

A) Introduction and Background

Government agencies derive their power from properly enacted laws. They have limited, clearly defined powers to implement these laws. Making sure that agencies do not exceed or misuse this power is one of the essential role of the Rule of Law principle in the context of administrative law. Against this background, one of the purposes of administrative law is to restrain activities of administrative bodies and prevent them from violating individual rights and interests. To achieve this purpose, citizens must have legal protection against the administration and its measures. The Cambodian Constitution provides the framework for legal protection against administrative measures, such as the right to complain (Art. 39[1] CC) and the right of judicial review (Art. 39[2] and Art. 128[3] CC.) The system envisaged by the Constitution provides citizens with legal protection against administrative measures and controls the executive power/administration through an independent judiciary. This is a new principle in Cambodian history as it establishes the supremacy of fundamental rights, which binds all public authorities. The Constitution (and administrative law as the concretization of the constitution) declares the individual a legal subject, with subjective public rights. And it outlines a system which protects these subjective public rights. The legal basis of this system is outlined in Art. 31, which states clearly that a citizen can complain against any type of administrative measure ("Khmer citizens have the rights (...) to complain"). Consequently, most of administrative sector laws provide complaint mechanisms against administrative decisions. Even if a citizen does not want to complain against an administrative decision but against a simple (inappropriate) behaviour or if a citizen intends to report a criminal behaviour such as corruption, other mechanisms provide additional opportunities for complaint, such as the Ombudsman (citizen officer) on sub-national level, or the Anti-Corruption Unit of national level. In the last two cases, citizens can play an important role to ensure accountability of government institution as a "watch dog" or as a "whistle-blower".

This workshop will mainly focus on exchanging lessons and information on legal foundations for effective complaint systems and on sub-national informal complaint mechanisms in selected ASEAN countries and Cambodia.

For a better understanding allow us to shortly describe the existing sub-national informal complaint mechanisms in Cambodia.

Currently there are **two subnational mechanisms** in Cambodia.

A) Provincial and National Accountability Working Groups

The Provincial Accountability Working Group (PAWG) mechanism exists to support administrative reform at sub-national level by increasing accountability of public investment. This mechanism helps the national and international community see that the local government has a trusted and transparent way to ensure local investments are management with accountability as per the principles of democratic development. T. Accountability Working Groups responsibilities are to:

- Collect and handle complaints related to misuse of the sub-national budget;
- Identify mistakes/faults of local officials and propose sanctions;
- Follow up, monitor, evaluate and publicise the solutions for different cases.

Officials from ministries in the public sector make up the National Accountability WG while the PAWGs are composed of a mix of public, private and NGO sector

representatives, including the provincial governor, deputy provincial governor, line ministry representatives, commune/sangkat representatives and the private sector. PAWGs have their own budget for solving the complaints, but that budget is low. The role of the NAWG is to support the PAWGs. It is not mandated to solve complaints but to give advice and training and follow up and investigate how complaints are resolved at provincial level.

It is possible to submit complaints to PAWGs where citizens feel that the commune/sangkat fund (CSF) has been used incorrectly, or where they feel there have been abuses of power or other issues of local governance that citizens may not be satisfied with. Citizens can make complaints in person or in writing through the 2545 accountability boxes which exist at numerous locations and levels throughout Cambodia's provinces¹. Complaints boxes are positioned at all provincial, district and commune offices, and at the offices of some Community-Based Organisations (CBOs). Leaflets are available with contact details of PAWG members at each accountability box, and citizens can also receive information about PAWGs from posters and the media. Aside from submitting complaints through the boxes, citizens can also contact PAWG members by phone or in person. Accountability boxes are locked, which allows for anonymity of complaints.

B) One Window Service Office (OWSO) and District Ombudsman Mechanism

One Window Service Offices are an innovation in service delivery in Cambodia, allowing for the provision of varied administrative services to citizens and businesses in one location and in a rapid and transparent manner. The OWSO has been created in 17 provinces at district level. Alongside the OWSO is the District Ombudsman's (DO) office. DO were piloted under the Konrad-Adenauer-Stiftung project co-funded by the European Union in two districts in Siem Reap and Battambang in 2004-2007. Under the World Bank funded Demand for Good Governance project, seven new DO were inaugurated in Kandal, Kampong Thom, Sihanoukville, Banteay Meanchey, Kratie, Kampong Cham and Prey Veng provinces.

Ombudsmen are neutral citizen representatives that are used to monitor the performance of local officials and to improve the accountability, transparency and responsiveness of administration. The DO is mandated as a neutral and independent representative of the citizens who is to seek acceptable resolutions for citizens and businesses.

The role of the DO is to:

- Monitor and deal with complaints related to administrative services offered by the OWSO;
- Advise on and attempt to target malpractice by public officials, and handle any other complaints about the **district administration**;
- Mediate between parties to solve complaints;
- Build good relations between the business sector, civil society organizations and the local administration.

