

Topic : Challenges due to Multiple Mandates

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The word “Ombudsman” means “representative” in Swedish.¹³¹ The classical duty is to receive and investigate complaints relating to public maladministrations which are the failure to perform in compliance with the law, the negligence of duty and the omission to perform duty that cause injustice to the people. The Ombudsman concept has spread out to countries of diverse legal and government systems around the world. The Ombudsman has a traditional duty to create a balance between the powers of government and its people and to ensure justice for the people by a “Check and Balance” system.

The Ombudsman can be a legal option for people who were harmed by governmental maladministration or misconduct, and is able to redress people’s grievance, and resolve people’s disputes by peaceful means in order to attenuate the situation. The Ombudsman’s fact-finding procedure is different from the Court. It is faster, less formal, and cost-effective. To illustrate, people can submit a complaint without using a formal letter and it is free of charge. The Ombudsman will consider and inquire into the complaint for fact-finding and find out a win-win solution between public agencies and complainant. Moreover, the complainants themselves may not be the direct party affected by the matter, they are eligible to voice the problem to the Ombudsman for consideration while a plaintiff in the court the complainant should be the one who directly affected person. The Ombudsman cannot only solve individual problems but also render solutions to public. However, unlike the court, the Ombudsman has no power to enforce in compliance with the laws but to provide recommendations to responsible organisations.¹³²

Traditionally, Ombudsman’s duties are investigating people’s complaints, redressing people’s grievances from injustice and corrupt practices and protecting human rights. According to the changing environment, there has been a movement towards the expansion in the roles of Ombudsman depending on different background of each country. This is to ensure fairness for the society.

From the Thai sixteen year experiences, there is a concept that the Ombudsman should extend his duty to resolve various problems arising from acts of government officials or government agencies. Therefore, the Constitution 2007 of the Kingdom of Thailand has given additional roles to the Ombudsman;

First: to investigate any omission to perform duties or unlawful performance of duties of (1) the Constitutional organisations or (2) agencies in the administration of justice, except the trial and adjudication of the Courts.

Second: to conduct a proceeding in relation to the ethics of persons holding political positions and state officials.

Third: to monitor, evaluate and prepare recommendations in compliance with the Constitution including considerations for amendment of the Constitution as deemed necessary.

Fourth: to conduct an own motion investigation in the case that the Ombudsman is of an opinion that the act cause injuries to the public or that it is necessary to protect public interests irrespective of a complaint.

¹³¹ Professor Amon Raksasat, “Parliamentary Ombudsman: Limitations of Works under the Constitution”. *Journal of Thai Ombudsman*, no. 2, (October 2003 – March 2004).

¹³² Office of the Ombudsman. (n.d.) **10th Year Anniversary of the Ombudsman.**

Fifth: the Ombudsman may submit a case to the Constitutional Court if the provisions of any law beg the question of the constitutionality or may submit a case to the Administrative Court, if rules, orders or actions of government officials beg the question of the constitutionality or legality respectively.

For the first role, it regards investigation of duties' omission or unlawful performance of the Constitutional organisations or agencies in the administration of justice. Although it is stated by the law, there have been no problems until present. However, their performances are monitored by the Ombudsman.

For the second role about the proceeding in relation to the ethics of persons, the Ombudsman is responsible for the establishment of the Code of Ethics of each government agency within one year and the set up of an Ethical Committee in each government agency. Ombudsman provides recommendations to the agencies on how to establish the Code of Ethics or improve the existing ones for each government sector. This aims to promote ethical awareness among public officials and leads to legal punishment if they violate the Code of Ethics.

The Ombudsman is also responsible for promotion of mindful awareness proceedings so that state officials avoid violation against the Code of Ethics. Concurrently, the Ombudsman is prompt to enhance ethical conducts that drive towards effective and concrete outcomes to achieve the set goal of sustainability. The Ombudsman therefore firstly focuses on cultivating an ethical and moral mindset for all Thais.

