

# Pre-Assessment on Ombudsman and other Complaint Systems in Cambodia



# Content

I. Introduction	1
II. Assessment	2
2.1. Methods	2
2.2. The Offices that were visited	2
2.4 Interviews with Government Agencies	3
2.4.2 National Authority of Land Conflict Resolution	3
2.4.3. Dispute Settlement Office in the Ministry of Commerce	5
2.4.7. Working Group for the Development of a Police Act for the Cambodian	8
2.4.8. Ministry of National Assembly and Senate Relation and Inspection	8
2.4.9. Anti Corruption Unit	9
2.5 Interviews with Non Government Organization	10
III. The Concept of Ombudsman	14
3.1. Definition	14
3.2. Criteria of an Ombudsman	14
3.3 Role and Function of an Ombudsman	15
3.4. Variety of Ombudsman Systems	15
3.5. Various Titles used for Ombudsman	17
IV. First Thoughts on a Cambodian Concept	18
4.1. Option I	18
4.2 Option II	18
4.3 Option III	18
4.4. The Name for the Complaint Office	19
V. Final Remark	19
References	19

## **I. Introduction**

The significant increase of the legislative power and administration tasks because of the increasingly pronounced complexity of the economic and social life has made more difficult the relation between citizen and administration in Cambodia. Citizens are confronted with bureaucratic administrative structures and an enormous lack of transparency; it has resulted in the appearance of the mistrustfulness, reticence and resignation of the citizens. Hence the Cambodian government decided to develop new effective law instruments to protect the citizens and to improve the relation between citizens and public administration.

One possible instrument could be the implementation of a nationwide ombudsman system. An ombudsman can play an important role to monitor the performance of the government officers in order to make public administration more accountable, transparent and responsive to the people. In 2003 the Council of Ministers decided to take in consideration the implementation of an the Ombudsman System; in 2005 the Council for Legal and Judicial Reform put this goal in the priority action 1.6.1 of the Plan of Action for Implementing the Legal and Judicial Reform Strategy. In 2005 as well an ombudsman was elected in Battambang and Siem Reap districts by the Asia-Urbs III project "Strengthening of city administrations".

In June 2008, the Council of Legal and Judicial Reform (CLJR) and the "Administrative Reform and Decentralization Program" (ARDP) implemented by GTZ agreed to a project to introduce and design a conceptual framework for the ombudsman in Cambodia. The following procedures were agreed upon for the drafting of this framework:

1. Assessment of the ombudsmen in Battambang and Siem Reap as well as other complaint offices in Cambodia
2. Several consultative meetings with representatives of various ministries, NGOs, and development partners
3. Study tour to an Asian country in order to learn about various ombudsman models
4. Finalizing of the framework for the Cambodian ombudsman

In the present report, the first activities of the CLJR on the drafting of the ombudsman concept for Cambodia are summarized. The report includes:

1. The survey of the ombudsmen in Battambang and Siem Reap as well as other public complaint offices
2. General background information about the ombudsman
3. Options for Cambodia

## **II. Assessment**

### **2.1. Methods**

The assessment of the various complaint offices in the public administration of Cambodia was made with the help of interviews. Interview partners were generally the heads or their deputies of the respective institutions.

In addition, the team interviewed representatives of non-governmental organizations, which assist Cambodians in conflicts with the administration.

The interviews took place in the time period from August to December 2008 and lasted on average between 1 and 1 ½ hours each.

### **2.2. The Offices that were visited**

A total of 9 institutions were visited, of which 8 were from ministries or other public administration offices and 2 were from Non State Actors. Several interviews could not take place, among others, the interview with the Anti Corruption Unit. Following the government's restructuring in September 2008, competencies were reorganized in several areas.

#### **The List of the Institutions**

##### Governmental institutions

- Ombudsman Office of Battambang District
- National Authority of Land Conflict Resolution
- Legal Department of the Ministry of Commerce
- Ministry of Interior
- Ministry of industry, mine and energy (industrial property, patent...)
- CCJAP III (police ombudsman)
- Ministry of Justice – Project Access to Justice
- Ministry of National Assembly and Senate Relation and Inspection
- Anti Corruption Unit

##### Non-Governmental institutions

- Office of the High Commissioner for Human Rights (OHCHR)
- Cambodian Human Rights and Development Association (Adhoc)

## **2.4 Interviews with Government Agencies**

### **2.4.1. Ombudsman in Battambang**

The Ombudsman in Battambang was elected in summer 2005 for a period of three years, based on the Prakas 790 on the Structure and Management of the Ombudsman's Office in Srok Battambang, Battambang Province of the Ministry of Interior.

