and local public servants (including personnel of the Executive Yuan and its subordinate organisations; support staff of the Judicial Yuan, Examination Yuan and Control Yuan; staff of the Legislative Yuan with

80 *Brief Report on Work of Control Yuan*, Control Yuan, Feb. 2007, p.5.

81 *Exercise of Powers and Functions of Supervisory Authority*, a reference document provided by Control Yuan, adds 'special investigative case study'.

82 *Brief Report on Work of Control Yuan*, Control Yuan, Feb. 2007, p.8.



the exception of legislators; military personnel; and the staff of public-owned companies). (2) Work and facilities of the Executive Yuan and its subordinate organisations. (3) Illegal or treasonous financial actions of government organisations and public-operated enterprises.⁸³

In addition, the Control Yuan, to exercise its supervisory authority, may send Control Yuan members bearing a control certificate or investigation certificate to various agencies, military units and public or private organisations to investigate case materials and other related documents. The heads and other related personnel of the agencies, military units or organisations may not refuse, and if questioning is required they shall respond in detail and sign a written record of the interrogation. When investigators conduct investigations they must notify the relevant parties in writing of the time and location of the interrogation. Investigators may not reveal the content of investigations to outside parties.⁸⁴

(3) Corrective power

Article 96 of Taiwan's constitution stipulates that 'the Control Yuan, according to the work of different subordinate organs of the Executive Yuan, shall establish various committees to supervise their activities with a view to ascertaining whether or not they are guilty of violation of the law or dereliction of duty.' Clause 1 of Article 97 of the *Constitution* states: 'the Control Yuan, based on reviews and resolution by various committees, may propose corrective measures and forward them to the Executive Yuan and its subordinate organs for improvement.' Article 24 of the *Control Law* stipulates that: 'the Control Yuan, after investigating the work and facilities of the Executive Yuan and its subordinate organs, may propose corrective measures to the Executive Yuan or its subordinate organs for improvement after these measures are examined and approved by the related committees'. Article 25 of the same Act and Article 20 of its enforcement rules set out that after receiving a demand for correction, the Executive Yuan or its related organs shall immediately make appropriate improvement or take action and shall reply in writing to the Control Yuan within two months. If it fails to reply to the Control Yuan in time about its improvement and action, the Control Yuan may, through a resolution by its related committees, question in writing or notify the responsible officials of the Executive Yuan or related organs to come to the Control Yuan for questioning. If the Control Yuan deems the reply of the Executive Yuan or related organ's calls for further investigation insufficient it may call upon related organs for explanation or ask the members in charge of the original

83 *Theory and Practice of Supervision Right*, Li Shen-yi, Control Yuan, May 2005, Second Edition, p.77 - 78.

84 Article 26 of *Control Law*.

investigation or investigators to check on the spot. If an executive organ is found to be procrastinating with pretences and refuses to take appropriate action for improvement the Control Yuan may initiate a proposal of impeachment against the head of the organ if the case is established by its investigation.⁸⁵

(4) Impeachment

Impeachment is a vital power of the Control Yuan for ensuring an honest government and rectifying government ethics. Both the *Additional Articles of the Constitution* and the *Control Law* empower the Control Yuan to impeach national and local public servants and personnel of the Judicial Yuan, Examination Yuan and Control Yuan that it considers to be in dereliction of duty or other violations of law. A case of impeachment can be forwarded to the disciplinary agency only after it is proposed by at least two members, reviewed by more than nine other members and approved by at least half of them. If the case involves criminal law or military law, it shall be referred to the competent judicial or military organisation for action according to the law.⁸⁶

Objects and conditions of exercise of impeachment authority⁸⁷

- i) Objects of the exercise of impeachment authority: 1.1 National and local public servants; 1.2 Popularly elected local chief executives (mayors of special municipalities and heads of counties, cities and towns); 1.3 Personnel of the Judicial Yuan, Examination Yuan and Control Yuan; 1.4 retired public servants.
- ii) Offices not subject to impeachment authority: 2.1 President and Vice President; 2.2 Legislators of all levels; 2.3 Employees and temporary staff of all levels of organisations; 2.4 Professors in the employ of public schools.
- iii) Conditions for the exercise of impeachment authority: Under the *Constitution* and the *Control Law*, the conditions for the Control Yuan to impeach local servants or personnel of the Judicial Yuan, Examination Yuan and Control Yuan are the violation of law or dereliction of duty: 3.1 Violation of law refers to the breach of laws and regulations; 3.2 Dereliction of duty refers to all matters which, whether stipulated by law or not, should be paid attention to but were not, or which should be performed but were not, or should not be performed but were, or actions beyond one's authority, regardless of intent or error.

85 *Brief Report on Work of Control Yuan*, Control Yuan, Feb. 2007, p.11 - 12.

86 *Brief Report on Work of Control Yuan*, Control Yuan, Feb. 2007, p.10.

87 *Theory and Practice of Supervision Right*, Li Shen - yi, Control Yuan, May 2005, Second Edition, p.125 - 132.



(5) Censure⁸⁸

The power of censure is used when the Control Yuan deems that a lawbreaking or derelict public servant deserves suspension from duty or should be dealt with by other immediate measures. The relevant regulations provide that a case of censure shall be reviewed by three or more members of the Control Yuan other than the initiating member(s) and approved by at least half of them, and that the case shall be referred to the censured official's superior for action. If the case involves violation of the criminal code or military law, it shall be referred to the competent judicial or military organisation for action according to the law.⁸⁹ If a superior or official in charge does not handle a censure case in accordance with the previous article, or if the action taken is considered inappropriate by two or more members of the Control Yuan, the censured public servant may be impeached. If the superior or the official in charge of the censured public servant does not, after receiving the censure notice, punish him or her, the superior official or the official in charge shall be held in dereliction of duty.⁹⁰

(6) Circuit supervision and inspection

Article 3 of the *Control Law* says that members of the Control Yuan may conduct circuit supervision in different areas⁹¹. This authority of the Control Yuan is established not under the *Constitution* but under the *Control Law*. It differs from investigative authority in that investigative authority targets specific cases and venues, such as government organisations. Circuit supervision does not target any specific case.⁹² When on supervisory tours, the tasks of the Control Yuan are to oversee the:

- i) Execution of a government agency's administrative programmes and budget;
- ii) Fulfilment of various major policies;
- iii) Performance of public servants;
- iv) Implementation of cases of corrective measures;
- v) Conditions of society and people's livelihood;
- vi) Handling of people's complaints and other related matters.⁹³

88 *Brief Report on Work of Control Yuan*, Control Yuan, Feb. 2007, p. 11.

89 Article 19 of *Control Law*.

90 Article 22 of *Control Law*.

91 Article 3 of *Control Law*.

92 *Legal Analysis and Discussion of Taiwan's Administrative Supervisory Organs*, Zhang Qilu, Zhang Wenhao, Ye Yizhang, *China Administration* May 2006, No. 77 p.112.

93 Article 3 of Procedures for Circuit Supervision by Control Yuan.

The objectives of circuit supervision are to:

- i) Inspect for violation of law or dereliction of duty in government work and public facilities of the Executive Yuan and its subordinate agencies;
- ii) Inspect for violation of law or dereliction of duty by national or local public servants;
- iii) Inspect the execution of budgets, financial audits and annual financial reports by government agencies.⁹⁴

The supervisory tour covers both central and local government agencies.⁹⁵

- i) The central level includes the Executive Yuan, the Judicial Yuan, the Examination Yuan and their subordinate organs. The supervisory tours of the central government are conducted by Control Yuan members assigned by related committees in accordance with their necessities. The supervision and inspection of the Executive Yuan are conducted jointly by the conveners of various committees with the Committee on Internal and Minority Nationality Affairs as the organiser.
- ii) The supervisory tours of local governments embrace provincial governments, governments of special municipalities, and county and municipal governments and their subordinate organisations. The supervisory tours of local governments are divided into eleven zones of responsibility according to the administrative division (i.e.) province, county, city. Supervisory team members are decided upon at the plenary meeting held every December and are rotated annually.

(7) Invigilation⁹⁶

The *Examination Invigilation Act* provides that when the Examination Yuan holds examinations, except the qualification examinations, it shall invite the Control Yuan or its field organs to dispatch invigilators. If the examination is conducted by organising an examination committee, the Control Yuan shall be asked to appoint members to serve as invigilators. If the examination is conducted by officials of the Examination Yuan or by a related organisation it entrusts, the invigilation may be conducted by persons dispatched by the supervisory organ of the locality. If irregularities, such as paying bribes or exchanging test papers, are detected, the invigilators shall report the case to the Control Yuan for action according to law. Upon conclusion of the examination the invigilators shall file a report to the supervisory organisation.

⁹⁴ Article 2 of Procedures for Circuit Supervision by Control Yuan.

⁹⁵ *Brief Report on Work of Control Yuan*, Control Yuan, Feb. 2007, p.13.

⁹⁶ *Brief Report on Work of Control Yuan*, Control Yuan, Feb. 2007, p.13.



(8) Audit authority

The Control Yuan exercises audit authority,⁹⁷ which is an important component of supervisory authority.⁹⁸ The Control Yuan has an Auditor General nominated by the President with the consent of the Legislative Yuan.⁹⁹

Audit authority consists of seven duties and functions;

- i) Supervision of implementation of budget;
- ii) Certification of receipt and payment orders;
- iii) Examination of financial activities and certification of annual financial reports;
- iv) Inspection of irregularities and dereliction of duty in financial activities;
- v) Evaluation of performance of financial activities;
- vi) Judgement of financial responsibilities;
- vii) Performance of other audit works stipulated by other laws.¹⁰⁰

Audit authority is exercised by the Ministry of Audit of the Control Yuan through the audit of the finances of the government and its subordinate organisations.¹⁰¹ The power of audit is exercised by auditors independently, free from any interference.¹⁰² The Legislative Yuan must provide its budgets to the Control Yuan. The Control Yuan directly scrutinises the annual financial statement of the government, requests the President to promulgate the finally audited government's annual financial report,¹⁰³ and investigates and handles cases of financial dishonesty reported by the Ministry of Audit of the Control Yuan.¹⁰⁴

The financial activities of central government agencies and their subordinate institutes shall be audited by the Ministry of Audit.¹⁰⁵ Provincial (municipal) governments and their subordinate agencies be audited by the appropriate provincial (municipal) audit bureaus. Audit offices may be established in counties and cities to audit the financial affairs of these local governments and their subordinate agencies.¹⁰⁶

97 Article 90 of *Taiwan Constitution*.

98 Article 7 of *Additional Articles of Constitution*.

99 Article 104 of *Taiwan Constitution*.

100 Article 2 of *Audit Act*.

101 Article 1 of *Control Law*; Article 4 of *Organic Law of Control Yuan*; Article 3 of *Audit Act*.

102 Article 10 of *Audit Act*.

103 Article 60 of *Taiwan Constitution*; Article 28 of *Financial Statement Act*; Article 34 of *Audit Act*.

104 Article 17 of *Audit Act*.

105 Article 4 of *Audit Act*.

106 Article 5 of *Audit Act*.

(9) Acceptance of public servants' asset disclosures

In order to improve government ethics and ensure the integrity of public servants, Taiwan has implemented standards governing public servant conflict of interest. The *Act on Property-Declaration by Public Servants* was promulgated on 2nd July 1993 and put into effect on 1st September of the same year. The Detailed Rules for Implementation of the Act were enacted on 20th August by the Executive Yuan, Examination Yuan and Control Yuan. Some articles of the Act were revised on 20th July 1994 and 12th July 1995. The Detailed Rules for Implementation were revised on 22nd January 1996, 12th January 2000, and 20th March 2002.¹⁰⁷

Article 4 of the *Act on Property-Declaration by Public Servants* states that the Control Yuan is an organisation entitled to receive property declarations. The following public servants must declare their assets to the Control Yuan:

i) **Articles 2 and 4 of the *Act on Property-Declaration by Public Servants* states that the following public servants must declare their properties to the Control Yuan:**

- President and Vice President;
- Premier and Vice Premier of Executive Yuan, and President and Vice President of Legislative Yuan, Judicial Yuan, Examination Yuan, and Control Yuan;
- Officers of political affairs;
- Senior Advisors, Policy Consultants, and Strategy Consultants of Office of President with gainful positions;
- Governors at or above village (town, city) level elected pursuant to *Public Officials Election and Recall Act*;
- Legislators / councillors at or above county (city) level;
- Judges and prosecutors at or above 12th rank;
- Principals of public junior colleges and above and chairpersons of subsidiary institutions of such schools;
- Chiefs, Chief Deputies at all levels, 12th rank and above Chiefs of Staff and administrators; Chairpersons, Vice Chairpersons, equivalent 12th rank and above administrators of headquarters and branches of state - owned enterprises; directors and supervisors representing government or state - owned shares in private juristic entities;
- Chief officers, deputy chief officers and administrators at all levels above rank of major general in military;

107 *Brief Report on Work of Control Yuan*, Control Yuan, Feb. 2007, p.14.



ii) **Political affairs officers:** Article 2 of the Detailed Rules for *Implementation of the Act on Property-Declaration by Public Servants* states the following political affairs officers must declare their assets to the Control Yuan (political affairs officer refers to a person appointed by a government body that receives a salary):

- Persons appointed by President in accordance with Constitution;
- Persons who, according to Constitution, are nominated by President and appointed by approval of Legislative Yuan;
- Persons who, according to Constitution, are appointed by President at request of President of Legislative Yuan;
- Specially appointed persons;
- Persons above 12th rank appointed according to other laws or by local governments.

The Control Yuan may conduct audits based on the information provided by the persons listed above. If the Control Yuan thinks a declaration is untruthful it can request an organisation, group or individual in the location of the assets to conduct an enquiry, and the party conducting the enquiry has the obligation to report truthfully. If a person required to submit a property declaration fails to do so without sufficient justification or submits a false declaration, the Control Yuan may levy a fine against that person.¹⁰⁸

(10) Recusal of public servants due to conflict of interest

In order to promote clean and competent politics, government ethics, and to avoid corruption and profiteering, the *Act on Recusal of Public Servants Due to Conflict of Interest* was promulgated on 12th July 2000 and put into effect two days later on 14th July. In accordance with this Act, the Executive Yuan, the Examination Yuan and the Control Yuan jointly issued enforcement rules and put them into effect on 20th March 2002. To comply with the Act and its rules, the Control Yuan has continued to receive, review, investigate and punish offenders contravening regulations about related cases to avoid a conflict of interest. The Control Yuan has also established operation standards to address these cases.¹⁰⁹

The *Act on Recusal of Public Servants Due to Conflicts of Interest* applies to:

- i) **Public servants:** persons designated in Clause 1 of Article 2 of *Act on Property-Declaration by Public Servants*¹¹⁰.

108 Article 11 of *Act on Property-Declaration by Public Servants*.

109 *Brief Report on Work of Control Yuan*, Control Yuan, Feb. 2007, p.19.

110 Article 2 of *Act on Recusal of Public Servants Due to Conflicts of Interest*.

ii) Related persons of a public servant:

- Spouse of a public servant or family members living together with public servant.
- Relatives of public servant, to second degree of kinship.
- Trustees of trust property consigned by public servant or spouse.
- Any for-profit enterprise in which public servant and persons specified in above Clauses 1 and 2 that hold posts of C.E.O., director, supervisor or manager.¹¹¹

The term 'conflict of interest' referred to in the Act means that the public servant obtains interests for himself or herself or related persons either directly or indirectly through any act or omission in the course of performing his or her official duties¹¹². This includes:

- i) A public servant shall not seek interests for himself or herself or for related persons by manipulating his or her official powers, opportunities or any method under his or her official duty.¹¹³
- ii) Related persons of a public servant shall not seek interests for himself or herself or for the aforementioned public servant by requesting relevant persons in the organ, speaking for the same, or by other improper means.¹¹⁴
- iii) A public servant and his or her related persons shall not conduct transactions such as sales, lease and contracting, etc. with the organ with which the public servant serves or the organs under his or her supervision.¹¹⁵

To those in violation of the provision of the Act, a penalty of between NTD1 million to NTD7.5 million shall be imposed while any property interests gained thereof shall be pursued and confiscated.¹¹⁶

(11) Political Donations Act¹¹⁷

In order to normalise and manage political contributions, promote citizens' political participation, protect fairness and justice of different political activities, and elevate the development of democratic politics, the Political Donations Act was promulgated on

111 Article 3 of Act on *Recusal of Public Servants Due to Conflict of Interest*.

112 Article 5 of Act on *Recusal of Public Servants Due to Conflict of Interest*.

113 Article 7 of Act on *Recusal of Public Servants Due to Conflict of Interest*.

114 Article 8 of Act on *Recusal of Public Servants Due to Conflict of Interest*.

115 Article 9 of Act on *Recusal of Public Servants Due to Conflict of Interest*.

116 Articles 14-17 of Act on *Recusal of Public Servants Due to Conflict of Interest*.

117 *Brief Report on Work of Control Yuan*, Control Yuan, Feb. 2007, p.20



31st March 2004, and put into effect on 2nd April of the same year. The Department of Asset Disclosures by Public Servants of the Control Yuan is in charge of affairs disclosing political contributions.

According to the Act, the Control Yuan is responsible for related matters as follows:

- i) Approval of opening of political accounts of political parties, political groups and candidates;
- ii) Approval of changing or closing of political contribution accounts of political parties, political groups and candidates;
- iii) Handling of candidates' disclosures of accounting reports to be collated in volumes and issued in gazettes or posted on website;
- iv) Acceptance of candidates' balance reports of political contribution accounts;
- v) Review of accounting report of political contributions disclosed by political parties, political groups and candidates;
- vi) Imposition of fine on violation of Political Donations Act, and forwarding of fined cases to administrative execution if delay in paying fine, plus construction of replies for those pursuing cases;
- vii) Handling of affairs of demand and return of payment to treasury of fined cases against Political Donations Act.

4. Comparison between Taiwan's Control System and 'Ombudsman'¹¹⁸

If the comparative study of the legal systems of two regions consists only of a subjective analysis of superficial detail and ignores objective and substantive observations, just half the results would be achieved by double the effort. Certain characteristics of the Ombudsman system described in previous chapters are identical to those of Taiwan's control system but that does not mean that the two systems are equal or have an inevitable similarity. A system's formation depends upon such influences as the existence of an established legal structure as well as social backdrop, composition, functional authority, role and other specific aspects. As such, the comparative analysis conducted below is limited to an analysis of the similarities and differences between Taiwan's current supervisory system and Ombudsman system.

118 *Fundamental Theories of Administrative Law*, Cheng, Chung - mo, San Min Book Co., Ltd., October 1999, p. 878 - 882.

4.1 Similarities between systems

- (1) In both cases, the creation of the respective system had a constitutional (or at least legal) basis. The Ombudsman system and Taiwan's control system are similar, in that they are not the product of momentary, secondary or temporary creative whims but rather both came into existence based on universal values.
- (2) There is a bottom-up supervisory relationship, and the vast majority of Ombudsman are legal academics that do not have ties to the world of politics; rather, they assume this vital task in the name of all common people. They are responsible to the legislative bodies but have the right to independently exercise their function, and the object of that function is nevertheless the accountability of government agencies and public servants. In Taiwan, the committees of the Control Yuan are similarly selected from among the population and given the special duty of censure and impeachment of administrative agencies and public servants. In other words, both the Ombudsman and the committees of the Control Yuan lie outside of the category referred to as 'officialdom'.
- (3) Both have government agencies or public servants as their primary object of supervision. Under the sway of the concept which says that 'government is best which governs most', administrative authority has rapidly expanded, as have administrative personnel. Stricter supervision has become a natural consequence. Although both systems supervise judicial agencies and their staff, the judiciary is a secondary focus and only gives rise to a small number of exceptional cases requiring intervention.
- (4) Both systems similarly consist to a large extent of providing administrative remedy. Because of direct or indirect supervision by the members of the Control Yuan or the Ombudsman in such forms as case investigation, file review, mailing queries, making recommendations, impeachment, censure and correction, administrative agencies provide citizens whose rights and interests have been infringed upon simpler and more convenient access to administrative remedy than would be possible through the regular administrative process.
- (5) Monitoring functions of similar nature and capability. The Ombudsman and members of the Control Yuan similarly receive petitions from any person (including personnel governed by a special power relationship). The petitions are not subject to a strict format, jurisdiction, time limit or fee. This means that people such as illegally dismissed personnel may have their case referred to a judicial body for investigation and handling. The awareness that individuals have easy access to a supervisory agency is sufficient to incite administrative agencies to do their best to reduce arbitrary decisions and abuse of



public power in their handling of public affairs and to ensure that the public's rights and interests are reliably safeguarded.

- (6) Both agencies lack the authority to adjudicate. The authority of the members of Taiwan's Control Yuan is limited to submitting resolutions of impeachment as well as censure, correction, investigation, and audit, in addition to publishing reports and issuing information via the media. Likewise, the Ombudsman only has the authority to investigate, criticise, recommend, reprimand and issue public announcements. Neither the Ombudsman nor the Control Yuan have the authority to establish a new legal relationship or to change or repeal an agency's administrative decision.