Based on the brain-storming from concerned agencies, The Ombudsman has set up a standard of ethics to enhance concrete practices among all government and state officials and all Thais, based on their own given priorities in five aspects under the theme "Five Fundamental Ethical Conducts of Thai Society", namely:

1) Honesty. It is to be honest with themselves and others in terms of body, verbal interaction and mind.

2) Disciplinary persistence and behaviour in compliance with the law.

3) Sacrificion and volunteer spirit. It is to serve public interests without expecting any return or self-satisfaction, helping others or the public for the benefit of the whole;

4) Sufficiency. Sufficiency means moderation and due consideration in all modes of conduct, together with the need for sufficient protection from internal and external shocks. There are three components: moderation, reasonableness, and self-immunity, with two accompanying conditions: appropriate knowledge and ethics and virtues.

Sufficiency is under H.M. the King's Philosophy of Sufficiency Economy. The United Nations Development Programme (UNDP)'s first Human Development Lifetime Achievement Award was presented to His Majesty for this philosophy. It has been recognized as the guiding principle for Thai citizen, and it is gaining wider international acceptance as a new development paradigm of the world.

5) Environmental conservation. It is the concept that the world is our home. The devastation of the environment and the exploitation of natural resources will affect all population of the world and this will lead to difficulties the in the near future. It is important to promote public awareness to the resolution of serious problems such as global warming and pollution. The concept focuses on maximum benefits based on (1) wise usages (2) wise saving and (3) comprehensive environmental recovery.

Theses "Five Ethical Conducts of Thai Society" are the top five fundamental moral concepts to be followed by all sectors of Thai society unanimously. Communication media in the forms of folders, short movies, and animations have been widely publicised including through social media such as You tube and Facebook.

For the third role, the Ombudsman has duties to inspect and monitor in order to ensure that government sectors perform or proceed according to the intention of the Constitution and to guarantee that the provisions of the Constitution are clearly enforced or sanctioned in practice. There have been no organisations or government agencies with direct responsibility for these operations in the past. The duties are divided into the follow-up on the enactment of legislation and proceedings of relevant agencies. For the fiscal year 2015, the achievements can be summarised as follows ,¹³³

For the enactment of legislation, a total of 175 pieces of legislation were under preparation. 36 pieces of legislation were enacted (published in the Government Gazette) and 139 pieces of legislation were pending.

For the proceedings of relevant agencies, a total of 1,904 works or projects were under preparation. 1,236 works or projects were completed and 668 works or projects were under proceeding.

According to the follow-up of compliance with the Constitution, Ombudsman provided recommendation for law amendment in order to solve the prospective problem systematically and to protect public benefits for the Thai society. There are two examples that I would like to share with you about education reform and spatial planning.

The first example is a Draft Act on National Education. This aims for education reform of the whole system to improve the efficiency of education management and resolve education problems such as education management, academic achievement of students and improvement by a standardised and efficient education inspection system.

The second example is a Draft Act on National Spatial and Land Use Planning. At present, Thailand does not have national policy and plan in terms of spatial and land use planning appropriately. Besides, there is no management plan for spatial planning in compliance with the direction of country's economic and social development. The draft act is to establish the National Committee of Spatial and Land Use Planning to specify the national policy of spatial planning and usage of lands, to set up long-term framework, to integrate all spatial planning works, and to push forward all relevant organisations to comply with the national plan. Furthermore, it is to establish the Office of the National Committee of Spatial and Land Use Planning as an independent organization which will be able to enforce the implementation in compliance with the Spatial and Land Use Planning laws in every level effectively.