The ombudsman is part of the new administrative structure at district level in Battambang. He has the task to oversee the One Window Service Office (OWSO) and the other offices of the district administration. He has to be present in the OWSO for at least 12 hours each week.

The ombudsman is "a neutral representative of citizen" who must seek an acceptable resolution for citizens and enterprises. To achieve this goal the ombudsman has the following powers to conciliate: He has the right to insight all relevant documents of the related staff and; if the normal intend to conciliate between citizens and administrative staff is not successful, he is asked to send a dossier with recommendations to the District Governor. Complaints on the District Governors performance shall be sent to the Provincial Governor to settle.<sup>1</sup>

The citizen's Office in Battambang is located within the district administration in the first floor. It is neither easy accessible nor visible, a clear signposting is missing.

This monitoring from the ombudsman of the OWSO has proven successful by the local authorities but the number of citizens who have come to the ombudsman to complain about the administration is vanishing small. In the course of three years, exactly 2 cases were registered and solved. However there were a number of cases has been complained by the people as well but the complaints are out the competency of the office.

### **2.4.2 National Authority of Land Conflict Resolution**

The National Authority of Land Conflict Resolution (NALCR) was established by Royal Decree No. NS/RD/0206/067, dated from February 26, 2006. Within just six months of its opening, the NALCR registered 116 complaints from citizens and institutions of which 79 were forwarded to the Secretariat of the National Cadastral Committee for examination. At the end of 2008, the number of registered complaints had reached 1500.

The job of the NALCR is to check the complaints of citizens or institutions make suggestions and forward these to the respective offices and ministries. According to article 3 and 5 of the subdecree on the organization and functioning of the secretariat of national authority for land disputes resolution the role and function of the NALCR are to solve and coordinate all land disputes; the general secretary of NALCR has the power to conduct investigation and inspection after received complaints and to issue instruction to block the place where there has conflict after received complaints.

The subdecree N. 65 A.N.K/ BK mentioned as well on the process of the case registration and the case solution. The processes are:

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<sup>1</sup> Prakas 790 of Ministry of Interior

1. Receive and register cases according to the place of the complaints
2. Prepare cases
3. Input in land conflict case database
4. Ask the two parties for clarification
5. Classify and prioritize case
6. Collect evidences
7. Cooperate with relevant government stakeholders to investigate in the place of conflict
8. First report to the General Secretary for decision
9. Make summary of explanatory note of both matter of law and matter of fact with first recommendations to superior for decision
10. Send the decision of NALCR to MLMUPC for implementation

But the question of whether the suggestions of the NALCR are adopted and how the cases are solved individually cannot be determined from the reports. It is also not apparent in whose favor the cases were decided or how long the process took.

Excerpts from the 2007 Report

- Participated in resolving the environment land grabbing issue in Kompong Seila, Koh Kong Province, and peacefully confiscated 90 hectares of land to retain as government property.
- Prepared notices to the Ministry of Land Management, Urban Planning and Construction and the Ministry of Environment to take action, transfer and remove from the public functions in the cases of the Director of Koh Kong Provincial Department of Land Management, Urban Planning, Construction and Cadastre and the Director of Koh Kong Provincial Department of Environment in relation to the irregularity of requesting certificates for ownership of fixed property in the Peam Krosaob wildlife sanctuary in Stung Veng village, Stung Veng commune, Smach Meanchey district, Koh Kong Province.
- Took legal action against Oknha Tan Seng Hak - Oknha Te Haing and Oknha May Vuthy in relation to the case of land grabbing and illegal clearing of forest land, which is currently under court procedures.
- Prepared a notice letter to the Ministry of Land Management, Urban Planning and Construction, the Ministry of Environment, the Ministry of Agriculture, Forestry and Fisheries, and the Forest Administration to take strict administrative action against 15 government officials because those officials had violated the guidelines of land law, forestry law, the fisheries law and the law on environmental protection and natural resource management, and especially had disregarded the highest order of Samdech the Prime Minister.

- Resolved the land dispute case between 92 families and the Chamroeun Cheat Company in village No. 4, O Tres commune, Stung Hao district, Sihanoukville, by requiring the municipality to:
  - Establish a working group to collect data on the truly landless people living on the disputed land.
  - Arrange and distribute social concession land to those people who have or no land.
  - Investigate to find the ringleaders who provoked the people to go and live on the disputed land.
- Resolved the case involving 600 families, the Sam Phannarith Company and the Seng Hong Heng Company by requesting for the return of the farming land and development land, which the province issued an order to confiscate, by recommending:
  - The provincial sub-committee to prevent, eradicate and suppress the clearing, burning and fencing of forestland for ownership, and to practically review the case of the 600 families whose land was confiscated through an issuance by the province order.
  - As for the request by the Sam Phannarith Company and the Seng Hong Heng Company in relation to the Government's public land, the NLA will provide its views and opinions including its proposed measures for the highest decision by Samdech the Prime Minister.