4.2 Differences between systems

- (1) Different position in the political systems: Under Taiwan's constitutional government system and the separation of the five powers of government, the Control Yuan is Taiwan's highest and sole supervisory organ. Its position is equal to that of the other four powers. Although Interpretation No. 76 of the Justices of the Constitutional Court states that the National Assembly, Legislative Yuan and Control Yuan are the joint equivalent to Congress in Western democratic countries, the Control Yuan is not subordinate to the National Assembly or the Legislative Yuan. For this reason, academics have, in line with its functional authority, compared the Control Yuan to the Senate in Western countries. By contrast, the Ombudsman is subordinate to and responsible to parliament. Although it is able to maintain complete independence in the exercise of its functional authority, it is also unavoidable that it becomes parliament's subordinate organ for supervising administrative agencies.
- (2) Institutionally, the President of the Control Yuan and the Ombudsman occupy different positions. The President of the Control Yuan is elected by members of the Control Yuan. The President administers the overall affairs of the Yuan and supervises subordinate organisations but the Control Yuan is a collegiate system and with the exception of audit authority being independently exercised by the Auditor General control authority is independently exercised by the members of the Control Yuan through consensus by the various Yuan committees, or through the passing of resolutions by the Control Yuan Plenary Meeting. In this sense, the Yuan President is merely the Yuan's senior official in name and not the highest ranking official in terms of real power. The President of the Control Yuan cannot act in the name of the Control Yuan or in the name of all or some of the Yuan members; nor is he or she permitted to unilaterally exercise control authority in the name of the Yuan committees. With the exception of the Control Yuan Plenary Meeting,

during which the Yuan president acts as chairperson, the Yuan president does not have any seniority regarding the members of the Control Yuan or any authority to give directives or orders. This is true with respect to all authorities conferred upon the Control Yuan by Taiwan's constitution.

The Ombudsman, on the other hand, other than being appointed by parliament on the basis of outstanding reputation and good academic credentials, constitutes a separate, autonomous system. The Ombudsman has full authority to appoint or dismiss assistant staff as long as staff numbers, salary, pension and other details comply with the law or the stipulations of parliament. For these reasons, the president of Taiwan's Control Yuan is not an Ombudsman, nor can a member of the Control Yuan be referred to as an 'Ombudsman' in the full sense of the word. This is because, besides the investigation of cases, the Control Yuan and its members have practically no possibility of independently exercising authority.

- (3) The methods of selection differ. Members of the Control Yuan are primarily drawn from members of the various provincial and municipal legislative bodies, with the focus on accurate representation from the different regions and on a proper balance of political power. Political considerations trump all other factors. For this reason, individual members of the Control Yuan cannot expect to enjoy national prestige. Because of the primacy of political considerations, it is sometimes even difficult to be assured of the academic and legal knowledge of individual members. By contrast, in Sweden, Denmark, Finland or Norway, the individually appointed Ombudsman is invariably a learned person with a legal background and significant reputation in society. He or she is not a product of the political system but selected solely on skills and reputation. By comparison, imperial China's Censorate took, in certain respects, a different approach to selection criteria but nevertheless arrived at many of the same conclusions.
- (4) The objectives and jurisdiction of supervision differ. Impeachment authority is the main supervisory authority of Taiwan's Control Yuan. This authority can be applied to all levels of public servants—both national and local including the 'cabinet' (i.e.) the head of the various ministries and committees—and judges. However, the President and Vice President, legislators of all levels, temporary staff, professors appointed to public schools and the employees of agencies are excepted from the Control Yuan's impeachment authority. The Ombudsman supervisory authority, on the other hand, does not include:

(i) members of the cabinet; (ii) judges; (iii) public servants in local governments. These personnel do not require additional supervision by the Ombudsman. Judges should independently adjudicate according to law and cannot be subject to interference by any agency. Furthermore, the mandate of



the Ombudsman is to supervise government and facilitate administrative remedy. If the Ombudsman was given jurisdiction over judges, its supervisory and remedial functions would be severely compromised. With regard to Ombudsman jurisdiction over local governments, this would run counter to the theory and practice of local self-government. Furthermore, it would drastically increase the number of cases, and the workload would far exceed the capacity of the Ombudsman structure with its relatively few staff. Additionally, when Taiwan's Control Yuan puts forth a motion of impeachment or censure, it is only doing so as an accuser, while the adjudication of the case is conducted by the National Assembly, Legislative Yuan or Committee for the Discipline of Public Servants (unlike regular courts: its disciplinary punishment is not criminal punishment). If the public official in question is also alleged to have committed criminal acts, the Control Yuan or disciplinary agency effectively acts as 'presenters'. The power to decide whether to prosecute rests with the Public Prosecutor and a regular court being the only permitted venue for hearing the case. In Western countries such as Sweden and Holland, the Ombudsman's accusation that a public official has committed a criminal offence may directly serve as the basis for adjudication and punishment.

5. Characteristics and General Appraisal of Taiwan's Control System

Taiwan's control system is a component of its administrative system. At the same time, it is an essential component of the political system. The control system is not only unique in structure but in certain aspects of its functional authority and other features.

The supervisory structure and supervisory authority of Taiwan's control system has very definite characteristics, which are discussed below.¹¹⁹

5.1 Structural characteristics of Taiwan's Control System

The five-power system of Taiwan's government is an extremely unique model. Taiwan's Control Yuan is a special administrative supervision organ, independent of administrative agencies and in parallel with the executive and political authorities. This gives the control system a special character and position. Solely from the perspective of framework, Taiwan's Control Yuan is a special agency of the Taiwanese government. Assuring its independence in supervisory work, strengthening restraints on its supervisory power, and increasing the efficacy of its work would have a definite positive significance.

119 *On the Features and Structure of Taiwan's Supervision System* - Zhuo Yue, Taiwan Research Quarterly, 2002, Edition No. 4, P.39-41.

(1) Structural characteristics

- i) Taiwan's Control Yuan is organised on a collegiate system consisting of committee members; that is, important functional authority rests with committee collectivism. This feature is manifested in two ways:

First is the formation of the membership and the organisation; the members and the President of the Yuan are nominated by the President with the consent of the Legislative Yuan. The structure of the Control Yuan is comprised of the Control Yuan Plenary Meeting formed by the President, Vice President and members. The Control Yuan's functional structure consists of the committees.

Second is the fulfilling of authority; consent authority is very important for policy supervision, which is subject to the examination and consensus of the committee of the entire Yuan. Corrective authority, on the other hand, is exercised by relevant committees of the Control Yuan. Even if members of the Control Yuan have the right to submit cases of impeachment and censure, the cases still need to be collectively approved by a certain number of members. In its organisational structure, the Control Yuan endeavours to express its differences in character and work function from administrative organisations. Administrative supervision is the process of watching over and enjoining administrative personnel and dealing with administrative personnel that violate the law or are in dereliction of duty. This function requires assured authority in order to prevent and correct the corruption of administrative authority. At the same time, it is also a very cautious task that requires strict measures, adequate proofs and avoidance of personal emotions or arbitrariness. Theoretically, the collegiate system can meet the requirement that the supervisory agency be unbiased and thorough in its actions.

- ii) Taiwan's Control Yuan is a specialised administrative supervisory organ but it has not built the vertical top - down structure that corresponds to the structure of administrative agencies. It has not formed a stratified system consisting of a senior supervisory organisation that directly leads subordinate organisations. Taiwan's Control Yuan has not set up permanent grassroots - level local supervisory organisations but is permitted under law to establish, when necessary, a local administrative office to serve as a 'dispatched' organ. This means that the Control Yuan is responsible for conducting comprehensive supervision of administrative agencies from top to bottom. This type of leadership system, considered from the viewpoint of prominent supervisory authority and concentrating supervisory power, is unique in certain respects.

5.2 Characteristics of supervisory authority

First, policy supervision and supervision to uphold the law are merged. A breakdown of the key functions of the Control Yuan reveals that its primary function is supervision to uphold the



law. This includes the authority of impeachment, censure, corrective measures, audit, invigilation, and so on. At the same time, its function involves the power of consent on the appointment of personnel, resulting in a functional structure system incorporating the supervision to uphold law and policy supervision. Of course, this is primarily manifest through supervision of the administration as a whole. The government of Taiwan has given control over financial and budgetary planning to the Legislative Yuan and has stressed that the Control Yuan's power of consent is only one part of the complete power of consent. The consent authority of the Control Yuan, compared with that of the Legislative Yuan, puts a particular focus on passively and actively determining whether candidates for appointment possess the required qualifications. In this way, the consent authority is of a legal nature.

Second, inspective supervisory and prosecutorial supervision interact. Based on the position of the Control Yuan, its functional authority can be categorised as two types: one type—inspection authority—is auxiliary. It includes investigation, circuit supervision, audit, invigilation, and so on. The other type—prosecution authority—is primary. It includes impeachment, censure, and correction. Inspection is a required stage in the preparation for prosecution, and its function is to acquire a prompt, comprehensive and accurate understanding of administrative activities to determine the margin of deviation between actual implementation and specified implementation standards. Inspection is key in the initial stage of supervisory work. Without it, situations would remain unclear, information would be ineffective, and the Control Yuan, finding its way in the dark, would lose supervisory control. For example, according to the relevant regulations, the Control Yuan, based on reports submitted by the public, incidents reported in the mass media and cases forwarded by government departments, initiates investigations and assigns Yuan members, Yuan employees, or other appointed agencies, to conduct them. The investigators, armed with an investigation certificate, go to government offices, military units and organisations to investigate case materials and other related documents. The various bodies and their staff may not refuse the investigator. Investigators, when necessary, can require personnel being investigated to go to a specific location to be interrogated. These personnel must sign the record of the interrogation. To prevent government officers and personnel from altering or destroying evidence, investigators may, when necessary, temporarily seal and confiscate the evidence in question. It can be seen therefore, that the function of investigation is to clarify truth and falsehood and to obtain conclusive evidence. It is a prerequisite for prosecutorial supervision. At the same time, prosecution is also a necessary developmental stage of inspection. Only by discovering administrative actions that violate the law or constitute dereliction of duty and then launching a prosecution is it possible to fully realise the function of inspection. The objective of discovering problems is to solve them. If cases finished after the inspection stage, administrative personnel that violate the law or are in dereliction of duty would not be reprimanded and the process would not have the desired warning effect for other public servants, causing supervision to lose its original sense.

Third, the supervision of persons and supervision of issues are differentiated. The impeachment and censure authority of the Control Yuan has certain specific differences. For example, with regard to the targets of supervision, for impeachment there is a broad range of targets, while for censure the targets are normally middle and low-ranking personnel. With regard to the degree of offence, impeachment may be applied to a broad range of offences ranging from minor to severe; censure is generally only used for relatively minor legal infractions or dereliction of duty and is applied with little delay. The application of impeachment is very strict, and the regulations for its use are clearly stipulated in related laws. Censure, on the other hand, is in a sense a simplified form of impeachment, and is a flexible mechanism that can be adapted to special urgent circumstances. With regard to the targets of supervision, in the case of impeachment and censure alike the targets are people, since they are a form of supervision of administrative personnel. By contrast, correction authority targets circumstances, and constitutes supervision over organisational behaviour. This differentiation of people and circumstances is also manifested within the Control Yuan. Impeachment and censure motions are put forth by individual Yuan members or committee members, while correction motions are put forth by the committee corresponding to the administrative agency in question. This method of differentiating the supervision of people from the supervision of circumstances has the positive effect of encouraging administrative personnel to exercise diligence in their work duties and conscientiously implement government directives. It also helps encourage initiative on the part of administrative personnel and eliminate their fear of difficulty.

Fourth, prosecutorial supervision and disciplinary supervision are mutually distinct. The prosecutorial supervision of the Control Yuan is quasi-judicial in effect, since it involves a prosecutorial process. That means when dealing with the legal infraction or dereliction of duty of administrative personnel, the Control Yuan can act as an informer or accuser, since it has prosecutorial authority but no disciplinary authority. Any reprimand or discipline imposed on administrative personnel as a result of the work of the Control Yuan is normally implemented by judicial agencies. The Taiwan Government has established within the Judicial Yuan the Committee on the Discipline of Public Servants, which is responsible for implementing reprimand and punishment of administrative personnel who have violated the law or have been in dereliction of their duty. The Committee on the Discipline of Public Servants has a chairperson and nine to 15 members. The members of the Committee on the Discipline of Public Servants fall within the scope of the definition of 'judge' and enjoy the rights of a judge.

The disciplinary powers of the committee include dismissal, suspension, demotion, salary reduction, demerit, and reprimand. To review a case of misconduct negligence, the committee must have at least seven committee members present. The chief of committee designates a member of longstanding to act as chairperson and the review result must have a resolution reached by a simple



majority of the members present. The fact that the Control Yuan has only prosecutorial supervisory authority is also controversial in Taiwan society but the general viewpoint is that the separation of the powers of prosecutorial supervision and disciplinary supervision conforms to the principle independent judicial judgement, as well as to the political norms of the public. Through this type of mechanism, it is possible to guarantee that prosecutorial supervision is restricted and that administrative personnel receive fair treatment before the law.

5.3 Effect of constitutional revision on supervisory system

Between 1991 and 2005, Taiwan conducted seven separate revisions of its constitution. It did not, however, change the fundamental structure of its five-power constitution. In the process of the seven revisions of the constitution, the Control Yuan underwent a series of changes, primarily in the following areas:

- (1) In character, the Control Yuan was transformed from part of 'Congress' to the 'highest supervisory organ'.
- (2) Consent authority over the President, Vice President, and committee of the Examination Yuan, and President, Vice President and judges of the Judicial Yuan was transferred from the Control Yuan to the National Assembly, and thence to the Legislative Yuan.
- (3) The method of appointment of members of the Control Yuan, including the Yuan president and vice president, was changed to nomination by the President, with consent of the Legislative Yuan.
- (4) The Control Yuan's impeachment authority over the President and Vice President was removed and transferred to the Legislative Yuan.¹²⁰ However, the personnel of the Control Yuan was included; therefore, under Clause 4 of Article 7 *Additional Articles of the Constitution*, the Control Yuan also becomes subject to impeachment.¹²¹ In the 7th revision of the constitution,

120 Article 2 of the Additional Articles of the Constitution (7th revision, 2005) states: 'Recall of the President or the Vice President shall be initiated upon the proposal of one fourth of all members of the Legislative Yuan, and also passed by two thirds of all the members. The final recall must be passed by more than one half of the valid ballots in a vote in which more than one half of the electorate in the free area of the Republic of China takes part. Should a motion to impeach the President or the Vice President initiated by the Legislative Yuan and presented to the grand justices of the Judicial Yuan for adjudication be upheld by the Constitutional Court, the impeached person shall forthwith be relieved of his duties.'

121 Interpretation No. 14 of the Justices of the Constitutional Court, 'It is the intention of the Constitution drafters that Members of the Legislative and Control Yuan are representatives of public opinion, either directly or indirectly, and are not subject to the exercise of control power. Yet other personnel of the Legislative and Control Yuan as well as staff of the National Assembly, the Presidential Office and its affiliated agencies are within the scope of control power. Therefore, except for provisions on the Executive, Judicial and Examination Yuan, clause 2 of Article 97, and Article 98 of the Constitution further separately stipulate impeachment and other control power against public officials of the Central Government.'

the power to impeach the President and Vice President was revised from 'the Legislative Yuan proposes recall to the National Assembly, and if two-thirds of the members of the National Assembly approve, the impeached person shall forthwith be relieved of his duties' to state instead 'The grand justices of the Judicial Yuan shall, form a Constitutional Court to adjudicate matters relating to the impeachment of the President or the Vice President, and the dissolution of unconstitutional political parties.'

- (5) In the area of guarantees, the members of the Control Yuan no longer held the status of representatives of popular opinion.¹²² Therefore, the immunity of speech and immunity from arrest of the members of the Control Yuan was cancelled.
- (6) Number of Control Yuan members: the number of members of the Control Yuan was fixed at 29.
- (7) The process for exercising impeachment authority was changed to 'put forth by two members and examined and approved by no less than nine members of the Control Yuan'.
- (8) Regulations on non-affiliation: provisions were added to state that members of the Control Yuan must be above party affiliation and must independently exercise their function according to law.

From the changes to the powers of the Control Yuan during the process of constitutional revision, it is clear that the power of the President within the supervisory system was augmented, while the powers of the Control Yuan were reduced. This manifests itself in the following ways.¹²³

(1) Cancellation of Control Yuan's power to impeach President

Following constitutional revision, the most significant change in the power of the Control Yuan was the loss of its power to impeach the President. With the President no longer subject to impeachment by the Control Yuan, the function of the Control Yuan was manifestly reduced.

(2) Change in method of appointing members of Control Yuan

Originally, the members of the Control Yuan were indirectly elected by the assemblies of the provinces and municipalities. Following constitutional revision, members of the Control Yuan are now nominated by the President with the consent of the Legislative Yuan. This results a significant increase in the influence of the President over the Control Yuan.

¹²² Interpretation No. 325 of the Justices of the Constitutional Court states, 'Interpretation No. 76 of the Judicial Yuan states that the Control Yuan together with other central representative authorities are deemed equivalent to the Congress of a democratic country. Such interpretation is no longer applicable to the Control Yuan since, after the implementation of Article 15 of the Amendment to the Constitution, the Control Yuan is not considered a central representative authority; moreover, its position and power have been changed as a result thereof. Consequently, the above Interpretation shall no longer be applicable to the Control Yuan.'

¹²³ *Constitutional Revisions and Changes in Control Systems: A Comparison of the Experiences of Taiwan and Finland*; Zhou Yang Shan, Li Wenlang, Research of National Dr. Sun Yat-sen Memorial Hall, Edition 2, p.27-29.



(3) Abrogation of Control Yuan's power of consent of appointment

The Control Yuan originally held power of consent for the appointment of the President, Vice President and members of the Examination Yuan and President, Vice President and judges of the Judicial Yuan. That power was changed to the Legislative Yuan, which has the power of consent over the nominations it receives from the President.

(4) Rescinding of the special powers of the members of the Control Yuan

In the second revision of the constitution, Control Yuan members lost their status as representatives of popular opinion. Because of this, they also lost their immunity of speech and immunity from arrest.

5.4 Overall Appraisal of Taiwan's Control System

Under Taiwan's five-power political system, judicial authority is apolitical and passive but judicial agencies have absolutely no power to actively supervise whether government institutions and the public servants that work under them are violating the law, are in dereliction of duty or deviating from policy. On the other hand, the Control Yuan does have this power. The impeachment authority of the Control Yuan is largely judicial in nature. For this reason, the existence of the Control Yuan and the exercise of its authority are sufficient to offset the defects of the judicial departments and their authority, and bring about a complete legal system. Below we conduct an appraisal of Taiwan's supervisory system from different perspectives.¹²⁴

(1) Independent execution of duties and high level of authority

Taiwan's supervisory system drew on the strengths of the Western ideal of separation of the three powers, and combined it with the essence of the supervisory independence in ancient China to arrive at the five-yuan system. It made the Control Yuan, as the highest supervisory body, independent of the Executive Yuan, Legislative Yuan, Judicial Yuan, and Examination Yuan but also made it equal in position. Organisationally, the system can be considered the realisation of Sun Yat-sen's thoughts on the five-power constitution, as well as his concept of the independence of supervisory authority. Supervisory independence was a basic starting point for Sun Yat-sen. Its theoretical basis is that judicial agencies adjudicate the public, and the supervisory agencies adjudicate officials. Since the agency adjudicating the public is independent the supervisory agency adjudicating the officials

124 *Study of Taiwan's Supervisory System*, Li Mu, Journal of Wuhan University of Technology (Social Sciences Edition), June 2005, No.18, Edition 2, p.378-382.

should also be independent of the administrative, legislative and judicial systems. In the central government, the Control Yuan 'is on an equal footing' with the other four Yuans. Locally, the Control Yuan's subsidiary organisations are likewise not subordinate to the local governments. From this, a supervisory system that is horizontally independent and vertically unified is formed, with the result that the supervisory agency is organisationally independent and has its own system. An independent and sound supervisory agency and system is a necessary organisational guarantee that the supervisory function will be brought fully into play, as well as a basic requirement of modern administrative supervision.

(2) Supervisory laws and regulations form complete system

Chapter 9 of Taiwan's constitution contains provisions on supervision. It defines the organisation and functional authority of the Control Yuan. In the chapters in the constitution covering the centralised political system, with the exception of Chapter 4 on the President, Chapter 9 has the greatest number of provisions, total 17 in all. This is sufficient proof that the supervisory system is accorded much importance. In addition, related operational regulations include: the *Control Law*, *Enforcement Rules of the Control Law*, *Act on Recusal of Public Servants Due to Conflicts of Interest*, *Enforcement Rules of the Act on Recusal of Public Servants Due to Conflicts of Interest*, *Act on Property-Declaration by Public Servants*, *Enforcement Rules of the Act on Property-Declaration by Public Servants*, *Examination Invigilation Act*, *Law of Audit*, *Political Donations Act*, *Organic Law of the Control Yuan* and *Control Yuan Regulations for Investigation and the Use of Evidence*, *Control Yuan Procedures for Receiving and Handling Petitions from the Public*, *Rules for Meetings of the Control Yuan*, *Procedures for Examination of Materials of Property Declaration by Public Servants*, *Control Yuan Procedures for Circuit Supervision*, and so on. The completeness and comprehensiveness of the laws and regulations means that supervisory activities are based on established law increases the feasibility and accuracy of supervision, reduces arbitrariness, prevents supervision from overstepping authority, and promotes the standardisation and systematisation of supervisory work.