For the fourth role, the Ombudsman can conduct an own motion investigation to solve the problem causing injuries to the public or to protect public interest irrespective of a complaint. There are two examples as follows;

The first example is preparation of a Draft Act Proscribing Offences Related to Nominees. This derives from the problem related to land possession in Thailand by foreigners. Therefore, the government has to adopt legislation or measures to reserve lands for Thais, otherwise it could cause social, economic and security impacts for the country. The purpose is to control certain numbers of land possession by foreigners, to prevent and control illegal transactions through Thai nominees and to preserve lands and natural resources for future generations of Thai people. Importantly, it is to protect public interest.

The second example is the study on Whistle-blower Protection. This is to stop and prevent corruption by state officials in state administration which will induce social peace. This can support and motivate any person who has information about corruption to be courageous and to be protected under various measures and not to be affected in any way by providing that information to be officials. This will not only protect public interest but also solve the problem causing injuries to the public.

¹³³ Office of the Ombudsman. (n.d.) **Annual Report of the Ombudsman 2015.**

Finally, the fifth role concerns the submission of cases to the Constitutional Court for further consideration. One of the successful cases with problems of unconstitutionality is the case that the Code of Revenue causes unfair practices for collection of personal income taxes for legally-married women. The Ombudsman found that the taxable income of the legally-married woman were includable in the husband's tax base for tax collection. The Constitutional Court ruled in favor of the Ombudsman's recommendation that the tax treatment of legally-married women was against the principle of non-discrimination and gender equality. That provision of the Revenue Code is no longer enforceable.

Over the past nine years, since the proclamation of the 2007 Constitution, there are still challenges facing the Ombudsman. We have to face the increasing number of complaints against the government and expectation of the people. People's expectation from the Ombudsman is not only for quality decisions but also for timely and efficient response. However, there were certain complaints that the Ombudsman could not determine the proper solution to within a short period of time partly because the engaged agencies failed to submit required explanations or evidences.

As the Ombudsman's duty is to provide non-binding recommendations, the Ombudsman has to strike a balance in a way that all stakeholders agree, to comply with the Ombudsman's non-punishable recommendation without delay or suspicion of governance standard. The Ombudsman has to investigate on the abuse of or the negligence of powers by state officials and also need to seek cooperation with them at the same time so this is always controversial.

According to the said Constitution, if the Ombudsman is of an opinion that any violation or failure to comply with the ethical standard is serious or there are reasonable grounds to believe that the proceedings conducted by the responsible person may be unfair, the Ombudsman may conduct an inquiry and disclose the result to the public. This is the same adjudicated system as a court trial and provides the final result on whether a state official is guilty because of serious violation of the ethical standard and whether the proceedings conducted by the responsible person are fair. It can be seen that this procedure contradicts the Ombudsman's fact-finding investigation because the Ombudsman has no power to force the agencies to implement in accordance with the decision. Thus, the Ombudsman has to work with state agencies and create an understanding for them to seek a solution to people's complaints.

For the establishment of code of conducts of each government agency, although they mostly submit their code of conducts, it is challenging to further this implementation by encouraging the government agencies to uphold ethics and morality and put them into practice. The duties to promote ethical behaviour and to inspect the violation of state officials against the code of conduct might be a contradiction in turn.

In conclusion,

The Ombudsman is recognised as a key organ to facilitate justice by balancing the operation of public agencies, the public interest and necessity, as well as protecting civil rights. Also, the Ombudsman has been trying to uphold ethical standards and enhance a good governance system. Fairness and ethics in governance are the highest priority.

Before the enactment of the Constitution of 2007 of the Kingdom of Thailand, public administration problems arose from a lack of morals and ethics causing injuries to the public. The said Constitution formulates legal punishment for public officials' violation of the ethical standard and promotes moral and ethical behaviour. The Ombudsman's multiple mandates as aforementioned may assist in solving problems from mal administration and enhance good governance or better system. They are necessary for the Thai situation as they encourage public sector efficiency and effectiveness.

The Ombudsman in each country has different roles and duties depending on its governing structure, economical, social and political background, and patterns of lifestyle. However, the practices may be different but they move towards the common goal of better public administration, happiness and well-being of people.