### **2.4.3. Dispute Settlement Office in the Ministry of Commerce**

The Dispute Settlement Office in the Department of Legal Affairs of the Ministry of Commerce was set up in 2008 and at the time of the interviews was still under construction. The legal basis for this office is sub **decree ????????** The goal of the ministry is to establish a complaint office for businesspeople who are not in agreement with decisions of the ministry.

The office is located in the Ministry of Commerce, but there are no signs to indicate where one can find the office.

The office has two personnel, the Office Chief and his deputy.

It is still unclear how complaints are handled, and corresponding regulations are being drafted.

Prior to the construction of the Dispute Settlement Office, complaints went directly to the Cabinet of the Ministry, which forwarded the complaints to the respective departments. The department would investigate the case and tried to find a solution in conversation with the register of the complaint. If this was not possible, the case would be presented with a report and suggestion to the Minister for a decision.

There are no exact statistics about the number of complaints, but the estimate is 10 large and 20 smaller cases since 2000.

#### **2.4.4 General Department of General Inspectorate in the Ministry of Interior**

The General Department of General Inspectorate in MoI often operates as an alternative dispute resolution bureau. It investigates disputes and tries to work with the parties to find an acceptable resolution. Land dispute cases make up a significant and increasing percentage of the General Inspectorate's caseload. The Department gets support from USAID through East West Management Institute (EWMI) in order to improve the Inspectorate's ability to effectively investigate and mediate land disputes.

Besides this role, the inspectorate is in charge of solving internal problems in the ministry as well.

#### **2.4.5. General Inspection Department of Ministry of Industry, Mines and Energy**

The General Inspection Department of the Ministry of Industry, Mines and Energy (MIME) has two main fields of responsibility: it is responsible for the annual internal auditing and is the receiving office for internal complaints.

The method of handling internal complaints is regulated in the MIME as it is in all the other ministries: the complaints are verified by the inspection department, and following a hearing with both parties, the department delivers a recommendation which the minister finally decides upon.

In difficult cases, a working group is assigned to investigate the case, and if necessary, the Disciplinary Council is convened.

There are neither numbers nor reports on the number of internal complaints each year or their content.

#### **Complaints from Businesspeople**

Businesspeople who want to complain about ministerial decisions like the distribution of licenses have two possibilities: They address their complaints to the respective department that is responsible for the licensing. The department must verify the complaints, issue a recommendation and present it to the minister for his decision. Should this process touch on multiple ministries then an inter-ministerial group is convened in order to verify the complaint.

In addition, a business licensing complaints hotline is available to businesspeople. This hotline has been unique in Cambodia for some time. Businesspeople can register their complaints through this hotline without long waiting times or administrative processes. They call the hotline and give the necessary information such as name of the business, contact person who is registering the complaint, and the reason for the complaint. If the hotline officer thinks that the complaint is justified, he forwards it to the relevant office.

Although the hotline is an initiative of the MIME, it receives complaints relating to any business licenses or inspections conducted by any ministry or government agency.

The hotline has been available for about one year. A report about the number of complaints registered on the hotline, how the cases were addressed, and the satisfaction of the customers, is not yet available.

#### **2.4.6. House of Justice of the Ministry of Justice**

In July 2007, the first House of Justice was opened in Kampong Speu Province. Today, there are 20 Houses of Justice in six provinces ( Kampong Pseu, Kampong Chhnang, Battambang, Siem Reap, Mondulkiri, and Ratanakiri) and 10 more should begin their work in 2009 (4 districts in Prey Veng, 2 Districts in Kampot, and 4 Khans in Phnom Penh).

The objectives of the House of Justice, supported by UNDP, are to provide training and technical assistance to dispute resolution bodies at the commune level in conciliation skills and basic legal knowledge, to assess the demand for legal information at the commune level, and to disseminate legal information to local officials and the public in each district.

In addition officials at the House of Justice may also conciliate and mediate civil disputes if parties agree and provide referral services to disputants whose cases cannot be, or are not desired to be, resolved at the local level.

The Houses of Justice, which are assigned to the districts, are each staffed by two people: the director as named by the Ministry of Justice, and an assistant. In addition, every House of Justice has a council, which mediates in disputes and is meant to find an acceptable solution for both sides. It is composed of a commune chief, a police representative, a women's representative, and four citizens that are elected from the villagers.