(3) Broad and abundant legal authority and mutual co-ordination

Supervision means to monitor and restrain the power of state organs and their officials. Supervisory power and its protection and restraint are, on the other hand, the guarantee that supervisory agencies implement their supervisory power in accordance with the law. If a supervisory agency does not have a legal form for defining the scope of



its supervisory function, its full power and the guarantees it enjoys it will be impossible for it to conduct effective supervision and restraint of other government organisations. The functional authority of the Control Yuan includes impeachment, censure, corrective measures, audit, circuit supervision, investigation, acceptance of people's petitions, acceptance of asset disclosures from public servants, and invigilation. Combined, these powers ensure the authority of the supervisory system.

However, the supervisory authority is incredibly vast and thus has less disciplinary authority. With only 29 members responsible for supervision, censure and impeachment involving the island's hundreds of thousands of public servants, it is, in fact, a difficult task to achieve, and in practice supervision tends to dwell on the trivial and avoid what is truly important. For this reason, the Control Yuan has been derided as 'only swatting flies, not hunting tigers'. Control Yuan members' low efficiency and failure to handle petitions from the public has resulted in the Control Yuan being called the 'case deposit Yuan'. Additionally, the responsibility for examination invigilation has become onerous, and as one scholar pointed out, there is really no necessity for the Control Yuan to continue to exercise invigilation authority. Furthermore, the censure motions put forth by the Control Yuan are frequently revised to 'Letter Requesting Improvement by the Executive Yuan'. How can this hope to achieve the desired result of the censure? The situation is no better when disciplinary punishment is sought from the Committee on the Discipline of Public Servants, in which case the Control Yuan merely has the authority to accuse. Frequently, when the Control Yuan officially proposes a case for impeachment, and it is heard by the Committee on the Discipline of Public Servants, it results in nothing more than the case being recorded or a reprimand. Again, the effect of discipline is lost. From this, it can be seen that the authority of the members of the Control Yuan to impeach officials is, in reality, very limited. The Control Yuan only has the authority for partial impeachment, censure or correction concerning cases of officials other than the President or Vice President. In fact, the Control Yuan, without any official sanction (or 'imperial sword'), has a hard time fulfilling its function of 'demon killer'. Furthermore, the method in which members of the Control Yuan are appointed urgently requires reform. The Control Yuan's members, President and Vice President are now nominated by the President with the consent of the Legislative Yuan, instead of being indirectly elected or elected from among the members, as in the past. This seems to be a retrograde step. To guarantee the independent operation of the Control Yuan, the importance of electing Control Yuan members is beyond doubt. As for the issue under harsh criticism concerning the eligibility for the position of Control Yuan member, one can review the qualification requirements for Ombudsman applied in

Northern European countries in order to increase their legal and professional knowledge. At the same time, the provisions requiring that members must have served as 'members of the National Assembly' and be 'incorruptible and upright, have rich political experience or have managed news or cultural enterprises, and have an excellent reputation' should be rescinded. The first provision, because legislators themselves are heavily tinged with plutarchy, and ordinarily have a mutually beneficial relationship with a political party or a local faction. Bringing them into the Control Yuan is akin to importing these influences and makes administering the Control Yuan more complicated and difficult. The second provision should be rescinded because its definition is too broad and general, and cannot be measured by any objective standard. This makes it easily subject to manipulation by the President or being presented as a reward to politicians.

Additionally, the consent authority of the Control Yuan is still a favourite subject of discussion and criticism in various sectors of society. Many people think the nature of the work of the Control Yuan is a special mechanism in a healthy legal system, and a type of supervision that seeks to maintain the law by responding to illegal actions and dereliction of duty of administrative personnel, and it should not be intertwined or muddled by the policy supervision of the Legislative Yuan. This was precisely the case when the opposition-dominated Legislative Yuan refused to consent to President Chen Shui-bian's nominees for the 4th session of the Control Yuan; this resulted in Control Yuan positions remaining empty from February until the end of July 2005, already half a year. According to statistics issued by the Control Yuan, some 8,076 cases, including direct complaints from citizens and letters and reports from agencies, were received during this period. If property declarations and cases being handled by individual members are included, more than 10,000 cases were lodged. However, an interesting phenomenon was that even though the Control Yuan is supposed to be an important channel for the expression of popular dissatisfaction the Control Yuan cessation of activities during this standoff did not give rise to too much concern on the part of most of the public, nor was there much discussion of it in society. This indicates that the Control Yuan has not gained the support of the general public or of political parties or that the public does not understand how the Control Yuan works or what it is supposed to achieve. This puts the survival of the Control Yuan at serious risk. To reverse this negative image – in addition to increasing the efficacy of the Control Yuan and gaining the recognition of the public – there is a need for increased promotion aimed at increasing the public's understanding of the value of the Control Yuan's existence. Taking the period of 2001 - 2004 as an example, the average annual completion rate of cases submitted by the public was 99.5%, which is extremely high. Of the 195 people impeached,



senior rank officials or above, or generals, accounted for 100, or more than one half. This is inconsistent with the public's rigid impression of the Control Yuan as an organisation that only 'swats flies, and does not hunt tigers'. The only problem is that it lacks serious and significant cases. The percentage of cases initiated by the Control Yuan account for 40% of all cases, and underscores the initiative of Control Yuan members. These figures reveal that the Control Yuan does not, as is often claimed, have an unclear function of no value.¹²⁵

(4) Effective implementation of system

From statistics contained in the Work Progress Report of the Control Yuan published in 2005, it is apparent that Control Yuan committees are increasingly fulfilling their function as time passes. From February 1999 to January 2005 (because the 4th session of the Control Yuan had not filled their positions, there are no related statistics after February 2005) the Control Yuan received a total of 100,608 written complaints from the public, of which 100,478 were handled. With each passing year, the number of cases handled increased. Of this number, some 1,018 cases required corrective measures, with a completion rate of 80.9%. Of the 776 cases archived, 671 cases reported improvement, while 102 cases reported having imposed punishment of personnel or disciplinary transfer. There were ten cases of censure, with the number of individuals censured totalling 14. Of the cases of censure, nine involved violation of the law and dereliction of duty and one involved violation of the law only. The nine cases were referred to the senior official or subordinate of the offending personnel. In one case, the senior officer forwarded the case to a judicial (military) agency. There were 118 cases of impeachment, with 302 individuals impeached. The impeachment cases consisted of 115 cases of illegality and dereliction of duty, and three cases of illegality. Of these, 117 cases reported having imposed disciplinary transfer and one case was referred to the courts. This efficiency is already quite high. In 2004, the Control Yuan approved 18 impeachment cases, including 17 cases of legality and dereliction of duty and one case of legal infraction. A total of 51 individuals were impeached, including 33 civil officials and 18 middle and senior officials. The associate rank accounted for 13, the assistant rank accounted for one, appointed counted for one, and seven were generals. That military generals were also impeached shows that the Control Yuan does not work to accomplish nothing. Even more importantly, the independent supervisory system is like a 'sharp sword held high' - it encourages public servants to scrupulously perform their functions and not break the law. The organisational culture of Taiwan's supervisory bodies

125 *Comparison of the Supervisory Systems of Taiwan and Finland*, Li Wenlang, *Journal of Social Sciences*, June 2005, Volume 13, Edition 3, p.125-177.

has long given people the impression of closed, passive and authoritative conservatism. With social change, the knowledge of the public has increased; indeed, the public's expectations of government administration have become more demanding. In particular, the public is deeply concerned about whether the supervisory function is manifest, since they consider the Control Yuan to be the last line of defence. The Control Yuan, as an independent body with a well-established functional authority, has been called the 'poor man's court'. For this reason, in future the Control Yuan should maintain supervisory authority, justice, and professionalism, guarantee the effective exercise of supervisory authority, rid itself of corrupt individuals in government agencies, rectify official governance, and seek a solution to the current situation of big money politics in Taiwan and increasing corruption.

The supervisory system of Taiwan has its merits. The functional scope of the Control Yuan and its large number of supervised agencies and offices constitute one of the world's more powerful supervisory bodies and Taiwan is a region with a long history of implementing supervisory systems. Nevertheless, it is undeniable that the Control Yuan has long been a subject of criticism and debate. Although it has certain systematic problems and needs to undergo adjustment, the real problems are centred round people and not the system. Because the entry qualifications to be a member of the Control Yuan are so relaxed a series of members have become tools to be manipulated for political reward. This does not conform to the high expectations that society has for Control Yuan members. Add the fact that in the exercise of their authority the Control Yuan members are often unable to be independent and just, it causes the public to lose trust, the National Assembly to be unsupportive and administrative agencies to lack respect for the Yuan. For these reasons, it is difficult for the Control Yuan to achieve its full potential.

The situations in Taiwan and Macao are different, and both their objective and subjective conditions dissimilar to some degree. The supervisory system of the two regions is also different. Viewed from the current increasing diversification in supervisory systems worldwide, it is quite clear that it is very difficult for any legal system to copy or directly import methods from another jurisdiction. However, Taiwan's successful experience with its supervisory system is still an appropriate reference for Macao.



Chapter 5

Ombudsman System of Japan

1. Introduction to Administrative Counselling System

The traditional Ombudsman system in Japan takes the form of the Administrative Counselling System (ACS), whereas the department specifically in charge of administrative complaint is the Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications, which is responsible for the organisation and operation of the Administrative Counselling System.

In Japan, should an individual disagree on a public administrative action that specifically concerns his or her personal interest or appeal, or should he or she be discontent with a public administrative action which does not concern any specific individual, that person may directly protest to the public administrative organisation concerned; the complainant may also initiate legal action directly via the judiciary, and may even solicit assistance from members of the Diet to verify whether the concerned public administrative action has been lawful, whether it has infringed upon or adequately protected the lawful rights of the concerned individual, and whether it has respected and embodied the common interests of society.¹²⁶

In Japan, all administrative departments across different levels have internal procedures and measures for compensating parties whose rights have been infringed upon due to improper administrative actions, in addition to procedures for the rectification of such actions. Provided the protests put forth by citizens are reasonable and lawful, related administrative departments will investigate and review the concerned administrative action in an orderly manner, and implement corrective measures or modifications where necessary. Each year, public administrative organisations receive countless appeals; in 2002, through its Tax Consultation Office, the National Tax Agency alone received nearly three million appeals.

Judicial agencies in Japan (i.e.) courts across all levels, provide citizens with a judicial channel for resolving appeals. In addition to jurisdiction over litigation between citizens and public administrative organisations they possess the authority to investigate any legislative action in violation of the constitution, and to rule on laws, regulations, or administrative actions considered unconstitutional. In reality, judicial agencies in Japan possess the final authority to rule on whether state actions are proper.

Assistance from members of the Diet is realised through the supervision of the Diet over executive power. The National Diet of Japan possesses supervisory authority over the implementation of both executive and judicial powers, and its members can exercise supervision over administrative

¹²⁶ See *The Ombudsman and Citizen Participation*, speech by Hiroyuki Hata, Director of The Administrative Evaluation Bureau of Ministry of Internal Affairs and Communications, at the 8th Asian Ombudsman Association Conference 2004.

agencies across different levels as well as principal officials of the government through such means as enquiry, query, investigation into state policy, motion of no confidence, and impeachment. Members of the Diet possess the power, on the part of citizens, to request government officials to attend Congressional councils to respond to questioning and provide testimony and explanation in regard to policy objectives, domestic and foreign policies, and state actions, including administrative actions. They also possess the authority to put forth motions of no confidence and impeachment against public servants deemed to be in dereliction of duty or corrupt.

The implementation, however, of the three aforementioned channels for resolving citizens' administrative complaints has been problematic in varying degrees.

Theoretically, internal rectification and resolution by governmental administrative departments themselves should be the most convenient, expeditious, and direct channel for resolving citizens' appeals. For various reasons, however, citizens are often sceptical about whether government departments can justly, impartially, and objectively consider and review the government's prior administrative actions.

As for judicial litigation, making use of the judiciary to protect one's legitimate rights and seek precise solutions for problems is of course a viable option. However, this not only requires citizens to openly confront administrative agencies of the government, but, since judicial litigation requires strict and meticulous description of the nature and jurisdiction of disputes, to spend large amounts of time and money on formalities and procedures. The Japanese people are not as culturally disposed toward litigation as people from Western culture since they prefer not to openly confront others. Judicial litigation not only runs counter to Japanese culture and tradition but to the principle of economic efficiency observed by the Japanese.

Supervision of executive power by members of the Diet takes place primarily in important domestic and foreign affairs such as government policy, law enforcement, and fiscal arrangements. The administrative actions of the government which it aims at are generally representative and integral subjects such as fundamental systems, management models and so on. The public servants that it supervises are also primarily limited to judges and officials of the National Personnel Authority. For this reason, it is not well adapted to providing personalised assistance in response to the highly individualised appeals of citizens.

Japanese in modern society are profoundly aware that the public administrative actions of government deeply affect almost every aspect of their daily lives. To publicly confront departments exercising public administrative power or to expect them to examine their own shortcomings and loopholes, therefore, is indeed as hopeless a battle as it is daunting. Citizens want to rely on the expeditious, time-efficient, and peaceful resolution of problems. The method of achieving this should



consist of procedures that justly, impartially, and objectively respond to the actual appeals of citizens in a personalised, individualised manner. The Administrative Counselling System, therefore, has become the 4th option for Japanese citizens.

Japan's Administrative Counselling System refers to the dialogue between administrative evaluation departments of the government, the individuals which they commission, and citizens, on whose request such dialogue occurs. In the process of dialogue, they understand citizens' appeals, listen to their complaints and opinions about various departments' exercise of public administrative power, mediate their relations with the concerned public administrative organisations over specific public administrative actions, assist in resolving and rectifying problems and errors in public administration and its operational process, and reflect in a timely manner public opinion on the evaluation and improvement of management policies, systems, and measures of public administration.

The Administrative Counselling System can basically be divided into two sections: the first section refers to the executive departments of the government and their civil servants. It primarily concerns the Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications, including its local organisations in various administrative regions across the entire country: District Administrative Evaluation Office, Regional Administration Evaluation Branch Offices, Regional Administrative Evaluation Bureaux, General Administrative Counselling Bureaux, as well as non-governmental counselling organisations of the Administrative Grievance Resolution Promotion Council across different levels. The second section refers to Administrative Counsellors, who are non-governmental individuals commissioned by the Minister of Internal Affairs and Communications.

Within the Administrative Counselling System, the departments responsible for receiving and replying to complaints and requests from the public are the Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications, its local organisations, and Administrative Counsellors. The departments responsible for investigating cases, studying appeals and opinions, providing non-binding rationalisation recommendations, and persuading concerned organisations to take action to modify or rectify their administrative actions are the Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications, its local organisations, and Administrative Counsellors. The Administrative Grievance Resolution Promotion Council provides the Administrative Evaluation Bureau with consultative recommendations regarding dubious or complicated cases submitted by the Administrative Evaluation Bureau as well as subjects concerning the routine practice or fundamental system of public administration. The departments responsible for rectifying or maintaining specific administrative actions, implementing improvement suggestions regarding public administrative policies, systems, and measures are administrative organisations across all levels of the government, independent administrative legal persons, special legal persons,

public legal persons, other legal persons which implement state-commissioned affairs or organise state-funded activities, as well as regional public organisations commissioned by the central government to exercise, on its behalf, public administrative power.

For example ¹²⁷, Mr Y, subsequent to purchasing a residence, wished to apply for tax relief for home acquisition. At a Tax Consultation Office nearby, he received a paper listing all documents required, one of which was titled Certified Copy of Registration. When Mr Y applied for a copy at a Regional Legal Affairs Bureau, he realised that the bureau did not have any guidelines on how to apply for the aforementioned document.

Staff at the Regional Legal Affairs Bureau explained to him that the Certified Copy of Registration, which the Tax Consultation Office requires, is known as a Registration Certificate in the Regional Legal Affairs Bureau. Upon receiving this document necessary for application for tax relief, Mr. Y found it necessary that government departments standardise the name of this document, since one document named differently at different executive organisations introduces confusion and inconvenience to applicants. Hence, he complained to the regional administrative evaluation department.

Upon receiving the complaint, staff enquired into the situation at the Regional Legal Affairs Bureau. A staff member of the Regional Legal Affairs Bureau explained that when the Ministry of Justice computerised the registration system, the document known as Certified Copy of Registration was renamed Registration Certificate. After the completion of the computerisation of the registration system, the Regional Legal Affairs Bureau issued public announcements to inform the public of the name change. A few months later, believing that all citizens were aware of the change, the Regional Legal Affairs Bureau ceased issuing the announcements – which was why Mr. Y could not find any guidelines at the Regional Legal Affairs Bureau when applying for a Certified Copy of Registration.

The National Tax Administration Agency had apparently never adopted the new name of the document but continued using the original name of Certified Copy of Registration.

The administrative counselling department recommended that the Regional Legal Affairs Bureau continue announcing the name change to the public, and that the National Tax Administration Agency adopt the new name of Registration Certificate for the document, and modify related contents in the paper listing all documents required for the application for tax relief.

The Regional Legal Affairs Bureau accepted the administrative counselling department's advice and posted an announcement about the change of name on the announcement board at the reception counter in order to assist citizens in the application procedure.

¹²⁷ Provided by the Division of Administrative Counselling, Administrative Evaluation Bureau, Ministry of Internal Affairs and Communications of Japan.



Likewise, the National Tax Administration Agency accepted the administrative counselling department's advice and decided to change the name of the relative document before the next year-end tax refund. Meanwhile, per the advice by the administrative counselling department, related regional Tax Consultation Offices undertook to update the list of documents required for the application for tax relief.

Finally, related administrative counselling individuals informed Mr. Y about the handling and result of his complaint, at which point the case was concluded satisfactorily. Although this case cannot reflect all the functions of all organisations involved in the Administrative Counselling System during the process of handling appeals for administrative counselling, it nonetheless enables us to observe a facet of the Administrative Counselling System.

Citizens can, in person, visit Administrative Evaluation Bureaus across different levels as well as their external channel – the General Administrative Counselling Bureau – or solicit help directly from Administrative Counsellors; they may also employ various means such as mail, telephone, fax, or Internet to request administrative consultation or submit complaints and opinions. Nationwide, the telephone is the most frequently used method of communication.

Citizens can, wherever they live in the country, complain and appeal to administrative counselling individuals, who are ready to receive complaints and requests from citizens regardless of whether the issue arose in his or her jurisdiction. Citizens will actively assist citizens in solving their problems.

Mr. A, for example,¹²⁸ recalled that his late grandfather once mentioned that he had received a plot of land from the former Imperial Household Ministry on 10th April 1925. Upon consulting land registration files, Mr. A realised that the ownership of the land still resided with the former Imperial Household Ministry. Considering his advanced age, Mr. A wished to complete the registration of the ownership of the land within his remaining years, and believed that the administrative departments of the former Imperial Household Ministry that was then responsible for transferring the plot of land from the Ministry should be responsible for implementing the registration for the transfer of ownership.

He sought out the Commissioner for Administrative Counselling near the quarter in which he resided and explained the situation. The Commissioner believed that the facts should first be verified but since this task already exceeded his regional jurisdiction he referred the case to the District Administrative Evaluation Office.

The District Administrative Evaluation Office, upon consulting files related to the plot of land, discovered that:

¹²⁸ Provided by the Division of Administrative Counselling, Administrative Evaluation Bureau, Ministry of Internal Affairs and Communications of Japan.

- (1) Although Mr. A failed to provide any documentation proving that his grandfather had received the land transferred from the former Imperial Household Ministry, another registered file did record his late grandfather's ownership;
- (2) No information in the archives could be found to substantiate the claim that the Regional Forest Office and the Local Finance Office had received the plot of land. After WWII, the former Imperial Household Ministry transferred the imperial forests from imperial possession to the state – part of it became national forestland supervised by the Regional Forest Office, and part of it became state-owned land supervised by the Local Finance Office.

The District Administrative Evaluation Office concluded, therefore, that Mr. A's grandfather did receive a plot of land transferred from the former Imperial Household Ministry during his lifetime, but had never completed the registration for the transfer of ownership. The Office reported this case and its investigation to the Administrative Evaluation Bureau of Ministry of Internal Affairs and Communications, and informed and requested the Imperial Household Agency to investigate the ownership of the plot of land in question from the perspective of Imperial possession management.

Investigations by the Imperial Household Agency revealed that:

- (1) The plot of land was deleted from the list of registered imperial possessions in 1925 and was no longer administrated as state-owned land;
- (2) Mr. A's grandfather had signed a contract for the land with the former Imperial Household Ministry and had already completed the defrayment of the land in compliance with the contract.

Since the Imperial Household Agency had confirmed that Mr. A's late grandfather owned the land, the District Administrative Evaluation Office advised related government departments to initiate registration for the transfer of ownership to Mr. A and requested him to visit the related government departments to complete the relevant procedures.

Imagine – if the Administrative Counselling System had not included the aforementioned trans-jurisdictional service, when would the aged Mr. A have been able to fulfil his cherished desire? And in order to inherit his grandfather's land, how much pain and trouble would he have had to endure?