Currently the Ministry of Interior with support of the World Bank and KAS is reviewing the sub-national complaint mechanisms described above. There are different proposals/options of further developing the mechanisms in order to make the sub-national informal complaint handling more effective and transparent. Issues of overlapping mandates, financial sustainability, and lack of clear legal framework for existing mechanisms need to be addressed and solved.

KAS is currently undertaking a legal desk review of existing mechanism in order to analyse from a legal perspective the existing sub national complaint mechanism. This workshop is used to present the preliminary results of the desk review undertaken by KAS and to give first recommendations for the further development of the mechanisms.

¹

B) Objectives of the Workshop

- To provide and share regional experiences on complaint systems and mechanisms (in Germany, Thailand and the Philippines)
- To gain knowledge on formal and informal complaint systems and mechanisms existing in the region to develop recommendations for a more coherent complaint system in Cambodia
- To showcase the current Cambodian sub national complaint system, mechanisms, its advantages and challenges to regional experts
- To provide additional regional input for the Ministry of Interior and NCDD (National Committee for Sub-democratic Development) for further development of the existing sub national legal and policy frameworks and complaint mechanisms.

C) Expected Results

- Regional Experiences are shared with relevant national and local stakeholders
- KAS preliminary recommendations on reviewing the existing sub-national complaint mechanisms are presented to relevant Cambodian authorities
- Regional Recommendations are collected and integrated in the KAS Desk review/recommendations

D) Preparation of Presentations

Kindly send your Presentation latest until May 20th to the following contacts:

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**Administrative Complaint Mechanisms in ASEAN
June 3-4, 2013
Siem Reap, Kingdom of Cambodia**

28.05.2013

Sunday June 02 2013

Arrival of Participants in Siem Reap, Cambodia

Hotel: Sokha Angkor Resort Hotel
National Road No. 6 Sivatha St Junction,
Siem Reap, Cambodia

Check-In at 13.00 - 19.00 hours

19.00-20.30 hrs Welcome Dinner at The Lotus or the Poolside (subject to weather)

Monday, 03 June 2013

08.00.-08.30 hrs Registration
At the Foyer area Grand Ballroom

08.30-08.40 hrs Welcome Remarks

By Mr. Marc Spitzkatz, Director, Rule of Law Programme Asia

08:40-08:50 Opening Remarks

By H.E. Mr. Leng Vy, Director General of General Department of Administration, Ministry of Interior

08.50-09.10 hrs Input Statement

Overview on International Legal and Non-legal Approaches and Principles of Handling citizens complaints against Administrative Action

by Prof. Jörg Menzel, Professor of Law, University of Dresden

09.10-10.00 hrs Session 1

International legal approaches to handle Citizens complaints against administrative action

Moderator:

Mr. Marc Spitzkatz
Director, Rule of Law Programme Asia
Konrad-Adenauer-Stiftung Ltd.

09.10-09.20 hrs **Citizens complaints mechanisms and handling in Germany**

by Prof. Joerg Menzel, Professor of Law, University of Dresden

09.20-09.40 hrs **Citizens complaint mechanisms and handling in Thailand**

by Mr Somchai Laisupanwongse,
Appeals/Complaints Commissioner in MSPC, Thailand

09.40-10.00 hrs **Citizens complaint mechanism and handling in the Philippines**

by Prof. Harry Roque
Director, Institute of International Legal Studies, University of the Philippines

10.00-10.30 hrs Tea Break

10.30-11.30 hrs Session 2

Economic, Financial and Social Benefits of a Transparent and Effective Complaint Mechanism and Handling Systems

Moderator:

Prof. Joerg Menzel, Professor of Law, University of Dresden

10.30-10.50 hrs Prof. Harry Roque, Institute of International Legal Studies, University of the Philippines

10.50-11.10 hrs Prof. Siracha Charoenpanij, Ombudsman Office of the Ombudsman Thailand

11.10-12.00 hrs Questions and Answers

12.00-14.00 hrs Lunch at The Lotus

14.00-15.00 hrs Session 3

Introducing the Ombudsman System in Thailand and the Philippines

Moderator:

Mr Marc Spitzkatz,
Director, Rule of Law Programme Asia,
Konrad-Adenauer-Stiftung Ltd.