The process: the citizen's case is examined and the House of Justice representative meets with the defending party and determines whether they are prepared to resolve the case before the council. If both parties are in agreement, the case is presented for the council and they attempt to reach a common solution. Based on the experiences in the districts, the citizens are generally in agreement with this process.

The topics that confront the House of Justice: first and foremost are land disputes, the second problem is domestic violence, and third come contractual disputes.

The percentage of successful resolution of cases is high and averages around 60 percent. Statistics from the first quarter of 2008 are as follow:

Example: Phnom Sruoch District:

Cases left from 2007:	103
Cases during received during 1 <sup>st</sup> quarter:	28
Cases resolved successfully	84 <sup>2</sup>
Cases resolved unsuccessfully	27
Cases withdrawn	0

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<sup>2</sup> Successfully means that both parties agreed on a solution

Cases carried to the next quarter	10
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Example: Korng Pisey

Cases left from 2007:	38
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Cases received during 1 <sup>st</sup> quarter:	58
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Cases resolved successfully	60
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Cases resolved unsuccessfully	0
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Cases withdrawn	1
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Cases carried to the next quarter	36
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Example: Kampong Leng District

Cases left from 2007:	14
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Cases received during 1 <sup>st</sup> quarter:	6
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Cases resolved successfully	13
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Cases resolved unsuccessfully	0
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Cases withdrawn	0
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Cases carried to the next quarter	7
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#### **2.4.7. Working Group for the Development of a Police Act for the Cambodian National Police**

A new police act has been in development in the Department of National Police since June 2008, which would revise the structure and responsibilities of the National Police. In addition, a code of conduct and the definition of disciplinary offences are being developed.

In conjunction with this new police act, a process is also being developed that gives citizens the possibility to complain about the police in the cases of improper behavior. It should ensure "that the members of the public can have confidence in the honesty and integrity of the National Police<sup>3</sup>."

The exact procedure and what offices will be responsible for which complaints will be discussed throughout 2009, but it is possible according to the statements of the international expert who is guiding this work that a police ombudsman would be established.

#### **2.4.8. Ministry of National Assembly and Senate Relation and Inspection**

The ministry played an important role to assist the government to conduct inspection on the performance of the other government ministries or institutions

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<sup>3</sup> Framework for Legislation of the working group for the development of a police act for the Cambodian National Police, June 2008

in order to ensure accountability and transparency for the government and people. According to the sub decree on the organizing and functioning of MONASRI, the government provides a full power to general department of inspection to conduct inspection and mediate the complaint against administration.

For solving complaint against administration, one department called department to receive and investigate complaints is responsible to receive complaint from all source on the issues against administration to take investigation and solve by reconciliation mechanism. Most of the case, the ministry has no power to decide but they form the file with recommendations to prime minister for decision. The procedure to solve the case is, generally, the same like other ministry or government institutions did. When the case comes, the department makes clarification and identify whether the case is in their mandate or not and then they will send to the relevant government institutions for solving and asking for report. Most of the case that the ministry received is land issue. So far there is no clear statistic of number of the complaint in the ministry

Concerning to the inspection, one department is responsible to make annual plan and conduct the plan to conduct inspection to the government institutions. Actually, the inspection work, MONASRI has clear procedure and plan. The will go directly to the ministry or government institution for checking irregularity of government institution performance, in particular, expenditure.

#### **2.4.9. Anti Corruption Unit**

The Anti Corruption Unit (ACU) was founded in 2006. It is the successor to the Entity against the Corruption Activities, which was established in 1999 and according to statements by the ACU, was largely powerless.

The legal basis for the ACU is Sub Decree Nr. 84 ANK date 22/08/2006. In this Sub Decree, the roles and responsibilities of the ACU are preventing corruption issues, enforcing laws and regulations, and encouraging the citizens to participate in the fight against corruption.

The ACU office is located somewhat outside of the center of Phnom Penh in Khan Russei Keo; the building has clear signage and in the entrance there is a large, white postbox in which letters for the ACU can be deposited.

The work of the ACU has three main focuses: 1. The development of initiatives to avoid corruption, to clear up individual and collective cases of corruption, and to encourage the citizens to participate in the fight against corruption.

The most spectacular cases since their foundation: the so-called Water Festival Case and the Hennessy Case. The Water Festival Case dealt with the illegal importing of right-hand-drive cars from Thailand, which was only possible due to corresponding bribes being paid to the respective officials. The Hennessy Case was similar: a wine importer bought the favor of several officials with bribes, and as a way of saying thanks, the officials did not bother to follow the legal

regulations for the import of wine. Both cases were brought before courts by the ACU.

