

BACKGROUND PAPER

**Sub-National Complaint Mechanisms in
Cambodia and ASEAN**

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Introduction

Accountability involves not only just a relationship between two actors, but also the mechanisms, rules and resources to enable citizens to question and oversee the actions of their local authorities. In academic and policy circles there has been an increasing understanding of the importance of effective accountability and recourse mechanisms to democratic government. These mechanisms are necessary in order to restrain the arbitrary application of power, and to provide recourse to citizens who feel they have been wronged. Sub-national complaint handling mechanisms are crucial, as their devolution of public accountability to a local level makes them more accessible to the citizenry. Furthermore, as detailed below, the majority of complaints tend to relate to issues of local importance, for which the source of and recourse to the problem both lie at the local level.

Complaint mechanisms represent important steps towards creating a system of government which is more responsive to its citizens' needs and less able to exercise power in an arbitrary manner. This in turn strengthens the link between citizen and state, and can improve development outcomes through reduced corruption, improved efficiency and a pursuant increase in state legitimacy and stability. Citizen complaint mechanisms positively contribute to improved governmental accountability and engagement with citizens. However, this occurs in a variety of ways and with different levels of maturity and robustness depending on any given country, and the effectiveness of such mechanisms is dependent on different factors that influence their usage.

In different countries, the ways in which their complaints offices are organized, the legislation that supports them, the scope of their mandates and the methods by which the public can access them can differ greatly. For example, in Thailand, the Office of the Ombudsman (an ombudsman is a "government official appointed to receive and investigate complaints made by individuals against abuses or capricious acts of public officials¹") is centralized and provided for in the constitution as well as having its own legislation, whereas in Vietnam the complaint mechanisms is housed in a variety of government departments and is not addressed in the constitution, although it has its own legislation.

¹ Merriam-Webster Dictionary, online, accessed July 3, 2013, <http://www.merriam-webster.com/dictionary/ombudsman>

In Cambodia, citizens have the right by law to submit complaints and ask for decisions to be explained by their elected representatives in councils. However, public accountability of officials is a relatively new concept and accountability mechanisms and practices may still not be fully understood both by officials and by citizens. For complaint mechanisms to be effective it is important that they are easily accessible and citizens are aware how to make complaints through public education in using the mechanisms. Citizens must be able to know who they are complaining to and how this differs according to the issue they are complaining about. Complaints must be reviewed according to a clear process and in a timely manner, with authorities compelled to take action and citizens informed of decisions made. Effective and clear investigation and enforcement regimes are critical to the effective functioning of the mechanisms. Another key consideration is the independence of the mechanism from the public administration, and there must be sufficient funding for its full operation.

In Cambodia there are two key complaints mechanisms at sub-national level: The Provincial Accountability Working Groups and the District Ombudsman's system, which will be examined in detail in the first part of the paper below. This second part of the paper is a comparative study of regional experiences with complaint handling mechanisms in Vietnam, Thailand and the Philippines. It considers the legal basis for the complaint mechanisms, their structures, procedures and the challenges they face. This comparative study offers insight and examples for the consolidation and future of the Cambodian system of sub-national complaints. The lessons which emerge from this study are the importance of a well defined mandate, sufficient resources, enforcement and sanction powers, public awareness and ease of filing a complaint, and independence of complaint handling mechanisms, in order for them to be effective.

Part 1 Sub-National Complaint Handling Mechanisms and Policy in Cambodia

I. Importance of sub-national accountability

Accountability, as defined by Eng and Craig (2009)², is a personal, administrative and political value embedded in all formal institutions. It involves not only just a relationship between two actors, but also the mechanisms, rules and resources to enable a governance system to function more responsibly, and to enable citizens to question and oversee the actions of their local authorities. For this to occur, not only must authorities be receptive to the needs and problems of citizens and understand their obligations but there must be ways in which local authorities either respond to citizen complaints about administrative actions directly or are compelled to respond by independent agencies. This must occur through a clear and understandable process. However, public accountability of officials in Cambodia is a relatively new concept and accountability mechanisms and practices may still not be fully understood both by officials and by citizens.

Article 39 of Cambodia's Constitution states that "Khmer citizens shall have the right to denounce, make complaints or file claims against any breach of the law by state and social organs or by members of such organs committed during the course of their duties". Citizens have the right to ask for decisions to be explained by their elected representatives in councils, however this concept does not have a long history in Cambodia and in reality they are unlikely to do this unless there are strong mechanisms functioning that empower them and ensure that they do not feel threatened. Effective mechanisms to let them submit complaints are particularly important in Cambodian culture, where there is an emphasis on status and deference is often paid by villagers to those of a higher status.