The content of administrative counselling can largely be divided into three types.¹²⁹ The first type includes complaints and requests proposed due to discontent with a specific public service,

¹²⁹ See *Japan's Administrative Counselling System*, published by the National Federation of Administrative Counsellors' Association of Japan, April 2004, p11-13.



or disagreement on a particular public administrative action. The administrative actions referred to concern different affairs affecting public life or personal rights, including such matters as maintenance and administration of public roads, postal services and savings, insurance or pension, and employment standards or labour safety, etc. The second type includes consultation on administrative operations and management activities. Citizens' complaints and requests often arise out of a lack of or incomplete understanding of laws and regulations, and if information which they require can be provided promptly many complaints and requests will automatically evaporate. The third type includes complaints, requests or consultations that do not belong to the scope of duty of administrative counselling (e.g.) affairs under the jurisdiction of regional autonomous organisations, complaints and requests related to civil rights, etc. These issues, ostensibly outside the scope of administrative counselling, often conceal problems related to administration and operation which, from the perspective of administrative supervision and evaluation, are worthy of attention. The discovery of these problems depends entirely upon the patience, attentiveness and level of knowledge of and familiarity with the operational procedures and management mode of public administration of the administrative counselling individuals who conduct a dialogue with citizens.

The Administrative Counselling System is an integral part of the entire public system for resolving citizens' administrative complaints in Japan. The procedures and measures for administrative complaints that it provides for citizens differ from the mechanism of self-rectification and assistance of administrative departments across different levels of the government, and also from judicial assistance provided by the judiciary, and certainly from the politically tinged ideological assistance provided by the Diet or Regional Councils.

The Administrative Counselling System subsists and develops in the internal administrative system of the state but the government departments responsible for the organisation and operation of the Administrative Counselling System do not get involved in specific administrative activities that directly affect the public and society at large. Their principal duty is to co-ordinate policies between ministries or ministerial departments of the government, and ensure that state policies are harmonious, just, impartial, and cost-effective. They can remain relatively independent, therefore, from any actual operation of state policies, and they, in form, appear almost as the 'third party' outside of public administrative organisations and the citizenry: while maintaining neutrality and averting suspicion of officials helping one another, they gather in agglomeration all information about the operation of public administration. At the same time they fulfil citizens' wishes to receive appropriate and adequate information about the operational procedure of public administration – be it simple or complicated – anytime and anywhere. They also enable citizens to convey their discontent with, appeal to, and suggestions regarding public administrative departments and their

administrative activities regarding administrative supervision and evaluation departments of the government and their commissioned individuals in a relatively relaxed and friendly environment.

The Administrative Counselling System, thanks to its characteristic of resolving conflicts and disputes in a time-efficient, uncomplicated, effective, moderate, and reliable manner, is widely accepted by the public. Under normal circumstances, citizens do not actively and lucidly define the nature of the problems they encounter, or know which government department they should communicate with. They usually enquire at the government department which they think is the most convenient and trustworthy, from whom they find if their requests are lawful and legitimate, and whether such have been satisfied, understand the content and significance of certain administrative actions. They can, of course, also request assistance to rectify individual administrative action that infringes upon their rights.

In 2002, appeals for assistance which entered the Administrative Counselling System totalled 187,358, or an average of 513.31 appeals per day. Some 14,588 cases (7.8% of all cases) comprised complaints and requests; 42,507 cases (22.7% of all cases) were enquiries about the operation and management of public administration; 130,111 cases (69.45% of all cases) involved matters beyond the scope of administrative counselling, of which 81,924 cases (43.8% of all cases) were related to civil rights and 48,187 cases (25.7% of all cases) came under the jurisdiction of authorised regional organisations.¹³⁰

In 2006, appeals for assistance via the Administrative Counselling System numbered 179,419 or an average of 492 appeals per day, of which only 16,432 cases (9.16% of all cases) were complaints and requests.¹³¹

In 2007, the Tokyo General Administrative Counselling Bureau alone dealt with more than 800 requests for administrative counselling, of which over 500 (62.5% of all cases) were civil rights-related and involved matters beyond the scope of administrative counselling.¹³²

From the partial statistics provided above, one can observe that:

- (1) Citizens are not totally clear about the actual scope of matters covered by administrative counselling, since the number of appeals for assistance with subjects exceeding the scope of administrative counselling accounted for half of the total number of appeals for assistance;

130 Provided by the Division of Administrative Counselling, Administrative Evaluation Bureau, Ministry of Internal Affairs and Communications of Japan.

131 Provided by the Division of Administrative Counselling, Administrative Evaluation Bureau, Ministry of Internal Affairs and Communications of Japan.

132 Provided by Administrative Counselling Promotion officers of the Tokyo General Administrative Counselling Bureau.



- (2) Although administrative counselling individuals are not organisations or individuals that directly provide specific public services or take specific public administrative action, and although the opinions of administrative counselling individuals and their pertaining departments in organisations which exercise the power of public administration are non-binding, administrative counselling departments and individuals nonetheless receive a large number of requests for administrative counselling every day.

Why would the public engage with the Administrative Counselling System in this 'blind' manner? This is because administrative counselling departments and individuals are those whom the public regard as the most convenient and trustworthy. People are willing to utilise the mechanism of administrative counselling, whereby they directly solicit help from departments specialised in administrative complaints, because they feel that this mechanism may help them solve existing problems, while avoiding troubles in the future.

2. Emergence and Development of Administrative Counselling System

Officially established in 1955, the Administrative Counselling System now spans more than half a century.

2.1 Enactment of Constitution of Japan

On 26th July 1945, leaders of the three Allied powers - Winston Churchill, Harry S. Truman, and Joseph Stalin - jointly issued the Potsdam Declaration requesting 'the government of Japan to proclaim now the unconditional surrender of all Japanese armed forces', directing that 'the Japanese Government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people. Freedom of speech, of religion, and of thought, as well as respect for fundamental human rights shall be established'. When the Japanese Emperor proclaimed unconditional surrender on 15th August, the WWII ended, and American troops entered and garrisoned Japan. The *Constitution of Japan*, drafted under the personal supervision of Douglas MacArthur, Commander-in-Chief of the US Army Forces Far East, was approved by the Japanese Emperor on 3rd November 1946 and enshrined in law.¹³³

The Constitution of Japan came into force on 3rd May 1947, and constitutional monarchy—having been implemented in Japan for some 50 years—came to an end. The theocratic country in

¹³³ See <http://zh.wikipedia.org>.

which the Emperor personally ruled ceased to exist and the parliamentary cabinet system – based upon the *Trias Politicas* theory of legislative, judiciary, and executive powers – was established. The Japanese Emperor would henceforth no longer participate in national politics but ‘be the symbol of the State and of the unity of the people, deriving his position from the will of the people, in whom resides sovereign power.’¹³⁴ The symbolic leader of the country, he would ‘perform only such acts in matters of state as are provided for in the *Constitution of Japan* and he shall not have powers related to the government.’¹³⁵

The parliament, known as the National Diet of Japan, became the paramount power as well as the only legislative institution in Japan. Adopting the bicameral system, the Diet consists of the House of Representatives and the House of Councillors. Members of the Diet are elected by the people throughout the entire country, and embody the national sovereign spirit of the people. The Diet consists of the Secretariat, the Legislative Bureau, the Judges Impeachment Court, the Judge Indictment Committee, and the National Diet Library.¹³⁶

Judicial authority in Japan is exercised by judicial institutions, including the Supreme Court, High Courts, District Court, Family Court, and Summary Courts.¹³⁷ The Diet, possessing the power of impeachment for all court judges across all levels, supervises the judicial departments.

The Cabinet, comprising the Prime Minister and all Ministers of State, is the highest executive institution in Japan, and answers to the Diet. The Prime Minister must be a member of the Diet, elected by other members and appointed by the Japanese Emperor; the Prime Minister possesses the power to appoint or remove Cabinet members. The Cabinet exercises leadership over more than ten ministerial-level executive organisations,¹³⁸ including the Cabinet Office, Ministry of Internal Affairs and Communications, Ministry of Justice, Ministry for Foreign Affairs, Ministry of Finance, Ministry of Education, Culture, Sports, Science and Technology, Ministry of Health, Labour and Welfare, Ministry of Agriculture, Forestry and Fisheries, Ministry of Economy, Trade and Industry, Ministry of Land, Infrastructure, Transport and Tourism, Ministry of Environment, and Ministry of Defence, whose chiefs are Ministers of State (i.e.) Cabinet members. The Cabinet further comprises more than 10 institutions¹³⁹ – be they bureau, department, or council – directly subordinate to it, including the Cabinet Legislative Bureau, Security Council, Urban Renaissance Headquarters, and National Personnel Authority. Executive departments across different levels, led

134 Article 1 of *Constitution of Japan*.

135 Article 4 of *Constitution of Japan*.

136 See *Executive Organisational Chart*, version 2008, the Administrative Research Institute Foundation of Japan.

137 See *Executive Organisational Chart*, version 2008, the Administrative Research Institute Foundation of Japan.

138 See *Executive Organisational Chart*, version 2008, the Administrative Research Institute Foundation of Japan.

139 See *Executive Organisational Chart*, version 2008, the Administrative Research Institute Foundation of Japan.



by the Cabinet, are responsible for all executive affairs of the country, and exercise the function of national public administration. Meanwhile, the Diet also possesses supervisory power over the exercise of executive power.

The *Constitution of Japan* establishes regional autonomy. The entire country is divided into 47 prefectural level and 1,820 municipal level administrative districts.¹⁴⁰ Each administrative district comprises councils, executive organisations and other local public organisations. They receive state funding and assume local autonomous authority. They may also be commissioned by the central government to exercise public administrative duties on its behalf.

The Board of Audit, established under the *Constitution of Japan*, is independent from the Cabinet, and specialises in inspecting the final accounts of revenue and expenditure of government departments. It also conducts the fiscal inspection of state-owned properties, creditor's rights and public legal persons as well as regional public organisations funded by the government. Inspection reports by the Board of Audit are submitted by the Cabinet to the Diet for discussion.

2.2 Establishment of Administrative Supervision Departments

At the conclusion of World War II, Japan was a defeated nation. Its coffers were empty, its economy in a state of collapse, and much of the population was bereft of its livelihood. Discipline was neglected and violations of the law were frequent. To stimulate economic recovery, restore ethics and morals and improve social order the Japanese government enhanced its involvement in politics, economy and social life of the people. To ensure the implementation of government policies as well as to enhance governing ability and administrative efficiency, the Japanese Cabinet established the Central Administrative Supervision Committee in September 1947 to enhance supervision over administrative acts of all government departments and initiate administrative supervision. After the *National Government Organisation Act* was implemented on 10th July 1948, the Cabinet, in compliance with relevant stipulations of the *Act*, merged the Central Administrative Supervision Committee—which had then been in place for less than one year—with the Cabinet's administrative investigation department, whereby the Administrative Management Agency was created, under which a supervisory department was also established to take charge of administrative supervision affairs.

¹⁴⁰ See <http://zh.wikipedia.org>.

In the 1950s, the Japanese government and the people shared a common objective; namely, to rebuild the economic system and extricate the country from the economic disaster which WWII had visited upon them. In this context, factors such as the acceptance of the government's ruling principles and policies by society, the thorough implementation of the central government's policies by administrative departments across all levels, and the recognition of administrative acts conducted by government departments across all levels by the populace appeared particularly important. In order to enhance its supervision of the handling of public affairs by administrative departments at the grassroots level and ensure that future policies reflected the needs of the people in the fulfilment of their expectations, the central government decided to enhance administrative supervision. In August 1952, the Administrative Management Agency, in compliance with the *Organisation Act*, established, on the foundation of the Department of Supervision of the Administrative Management Agency, the Administrative Inspection Bureau as well as eight District Administrative Inspection Bureaux and 41 Local Administrative Inspection Bureaux across the entire country. In 1955, the Administrative Management Agency and its district and local Administrative Inspection Bureaux began receiving complaints from citizens about public administrative acts. This made the reaction of the public to administrative acts at all levels one of the means of administrative supervision over the government. With this, within the administrative supervision system of Japan, the Administrative Counselling System was born.

At the time, if individuals disagreed with the administrative acts of the government their only recourse was to complain to the Administrative Inspection Bureau and its branch organisations distributed across various administrative districts. Because the primary function of the Administrative Inspection Bureau was to internally supervise the administrative operation and handling of public affairs of government departments, and externally, it lacked the function to directly deal with public issues, with the result that the public was not entirely clear about its functions. Unlike the present-day General Administrative Counselling Bureaux, which are located in busy and convenient areas, Administrative Inspection Bureaux were located in areas that for most people were remote or inconvenient. It was not easy, therefore, for individuals to make a special trip to the Administrative Inspection Bureaux to express their dissatisfaction or disagreement with certain government departments or administrative acts by the government. In reality, people more often than not kept government departments at a respectful distance. For this reason, with respect to their role as providers of administrative counselling, the District and Local Administrative Inspection Bureaux were barely adequate.

In the late 1950s, the Japanese economy entered its post-war boom period and as the economy rapidly expanded the administrative acts of the government widely and deeply affected the individual's daily life. People increasingly felt the effects of administrative acts taken by the government, and



the volume of various complaints and opinions steadily increased. The government realised that the current Administrative Inspection Bureau was far from satisfactory in dealing with the demands for administrative counselling services. The expectation that through the people's reaction to public administrative acts the government could understand the performance of public administrative departments across the country in the implementation of state policies, laws and regulations, existing measures, etc., as well as whether the policies and measures the government adopted were beneficial to economic development, social progress, and prosperity and safety, was all but unfulfilled. It was therefore necessary to establish an administrative counselling channel that was relatively independent of the system of Administrative Inspection Bureaux and more acceptable to the public, in order to improve and enhance administrative counselling services and thereby enable this form of societal supervision to exert its positive influence on the process of increasing administrative governance.

Consequently, the Administrative Counsellor System emerged in 1961.¹⁴¹ By means of establishing non-governmental Administrative Counsellors, the government sought to shorten the geographical and psychological distance between administrative counselling and the ordinary person; establish an easily accepted, familiar, and informal counselling channel; make it convenient for citizens to visit so that they could enquire, complain, and provide suggestions about the operation of public administration and administrative acts, as well as receive appropriate, prompt assistance from Administrative Counsellors, thereby helping them resolve their actual problems and difficulties.

While developing the non-governmental Administrative Counselling System, the Japanese government was also actively considering how to improve administrative counselling affairs within government departments themselves, how to shorten the distance between the Administrative Inspection Bureau and ordinary people, and how to enable them to use the administrative counselling service provided by Administrative Inspection Bureaux at different levels more easily and conveniently. As a result, the external window of Administrative Inspection Bureaux across all levels—the General Administrative Counselling Bureau—was created.

During the phase of stable development in the 1980s, the Japanese economy enjoyed rapid increases in asset value. As the scope of public administration became increasingly extensive, the people's demand for various facilitating measures and services by the government became increasingly vocal, as did expectations for the improvement in the quality of public administrative services. More and more administrative counselling cases concerned changes of existing rules and regulations as well as the fundamental system, which involved essential fiscal arrangement. How to co-ordinate the relationship between individual cases and the general system? How to strike a balance

141 See *Japan's Administrative Counselling System*, published by National Federation of Administrative Counsellor's Association of Japan, April 2004, p.5.

between the individual rights and interests of the people and the public interests of society? Which existing policy or measure could be considered by society as the right balance between individual rights and interests and the existing system and policies? The Japanese government wished to glean more extensive and profound opinions from the public.

In this context, the Administrative Grievance Resolution Promotion Council was established in December 1987.¹⁴² Originally subordinate to the Administrative Inspection Bureau, in 1990 it became a counselling organisation directly subordinate to the director of the Management and Co-ordination Agency, which was in charge of handling grievances and complaints regarding various public affairs. Today, it is one of the standing councils in the Ministry of Internal Affairs and Communications. Of the 50 local organisations under the same ministry, 12 District Administrative Evaluation Bureaux have regional Administrative Grievance Resolution Promotion Councils possessing similar functions.¹⁴³

In the early 1990s, the bubble economy in Japan burst and as the economy started its long stagnation regional public organisations encountered severe financial crises, while the citizens' distrust of the government grew with each passing day. To reverse the negative image of the government and show that the operation of public administration and management was based upon public interest, regional public organisations across Japan, on the foundation of the existing administrative supervisory system, introduced an administrative evaluation function. Simply put, it implemented different government services via common and simple channels, attracted and encouraged local residents to use them, and evaluate—from the perspective of quality and quantity as well as personnel and affairs—government services. It sought to foster mutual understanding and support between government and citizens, whereby government measures would reflect residents' rights and interests, and residents would support government administration. A period of implementation revealed that the administrative evaluation system had achieved certain results in autonomous regions as anticipated.

In the late 1990s, the Cabinet introduced the functions of administrative evaluation into its process of administrative supervision. It adopted a series of specific measures, including pre-evaluation, ongoing evaluation, post-evaluation, and re-evaluation. It elevated, amid the streamlining of organisational structure of central institutions as well as administrative reforms seeking to re-organise central administrative departments, the status of Internal Affairs and Communications from department to ministry. It also established, on the basis of the Administrative Inspection Bureau, the Administrative Evaluation Bureau, which specialised in administrative supervision and evaluation.

142 See *Japan's Administrative Counselling System*, published by National Federation of Administrative Counsellor's Association of Japan, April 2004, p.17.

143 Provided by Division of Administrative Counselling, Administrative Evaluation Bureau, Ministry of Internal Affairs and Communications of Japan.



Summarising the 50-plus year history of the Japanese Administrative Counselling System, we see that it came into being and developed alongside the process of establishing and developing an administrative supervision by the Japanese government. It was built upon a solid socio-economic foundation as the basic human right defined in the *Constitution of Japan*, and as a result, the sovereignty of the people and principles, such as freedom of religion, thought, speech, and so on, saw substantial development in the post-WWII era.

Economic development has led to the expansion, both in terms of scope and depth, of public administrative activities, and to the people's increased demand for government; as citizens become gradually but increasingly aware of personal freedoms, rights, and interests, so do their requirements of government, and their demand for quality government service. The government concept of putting people first has also slowly taken root in the national public administrative system, which is based upon the foundation of *Trias Politicas*. This, as far as Japan—a country which has for nearly 60 years adopted the constitutional monarchy system—is concerned, is indeed a huge and thorough change. The development of the economy and changing social ideology have provided the birth and development of the Administrative Counselling System within a favourable environment.

In formulating public administration policies and system, the government is willing to listen to the diverse opinions of the people; in conducting public administrative activities, the government actively adopts the people's voice in administrative complaints as one of the supervisory measures, with which it supervises whether administrative departments across all levels are conscientiously implementing the government's political concept of putting people first, and whether they are thoroughly implementing the government's established objectives and measures. In the actual implementation of public administration, the government constantly learns from experience, creates and develops the Administrative Counselling System, and formally includes social supervision in its administrative supervision.

Today, the Administrative Counselling System—from being non-existent to existent, and from being implemented by a single government department for the participation of non-government individuals from all sides through various channels—has already operated for more than half a century. It has become a reliable means for the government to supervise and evaluate the operation and management of public administration, and become a reliable platform by which public opinion is brought into the government's established policies and measures. The Administrative Counselling System is helpful for hearing people's complaints and opinions about public administrative acts, and for the improvement of management and operational procedures of public administration. It enables the public administrative service to embody and safeguard the individual rights of the citizen and the common interests of society, increases the administrative capability and efficiency of the government, advances the democratic management of public affairs, and embodies the constitutional spirit of sovereignty lying with the people.

3. Administrative Evaluation Bureau

The Cabinet, the core of the central government of Japan, directly supervises the Ministry of Internal Affairs and Communications. To fulfil its statutory missions and tasks, the Ministry has subordinate to it ten department-level organisations, one of which is the Administrative Evaluation Bureau.

3.1 Organisational Structure

The Ministry of Internal Affairs and Communications—formerly known as the Ministry of Public Management, Home Affairs, Posts and Telecommunications—was established in compliance with Clause 2 of Article 3 of Law No. 120 *National Government Organisation Act* dated 10th July 1948. The same Act has been amended various times, the most recent taking place in 2006 through Law No. 118, which came into force on 9th January 2007.¹⁴⁴

The *Statute of the Ministry of Internal Affairs and Communications*, proscribed on 16th July 1999, was Law No. 91 of the same year; subsequent to preparatory work lasting one and a half years, it came into force on 6th January 2001. To date, it has been subject to 15 amendments, the most recent of which was promulgated on 31st July 2002, and came into force on 1st April 2003.¹⁴⁵

In compliance with relevant stipulations in the *Statute of the Ministry of Internal Affairs and Communications*, the Ministry, in the very beginning, as far as administrative evaluation and supervision were concerned, merely established the Policy/Independent Administrative Legal Persons Evaluation Committee within itself, and directly led District Administrative Evaluation Bureaux in all administrative districts. At the time, for certain reasons, the Okinawa Regional Administrative Evaluation Bureau was also temporarily included in the scope of the Ministry's direct leadership. Under the jurisdiction of the District Administrative Evaluation Bureau are the Administrative Evaluation Branch Offices, under whose jurisdiction, in turn, are the Administration Evaluation Offices.