In the case that they receive complaints from citizens, the ACU proceeds in the following fashion: first they check whether they are responsible for the case. If so, they verify the documentation and ascertain whether there is enough evidence of corruption. If the evidence is sufficient, the ACU obtains authorization from the Council of Ministers to investigate the case. As soon as they receive this authorization, the investigation begins. When the investigation has been completed, the resulting report is delivered either to the Prime Minister or the Deputy Prime Minister. The Prime Minister or Deputy Prime Minister then makes the final decision as to which measures should be taken.

The ACU employs a total of 15 lawyers, who are responsible for investigating cases of corruption. The ACU took at a number of ads on TV in order to inform citizens about the institution. The exact numbers are not available as to how many cases the ACU has investigated and how many cases resulted in corruption charges. There are also no publicly released figures in regards to the use of the White Box in the ACU office.

## **2.5 Interviews with Non Government Organization**

### **2.5.1 Office of the High Commissioner for Human Rights (OHCHR) in Cambodia**

According to the OHCHR, it is being flooded with inquiries and complaints. Cambodian citizens as well as NGOs turn to the OHCHR requesting legal guidance and assistance in matters of dispute. According to the OHCHR, the number is only increasing. The number one category for some time has been land conflicts. The OHCHR also receives complaints in regard to domestic violence, the situation in prisons, and from citizens who have had their basic human rights abused (freedom to demonstrate, freedom of opinion, etc.).

The OHCHR is not a complaint office, which advises or represents individual citizens. It does however give individuals information about which NGOs they could turn to with their concerns. Still, the actual mandate of the OHCHR is, in conjunction with the administration and government agencies, to improve the legal security of the citizens and to reduce abuses of human rights. The OHCHR aims to work truthfully with the administration, but it also supports NGOs, which address the previously mentioned issues. In interviews, representatives of the OHCHR stressed repeatedly that the citizens' trust in official government complaint offices is very low. Based on their experience, the citizens therefore are more likely to turn to independent NGOs or institutes with their complaints.

### **2.5.2. Cambodian Human Rights and Development Association (Adhoc)**

On average, 300 citizens from across Cambodia look for help from ADHOC each month. At the top of the list are domestic violence (about 100 per month), human rights abuses (40-50 each month) and land disputes (30-40 each month). According to ADHOC, the numbers are tending to increase.

ADHOC has no mandate as an NGO to deal with official offices in regard to the complaints they register. It can, however, advise the affected parties. In larger

conflicts such as land conflicts with local authorities, the ADHOC supports citizens through offering legal advice, conducting targeted publicity work, and other measures.

## 2.6 Summary

The **assessment** of the complaint offices in Cambodia is **not complete**. There are additional institutions – for example, the National Assembly’s complaint office – which were not interviewed. This is principally due to the fact that following the new construction of the government in September 2008, the responsibilities of several institutions were changed and the newly responsible parties did not yet see themselves as being in the position to give information about their work.

Most of the complaint offices for citizens, whether in the ministries or the ombudsman in Battambang, are still very **new institutions**. They were created in the past two or three years. This confirms the efforts of the Cambodian government to make the administration more transparent and to give citizens the possibility to check decisions made by the administration.

Most of the complaint offices in the ministries are responsible for **internal and external complaints**.

So far there are five different units for receiving and solving complaint in the ministries and government institutions where the responsibility is more less the same. The five different offices are:

- 1- Internal audit unit of each ministry
- 2- Internal inspection of each ministry
- 3- Ministry of National Assembly and Senate Relation and Inspection
- 4- National Audit Authority
- 5- Anti Corruption Unit

Most of the complaint offices are located in the respective ministries. They are often **difficult to find**, since there are no signs posted. Citizens who are looking for these offices must ask their way through the ministries to find them.

The National Authority of Land Conflict Resolution and the Anti Corruption Unit are exceptions. They are located in separate buildings.

**The process** of how complaints from the citizens are addressed is largely uniform. The complaints are registered and the officials verify the incident or request a statement from the respective department. If the complaint is deemed justified, a suggested compromise is drafted. If the affected parties are in agreement then the case is closed, but if they are not in agreement, the case is presented to the minister with a recommendation from the complaint office.

The teams at the public complaint offices are employees of the respective ministries and the minister rules on the complaints that are registered at his ministry.

Only a few complaint offices do **publicity work**. One must therefore assume that the existence of these offices is unknown to many citizens.

There are only a few usable statistics about the work of complaint offices. **Statistics** such as the number of complaints registered each year, their content, or how they were resolved either do not exist or are not publicized. So far, surveys of customer satisfaction have not been conducted.

A completely new path was opened up with the **complaint hotline of the MIME**, which improves the service for businesses, particularly small and mid-size businesses. They can use the hotline to verify licensing decisions quickly and in an uncomplicated manner. Still, even here the statistics are missing and therefore no statements can be made about acceptance or customer satisfaction. It is suggested however that the continued development of the hotline be closely followed as this project could provide interesting indicators for the future development of complaint offices.