14.00-14.30 hrs **The Case of the Philippines**
Legal Framework (Laws and Policies), Organizational Structure, Mandate, Powers, Rules of Procedure, Function and Duties of Philippines Ombudsman – Achievements, Obstacles and Challenges

Ombudsman Conchita Carpio Morales, Ombudsman of the Philippines

14.30-15.00 hrs **The Case of Thailand**
Legal Framework (Laws and Policies), Organizational Structure, Mandate, Powers, Rules of Procedure, Function and Duties of Thai Ombudsman – Achievements, Obstacles and Challenges

Prof. Siracha Charoenpanij
Ombudsman, Office of the Ombudsman Thailand

15.00-16.00 hrs *Questions and Answers*

16.00-16.30 hrs **Tea Break**

16.30-17.30 hrs **Discussion**
Advantages and Disadvantages of the Presented Models in Terms of Mandate / Handling Complaint Procedures / Operational Costs / Citizen Friendliness → Lessons for Adaptation and Introduction into Cambodia

Moderator:

Prof. Kong Phallack, Dean and Professor of Law, Panhnasatra University, Attorney at Law and Arbitrator

17.30 hrs Conclusion

18.30-21.00 hrs Dinner at Takezono Restaurant (Japanese)

Tuesday, 04 June 2013

08.00-09.00 hrs Session 4

Introduction to and Overview of the Current System of National Administrative Complaint Mechanisms in Cambodia

Moderator:

Mr. Denis Schrey,
Country Representative, Konrad-Adenauer-Stiftung, Cambodia

08.00-08.30 hrs The Case of Cambodia

Mr. Dara Klok, Senior Expert, Council for Legal and Judicial Reform

Mr. Kai Hauerstein, CIM Expert and Legal Advisor to General Secretariat, Council for Legal and Juridicial Reform

08.30-09.00 hrs *Questions and Feedback from regional and international representatives*

09.00-10.00 hrs Session 5

Overview of Legal Framework, Organizational Structure, Mandate, Powers, Rules of Procedure and Function and Duties of the current two existing Sub National Complaint Mechanisms in Cambodia:

Moderator:

Prof. Jörg Menzel,
Professor of Law, University of Dresden

09:00-09:20 Mr. Yin Malyna, Director of Local Administration Department, Ministry of Interior

09:20-09:45 Experiences from the practitioners:

- **the “Cambodian District Ombudsman” – Achievements, Obstacles and Challenges**

Mr. Pich Samorn, Chief of Citizen Office (Ombudsman) of Siem Reap Municipality

▪ **the Provincial Accountability Working Group (PAWG) – Achievements, Obstacles and Challenges**

Mr. Ly Samrith, Member of the PAWG of Siem Reap Province and Administrative Chief of Siem Reap

09:45-10:00 **External NGO view on the Challenges and Obstacles of both mechanisms**

Mr. Heng Monychenda, Director, Buddhism for Development

10:00-10:45 Questions and Answers and Feedback and advise from regional and international experts

10.45-11.00 hrs [Tea Break](#)

11.00-12.30 hrs **Focus Group Discussions**

10 participants/3 groups/3 assignments/1 moderator and 1 translator in each group
Elaborating recommendations for an improved system of administrative complaint handling in Cambodia

Group A)

Elaborate ideas/recommendations for an improved coherent and integrated legal policy framework for complaint management in Cambodia

Guiding Questions distributed

Moderator:

Prof. Kong Phallack, Dean of Law Faculty, Panasastra University Cambodia, Attorney at Law and Arbitrator

Translator: Som Savuth

Group B)

Elaborate ideas/recommendations for sustainable financial resources for complaint mechanisms

Guiding Questions distributed

Moderator:

Kai Hauerstein, CIM Expert and Legal Advisor to General Secretariat, Council for Legal and Juridical Reform

Translator: Soth Sang Bonn

Group C)

Elaborate ideas/additional recommendations for the development of the two existing sub national complaint mechanisms in Cambodia

Guiding Questions distributed

Moderator:

Prof. Jörg Menzel, Professor of Law, University of Dresden

Translator: (tbc)

12.30-14.00 hrs Lunch at The Lotus

14:00-14:45 Presentation of three Group Work results of Recommendations (Group A-C)

14:45-15:30 Presentation of legal mandate analysis/desk review and preliminary recommendations of options of how to further develop the two existing sub national complaint mechanisms in Cambodia?

By Prof. Kong Phallack, Dean of Law Faculty, Panhasastra University Cambodia, Attorney at Law and Arbitrator

Prof. Jörg Menzel, Professor of Law, University of Dresden

15.30-16:00 hrs Tea Break

16:00-16:30 Questions and Feedback from Participants

16:30-17.30 hrs Closing remarks, Closing of the conference and next steps

Mr. Marc Spitzkatz, Director, Rule of Law Programme Asia Konrad-Adenauer-Stiftung Ltd.

Mr. Denis Schrey, Country Representative, Konrad-Adenauer-Stiftung, Cambodia

H.E Secretary of State, **Sak Setha**, Head of National Committee for Sub-democratic Development Secretariat (NCDDs)

17.30hrs End of Programme

19.00-21.00 hrs Dinner at Angkor Village Theatre

(Please assemble at the Hotel Lobby by 17.45 hrs for departure to the Restaurant)

Wednesday, 05 June 2013

Departure of delegates until 12.00 o'clock.