The *Organisational Statute of the Ministry of Internal Affairs and Communications*, promulgated on 7th June 2000, came into force in April 2001, with the most recent amendments taking place under Decree No. 20 of 1st February 2008.

As stipulated in the *Organisational Statute of the Ministry of Internal Affairs and Communications*, the Ministry comprises ten direct subordinate bureaux, one of which is the Administrative Evaluation

¹⁴⁴ See <http://www.k.l.i.is.nagoya-u.ac.jp>.

¹⁴⁵ See <http://law.e-gov.go.jp>.



Bureau. The Bureau, in turn, comprises two subordinate departments: the Division of General Affairs and the Division of Administrative Counselling, in addition to which are assigned one Policy Evaluation Officer and nine Evaluation Supervision Officers. Within the Ministry there is also one Policy Evaluation and Inspection Officer. The Policy / Independent Administrative Legal Persons Evaluation Committee was retained, and the Okinawa Regional Administrative Evaluation Office was merged with the regional administrative evaluation departments of Okinawa Prefecture.

Nationally, the Ministry of Internal Affairs and Communications comprises seven District Administrative Evaluation Bureaux, each of which, within itself, comprises a Division of General Affairs and Division of Administrative Counselling; in addition, there are a further 38 Administrative Evaluation Offices across the country. As of April 2007, the Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications had established nearly 50 local organisations in administrative regions across all levels.

The Administrative Evaluation Bureau is led by a director. He or she is subject to appointment and removal by a Cabinet member, the Minister of Internal Affairs and Communications, whereas appointments of all heads of administrative evaluation departments across different levels are subject to his or her administrative leadership.

All activities of the Administrative Evaluation Bureau, its local organisations, and Administrative Counsellors commissioned by the Minister of Internal Affairs and Communications, including all expenses involved in administrative counselling services, are paid for from the Ministry budget. Activity plans, drawn up annually, are included in the aggregate budget of the Ministry and submitted by the Cabinet to the Diet for review and approval.

Comparing the positions of the Administrative Evaluation Bureau and the Board of Audit within the public administrative system of Japan, it is not difficult to discover that the degree of the Japanese government's supervision over the procedures and conditions of public finance substantially exceeds that over administration. The Japanese Board of Audit comprises two sections: the Council of Inspectors and the Department of General Affairs. The former is responsible for decision-making, while the latter is responsible for inspecting operations. The Council of Inspectors comprises three inspectors, and all decisions must be approved unanimously by the entire Council. Prior to appointing an inspector, the Cabinet must obtain approval from the House of Representatives and House of Councillors; subsequent to the appointment, the Japanese Emperor issues a certificate, with each term lasting seven years. The Chair of the Council is elected by the three inspectors and appointed by the Cabinet. The Director of the Board of Audit is also the Chair of the Council of Inspectors. This prudent appointment procedure no doubt enables the Board of Audit to remain relatively independent from the national administrative system, which is important for the protection and enhancement of the objectivity and scientific approach of its fiscal inspection.

Concerning the Administrative Evaluation Bureau, responsible for the supervision and evaluation of public administration, however, its director and other leaders and superintendents are all appointed by the Minister of Internal Affairs and Communications, a Cabinet member, whereas its fiscal budget is provided for by the Ministry, one of the state executive departments. Its personnel appointment and dismissal and source of fiscal budget are all subject to the Ministry and the Minister, led by the Cabinet, and as such it has a close relationship with the national public administrative system. Under such circumstances, the effect of its supervision over the national public administrative system depends to a large extent upon the attitude of the Cabinet and the Minister of Internal Affairs and Communications towards administrative supervision, as well as the attitude and principles of the individuals responsible for the organisation and implementation of administrative supervision. Should they see the maintenance of society's common interests as their duty, adopt objective, fair, and impartial principles, dedicate themselves to improving the operation of public administration, supervisory staff, even though their personnel appointment and dismissal and fiscal source are subject to the administrative system and leadership to which they pertain, they can then enable the administrative supervision system to exert its due influence.

3.2 Duties

As stipulated by the *Statute of the Ministry of Internal Affairs and Communications*, affairs subject to the administration of the Ministry include:

- (1) Evaluation of policy. The Ministry drafts and establishes the basic plan of policy evaluation, and is responsible for the co-ordination of policy evaluation of all ministries of the central government as well as normal affairs;
- (2) The conducting of ordinary and necessary evaluation regarding the consistency and evaluation of policies of all ministries of the central government to ensure that their policy evaluation has been implemented rigorously and objectively;
- (3) Evaluation and supervision of administrative affairs. The Ministry evaluates and supervises the actual fulfilment of statutory duties of administrative departments across all levels;
- (4) The conducting of necessary evaluation on the consistency of policies of all ministries of the central government and their own policy evaluations, or if administrative evaluation of and supervision of administrative departments across all levels include the following legal persons, the Ministry should conduct the necessary investigation into the details of the fulfilment of their duties:
 - i) Independent administrative legal persons;
 - ii) Special legal persons established directly by law;



- iii) Public legal persons approved to be established by specific administrative departments, which have more than half of their budget funded by the state, and whose function is to distribute state funding to the public;
 - iv) Other legal persons who conduct tasks commissioned by the state or organise state-funded activities;
- (5) The conducting of necessary evaluation regarding the consistency of policies of all ministries of the central government and their own policy evaluations, or in conducting administrative evaluation of and supervision of administrative departments across all levels; if various duties of regional public organisations commissioned by the central government in compliance with Law No.67 in 1947, Clause 9i) in Article 2, are concerned of *Local Autonomy Law*, the Ministry may conduct the necessary investigation into the completion status of the regional public organisations' duties;
 - (6) Mediation during the grievance procedure regarding complaints about public administrative acts conducted by legal persons or regional public organisations mentioned in (4);
 - (7) Issues related to Administrative Counsellors.

In order that the Ministry of Internal Affairs and Communications conducts evaluation on and supervision of policies and administration, the Minister is authorised to:

- (1) Propose, within the scope of duties of the Ministry, recommendation to related administrative departments subsequent to the completion of administrative evaluation of administrative departments across all levels;
- (2) Require, if necessary for administrative evaluation, heads of related administrative departments to provide information and explanations in written form for the operation of their departments or according to specific request;
- (3) Investigate, in written form, the details of the fulfilment of the duties of the following legal persons, and request them to provide relevant information:
 - i) Independent administrative legal persons;
 - ii) Special legal persons established directly by law;
 - iii) Public legal persons approved to be established by specific administrative departments, which have more than half of their budget funded by the state, and whose function is to distribute state funding to the public;
 - iv) Other legal persons who conduct tasks commissioned by the state or organise state-funded activities;
 - v) Regional public organisations commissioned by the central government to exercise, on its behalf, public administrative power; the aforementioned organisations may not refuse requests by the Minister of Internal Affairs and Communications;

- (4) Listen, prior to conducting administrative evaluation of and supervision of the fulfilment of tasks of regional public organisations commissioned by the central government, to their opinions before requesting them to provide information in written form;
- (5) Request related officials and individuals to thoroughly co-operate during investigations in written form;
- (6) Request the individual or organisation being investigated—subsequent to proposing recommendation to the chief of related administrative organisations—to submit a report to explain whether the organisation has taken appropriate action based on the recommendation proffered and specific measures, and so on;
- (7) Report in details to the Prime Minister at Cabinet meetings in compliance with Law No. 50 in 1947 the *Cabinet Act*, should supervision and evaluation findings show the necessity to improve the basic mode or system of administration;
- (8) Inform the chief of the concerned administrative organisation, should supervision and evaluation findings show that laws and regulations must be observed.

As stipulated in the *Organisational Statute of the Ministry of Internal Affairs and Communications*, the Administrative Evaluation Bureau is a specific department that conducts the Ministry's evaluation of and supervision of policies and administration, and which assists the Minister to fulfil his or her duties. The Bureau's scope of duties includes all tasks of the Ministry in relation to evaluation and supervision, and it is responsible for conducting ordinary affairs of the Policy / Independent Administrative Legal Persons Evaluation Committee. The Evaluation Supervision Officers are responsible for administrative evaluation and conducting all necessary investigations related to administrative evaluations, whereas the Division of Administrative Counselling is responsible for the regular operation of the Administrative Counselling System.

The scope of duties of the Division of Administrative Counselling includes:

- (1) Receiving and mediating complaints and requests concerning public service or public administrative acts as well as the operational procedure of the following organisations:
 - i) Administrative organisations across all levels of government;
 - ii) Independent administrative legal personalities, such as National Agency of Vehicle Inspection, and Nippon Telegraph and Telephone Corporation;
 - iii) Special legal persons established directly by law;
 - iv) Public legal personalities which are approved to be established by specific administrative departments, which have more than half of their budget funded by the state, and whose



function is to distribute state funding to the public, such as the Industrial Structure Improvement Fund, etc;

- v) Other legal persons who conduct tasks commissioned by state or organise state-funded activities;
- vi) Regional public organisations commissioned by central government to exercise, on its behalf, public administrative power;

(2) Issues related to Administrative Counsellors

The public may, should the aforementioned six types of organisations which exercise public administrative power conduct administrative operation or improper administrative acts which infringe upon the public's legitimate rights, complain to administrative evaluation departments across all levels, request that the specific administrative act which disadvantages them be altered, that the conditions of certain public services provided by the government be altered, or even that the professional attitude of public servants be improved, etc.

The Administrative Evaluation Bureau does not accept complaints and requests related to the following cases:

- (1) Criminal investigations, cases awaiting court rulings, as well as cases already judged, settled, mediated, or arbitrated;
- (2) Cases already in Ombudsman procedure, or those which have already been decided;
- (3) Cases involving high-level political decisions or particular professional and technical decisions.

3.3 Operation

Administrative evaluation departments across all levels, subsequent to receiving complaints, first investigate the causes and effects of the case prior to studying applicable laws and regulations, and subsequent to understanding the opinions the complainant and the related public administrative department have regarding the issue, mediate according to the principles of fairness, reason, and lawfulness, and strive to satisfactorily resolve the dispute.

Should the administrative evaluation department consider the complaint or opinion reasonable, it will take the initiative to contact the public administrative organisation concerned either in oral or written form, put forth its suggestions, and its hope that the parties will consider these recommendations. At times, it also requests the public administrative organisation concerned to explain and clarify the issues being complained about.

Should complaints or requests concern the fundamental system and operation of public administration, or should the number of complaints and opinions of the same nature or about the same subject increase, the Administrative Evaluation Bureau under the Ministry of Internal Affairs and Communications will request the Administrative Grievance Resolution Promotion Council to listen to public opinion.

For instance¹⁴⁶, a citizen complained that the current health insurance system forces him to commute long distances between his home and work place every day; since he supports his elder brother, who is severely psychologically handicapped, his health insurance also insures his elder brother. He hoped that some specific measures could be adopted so that while his health insurance covers his elder brother, he could be exempted from the requirement that he must live in the same residence as his elder brother, and as such not have to commute long distances on a daily basis.

In investigating the case, the Administrative Evaluation Bureau noted that, as stipulated in the *Health Insurance Act*, two conditions apply regarding the younger brother's health insurance covering the elder brother:

- (1) Younger brother supports elder brother;
- (2) They live together. For the elder brother's health insurance to cover the younger brother, however, only one condition must be satisfied, that the elder brother supports the younger brother. The Bureau requested the Ministry of Health, Labour and Welfare to explain the reasons which led to the aforementioned difference, and the reply was that the most important reason is that elder members in the family take care of themselves, which, more often than not, is indeed the case.

Since the elder brother in this case is incapable of taking care of himself, however, the younger brother is put in an invidious position: he could either choose not to support his elder brother, or move to another house, or change his job, all of which would be extremely difficult to implement. The only way to eliminate this dilemma was to amend the laws and regulations governing the coverage of the elder brother by the health insurance of the younger brother. But should one amend laws and regulations for minority cases? The Bureau considered it necessary to consult public opinion, and referred the case to the Administrative Grievance Resolution Promotion Council for discussion.

Members of the Administrative Grievance Resolution Promotion Council believed that, in order to protect the welfare of elder siblings who are supported by younger siblings, it is necessary that the Ministry of Health, Labour and Welfare review the conditions for dependent insurance coverage. Based upon the aforementioned opinion, the Ministry of Internal Affairs and Communications convinced the Ministry of Health, Labour and Welfare to accept the recommendation.

146 Provided by Division of Administrative Counselling, Administrative Evaluation Bureau, Ministry of Internal Affairs and Communications of Japan.



Administrative counselling departments and individuals, when encountering complaints and requests which involve jurisdictions of multiple public administrative departments, inform the Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications, which then steps in and co-ordinates. Should the Administrative Evaluation Bureau under the Ministry of Internal Affairs and Communications consider that certain complaints or requests could potentially take place throughout the country, they initiate an investigation and co-operate with related organisations in order to prevent similar complaints from arising. The example ¹⁴⁷ below illustrates this point.

A citizen within the fee zone of the NTT (Nippon Telegraph and Telephone Corporation) forgot to dial regional codes when making calls. Consequently, he heard the recorded voice instruction that 'the number you have dialled is not currently in use, please check your telephone number and dial again'. He was very dissatisfied since the telephone number he had dialled was correct, and all that he had overlooked was to dial the area code. The recorded voice instruction he wished to hear was 'please dial again, including the area code'. Consequently, he complained to the Regional Administration Evaluation Branch Office of his region.

The Regional Administration Evaluation Branch Office, upon understanding the situation, realised that:

- (1) Two persons within the same code area but different pay zones, when making phone calls, ought to dial the area code, which the complainant, under the circumstances, did not;
- (2) Without dialling the area code the call cannot be connected but the recorded voice instruction being complained about can be heard;
- (3) Recorded voice instruction does not address actual situation.

The Regional Administration Evaluation Branch Office, together with three other Regional Administration Evaluation Branch Offices in the same region, negotiated with NTT and convinced it to modify the recorded voice instruction in the region.

Subsequent to receiving the report of the case, the Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications believed that similar conditions could also happen in other regions, and consequently initiated a nationwide investigation and review. The result showed that the entire country has 127 area codes and 307 pay zones, which signifies that there are quite a few regions in the country which share the same area code but with different pay zones, and that similar incidents would most probably recur. As a result, all telecommunication companies agreed to co-ordinate so that:

¹⁴⁷ Provided by Division of Administrative Counselling, Administrative Evaluation Bureau, Ministry of Internal Affairs and Communications of Japan.

- (1) Upon receiving requests for modifying recorded voice instructions, changes must be made immediately. At the same time, explanations would be published in telephone directories or similar media to remind users that two persons within the same code area but different pay zones must dial the regional code;
- (2) From the aforementioned handling, it would be the same for forgetting to dial telephone numbers.

The opinions of the Administrative Evaluation Bureau under the Ministry of Internal Affairs and Communications, where necessary, can also be handed by the Minister to other Ministers of State who are in charge of the related departments, or for study and discussion in Cabinet meetings. Subsequent to the decision by Ministers of State or the Cabinet, they are implemented in unified fashion by administrative departments across all levels of the government.

In the event of large-scale natural disasters, such as the earthquakes in Niigata Chuetsu or the western coast of Fukuoka, the Ministry of Internal Affairs and Communications co-operates with relevant organisations, promptly establishes Special Administrative Counselling Centres and, regarding specific large-scale natural disasters, receives and handles enquiries from residents of regions affected by natural disaster.

Although the opinions of the administrative evaluation departments in Japan at times represent the position of the Ministry of Internal Affairs and Communications, these opinions, as in the traditional Ombudsman system, are not binding. In relation to complaints, the Ministry and its administrative counselling departments across all levels neither initiate their own procedure for redress nor do they order related public administrative departments to adopt rectification measures; they simply offer their recommendations, and encourage and persuade related public administrative departments to review their own administrative acts. Normally, the opinions of administrative counselling departments are accepted by related public administrative departments. Why are public administrative departments willing to accept recommendations and opinions that are not binding and willing to review their administrative procedures and acts, and take the initiative to adopt rectifications? There are at least two elements worthy of attention and discussion.

The first element is the quality and endeavour of staff in administrative evaluation departments. As of April 2007, the Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications as well as their local organisations, which totals nearly 50, have a combined staff of more than 1,300. All of them are public servants and thanks to years of experience in public administration possess a thorough understanding of the entire administrative operation; upon receiving special training in administrative evaluation and supervision, they are capable of conducting supervision of the fairness and lawfulness of public administrative departments.



The second element is the *modus operandi* which administrative evaluation departments adopt during the process of administrative supervision: assistance, mediation and dialogue on the basis of equality. The fact that the public complains about certain administrative act signifies that the administration of certain public administrative departments has failed to live up to the expectations of the public, or that they infringe upon the existing legal rights of the public, so that differences or disputes occur between the two parties. Since the two parties would subsequently doubt each other's ability to recognise and correct their own mistakes, as well as the goodwill of understanding and forgiving each other's errors, they are not willing to conduct direct dialogue easily. In this situation, the intervention of administrative counselling personnel of administrative evaluation departments as a third party is more easily acceptable to both. For administrative counselling staff—the communication bridge between the two parties—their principal objective is to search for the best solution to the problem rather than investigate or accuse any party of causing the current dispute or seek compensation. The opinions of administrative counselling staff are not binding on both parties but convince them with the objectivity, scientific approach, impartiality and non-affiliation of their arguments. This enables the two parties to soften their psychological defences and resistance, express themselves frankly, understand each other with goodwill, and actively take actions to minimise differences, thereby ultimately leading to the resolution of the dispute.

In order to continuously improve the service quality of administrative counselling staff, co-ordinate to make sure that complaints and requests of the same nature are handled identically in different places and in departments across different levels, enhance connections between administrative evaluation departments and administrative organisations of the government across all levels, independent administrative legal persons, special legal persons established directly by law, public legal persons which are approved to be established by specific administrative departments, which have more than half of their budget funded by the state, and whose function is to distribute state funding to the public, other legal persons which conduct tasks commissioned by the state or organise state-funded activities, as well as regional public organisations commissioned by the central government to exercise, on its behalf, public administrative power, the Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications regularly organise for them nationwide or regional exchange meetings, encourage and promote the sharing of experiences and co-operation between peers responsible for administrative counselling, as well as co-operation between administrative evaluation departments and various public administrative organisations.

3.4 Convenient service for public and General Administrative Counselling Bureau

In order to make it convenient for the public to make complaints and provide opinions, the Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications, District

or Regional Administrative Evaluation Bureau, Branch Offices and Offices have adopted many convenient measures. For instance, all administrative evaluation departments across different levels operate an Administrative Complaints Hotline (行政苦情110番), which is operational around the clock and every day; even if the call is not personally attended, there are nonetheless voice recording facilities via which residents can make complaints or provide opinions at any time.

Administrative evaluation departments across different levels are all stocked with stationery specifically for administrative counselling with up-to-date addresses of administrative evaluation departments printed on them; they are placed in some 1,400 post offices or other public places across the country in order to make it convenient for residents to post their complaints and opinions.

Furthermore, administrative evaluation departments accept administrative complaints and enquiries from the public by different means, be they in spoken or written form, or traditional or electronic, as long as he or she sees it as the most convenient means; with technological developments and changes in modern lifestyle a wide variety of convenient measures are emerging.

In addition, the most important convenient measure for the citizen is the establishment of an external channel, the General Administrative Counselling Bureau, by administrative evaluation departments across all levels.

Across the country there are 22 General Administrative Counselling Bureaux. Some have operations scattered around various districts (e.g.) the Kyoto General Administrative Counselling Bureau has four offices. Some have longer histories, such as the Tokyo General Administrative Counselling Bureau, which is now 30 years old.

These offices are all located in busy areas and transport hubs, such as the Tokyo General Administrative Counselling Bureau, which is located on the 7th floor of Seibu in Ikebukuro, and the Osaka General Administrative Counselling Bureau, which is located on the 8th floor of the Daimaru Shinsaibashi Branch south wing. General Administrative Counselling Bureaux are open daily with fixed office hours (e.g.) from 10:00am to 5:00pm. Even on days when the commercial institutions in which they are located are closed, their administrative counselling channels are nonetheless open. Since the establishment of General Administrative Counselling Bureaux are helpful for the protection of legitimate rights of individuals as well as the promotion of the common interests of society, commercial institutions are willing to rent out space at low prices for administrative counselling channels to the Ministry of Internal Affairs and Communications.

The personnel who hold a dialogue with the public at General Administrative Counselling Bureaux are termed Administrative Counselling Promotion Officers. They are often retired public servants with plentiful experience in public administration, are familiar with the operation of public



administrative departments, and possess a thorough understanding of the policies, legal system, and administrative measures of public administration. In accordance with the state re-employment of the public servant system in Japan, subsequent to retirement they are re-employed and remunerated by the Ministry of Internal Affairs and Communications for work as Administrative Counselling Promotion Officers, in which capacity they can utilise their copious experience and knowledge to provide an administrative counselling service to the public.