The Ombudsman in Battambang has also been an attempt to open new possibilities to the citizens to contest decisions by the administration and protect against incorrect decisions. However, the implementation of the ombudsman system in Battambang is still facing quite big problems.

The reasons for this could be complex.

- Many citizens don't yet know about the ombudsman's existence. Although leaflets were handed out, several talk-back radio programs were financed, samples of citizens questioned have shown that the level of awareness is pretty low. Less than 5 percent of the citizens know about the ombudsman office.<sup>4</sup>
- The citizens don't have the courage to complain about the administration, because it is not possible to visit him unobserved. The possibility that this keeps the people from asking the ombudsman for help cannot be excluded.
- The people don't believe the ombudsman can help them with a conflict with the administration.
- The word Ombudsman does not exist in Khmer and therefore the offices in the Battambang was named Citizen's Office. Many believe that the name has a negative impact on the public awareness of the Citizen's Office. To more clearly explain the role of the office other titles such as "complaints receiving office", "citizen's relation office" or "Office for serving citizens" have been proposed by these people.<sup>5</sup>

An internal evaluation conducted by the Ministry of Interior came to the conclusion that the ombudsman remains a worthwhile innovation. The ombudsmen have created a mechanism to strengthen transparency, to curb corruption, and to build up trust of citizens in the district administration. Further, his presence has indirectly played a big factor in ensuring the efficient and transparent running of the OWSO itself.<sup>6</sup>

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<sup>4</sup> Research of gtz on the ombudsman in Battambang and Siem Reap, 2007

<sup>5</sup> *ibid*

<sup>6</sup> Evaluation on the Pilot Project Districts of Siem Reap and Battambang on One Window Service, May 2007

The Ministry of Interior recommends:

- The location of the ombudsmen offices should be stationed at independent places easily causing the citizens to come for communications
- A letter box should be put in public areas where people easily see and insert letters;
- The citizens should be inform deeply about the role and the tasks of the ombudsman office
- The ombudsman should get competences <sup>7</sup>

**Independent Organizations** such as ADHOC and OHCHR report that the number of complaints about the administration is increasing. They see the relation between the citizens and state offices as tense. Many citizens no longer believe in justice and have little trust in the administration or the judicial system. They have to pay a lot, wait for long periods and, if the opposing party is rich, have hardly a chance of winning the case.

### **Conclusion**

- a. There is a need for a functioning complaint system. The rising numbers of complaints confirms this.
- b. The more independent the complaint offices and teams are, the better the reception will be from the citizens.
- c. Complaint offices should be easily accessible and located in a neutral location.
- d. The work done by the complaint offices on citizens' complaints about the administration should be more transparent.
- e. The complaint offices should get more competences to investigate and solve cases
- f. The

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<sup>7</sup> ibid

### III. The Concept of Ombudsman

#### 3.1. Definition

*"The ombudsman is an independent and non-partisan officer...often provided for the constitution who supervises the administration. He deals with specific complaints from the public against administrative injustice and maladministration. He has the power to investigate, report upon and makes recommendations. He is not a judge or tribunal. He has no powers to make orders or reverse administrative action. He seeks solutions to problem by a process of investigation and conciliation. His authority and influence derive from the fact that he is appointed by and report to one of the principle organs of the state, usually either the parliament or the chief executive."*<sup>8</sup>

#### 3.2. Criteria of an Ombudsman

An Ombudsman is selected in a process which honours and symbolizes neutrality; he is autonomous and must have the power to investigate, recommend corrective action and issue reports. He must be granted the authority to directly report its yearly operation status to the either parliament or the head of state, province, municipality etc.

The ombudsman guarantees fair and objective investigations, takes in consideration the arguments brought forward by both sides and tries to achieve a satisfactory solution. According to the Professor Larry B Hill has enumerated the following characteristics of the pure ombudsman<sup>9</sup>: -

- Established as separate entity that is functionally autonomous.
- Operationally independent of both the legislature and the executive.
- Ombudsman is a legally established governmental official.
- A monitoring specialist.
- Administrative expert and professional.
- Non-partisan.
- Normatively universalistic.
- Client-centered, but not anti-administration.
- Popularly accessible and visible.
- High status institutions
- Have extensive resources to perform his mission.

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<sup>8</sup> Caiden.G.E., (ed.) international handbook of the ombudsman, Westport, Connecticut; Greenwood Press, 1983, P.13. The author point out that an ombudsman need not be a "he" but can be "she".