There are three key principles of accountability mechanisms: awareness and education; prevention of wrongdoing; and investigations, sanctions and enforcement³. It is critical for the effective functioning of these mechanisms that citizens are aware how to make complaints; who they are complaining to; how this differs according to the issue they are

²Eng, N. & Craig, D. (2009). *Accountability and Human Resource Management in Decentralized Cambodia*. CDRI Working Paper Series No. 40. (CDRI; Phnom Penh, Cambodia)

³Graham, P. (2010). Final Report of Extension of the Contract for the Design of the Complaint Investigation Handbook and Training for the Accountability Working Groups To include Assessment of National and Provincial Accountability working group and its complaint Mechanism. (National Committee for Sub-National Democratic Development; Phnom Penh, Cambodia)

complaining about; and that these mechanisms are easily accessible. Mechanisms must be designed to ensure that complaints are reviewed according to a due and clear process, in a timely manner, and that authorities are compelled to take action and citizens are informed of decisions made. There are two key complaints mechanisms at the sub-national level: The Provincial Accountability Working Groups and the District Ombudsman's system.

II. Provincial and National Accountability Working Groups

Established by the National Committee for Sub-National Democratic Development (NCDD), the Provincial Accountability Working Group (PAWG) mechanism exists to support administrative reform at sub-national level by increasing accountability of public investment. This mechanism lets 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. The PAWGs are supported by National Accountability Working Groups (NAWG). These bodies can propose redress in the case of complaints, however they do not have legal power. 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 cases⁴.

Officials from ministries in the public sector make up the NAWGs while the PAWGs are composed of a mix of public and private 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 the 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

⁴ Knowles, J.N. (2007). Final Report-Assessment of the Accountability Working Group. (Rural Investment for Local Governance project; NCDD)

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 provinces⁵. 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 complaints⁶.

Accountability boxes are opened every month, the complaints transferred into an envelope and transported to the PAWG. Complaints are taken out and read at monthly meetings. Following this they are investigated if they are considered a fair complaint, or submitted to relevant ministries if they fall outside the mandate of the PAWGs. The PAWG has to study and investigate cases that are presented to it. Rather than individually sanctioning those who are investigated, the PAWG recommends action to be taken or refers cases to entities or relevant institutions that can then take punitive measures or solve the case according to relevant legislation on the issue. Resolution is based on investigative reports submitted to the PAWG. The PAWG support group is empowered to give the decision of the PAWG to the relevant body, which has 15 days to decide whether to authorise disciplinary action, reporting back to PAWG on their decision. After investigation, an announcement about any punishment is made within 15 days⁷. The support group has to collect reports from those who were appointed to follow up on the decision and the PAWG checks and discusses the report.

Where the investigation does not show up evidence of misconduct, the case can be referred to department heads for improvement of procedures or reprimand⁸. Feedback to complainants is key and feedback to district and commune levels takes place after a decision is made to investigate and after any sanction has been authorised. Members of the PAWG that are possibly involved in the complaint or that are involved in the dispute may not enter the complaints solving process.

⁵ Information obtained through interview with National Accountability Working Group, NCDD. 31th, August 2012

⁶ Graham (2010)

⁷ Graham (2010)

⁸ Graham (2010)

Overall, figures show that the numbers of complaints submitted through the accountability boxes has risen. Comparing the first two quarters of 2011 and 2012, there were 476 complaints this year compared to 346 last year, a rise of 38%. Of these, 65% were investigated and reported on. 99% of complaints were submitted using the accountability boxes, showing that citizens value the anonymity that this provides. By far the highest number of complaints in the first six months of 2012 were regarding the role and duties of ministry, institutions and other authorities that work under local administrations (70%), followed by complaints about the role and duties of commune/sangkat members and staff (14%)⁹. Further details of complaints submitted through the PAWG can be found in Annex A.

According to an assessment of the structures, responsibilities and mandates of PAWGs undertaken in 2010 by an independent consultant on behalf of NCDD, key achievements of the PAWG mechanism are¹⁰:

- PAWGs are well-established and people know about the system and use it in growing numbers. This has helped promote the concept of public accountability despite this concept being unfamiliar to many citizens.
- The accountability box is a good way to offer anonymity to citizens when they complain as citizens may still be afraid to be singled out as a complainant.
- Problems of corruption and misconduct and poor administrative practices are being addressed, investigations conducted and wrongdoers sanctioned and disciplined.
- Information about complaint resolution is being received by the public, although it may not yet be completely understood.