In collaboration with administrative evaluation departments across all levels, other government departments or public legal persons, Administrative Counselling Promotion Officers establish monthly plans and formulate topics for administrative counselling meetings. For instance, in the January 2008 administrative counselling plan of the Tokyo General Administrative Counselling Bureau—except for the 1st to 3rd, which were New Year holidays—there were 19 days with ordinary administrative counselling as the topic, wherewith the Kanto District Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications provided administrative counselling services to citizens discontented with the operation or administrative acts of independent administrative legal persons and special legal persons. There were three days with registration counselling as the topic, during which time the Tokyo Legal Affairs Bureau provided administrative counselling service. Additionally, there were other administrative counselling services (e.g.) ordinary municipal affairs, social welfare, and national pension fund, communications and labour affairs, etc. In the February 2008 administrative counselling plan there was not a single holiday; in each of the 29 days, experts in specific fields attended, received enquiries from the public, and provided professional suggestions and recommendations. As a matter of fact, one could also ask—and be provided with answers to—questions not related to the subject at any time.

Questions raised and sought help for at the General Administrative Counselling Bureau can involve state affairs or focus on regional public administration, but most closely relate to the daily life of ordinary people (e.g.) registration and modification of fixed assets, insurance claims and payments, payment of pensions or old age allowances, and so on. As far as ordinary counselling is concerned, Administrative Counselling Promotion Officers, based on their own experience and knowledge or with the help of the Internet, provide suggestions to enquirers. For complaints and requests, subsequent to understanding the actual situation, they explain to complainants, clear up misunderstandings, and clarify doubts; or they provide recommendations to relevant departments, minimise the differences between them and complainants, and seek solutions; or they refer difficult questions to administrative evaluation departments at different levels, who handle the queries; the complainant can also elicit a response from the Administrative Counselling Promotion Officers.

In 2007, the two Administrative Counselling Promotion Officers at the Tokyo General Administrative Counselling Bureau received more than 800 requests for administrative counselling; some 300 were related to public administration, the majority of which were related to public service and public administrative acts by independent administrative legal persons, special legal persons established directly by law, public legal persons which are approved to be established by specific administrative departments, which have more than half of their budget funded by the state, and whose function is to distribute state funding to the public, as well as other legal persons who conduct tasks commissioned by the state or organise state-funded activities, while the rest was related to various registrations of fixed assets such as land and property.

All services provided by the General Administrative Counselling Bureaux are free of charge, and Administrative Counselling Promotion Officers also decline remuneration and gifts offered as tokens of appreciation by the public; details of counselling sessions are kept strictly confidential and are not easily divulged.

In 2002, according to information provided by staff from the Division of Administrative Counselling of the Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications, the number of administrative counselling cases - be they administrative complaint or enquiry - submitted through the Administrative Counselling System totalled 187,358, of which 57,755 (30.8% of all cases) were received by the administrative evaluation departments across all levels and their external channel, namely the General Administrative Counselling Bureaux. Of these 57,755 appeals, 42,901 (74.3% of all appeals received through the system in 2002) were received by General Administrative Counselling Bureaux across the country.

In 2007, the two Administrative Counselling Promotion Officers at the Tokyo General Administrative Counselling Bureau received more than 800 requests for administrative counselling (i.e.) each one handled more than two requests for administrative counselling every day.

It can be seen from this that:

- (1) administrative complaints and enquires submitted via the administrative counselling services of administrative evaluation departments across all levels of the government accounted for merely one third of all appeals in a year, which obviously constitutes the minority;
- (2) of the administrative evaluation departments across all levels of the government which provide administrative counselling services, 22 General Administrative Counselling Bureaux proved most popular, wherein seven in every ten requests for administrative counselling were submitted to Administrative Counselling Promotion Officers at General Administrative Counselling Bureaux. This shows that among all convenient measures for the people provided by administrative evaluation departments across all levels of government,



the Administrative Counselling Promotion Officers and their General Counselling Bureaux were the most effective, and hence the most successful.

4. Administrative Counsellors System

The Administrative Counsellors System, established in 1961, is the non-governmental and non-public servant component of the Japanese Administrative Counselling System.

4.1 *Administrative Counsellors Law*

After five years of implementation, the Administrative Counsellors System was proven to have strong social recognition in handling complaints by citizens about public administrative acts, and can survive and develop independently. Consequently, on 30th June 1966 the National Diet of Japan approved Law No. 99, the *Administrative Counsellors Law*, whereby the Administrative Counsellors System officially became part of the legal system of Japan.

The *Administrative Counsellors Law* has undergone various amendments and supplements via law and Cabinet decree, with the last amendment made in January 2001. The eight articles of the law stipulate the fundamental system of Administrative Counsellors.

Article 1 of the *Administrative Counsellors Law* states clearly from the very beginning the purposes of the establishment of the Administrative Counsellors System, which is first to make it convenient for the public to resolve and reflect their complaints and opinions about public administrative departments, and second, to increase the level of the government's democratic administration of public affairs.

Administrative Counsellors are not public servants but volunteers responsible for administrative counselling. They are appointed by the Minister of Internal Affairs and Communications from amongst individuals who have a certain social reputation, are venerable, and possess a thorough understanding of and dedication to the improvement of administration and operation. In the appointment of Administrative Counsellors, their jurisdiction is specified, normally to the extent of municipal level administrative districts. Their terms last no less than two years, and are continuously renewable. Administrative Counsellors do not receive remuneration for their work but do receive limited subsidies to compensate for necessary expenses in the fulfilment of their duties.

The duties of Administrative Counsellors are to:

- (1) Receive citizens' complaints and opinions about decisions, public administrative actions, and operational procedures—be they statutory or implemented on behalf of the central

government – of administrative departments across all levels of the government, independent administrative legal persons, special legal persons, public legal persons, other legal persons commissioned and funded by the state, as well as regional public organisations, etc. They provide necessary and appropriate suggestions to complainants and inform Administrative Evaluation Bureaux or other District Administrative Evaluation Offices, branch offices, or offices of the Ministry of Internal Affairs and Communications; and in accordance with Ministry guidelines inform concerned organisations exercising public administrative powers that are the subject of complaint or opinion;

- (2) Respond to investigations into the organisations in question exercising public administrative powers, should Administrative Counsellors consider it necessary, and inform the complainants or applicants of their investigations and findings;
- (3) Refer complaints and opinions which concern multiple public administration powers, or existing fundamental policies, systems, and measures of public administration, or which require special investigation to relevant administrative evaluation departments;
- (4) Counsel and inform residents of their jurisdiction, and make known the public duties they are responsible for;
- (5) Convey opinions and recommendations regarding the improvement of public administrative acts and operations formed during the fulfilment of duties to the Minister of Internal Affairs and Communications.

In practice, citizen's complaints and requests Administrative Counsellors receive are mostly closely related to everyday public matters. Taking appeal cases in 2006 as examples hereunder, we will classify complaints and requests according to category.

In 2006, according to information provided by staff from the Division of Administrative Counselling of the Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications, the number of cases handled by Administrative Counsellors totalled 110,972, of which 5,084 (4.58% of all cases) were complaints or requests. The administrative category most complained about by the public was the maintenance and administration of roads - such as the lack of pavements on roads with a high volume of traffic jeopardising pedestrian safety. Consequently, citizens complained and requested that pavements be laid. Over the entire year, complaints and requests in this category amounted to 519 and 437, respectively. Next was the category of social welfare, which includes the protection of citizens' basic living and welfare for children. Over the entire year, complaints and requests in this category amounted to 95 and 404, respectively. This was followed by health insurance and old-age pensions, which recorded 114 complaints and 383 requests for the entire year. This category also concerned disputes on matters such as the social



security fund and insurance payments (e.g.) a citizen is employed by a company but after three months of employment he or she has still not received an insurance certificate. Fourth was the postal service; citizens complained about misdirected mail, inconvenient location of mailboxes, or lack of mailboxes in newly developed residential areas. For the entire year, complaints and requests in this category amounted to 263 and 205, respectively. Next, as an island nation Japan has many inland rivers and a very long coastline, and the protection and administration of rivers and seacoast attracted the fifth largest volume of complaints. Over the entire year, complaints and requests in this category amounted to 112 and 120, respectively. Complaints and requests in the five aforementioned administrative categories totalled 2,652 (52.16% of all complaints or requests in 2006).

Since during their dialogue with citizens, Administrative Counsellors inevitably touch upon private matters, the *Administrative Counsellors Law* provides for a strict confidentiality system. Administrative Counsellors, during their tenure or even subsequent to it, must not reveal any personal data and information acquired during the fulfilment of their duties. They must not take advantage of their duties for any political purpose or provide any service to any political party. They must be impartial and disinterested, fulfil the duties of an Administrative Counsellor appropriately and adequately, and observe the guidelines of the Minister of Internal Affairs and Communications.

Should the Minister of Internal Affairs and Communications consider a certain Administrative Counsellor unable to fulfil his or her duties, he or she may annul the appointment. There are three possible conditions under which an Administrative Counsellor may not appropriately or thoroughly fulfil his or her duties:

- (1) If psychological or physical handicap prevents the Administrative Counsellor from fulfilling his or her duties appropriately, or makes it impossible to fulfil such duties;
- (2) If he or she is in dereliction of or breach of relevant stipulations in the *Administrative Counsellors Law*;
- (3) If he or she has committed an illegal act, which makes him or her unsuitable to continue in the position of Administrative Counsellor. Since the establishment of the Administrative Counsellors System, the Ministers of Internal Affairs and Communications have rarely, on the grounds of the latter two conditions, annulled the appointment of an Administrative Counsellor.

The Administrative Counsellor System differs from administrative evaluation departments across all levels supervised by the Ministry of Internal Affairs and Communications as well as their external channel - the General Administrative Counselling Bureau. It subsists and develops in non-governmental circles, does not belong to the public administrative system, and is not a government department. Despite the government's decisive influence on its subsistence and development and

the strong support given to it, public servants actually do not participate in the Administrative Counsellor System; it is not only a bridge between residents and organisations which exercises public administrative power but links residents and the internal Administrative Counselling System of the government. The Administrative Counselling System, composed of administrative evaluation departments across all levels of the government and their General Administrative Counselling Bureaux, lies within the public administrative system, and is one of the public administrative departments of the government. Staff serving in this system are also either public servants or retired public servants re-employed by the government. Via the Administrative Counsellor System, the Administrative Counselling System further expanded the government's scope of public opinions that it could receive.

Consequently, the two components—government and non-government, as well as public servant and non-public servant—within the Japanese Administrative Counselling system are distinct and yet related, whereby they jointly exert their positive functions in the evaluation and supervision of policies and administration in Japan.

4.2 Operation

Administrative Counsellors are individuals who, in the communities where they reside, have a certain social standing and reputation, are respected by local residents, and have a certain social influence. Currently, with about 5,000 Administrative Counsellors across the entire country, there is on average one Administrative Counsellor per 50,000 residents present in every municipal institution and prefectural level government institution.

Administrative Counsellors have a stable income from their profession or investment, are friendly, enthusiastic about community affairs, are willing to watch over and help people, are eager to serve society, and are dedicated to the work of administrative counselling. Most of them, over 60 years of age, are retired or self-employed individuals who, without livelihood worries, have more spare time and can take care of administrative counselling services alongside others.

Administrative Counsellors usually receive residents at their home. They also frequently co-operate with regional governments or other public organisations, regularly organise with them short term or temporary counselling centres or 'Roving Administrative Counselling Centres' in municipal governments, prefectural level government intuitions and other public facilities such as counselling chambers or cultural centres, enter a dialogue with local residents, and listen to their complaints and opinions about specific administrative acts or activities of organisations which exercise public administrative powers. At times, they also participate in activities related to social welfare and



human rights, where they, in association with other individuals, jointly provide the public with administrative counselling services.

For instance¹⁴⁸, the Yokohama Association for International Communications and Exchanges, between 10:30am and 3:30pm on 22nd May 2007, organised a One-day Joint Administrative Counselling Centre (otherwise known as the One-day Associated Administrative Enquiry Centre) at the Shintoshin Centre in Yokohama, where legal counselling services in relation to national and regional prefectural level administration such as registration, taxation, and old-age pensions, etc, were provided. Administrative Counsellors, in tandem with regional government officials, lawyers and other Administrative Counselling Promotion Officers, provided specialist counselling services to the public.

Administrative Counsellors, upon receiving complaints from citizens, carefully study the case, gather information, and formulate specific suggestions. They then convey their opinions to the relevant organisations for their reference, and hope that the problems raised by citizens will be sensibly resolved. Usually, the authorised entities which complaints complain about do not disregard Administrative Counsellors' opinions but review whether the laws and regulations regarding the administrative acts concerned are appropriate, whether they conform to the actual situation of the case, and whether the legitimate rights of interested parties are adequately protected, and whether the common interests of society are affected. They inform the Administrative Counsellors concerned of their review, and the latter reply to complainants and provide them with suggestions.

For instance¹⁴⁹, one national highway with a large volume of automobile traffic did not, despite the lack of reserved lanes for bicycles and pedestrians, prohibit bicycle riders and pedestrians from using it, and thereby risked the personal safety of bicycle riders and pedestrians. Local Administrative Counsellors had received complaints from citizens, who requested that a reserved lane for bicycles and pedestrians be built or established on this highway.

Subsequent to receiving these complaints and requests, the concerned Administrative Counsellor inspected the actual circumstances of the highway, and considered that it did indeed pose a potential danger to the personal safety of bicycle riders and pedestrians. Considering the complaints founded, he requested the regional branch of the National Road Maintenance to consider providing the necessary facilities.

It was perhaps due to the fact that multiple elements were concerned in changing the situation, that the construction would be substantial, or that there was a lack of funding, or due to unidentified reasons, the government department concerned did not initially respond to the recommendations and requests of the Administrative Counsellor.

148 See <http://yokoyokochineseanti.blogspot.com>.

149 Provided by Division of Administrative Counselling, Administrative Evaluation Bureau, Ministry of Internal Affairs and Communications of Japan.

The Administrative Counsellor, nonetheless, doggedly engaged the relevant government departments, convinced them to look squarely at the problems of the highway, and adopt appropriate measures to resolve the situation. Finally, thanks to his unstinting efforts, this highway finally has a reserved lane for pedestrians and bicycles, and thus the personal safety of pedestrians and bicycle riders has been enhanced.

Citizens' complaints and opinions are sometimes related to the fundamental system of public administration, as well as laws and regulations, or they can involve several public administrative departments or other authorities exercising the public administrative power which belongs to different fields. If they require specific investigation and co-operation, Administrative Counsellors may refer complaints or opinions to the Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications, or its Regional Administrative Evaluation Bureaux, branch offices, or offices, who co-ordinate the co-operation. The Administrative Evaluation Bureau and its branches, subsequent to analysing the cases, also notify Administrative Counsellors of their opinions and results. Administrative Counsellors then inform interested parties of the opinions and handling results of the bureau.

Administrative Counsellors have received such complaints before.¹⁵⁰ A citizen visited the Regional Social Insurance Office during office hours to request that his old-age pension certificate be re-issued. He was told by the receptionist, however, to come back before 4:30pm the next day. The citizen, very much upset with the staff who received him, complained to an Administrative Counsellor.

During the investigation into the case, the Administrative Counsellor realised that the computers at the counter of the Regional Social Insurance Office are connected to all Social Insurance Operation Centres; staff at the latter, through the computer system, could immediately retrieve applicants' personal information and immediately process applications for the re-issuing of an old-age pension certificate. Applicants' personal information is essential for enquiries and the handling of applications. Since the computer system at counters there could be used until 4:30pm only and yet offices of the Regional Social Insurance Office were still open for a while after 4:30pm, citizens who came during this period to enquire or apply for the re-issuing of old-age pension certificates could only come again the following day during computer hours. Apart from requesting them to come again earlier on the next day, staff who receive complainants have no other options. The only way to solve this dilemma was to prolong the working hours of the computer system with the old-age pension database in a way that corresponded to the opening hours of the Regional Social Insurance Office - but since the office was merely the user, not the administrator, of this computer system it was unable to prolong its working hours.

150 Provided by Division of Administrative Counselling, Administrative Evaluation Bureau, Ministry of Internal Affairs and Communications of Japan.



Consequently, the Administrative Counsellor informed the complainant of the response and provided the Minister of Internal Affairs and Communications with recommendations requesting that the working hours of the computer system in question be prolonged to correspond to the opening hours of old-age pension counters at the Regional Social Insurance Office, in order to enhance convenience for applicants in the realisation of their legitimate requests.

The Minister of Internal Affairs and Communications accepted his recommendation and referred it to the administrator of the relevant computer system, the Social Insurance Agency, which also accepted this recommendation. Consequently, starting on 1st November 2002, the Social Insurance Operation Centre prolonged the working hours of the computer system in question.

During the process of receiving, analysing, and studying complaints, Administrative Counsellors formulate opinions about specific public administrative acts or operational procedures from the perspective of ordinary people; these opinions reflect to a certain extent the public opinion of the community, and have certain social foundations. Administrative Counsellors may at any time, or periodically, reflect these opinions to administrative evaluation departments across all levels of the Ministry of Internal Affairs and Communications, so that they may understand what citizens think, and—during the evaluation of existing public administrative measures and facilities, planning of improvement or enhancement of the public administrative system, and establishment of future public administrative policies and systems—fully consider the voice of the people and protect their legitimate rights.

Before 1st January 2003, discounts for flights that Grade I handicapped individuals were entitled to were applicable to the purchase of tickets for other public transport but discounts for flights that Grade II handicapped individuals were entitled to were not entirely applicable to the purchase of tickets for other modes of public transport; instead, they offered different discount rates according to the specific part of the body affected and the degree of handicap.

From the perspective of ordinary people, it is difficult to differentiate between a Grade I and Grade II handicap. The handicap differentiation is for the purposes of public administration, and it is also understandable that the government categorise handicaps in determining the living stipend and degree of healthcare subsidy. For public transport, and especially for long-haul travel, however, the calculation of discount rates of tickets for other transport based on the further differentiation of a Grade II handicap according to the part of the body affected and degree of handicap is indeed unacceptable.

Administrative Counsellors, therefore, recommended that the Minister of Internal Affairs and Communications scrap the practice of determining rates of discount of tickets for other transport

based on the parts of the body affected and degree of handicap of Grade II handicapped individuals, and extend the discounts that Grade II handicapped individuals were entitled to for flights to all modes of transport.

The Minister of Internal Affairs and Communications referred this recommendation to the Ministry of Land, Infrastructure and Transport. Consequently, the related government departments accepted the Administrative Counsellors' recommendations, and decided to extend the discounts for flights handicapped individuals were entitled to, to all transport and other public facilities commencing 1st January 2003.¹⁵¹

Although both Administrative Counsellors and Administrative Counselling Promotion Officers serve on the frontline of administrative counselling and hold a direct dialogue with the public, the two, nonetheless, are hugely different.

Administrative Counselling Promotion Officers provide administrative counselling services at the external channel of administrative evaluation departments across all levels of the government - namely, the General Administrative Counselling Bureau; their working hours are fixed; they are retired public servants re-employed by the government; they are remunerated for their work, and are personnel within the government's internal system.

Administrative Counsellors, meanwhile, are merely volunteers entrusted by the Minister of Internal Affairs and Communications who voluntarily provide administrative counselling service to the public; they are not remunerated for their work, and are independent from the government system; they usually receive the public at home without fixed working hours; they are therefore easily accepted by local residents.

Local people see Administrative Counsellors as trustworthy friends and venerable elders; they believe that Administrative Counsellors stand in their shoes to approach and consider the operation of public administration and management issues, and assist them in administrative departments across all levels of the government and other organisations that exercise public administrative duties.

In 2002, according to information provided by staff from the Division of Administrative Counselling of the Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications, the total number of administrative counselling cases amounted to 187,358, of which 129,603 (69.2% of all complaints) were first received by Administrative Counsellors.

151 Provided by Division of Administrative Counselling, Administrative Evaluation Bureau, Ministry of Internal Affairs and Communications of Japan.



In 2006, the total number of administrative counselling cases amounted to 179,419, of which 110,972 (61.85% of all complaints) were first received by Administrative Counsellors.

It is obvious that although both Administrative Counsellors and Administrative Counselling Promotion Officers are geographically extremely close to the public, when it comes to psychological distance the former is still closer to the people.

4.3 Government and Administrative Counsellors

When the Minister of Internal Affairs and Communications appoints a citizen as the Administrative Counsellor of a region, government departments must, and will, adopt appropriate measures to make known to the people of his region his name and address, and promptly provide him with guidelines and training for administrative counselling.

The government usually encourages incumbent Administrative Counsellors to renew their term since the degree of Administrative Counsellors' understanding of the operation of public administrative and management measures is proportional to his or her tenure. With the increase in tenure, the area of public administration which he or she is familiar with becomes increasingly wide, whereas he or she also becomes increasingly experienced in handling numerous types of complaints and opinions about public administration and management, and he or she gradually becomes a valuable resource of the government. Quite a few incumbent Administrative Counsellors have continuously served in their positions for more than 20 years, with some even appointed to provide the public with administrative counselling services as early as the beginning of the Administrative Counsellors System.

The Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications annually organises the General Meeting of Administrative Counsellors, wherein Administrative Counsellors from administrative evaluation departments across different levels participate. The Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications then announces and introduces the arrangements of administrative supervision, including annual plans and goals of administrative counselling, as well as other information for the reference of participants. In addition, the Bureau annually organises collective training in Tokyo, whereby theoretical training is provided in the form of lectures to Administrative Counsellors, who also study and discuss specific cases together, and exchange their administrative counselling experiences. Furthermore, the Bureau often organises seminars on an irregular basis regarding the principles, practices, and procedures of public administration, in order to improve and enhance Administrative Counsellors' knowledge of and understanding of public administration. Last but not least, the Bureau, at any given time,

recommends reference books and other publications helpful for administrative counselling to Administrative Counsellors.