<sup>9</sup> "American Ombudsmen and 'Wannabe' Ombudsmen" by Larry B. Hill, Address delivered at the 1997 Spring Meeting of the American Bar Association Section of Administrative Law and Regulatory Practice, Hotel Washington, Washington D.C.

### 3.3 Role and Function of an Ombudsman

The Ombudsman concept provides the safeguard that every citizen will be provided an avenue to voice his concerns and grievances and permit opportunity for resolution prior to seeking remedy within the costly, cumbersome and backlogged judicial system. The informality, low cost, rapidity of action, flexibility, ability to enforce new policy, freedom from elaborate rules and of evidence are the important qualities, which make the ombudsman institution an ideal for the common man to seek relieve against administrative excesses and to get his grievances small or reat, redressed without spending money. The role of the ombudsman is to ensure that all public officials perform their duties with justice, honesty and public responsibility. Thus, the ombudsman became a unique instrument to represent the interests of citizens, protect basic human rights and improve quality of public administration.

The core business of public sector ombudsman remains receiving, investigation and redressed of citizen's complaints related to mal-administration of government agencies or their functionaries. An interesting feature of ombudsman institution is that it does not compete with the courts, or act as a further body to which those unsuccessful in the courts can appeal. The primary function of the Ombudsman is generally to examine:<sup>10</sup>

- A decision, process, recommendation, act of omission or commission which is contrary to law, rules or regulations, or is a departure from established practice or procedure, unless it is bona fide and has valid reason; is perverse, arbitrary or unreasonable, unjust, biased, oppressive or discriminatory; based on irrelevant grounds; or, involves the exercise of powers or the failure or refusal to do so for reasons of corrupt or improper motives such as bribery, jobbery, favoritism, nepotism, and administrative excesses; and,
- neglect, inattention, delay, incompetence, inefficiency and ineptitude in the administration or discharge of duties and responsibilities.

### 3.4. Variety of Ombudsman Systems

An office provided for by the constitution or by action of the legislature or parliament and headed by an independent, high-level public official who is responsible to the legislature or parliament, who receives complaints from aggrieved persons against government agencies, officials, and employees or who acts on his own motion, and who has the power to investigate, recommend corrective action, and issue reports<sup>11</sup>.The Ombudsman is independent of the Government and only acts upon his or her own judgment. The Ombudsman reports to Parliament on his or her activities and observations, but Parliament does not interfere in the individual cases handled by the Ombudsman or give him or her specific assignments

In the beginning most of countries had only one ombudsman respectively an ombudsman office. The ombudsman became appointed by the national government or the national parliament.

But in the last decades it turned out, that one ombudsman office is not able to handle all complains of the citizens – not only because of the increasing number of the complains but also because of the wide range of subject areas.

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<sup>10</sup> Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order 1983, Presidential Order No.1 of 1983. (Amended and updated vide Ordinance No. LXXII of 2002)

<sup>11</sup> Ombudsman Committee, International Bar Association Resolution, 1974

Today many countries have a mixed system with national, sub national and sector ombudsmen offices (e.g. Ombudsman for children, for equal opportunities, for handicapped people etc.)

## Ombudsman systems (1)

**Ombudsman on the National Level**

- is an official appointed by the parliament or the government; he reports directly to the parliament or the head of state.

**Ombudsman on sub national levels**

- is an official appointed by the parliament or council of relevant level (province, town) and reports directly to the relevant body or the head of the sub national level

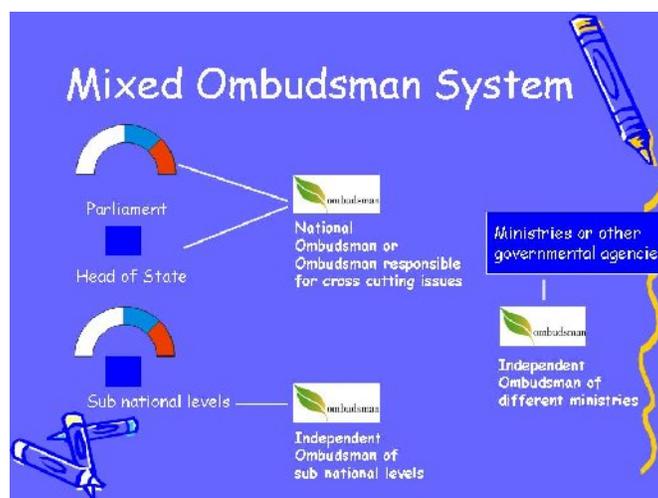
## Ombudsman systems (2)

**Ombudsmen in Ministries**

- are officials appointed by the Minister in each case; they report directly to the Minister.