However, some issues with the mechanism included¹¹:

- There is still confusion over the mandate of the PAWGs. This is evidenced by numbers of complaints submitted in different areas. For example, in Stung Treng province in 2010, of 99 complaints received 88 were seen as 'to be resolved' and 11 'not to be resolved'. However, in Kratie, of 122 complaints 15 were 'to be resolved' and 107 'not to be resolved'. As complaints were submitted in similar numbers, this indicates that mandates may be interpreted differently in different areas.

⁹ Information taken from *Second trimester report 2012 of Accountability Working Group*

¹⁰ Graham (2010)

¹¹ Graham (2010)

- Practices to disseminate information and details of resolutions should be improved. In many locations, leaflets may not be available around complaint boxes. Only 12% of respondents to the 2009 survey felt that information was well-distributed.
- Funding for salaries and equipment is very low for PAWGs. Each PAWG in 2009 received only \$632 and PAWG respondents felt that funding may be too low for investigators to travel in order to investigate complaints.
- There is not enough lateral communication between provinces and best practices are not shared consistently or often enough.
- There is a continued lack of legal research material available to PAWGs and investigators. Other equipment such as computers and communications equipment is also often lacking.
- There should be more guidance, training and information coming from NAWGs and top levels flowing down to PAWGs.
- Often complaints are made because local people do not understand certain procedures governing business and the public sector and require guidance on these. Therefore, education for the public is required so they understand how to use complaint boxes effectively. In the 2009 survey, only 14% of citizen respondents said that they were aware of how to make a complaint.
- The process for collecting and scrutinising complaints is currently too long. In many cases, it takes a minimum of three weeks for the point of investigation to be reached because of the procedures involved but also because some provinces are very large and transport times are a factor. Where complaints are submitted just after the monthly collection, this could take up to six weeks to be investigated and up to three months to be resolved. This may cause citizens to lose confidence in the process. More frequent collection of complaints would assist in this, but this is not possible under current PAWG systems.
- PAWGs need to be more consistent with when they meet. 40% of respondents to a 2009 survey said that meetings were not held consistently. However, a majority of respondents felt that meetings when held were very useful.
- Accountability boxes are currently in disrepair in many locations and this might dissuade citizens from submitting their complaints.

III. One Window Service Office 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 the 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 provinces¹².

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 representative of the citizens who is to seek acceptable resolutions for citizens and businesses. The increased complexity of economic and social life and in some areas the lack of full transparency of the actions of public officials has meant that an ombudsman's system is of growing importance in Cambodia in order to enhance trust and engagement between citizens and local authorities and to ensure that the law is upheld. The role of the DO is to:

- Monitor and deal with complaints regarding services from the OWSO;
- Advise on and attempt to target malpractice by public officials, and handle any other complaints about the district administration;
- Conciliate between parties to solve complaints;
- Build good relations between the business sector, civil society organisations and the administration.

DO have the power to seek all relevant documents to solve the complaint, to mediate between citizens and authorities, and to send recommendations to the district governor (or to the provincial governor if the complaint relates to the district governor's position). The Ombudsman at district level is selected by and accountable to a committee of representatives from the district council, the business community and civil society. The Ombudsmen is an independent entity and he/she is selected by an election committee composed of all members of the municipal or district council; three representatives of the

¹² Information taken from planning documents for DFGG Project: Terms of Reference for Consultant on One Window Service and Ombudsman Project (OWSO) Study on the Alignment of the District Ombudsman (DO) and the Provincial Accountability Working Group (PAWG)

local business community; and three representatives from registered local NGOs acting from the municipal and district base. All members of the election committee have the right to nominate two candidates to stand for the ombudsman election¹³. Over time, the Ombudsman's office has been seen as effective in improving transparency, curbing corruption, and ensuring the efficient and transparent running of the OWSO. It has helped to build trust between the administration and citizens, allowing for a neutral place where problems between citizens and the administration can be resolved¹⁴. Neutrality is a key aspect of the functioning of the DO, and represents an important innovation in complaints mechanisms in Cambodia. The ability of citizens to offer their concerns and complaints directly to a neutral and elected representative can be seen as a move towards a mechanism that addresses problems of limited access to information for citizens and public transparency, which is in many cases not provided to citizens through their local government. An independent citizens office also represents a step towards better governance in Cambodia.