Although the Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications adopts various measures and organises numerous activities in order to equip Administrative Counsellors with rich knowledge and experience in the extensive field of administration as well as to increase their administrative counselling abilities and quality, it nonetheless does not wish to see them appear in front of the public as experts in the field of the government's public administrative functions; rather, it hopes that they act as venerable citizens who, with commonsense comprehensible and acceptable to the public, hold a dialogue with them. Only when Administrative Counsellors are widely accepted by the public can they exercise their due functions.

The government, while advertising and promoting existing state policies and legal system via Administrative Counsellors, provides them with specialised training in order that they may adapt to counselling complaints and requests. For instance,¹⁵² the Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications has conducted a series of training activities for Administrative Counsellors across the country on the advertisement, promotion, and practices, etc. of the *Act on Securing of Equal Opportunity and Treatment between Men and Women in Employment*.

The National Diet of Japan passed the *Act on Securing of Equal Opportunity and Treatment between Men and Women in Employment* in July 1972, and the Supplementary Provisions on 21st June 2006, which were put into force on 1st April 2007.

Based upon the principles of equality of all men before the law, professional rights for all, and non-discrimination of gender stipulated in the *Constitution of Japan*, the *Act on Securing of Equal Opportunity and Treatment between Men and Women in Employment* seeks to encourage employers, the central government, and regional governments to adopt measures to ensure equal opportunity for and treatment of males and females in employment, and to ensure the health standards of women during and after pregnancy.

The said Act stipulates the equal opportunity and treatment of males and females in employment and the concrete measures to ensure equal opportunities for, and treatment of, females during their 'special times', and guarantee that the principle of health is adhered to at such times. Examples are equal conditions of recruitment and employment for males and females; no gender discrimination in allocation of work, promotion, demotion, training, type of work, position, housing loans, and other aspects such as work benefits, age and conditions for voluntary or compulsory retirement, dismissal and extension of contract, etc; females must not be subjected to unjust and unfair treatment such

152 Provided by Division of Administrative Counselling, Administrative Evaluation Bureau, Ministry of Internal Affairs and Communications of Japan.



as dismissal, persuasion to retire, or compulsory retirement due to their absence or other legally permitted outcomes as a result of their marriage, pregnancy, maternity, etc; invalid dismissal of pregnant females or less than one year subsequent to maternity; females sexually harassed at work who lay accusations about such must not be discriminated against, etc. The Act also stipulates various exceptional conditions of these substantive rights and the realisation of their principles.

The Act stipulates that employers must adopt all necessary measures to ensure the realisation of the related substantive rights, including establishing and disclosing recruitment and employment criteria based on job position, and eliminating unfair differences related to gender; change of working time for pregnant and post-maternity females and reduction of their workload, etc; it provides for central and regional government participation in the instruction, assistance, and supervision of the series of substantive rights and responsibilities; stipulates method of conflict resolution for employers and employees in the area of gender equality disputes.

Although the *Act on Securing of Equal Opportunity and Treatment between Men and Women in Employment and its Supplementary Provisions* comprise merely 43 articles, the substantive rights and necessary measures involved have both specific contents and abstract regulation. The resolution of disputes stipulated are relatively numerous, and include an internal grievance committee of enterprises, intervention of the Disputes Adjustment Commission of the Prefecture Labour Office and the judiciary. Applicable laws are also relatively complicated, including relevant decrees, fundamental policies and instructions established by the Ministry of Health, Labour and Welfare, as well as more than ten laws and regulations: the *Labour Standards Act* (Act No.49 of 1947), the *Maternal and Child Health Act* (Act No.141 of 1965), the *Act on Promoting the Resolution of Individual Labour-Related Disputes* (Act No.112 of 2001), the *Mariners Employment Security Act* (Act No.130 of 1948), the *Mariners' Act* (Act No. 100 of 1947), the *Public Corporation and National Enterprise Labour Relations Act* (Act No. 257 of 1948), the *Act on Temporary Measures concerning Court Officer* (Act No. 299 of 1951), the *National Diet Officer Act* (Act No. 85 of 1947), the *Self Defence Forces Act* (Act No.165 of 1954), the *Public Consultant on Social and Labour Insurance Act* (Act No. 89 of 1968), the *Special Measures Act for Employment Promotion of Mariners* (Act No. 96 of 1977), and the *Act for Securing the Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions for Dispatched Workers* (Act No. 88 of 1985).¹⁵³

Administrative Counsellors face not only the over-elaboration and complication of the aforementioned legal system but resistance to gender equality in society. Following increases in productivity, females have gradually been liberated from housework. Through the profound influence of the feminist movement, both the social and family positions of females have been elevated although it is still debateable whether Japan can be considered a society of gender equality.

¹⁵³ See <http://www.k.l.i.is.nagoya-u.ac.jp>.

The notion that males should assume the leading role in society and the family is deeply rooted in the thinking and culture of several generations of Japanese. There is a huge difference between the objectives which the *Act on Securing of Equal Opportunity and Treatment between Men and Women in Employment* seeks to attain and the actual culture of Japanese society. The exceptions and abstract content of laws on the rights and principles have no doubt left much space for dispute; also, problems of gender equality are omnipresent in daily life, thus complaints, requests, opinions, and recommendation related to gender equality are inevitable.

Of the more than 5,000 Administrative Counsellors across the country, the Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications has appointed 123 counsellors as the Leading Administrative Counsellors for Gender Equality, and provided them with specialised training to deepen their understanding of related policies and the legal system of the government in order to equip them with sufficient knowledge in the field of gender equality.

These Leading Administrative Counsellors for Gender Equality are required to not only handle complaints of this sort but provide suggestions and assistance on gender equality to other Administrative Counsellors. Through the work of Administrative Counsellors, the government hopes to promote and establish in social life the idea and culture of a society of gender equality.

The government attaches much importance to the opinions of Administrative Counsellors. One of the functions of the Administrative Counsellor system is to enable the government to promptly, quickly, extensively, and through multiple channels, hear of citizens' reactions to public administration and its operation, including discontent, disagreement, and criticism. This, however, does not signify that all recommendations and opinions brought to Administrative Counsellors' attention by ordinary people each year could be 100% met, as citizens would expect quick and prompt improvement. Tight fiscal budgets, differing public opinions, and other reasons obstruct or prevent certain recommendations of the people from being realised.

All in all, as long as the opinions conveyed by Administrative Counsellors to the government possess the right conditions, are feasible, and can benefit the public, the government will accept them; these opinions and recommendations are highly beneficial to the increase of administrative efficiency, and shore up the social basis for administrative decisions and the objectivity and scientific method of public administration; in turn, the thorough implementation of these administrative policies and measures are beneficial to the realisation of the common interests of society, and the protection of the legitimate rights of citizens.

The Minister of Internal Affairs and Communications also appointed the Chairperson of the National Federation of Administrative Counsellor's Association (NFACA) as a member of the



Administrative Grievance Resolution Promotion Council, the standing consultative committee of the Ministry. The National Federation of Administrative Counsellor's Association is the national non-governmental organisation of Administrative Counsellors which publishes quarterlies of Administrative Counsellors, releases the latest news related to administrative counselling and Administrative Counsellors, introduces specialised knowledge regarding public administration, its operation, and applicable terms for laws and regulations, and promotes exchanges between Administrative Counsellors, etc.

Every year, the Minister of Internal Affairs and Communications, based on the years of service and performance of Administrative Counsellors, awards them the Ministerial Distinction as encouragement.

The Ministry of Internal Affairs and Communications also pays for necessary expenses, largely transport costs, incurred during the Administrative Counsellors' fulfilment of their duties. The Ministry currently subsidises each Administrative Counsellor in the amount of approximately ¥60,000 (HK\$4,000) per annum.

The Ministry also adopts appropriate measures to promote the Administrative Counsellor system throughout the country. At present, some 40% of the total population know about and use the system.

5. Administrative Grievance Resolution Promotion Council

The Administrative Grievance Resolution Promotion Council is one of the standing committees of the Ministry of Internal Affairs and Communications, and its duties are to discuss and study citizens' administrative complaint cases handed in by the Ministry, and provide its opinions. Complaints which it discusses are primarily related to the fundamental mode of the existing public administrative system and operation, which can lead to the amendment of existing state system and public administrative policies.

Of the regional administrative evaluation departments of the Ministry, 12 have established their own Administrative Grievance Resolution Promotion Council. The formation, function, and operational mode of these regional Administrative Grievance Resolution Promotion Councils are largely similar to their counterparts at the Ministry.

The Administrative Grievance Resolution Promotion Council of the Ministry of Internal Affairs and Communications comprise seven non-governmental individuals and officials of the

Administrative Evaluation Bureau. The Minister of Internal Affairs and Communications usually appoints or invites distinguished scholars, professionals, former public servants, and individuals from the media who possess profound professional knowledge, rich social experience, and good character to the Administrative Grievance Resolution Promotion Council. Each term lasts two years, and is renewable on an ongoing basis.

Currently, the seven non-governmental members of the Council are: Tsutomu Hotta, lawyer and President of the Sawayaka Welfare Foundation and Chairman of the Council; Osamu Akiyama, former Director-General of the Cabinet Legislation Bureau; Wataru Omori Emeritus, Honorary Professor at the University of Tokyo; Sachiko Kagami, Honorary Director of the Woman's Centre, Chiba City; Mutsumi Kato, Director-General of the Japan Health Promotion & Fitness Foundation and former Administrative Vice-Minister of the Environment; Mitsuo Kobayahawa, Professor at the Graduate Schools for Law and Politics, University of Tokyo; and Noboru Tani, Administrative Counselor and President of the National Federation of Administrative Counselor's Association.

Meetings are convened by the Minister of Internal Affairs and Communications, whereas agendas are prepared by officials of the Administrative Evaluation Bureau. The number of meetings per year is not limited but usually there are two or three per annum.

At meetings, non-governmental Council members can request officials of the Administrative Evaluation Bureau to explain or clarify ordinary administrative policies and systems related to individual complaints, and move on to discuss various aspects that the case raises, provide their opinions freely without rigidly adhering to the existing fundamental administrative system, ordinary administration mode, or established administrative policies and measures. The result of this type of discussion often leads to the evaluation and general review of existing policies, legal system, or normal administration mode, and can facilitate major changes in public administration. The Council would usually form specific opinions and recommendation on the complaints discussed.

Through the two cases¹⁵⁴ below, we can understand the operation and influence of the Administrative Grievance Resolution Promotion Council.

Case 1

Ms. B, following her divorce, cared for her child alone, and as a result was financially hard pressed. The company which she worked for closed down and she subsequently lost her job. As her child was 14 years old, fees related to the raising and education of her child rose increasingly.

¹⁵⁴ Provided by Division of Administrative Counselling, Administrative Evaluation Bureau, Ministry of Internal Affairs and Communications of Japan.



She wished to receive childcare subsidies but her application was refused on the grounds that she had been divorced for more than five years. Ms. B wanted to apply for childcare subsidies until her child reached 18 years of age.

This case involves the normal conditions for the application for childcare subsidies. Subsequent to discussion, the Administrative Grievance Resolution Promotion Council of the Ministry of Internal Affairs and Communications took into consideration that i) since Ms. B had never applied for a government subsidy following her unemployment she had already strived to independently assume expenses related to the raising of her child; ii) under such circumstances, to refuse Ms. B's application on the grounds of application expiry was deemed inappropriate.

The Ministry of Internal Affairs and Communications, taking into account the opinions of the Administrative Grievance Resolution Promotion Council, persuaded the Ministry of Health, Labour and Welfare to study and consider abolishing the existing application deadline for childcare subsidies, and review the entire income protection system.

The Ministry of Health, Labour and Welfare accepted the recommendation, proposed revisions to the *Child Welfare Act* to the National Diet, and abolished the existing deadline for applications for childcare subsidies. Commencing April 2003, citizens could apply for childcare subsidies, even five years after divorce.

Case 2

The Oki Islands are situated 70km off Mainland Japan. Prior to high school graduation, pupils there must sit for examinations organised by the National Centre for University Entrance Examinations (NCUEE). Every year, candidates had to travel by ferry to Matsue to sit the exams. Due to weather conditions, they frequently had to stay in the city for five or six days, which increased their financial, physical, and psychological burden. Consequently, complaints were made and a request was submitted that an examination centre be established on the islands.

The related administrative evaluation department referred the case to the Administrative Grievance Resolution Promotion Council for discussion, and explained that:

- (1) Examination venues mentioned in the complaint are established according to examination areas by the National Centre for University Entrance Examinations;
- (2) In its guidebook, the National Centre for University Entrance Examinations indicates that examination venues should be established at universities, but in certain cases other educational institutions – for example, high schools – located in the same administrative

division, such as at prefectural level, could be used as examination venues. Meanwhile, the National Centre for University Entrance Examinations informed all universities in Japan and requested them, in the event of establishing examination venues outside of public universities to consider the actual conditions of transport, safekeeping and handling of papers, as well as expenses involved, and control the number of examination venues;

- (3) There are three high schools on the islands;
- (4) It is true that the fact that candidates have to travel by boat in order to sit for the exam and stay for five to six days due to weather conditions increases their financial, physical, and psychological burden;
- (5) Residents on the islands strongly request that examination venues be established there.

The Administrative Grievance Resolution Promotion Council considered that the establishment of examination venues concerned the public interest; it was therefore necessary to consider the burden placed on candidates from the islands and seek remedies. The Administrative Evaluation Bureau, based upon the aforementioned opinion, recommended that the National Centre for University Entrance Examinations request all universities concerned to review the location of examination venues.

Through the two aforementioned cases, we can observe that the Administrative Evaluation Bureau referred the opinions of the Administrative Grievance Resolution Promotion Council regarding complaints to relevant administrative departments across all levels of the government and other organisations exercising public administrative power for their reference, and that these recommendations often take the form of remedies by the Administrative Evaluation Bureau. The Council also recommended a related normal administrative system and measures, as well as laws and regulations, as part of its evaluation and supervision of the existing system, which was beneficial to the improvement of the public administration system, both fundamentally and integrally.

The Administrative Evaluation Bureau, prior and subsequent to meetings, publishes agendas and opinions on cases of the Administrative Grievance Resolution Promotion Council on the official website of the Bureau, and invites the media to attend meetings.



Chapter 6

Comparative Studies and Suggestions

Regardless of whether it was the Supreme Censor in China or the Ombudsman in Scandinavia, both were royal emissaries representing supreme rulers of the state, be it emperor or king, in supervising and prosecuting the numerous officials in relation to whether they rigidly implemented imperial will and state law. What they safeguarded were imperial interests.

When emperors in China understood and accepted the idea of the double-edged sword, administrators were established to watch their policies, words, and actions; but safeguarded, still, were imperial interests. However, the welfare of ordinary people, from that moment on, seemed to have non-elected representatives to conduct their general protection.

With changes in society and era, the missions of the Ombudsman also slowly reflected substantial changes. The Ombudsman of our present day has already become, or should become, the guardian to protect personal legitimate rights from unjust and unreasonable handling by the government. They are both supervisors that ensure that the government puts people first and rule according to the law, and agents of the dilution of bureaucracy, while enhancing democratic management and improving the operation of public administration.

1. Independence of Ombudsman System

Independence is one of the core values of the Ombudsman System; it is also the fundamental guarantee of its functions, and is the premise upon which it wins the confidence of the people.

The independence of the Control Yuan of Taiwan is unique in its form. Sun Yat-sen considered that 'government authority' comprises five powers – legislative, executive, judicial, examination, and control – and that all five must be separated. Following his concept, Taiwan established the Control Yuan, which has a corresponding legal position to the Legislative Yuan, Executive Yuan, Judicial Yuan, and Examination Yuan. Taiwan, in its fundamental constitution, stipulates that the Control Yuan is the supreme supervisory organ, which exercises the power of supervision, and seeks to supervise executive power from three perspectives: protection of laws, policies, and personnel. Control Yuan committee members exercising the power of supervision are nominated by the President, with the consent of the Legislative Yuan. The Control Yuan prepares its own annual budget and submits it to the Executive Yuan for aggregation, and to the Legislative Yuan for approval.

The specialised Ombudsman department in Japan - the Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications - is responsible for the organisation and operation of the Administrative Counselling System. Administrative counselling individuals responsible for receiving administrative complaints and investigation are either public servants of the government, or retired public servants re-employed by the Ministry, or non-governmental volunteers appointed by the Minister. The budget of the Administrative Counselling System is also part of the aggregate budget of the Ministry of Internal Affairs and Communications. The legal position, personnel appointment and dismissal, and source of funding of the Administrative Evaluation Bureau all reside within the public administrative system.

In Macao, the departments specialised in the Ombudsman system and anti-corruption are both part of the CCAC, which is a public institution established according to Article 59 of the *Basic Law of the Macao Special Administrative Region*, and which possesses autonomy in administration, finance, and assets. The Commissioner Against Corruption, nominated by the Chief Executive and appointed by the Central People's Government, answers directly to the Chief Executive. Its annual independent budget is directly submitted to the Chief Executive and, as part of the Macao SAR budget, approved by the Legislative Assembly.

Of Taiwan, Japan, and Macao, the one with the most obvious independence in terms of legal stance is no doubt Taiwan. In the political environment of Taiwan, however, the appointment of the members of the Control Yuan cannot be detached from the influence of political parties, and its source of funding is subject to the Executive Yuan. Hence, its unequivocally independent legal position is severely challenged. As for Japan, rather than saying that its Ombudsman system is the least independent in form, it would be better to say that it does not have any independence at all.

In accordance with Article 1 of the *Organisational Law of the CCAC* (Law No. 10/2000), the nature of the CCAC is that of a public institution regulated by specific laws, and, in contrast to other executive organisations of the Macao SAR, maintains its budget, implementation, and final accounts totally independent of the government; its establishment can be found in Section 1 of Chapter 4 of the *Basic Law*, which stipulates the fundamental system, for example, regarding qualifications, appointment and dismissal, and duties, of the head of the SAR, (i.e.) the Chief Executive. The Commissioner Against Corruption answers only to the head of the SAR, therefore, or the Chief Executive (i.e.) he or she answers only to the Macao SAR, and is a principal official of the Macao SAR.

One opinion holds that the independence of the Ombudsman System in Macao is weak since it is attached to the anti-corruption system.



We acknowledge that the CCAC initially continued the thinking of the pre-handover High Commission Against Corruption and Administrative Illegality and has anti-corruption as its principal objective. Illegal or improper administrative acts emphasised at the time were hotbeds of corruption, and the Ombudsman was a component in the anti-corruption system. In our present day, Macao has witnessed huge changes: citizens are increasingly aware of their personal rights and interests, and their demands for legality and rationality of public administrative activities of the government, as well as fairness, impartiality, openness, and efficiency of the operation of public administrative procedures are also increasing. 'One country, two systems' and 'government by the Macao people' means that the self requirement for the government of the SAR government is incomparable to that of the pre-handover government. The SAR government takes the initiative to conduct reforms of public administration, and adopts 'scientification, systemisation, and personalisation' as its main principles of reform. Thus, the status of the Ombudsman System has acquired an entirely new aspect, and its subsistence and development require the promotion of legality, rationality, fairness, impartiality, openness, and efficiency in its public administration and operation.

Is it now necessary to make the Ombudsman System independent from the anti-corruption system? Our answer is in the negative. This is because illegality or improper administrative acts are often the prelude to, and expression of, an abuse of power, and while power is abused, in addition to the growth of personal greed, the result is decay, with corruption the terminal point; illegality or improper administrative acts have a certain internal relationship with corruption. The detached legal status of the CCAC is thus helpful for the Ombudsman System to remain independent from the public administrative system, and for the supervision of public administrative activities. The fact that the Director of the Ombudsman Bureau is appointed by the Commissioner Against Corruption and answers only to him is one of the protective elements ensuring the formal independence of the Ombudsman System.

We argue that in terms of legal position the CCAC of Macao, in a certain sense, achieves the same objective despite taking different routes from the Control Yuan of Taiwan; the CCAC of Macao enjoys more independence than the Control Yuan of Taiwan, however, in terms of personnel and finance matters. The formal independence of the Ombudsman Bureau of the CCAC, therefore, is the most comprehensive of the three, and is worthy of promotion.

2. Powers of Ombudsman Body

The authority of the Control Yuan of Taiwan is extensive: in addition to the fundamental authority of a traditional Ombudsman System, it may even propose rectifications to the administrative actions of administrative departments, impeach the heads of various administrative departments, suspend relevant civil servants from duties or take other disciplinary actions, and can even refer the case to the judiciary to handle; it also has various binding legal powers such as supervision and audit, etc.

The Ombudsman System of Japan accepts not only citizens' complaints about administrative departments across all levels of government but against:

- (1) Independent administrative legal persons;
- (2) Special legal persons established directly by law;
- (3) Public legal persons approved to be established by specific administrative departments, which have more than half of their budget funded by the state and whose function is to distribute state funding to the public;
- (4) Other legal persons who conduct tasks commissioned by the state or organise state-funded activities and;
- (5) Regional public organisations commissioned by the central government to exercise, on its behalf, public administrative power. It merely possesses the traditional authority of the Ombudsman System, (i.e.) receiving complaints and conducting investigations, but not the power to propose non-binding recommendations and suggestions to relevant administrative departments, etc.