**Ombudsman for areas of responsibilities**

- is an official appointed by the government or the parliament; he reports to the parliament or the head of state



### 3.5. Various Titles used for Ombudsman

A variety of names have been used to represent the ombudsman office in different countries. The titles adopted by various countries connote diversity of shades and focus of ombudsman office.

#### Ombudsman and other names

The word "**ombudsman**" is of Swedish origin, and means "**representative**". Many other names are used to represent the ombudsman office in the different countries that have adopted the office. For example:

- **Defensor del Pueblo** is the title of the ombudsman office in a number of Spanish-speaking countries (such as in Spain, Argentina, Peru and Colombia).
- **Parliamentary Commissioner for Administration** (Sri Lanka, United Kingdom),
- **Médiateur de la République** (e.g. France, Gabon, Mauritania, Senegal)
- **Public Protector** (South Africa),
- **Protecteur du Citoyen** (Québec),
- **Volksanwaltschaft** (Austria),
- **Public Complaints Commission** (Nigeria),
- **Provedor de Justiça** (Portugal),
- **Difensore Civico** (Italy)
- **Investigator-General** (Zambia),
- **Citizen's Aide** (Iowa)
- **Wafaqi Mohtasib** (Pakistan), and Lok Ayukta (India) are the titles of some other ombudsman offices around the world.

Further information about the history of the ombudsman and in which countries the ombudsman system has been implemented can be found in the report "Ombudsman and other complain systems", compiled by ardp and CLJR in September 2008.

## **IV. First Thoughts on a Cambodian Concept**

### **4.1. Option I**

A national complaint office is created, which is responsible for all complaints independent of whether they are complaints directed against civil servants from the ministries, provinces, districts, or municipal administrations.

The head of the complaint office is elected by the parliament and the Council of Ministers has the right to make recommendations.

The complaint office has extensive competencies, among other things, the right to investigate, inspect records, and have an independent information policy.

The complaint office gives an account of its activities at least once a year to the parliament. The government and the ministers receive an annual report for their information. The report is public and is made available to all media outlets.

Complaints, which are registered at the individual ministries, will be forwarded to the national complaint office.

Starting in 2009, the District Ombudsmen, who will be elected in the municipalities with the support of the World Bank, will receive extensive competencies as outlined in Prakas 790 (Ombudsman in Battambang und Siem Reap).

The national complaint office as well as the offices of the District Ombudsmen will be located in "neutral" areas.

The national complaint office will have a hotline over which complaints from the citizens can be registered and forwarded to the head of the complaint office.

### **4.2 Option II**

A national complaint office will be established (see Option 1) and at the same time the complaint offices of the individual ministries will be gradually expanded.

The heads of the complaint offices in the ministries will be elected by the Council of Ministers.

The complaint offices will have the right to independently research the cases; they will have access to files and the right to conduct independent publicity work.

The complaint offices in the ministries will be moved out of the ministries and set up at neutral locations, perhaps all together in one location.

The sectoral complaint offices give an account of their report once a year to the Council of Ministers. The members of parliament and the heads of the national complaint office receive the annual report for their information. The report is public and will be made available to all media outlets.

### **4.3 Option III**

A national complaint office will be created (see Option 1). Additionally, the complaint office will have a council. The council has the right to mediate the case

and develop recommendations if both parties (the administration defendant and the citizen) are agreeable.

The council is comprised of members of the parliament, administration experts, representatives of the National League, representatives of the Chamber of Commerce, and representatives of NGOs. The chairperson is the head of the national complaint office.

#### **4.4. The Name for the Complaint Office**

Based on experiences from Battambang, the Khmer word for ombudsman, "citizen's office", does not clearly express which services this office provides. This could be one of the reasons why the ombudsman in Battambang was hardly visited.

It is therefore necessary that a name is found for the office or the person, which indicates what the institution or person is responsible for. For example: Citizen's Aide, Citizen's Consultant, Citizen's Advocate, Public Complaints Commission, National Authority for Public Complaints etc.

#### **V. Final Remark**

A functioning complaint system could play an important role in increasing the trust of citizens in the administration and government of Cambodia. The requirements would be that this institution

- can operate free from political influence,
- is really independent,
- mediates the cases fairly,
- does not treat any person better or worse than any other.

The head of the complaint office needs sufficient personnel and financial resources in order to autonomously address its responsibilities and it needs the unreserved support of the parliament, government and ministries.

#### **References**

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- Meeting with Ministry of Commerce
- Meeting with High Commissioner for Human Rights in Cambodia
- Meeting with ADHOC
- Meeting with Ministry of Interior
- Meeting with CCJAPIII
- Meeting with District Ombudsman in Battambang province
- Meeting with Ministry of Justice – Program of Access to Justice