The authority of the Ombudsman Bureau of the CCAC of Macao has also not exceeded the traditional authority of the Ombudsman. Eight years after having been established – in addition to conducting investigations into administrative acts of various government departments complained about by citizens and proposing recommendations – it also conducts examination of the system and examination of the operation, and is dedicated to unifying the understanding and implementation of administrative laws and regulations by different administrative departments.

The control power in Taiwan, established by Dr. Sun Yat-sen's theoretical concept of the separation of powers and functions – 'people have the power, and government the functions' and the 'Three Principles of the People' and 'government of, by, and for the people'. Control power is parallel to the other four powers of government, (legislative, executive, judicial, and examination), in conjunction with which it functions as a component of state power. It is understandable, therefore,



that the Control Yuan possesses binding legal power. The traditional Ombudsman System is established upon the ideological foundation of either autocracy or *Trias Politicas* - and must not stand equal to royal power, or legislative, executive, and judicial powers.

Dr. Sun Yat-sen's theory is a result of his arrangement and development of the Western *Trias Politicas*, whereby connections exist between the ideological foundations of control power and the traditional Ombudsman. The Control Yuan of Taiwan, however, is not entirely similar to the traditional Ombudsman in nature. Strictly speaking, the Control Yuan of Taiwan cannot be seen as the development of the traditional Ombudsman System nor as the extension of part of the traditional Ombudsman. The fact that similarities exist between the authorities of the two stems perhaps from the fact that great minds think alike; although, of course, because of ever-increasing international contact and exchange one cannot rule out the necessity and possibility that the two learn and take reference from each other.

The Administrative Counselling System, which Japan describes as a 'Japanese - style Ombudsman system'¹⁵⁵, lies within the orbit of administrative evaluation and supervision, and is one of the ways in which the Japanese government reflects society's supervision of public administration. It emphasises, by means of case analysis, the evaluation and supervision of the fundamental system and operational mode of the entire public administrative system. It focuses on the results of the implementation of public administrative laws, policies, and measures, and is dedicated to the improvement of the entire public administrative management. This idea has led to the increased value of administrative complaints, and it fully utilises the opportunity in which citizens, in maintaining their rights, supervise public administrative activities and their operation. Consequently, the value of the entire Ombudsman System is raised to a higher level.

Macao could easily draw from the Japanese experience and systematically establish, on the foundation of its existing Ombudsman System, a public administrative evaluation and supervision system. This can on the one hand extend the scope of complaints accepted by the Ombudsman Bureau of the CCAC, while consciously changing the focus of the work of the Bureau to integral and fundamental subjects such as supervision, evaluation and research of the fundamental system, operational mode, and laws and regulations of public administration. It may thereby conduct preoperational work for the establishment and implementation of future policies, laws, and measures. Not only can this compensate for the lack of supervision of public administration but enable the Ombudsman System to fully exert its functions.

In delivering his policy address on 13th November 2007, the Chief Executive mentioned that the scope of anti - corruption supervision would be extended to the private domain. He stated that:

¹⁵⁵ See *Japan's Administrative Counselling System*, published by National Federation of Administrative Counsellor's Association of Japan, April 2004, p.15.

‘the government will enhance related systems of anti-corruption and audit in order to promote the improvement of the public fiscal management system. It will bring its anti-corruption work more into line with international norms, take the initiative to prevent various potential corruption deriving from rapid economic development, and double its anti-corruption and audit supervision of departments or administrative segments which objectively are more prone to corruption in public affairs. In the coming year, the government will extend the legal authority of the CCAC through legislation and sensible development of the system, and extend its scope of supervision to the private domain, thereby realising the increasing share that government and society have regarding anti-corruption’.

All organisations established with full, or a certain level of, government funding, all activities organised by and services offered by the government, and all organisations, personnel, acts, or activities related to public administration and service are subject to the CCAC's Ombudsman System. The CCAC adapts analyses and research findings of complaints to the relevant fundamental models and operational procedures of public administration, to the concerned laws and regulations, and even to the words, acts, and attitudes of the staff concerned. The CCAC observes the overall situation through complaints, co-operate with related administrative departments and jointly improve the management and operation of public administration, while thoroughly implementing the objectives of the Ombudsman System.

3. Efficacy of Ombudsman

The Ombudsman has intrinsic functions in all areas of public affairs of society and administration of public services.

The executive power of the state is realised through the administration of the government's administrative organisations across different levels in various areas such as national politics, the economy, society, and culture, etc. Following the gradual privatisation of public services in certain areas, the executive power of the state is transferred in one way or another to the private domain. Whether or not the organisations which exert public administrative power and their staff understand the related laws and regulations, whether they strictly implement them, and whether they adopt scientific, effective, sensible measures to realise public administrative objectives and missions expected of the government is of paramount importance to the realisation of the executive power of the state.

In order to protect the common interests of society, maintain the legal system of the state and discipline, it is essential and realistic to supervise organisations that exert public administrative



power and their staff, and such is acknowledged and implemented by most countries in the world. Of the numerous means of supervision, the most direct and effective is the Ombudsman system (i.e.) power to check power.

‘Man is born free; and everywhere he is in chains’ is how the Enlightenment philosopher Jean-Jacques Rousseau concluded the relationship between freedom and restriction, rights and being administrated. The coercive power of state executive authority is at a strategic advantage when compared with that of civil rights, and is therefore easily prone to improper or illegal use. Such abuse of power, in turn, jeopardises individual freedoms and rights. During the process of realising the executive power of the state, therefore, it appears extremely important to endow the populace with the right of administrative complaint, as it is one of the effective systems in which citizens can actively safeguard and protect the legitimate rights of the individual.

The Ombudsman System, a platform to resolve disputes between citizens and organisations exercising public administrative power, provides citizens with the opportunity, during the process of protecting their legitimate rights, to supervise organisations exercising public administrative power and their staff in order to ensure the impartiality, legality, and efficiency of public administration.

How does one enable the Ombudsman System to fully exert its functions to realise the protection of legitimate rights and interests of individuals as well as its social supervisory functions during the process of the realisation of the executive power of the state?

3.1 Human Resources

Members of Taiwan’s Control Yuan must be at least 35 years of age, possess an outstanding educational record and reputation, be of upright character, or have been elected as a representative of the public, or have worked as a judicial officer, public servant, professor, professional, media personality, or political figure. The law requires that members of the Control Yuan be non-partisan. They may not hold more than one position concurrently, and must recuse themselves where appropriate.

Administrative Counselling individuals in Japan can be public servants, retired public servants, or non-governmental individuals. The former two have a certain level of understanding of, and experience in, public administration, and are persons qualified as public servants; the latter are usually volunteers who have a social reputation, are highly ethical, and are enthusiastic about the improvement of executive administration and operation - and some of them have already provided administrative counselling services for more than 20 years. The Administrative Evaluation Bureau regularly organises, depending on actual need, ordinary or specialised training and exchange sessions on a national or regional level.

In Macao, Commissioners Against Corruption must be incorruptible and law-abiding Chinese citizens; the incumbent Director of the Ombudsman Bureau is a prosecutor, whereas staff have undergone rigorous civil servant admission examinations and are selected from among numerous candidates, some of whom have LLB degrees. Personnel should receive, in accordance with actual necessity, training organised by the CCAC, and may also participate in training within the public administrative system.

In terms of the human resources of the Ombudsman systems in Taiwan, Japan, and Macao, the practices in Japan merit contemplation. Approximately 5,000 volunteers serve as Administrative Counsellors on the frontline of administrative counselling in Japan. In appointing Administrative Counsellors, the Minister of Internal Affairs and Communications particularly emphasises their enthusiasm for their work.

Red tape in administrative procedures, rigid bureaucratic thinking, inevitable chatter by complainants, catching the nub of the matter from a jumble of details and facts, subjects repeated day after day... These issues require patience and attentiveness, as well as enthusiasm for this job. Enthusiasm, however, can hardly be expressed through examinations, and is difficult to nurture through training.

Recruiting volunteers and appointing insightful persons can yet be regarded as a way of searching for enthusiasm. The civic organisation culture of Macao is strong, and although economic development has resulted in people's demands gradually diversifying, and the influence of civic organisations has decreased in comparison to before, they remain nonetheless a significant force at present. Co-operation can be sought from retired public servants – so can those who share the common goal, thus expanding the existing volunteer team.

By providing enthusiastic volunteers with training in administrative complaints and professional knowledge, increasing their knowledge and comprehension of public administrative activities and operational procedures, and enhancing their reception skills, the CCAC's Ombudsman Bureau functions as their technical support. Subsequently, they can be allocated to frontline tasks related to administrative complaints.

A specialised set of supervisory and disciplinary rules in the Ombudsman System, applicable to all personnel providing administrative complaint services, can then be established for self-disciplinary purposes. Efforts will then be made to create a pleasant work environment and, through psychological and material rewards, encourage them to stay or continue in order to maintain the stability of the team.



3.2 Winning People's Confidence

The legal status of the Control Yuan in Taiwan parallels the Legislative Yuan, Executive Yuan, Judicial Yuan, and Examination Yuan, which is well known in Taiwan. Although the law proclaims in writing that Control Yuan members must not be influenced by political parties and must exercise the authority of their office independently, the political environment in Taiwan makes this difficult to do in practice, and for this reason it has been difficult to win people's confidence.

Taiwan's experience tells us that should staff of the Ombudsman System fail to maintain neutrality and impartiality between citizens and organisations exercising public administrative power – even if the organisation which organises and operates the Ombudsman System is formally independent – it will nevertheless be unable to independently exercise the authority of its office, which will ultimately lead to the organisation losing the confidence of the people, with the organisation in question existing in name only.

As revealed by the relevant statistics of the administrative counselling departments in Japan, the Administrative Counselling System is the one system considered most convenient and trustworthy by citizens. This has largely to do with the fact that it primarily relies on non-governmental volunteers, that General Administrative Counselling Bureaux, where Administrative Counselling Promotion Officers work, are located in busy and convenient areas, and that various convenient and beneficial measures for the people are conducted in a zero-distance manner. Regarding information provided by staff from the Division of Administrative Counselling of the Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications, however, only 40% of the population of Japan know about this system. In fact, despite the efforts of the Administrative Counselling Bureau of the Ministry of Internal Affairs and Communications in annually organising promotional activities – including an Administrative Counselling Week held in all four seasons and distributing different kinds of interesting and attractive brochures near General Administrative Counselling Bureaux – the anticipated goal has clearly not been attained.

Practices in Japan show that:

- (1) Although the Administrative Counselling System exists and develops in the public administrative system, and thereby severely lacks formal independence, it nonetheless acts as a conduit for people's views; the objective of investigating cases is not to blame any public administrative organisation or staff but to evaluate and supervise the scientific method and rationality of related administrative policies, laws, and measures. It is therefore possible for it to act as an objective 'third party' that intervenes in disputes between citizens and organisations exerting public administrative power, and to independently exert its authority and mediate;

- (2) Regardless of how high the credibility of the Administrative Counselling System in the perception of citizens, should its promotion be inadequate the overall utilisation will still be limited.

On the basis of comparative studies of the Control Yuan in Taiwan and the Administrative Counselling System in Japan, we believe that the credibility of the Ombudsman System largely depends on the following factors:

- (1) Whether the Ombudsman System can genuinely and independently exert its authority. The independent value of the Ombudsman System is expressed through the formal independence of related institutions and their staff's independent exercise of authority in compliance with the law. Whether staff can exclude various external interferences and investigate cases according to the law alone, and whether they can, on the basis of investigation findings, propose legitimate and rational recommendations, is the key to the independent exercise of authority;
- (2) Whether the Ombudsman System's existence, contents, method of usage, and utility are well known;
- (3) Whether their recommendations are accepted by public administrative departments;
- (4) How geographically and psychologically close or far it is from the public.

The Ombudsman Bureau of the CCAC has always had as its objective the strengthening of confidence the public has in administrative complaints. It has expended a substantial amount of effort toward this end, and significant results have been achieved. In 2007, the CCAC received a total of 736 criminal and administrative complaint cases, of which 236 (32.1% of the total number of cases received) were administrative complaint cases. This represented the third consecutive year in which the percentage of administrative complaint cases received by the CCAC had increased. In 2006, the CCAC received a total of 840 cases, of which 254 (30.2% of the total) were administrative complaint cases. In 2005, the CCAC received a total of 1,109 cases, of which only 220 (19.8% of the total) were administrative complaint cases.

Comparing statistics from 2005, 2006, and 2007, we observe an interesting phenomenon: for three consecutive years, the number of all cases received by the CCAC decreased, and yet for three consecutive years the percentage of administrative complaint cases the CCAC received increased. What does this signify?

In comparison to the Control Yuan of Taiwan and the Administrative Evaluation Bureau of the Ministry of Internal Affairs and Communications of Japan, CCAC enjoys the most formal



independence. Although its staff are public servants subject to the regulations of the General Regulations Governing Public Servants, its personnel structure is independent from the public administrative system. Ms. Tou Wai Fong, the incumbent director of the Ombudsman Bureau, is a judicial officer, and has a high degree of independence. In addition, Macao is little troubled by partisan issues and therefore has the best conditions for the independent exercise of authority.

Since its establishment, the CCAC has paid much effort to promotional issues. According to our random survey, however, some 80% of interviewees claimed that they did not understand the Ombudsman System of the CCAC. In fact, it is difficult to determine how representative a random survey of 500 can be, although one cannot deny the phenomenon it reflects. We can therefore consider the following questions in good faith: are there any limitations affecting those who receive promotional materials? Do promotional materials for the public help them understand the CCAC's Ombudsman System? Is the means of promotion attractive to them and is it convenient for them to participate? Do the time and frequency of promotional activities consider the target audiences' routine, etc?

The Ombudsman System's function in improving public administration is primarily reflected in two areas: first, the Ombudsman System and public administrative organisations actively co-operate with each other, actively review themselves, and actively improve themselves; second, through citizens' complaints and requests, it realises the social supervision of public administration and eliminates 'blind spots'. The strength and efficiency of social supervision very much rely on the public's knowledge and understanding of the Ombudsman System. CCAC could perhaps consider, whilst promoting clean administration to government departments, educating civil servants in abiding by the law in order to actively improve administration and operation. It should also promote the Ombudsman System to the public and educate the public to actively protect their legitimate personal rights, and awaken their consciousness of the supervision of public administration.

In promoting CCAC's functions to the public, it should perhaps consciously increase to a large extent the content of promotion of the Ombudsman System in order to become relatively independent from campaigns targeting anti-corruption. After all, our current Ombudsman System can no longer simply be attached to the anti-corruption system; its existence and development primarily protects the legitimate and rational realisation of the protection of legitimate rights of the individual. It is designed to promote the good governance, openness, impartiality, fairness, and efficiency of public administration. It has all the conditions it therefore needs to independently engage in promotional activities. In reality, the public is used to thinking of the CCAC's Ombudsman System as part of the anti-corruption system and associates the two functions. This, in effect, is a continuation of history

and is not surprising but it does affect people's utilisation of the CCAC's Ombudsman System. Consequently, it is entirely necessary to explain the objectives and mission of CCAC's Ombudsman System to the public – both separately and in details.

Most people, when receiving promotional materials, are in a passive state and do not actively compare the content of the promotion with similar material. Most of the time they hear but do not listen, understand only a fragment of what they hear, and then proceed on their way. CCAC's Ombudsman System is merely one of the platforms in the public system whereby disputes between citizens and public administrative organisations can be resolved, and if, during promotional campaigns, simple comparisons are made between the Ombudsman System and the fundamental facets of other Ombudsman systems – such as objective, nature, function, and operation (e.g.) comparison with the Public Service and Consultation Centre of the Public Administration and Civil Service Bureau – it would help clarify the perception the public has of CCAC's Ombudsman System.

The publicising of successful case histories serves to inform citizens of the effectiveness and utility of the CCAC's Ombudsman System, which can be promoted in the following ways:

Leave the office and regularly organise, at different times and in different places, enquiry activities related to the CCAC's Ombudsman System; use the venues in various communities for public service of other government departments which are closely related to people's livelihood (e.g.) Education and Youth Affairs Bureau, Social Welfare Bureau, Health Bureau, etc. for extensive promotion.

Within the CCAC's Ombudsman system, enhance ordinary and specialised training in public administrative theory, public administrative practice, public administrative policy and law, as well as public relation skills, etc. for staff; increase the skills and intellectual quality of staff who receive and handle cases; enhance communication with government departments...To sum up, various measures can be progressively adopted to increase the technical level and efficiency of the Ombudsman System.

Employ volunteers eager to improve public administration, so that the public psychologically accepts that CCAC's Ombudsman System differs from similar systems in other government departments, that they are not officials, or are significantly different from other officials; make the public feel that an ordinary person, just like them, is listening to them, and thereby reduce the psychological distance from citizens.

Establish reception desks at busy, convenient spots: convenience and practicality are key, and the scale ought not be overly big or formal. The objective is to let the public feel that there is such a place on their doorstep where they can go to enquire about the various procedures of government



departments, or to complain about certain government departments or staff, or even file complaints; to let them feel that it is as convenient to go there as buying groceries at a convenient shop downstairs. They should feel that that place is safe, and that what they say today will not appear elsewhere the next day, and that their future will certainly not be disrupted simply because of what they have said; as such, the geographical and psychological distance from the public can be reduced.

In reality, over the years the CCAC has never ceased promoting the Ombudsman System and has all along hoped to enhance ombudsman work and improve credibility. For three consecutive years – from 2005 to 2007 – the number of cases the CCAC received continuously declined, while the percentage of administrative complaints continuously increased, demonstrating that measures adopted by the Ombudsman Bureau of the CCAC have produced initial results.

Whether the Ombudsman System can win people's complete trust is closely related to how much of an influence it can exert upon the legitimate and rational realisation of its protection of citizens' legitimate rights, promotion of good governance, increase of quality and efficiency of public administration, and construction of a fair, impartial, and harmonious society, etc.

3.3 Receiving Public Opinion

In Taiwan, the Control Yuan and Control Yuan members receive complaints from the public in written form and, when engaging in circuit supervision of regions, consider public opinion. As far as the social situation of Taiwan in recent years is concerned – especially numerous measures adopted regarding elections – there are quite a few ways to receive public opinion.

Administrative Counsellors, General Administrative Counselling Bureaux, and the Administrative Grievance Resolution Promotion Council in the administrative counselling system of Japan are all channels through which the government can gather public opinion. Through the history of the entire administrative supervision system of administrative evaluation – from regional to central governments – we observe that the Japanese government is not only committed to establishing various channels to receive public opinion but is also willing to bring public opinion into the improvement process of public administrative policies, laws, and specific measures. During our study of the Japanese administrative counselling system, we also noticed the influence of public opinion on the amendment of the fundamental system of public administration and general stipulations of laws as well as specific administrative measures.

In comparison to the search for, and receipt of, public opinion in the Japanese administrative counselling system, CCAC's Ombudsman Bureau seems to occupy a passive position.

We could perhaps consider it this way: the objective of public administration is, to the highest degree possible, to realise the legitimate rights and interests of citizens, and to strike and maintain a balance between the common interests of society and the legitimate rights of individuals. In the final analysis, the public are the recipients of the public administrative system service. As such, citizens express their demands and the public administrative organisations provide services in response: this is the essence of serving and being served. In exercising the rights of administrative complaint, citizens, from the perspective of ordinary people, propose questions and opinions about specific administrative actions of public administrative organisations: this is a test for the entire public administrative system, is an incentive for public administrative organisations and their staff, and is a counterbalance to the power generated by the exercise of public administration.

In the policy address, the Chief Executive mentioned several times the need to implement the 'people - oriented' idea in reality. We could perhaps consider the implementation of the administrative thinking of the Chief Executive in two ways: first, establish a channel for public opinion within the Ombudsman System of the CCAC (e.g.) establish a societal counselling committee pertaining to the CCAC or the Ombudsman Bureau that would freely and openly discuss cases which are complicated or involve public interest. Thereby, public opinion would emanate from both specific complaints and the fundamental system and general measures of public administration; second, co-operate with related public administrative organisations, review in a timely manner the existing administrative system, and evaluate and improve the existing fundamental system and operational mode of public administration on the basis of public opinion.

In reality, the process of conducting public consultation is also the process of promoting public administrative policies, laws, and measures of the government, and is a mutual education and learning process for the consulting party and the party being consulted. This kind of active and positive mutual relationship between citizens and the government is helpful in improving the quality of both parties, whereas the relationship between the two should be complementary and supplementary.

We believe that CCAC's Ombudsman System, in the environment in which related departments actively promote research, actively search for development and improvement, will, based upon the existing foundation, find a way that suits the actual circumstances of Macao, and keep the historic Ombudsman System in line with the times, political, economic, and social development of Macao. At the same time, it will enrich its theory and practice, while contributing to the fairness, impartiality, openness, and efficiency of public administration in Macao, to the realisation of the legitimate rights of the residents of Macao. This, in turn, will engender respect for, and the protection of, the common interests of Macao society, and lead to the construction of a healthy society in which harmony and progress co - exist!



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