However, some of the problems with the Ombudsman mechanism at present include:

- Complaints are often not submitted in the correct field, indicating that citizens may be confused about the role of the ombudsman. Although DO are mandated to deal with complaints regarding the OWSO, a review of the complaints between 2006 and 2009 showed that only two were registered and resolved, but with other complaints submitted and out of the competency of the DO¹⁵. In 2011 less than 10% of the correspondence received by the DO related to complaints in the field intended¹⁶. Complaints received mainly revolve around dissatisfaction about service provision and service providers (such as Municipalities and line departments) and complaints that services from the OWSO are limited¹⁷.
- Despite awareness campaigns including leaflets and radio programmes, citizens may not be aware of the office: in a 2007 survey only 5% were aware of its existence.

¹³ Information taken from presentation by Mr. CHAN Sothea, Project Manager, Ombudsman's Office

¹⁴ Council for Legal and Judicial Reform (2009).

¹⁵ Information taken from planning documents for DFGG Project: Terms of Reference for Consultant on One Window Service and Ombudsman Project (OWSO) Study on the Alignment of the District Ombudsman (DO) and the Provincial Accountability Working Group (PAWG)

¹⁶ Information taken from presentation by Mr. CHAN Sothea, Project Manager, Ombudsman's Office

¹⁷ Information taken from planning documents for DFGG Project: Terms of Reference for Consultant on One Window Service and Ombudsman Project (OWSO) Study on the Alignment of the District Ombudsman (DO) and the Provincial Accountability Working Group (PAWG)

- There is a lack of professional expertise and limited resources, including financial and human resources.
- There may be a lack of trust between citizens and the ombudsman's mechanism, evidenced by the eagerness of citizens to submit complaints through accountability boxes but not through the ombudsman's office¹⁸.
- Citizens also may be afraid of submitting complaints to the Ombudsman as they cannot go to visit him/her unobserved. They may also feel that the Ombudsman cannot help them in a conflict with the administration.
- There is no direct translation for the word Ombudsman in Khmer, and many believe this negatively impacts understanding. Other possible words to explain it could be 'complaints receiving office' or 'office for serving citizens'.
- Ombudsmen are at present only located at the municipal/district level.
- In a case study of Battambang, the following problems were observed: the office is not clearly visible to citizens and is not well-signposted¹⁹.

IV. Other ways in which citizens can complain

Direct submission of complaints to the commune council

The clearest way for citizens to voice their concerns about a local issue is through the removal from office of their elected representatives on the commune council. However, commune councillors are also frequently challenged to deal with complaints on a wide range of issues, the most common of which are small-scale complaints from citizens about land, domestic violence, inheritance disputes and loan repayment issues.

Normally, local authorities only solve complaints about civil cases. They are not mandated to make decisions about winners and losers of such cases, rather to make compromises by giving comments, advice and guidelines to the parties contesting the case. If the Commune/Sangkat cannot solve the problem themselves they can transfer the case to the district level or to the courts. Commune councils have powers to conduct monitoring, control and intervention in association with officials at the provincial/municipal,

¹⁸ Research by GTZ on the ombudsman system in Battambang and Siem Reap, 2007

¹⁹ Council for Legal and Judicial Reform (2009).

district/Khan territorial levels²⁰. Complaints must be submitted to the council in writing by all parties, which must permanently reside in the jurisdiction of the council²¹. Monitoring, control and interventions to solve complaints include actions such as investigation and evaluation, and complaints can be resolved through the issuance of written instructions to the Commune/Sangkat Council to carry out duties required by law²².

To adequately deal with disputes, councillors must have time available to visit villages regularly, which is often difficult where distances are very large and budgets are low. Sometimes citizens may be reticent to approach commune councillors as they may feel that unless there is a village network to provide information or the complaint occurs in a village where the commune council office is located it is difficult for commune councils to adequately resolve problems occurring in villages²³.

A survey by CDRI in 2011 showed that overall, resolution of complaints was improving quite considerably despite some of the problems stated above. When citizens were questioned about the capabilities of commune councils to resolve complaints, 81% felt that they managed to solve conflict in the villages, up from 55% in 2005.; 91% felt that complaints were taken seriously by authorities; and 99% felt that they could approach commune councils if they had a problem, showing that confidence in complaint resolution by commune councils has significantly improved. This could indicate that that decentralisation reform has successfully managed to resolve conflict at the local level and reduced the gap between local authorities and citizens²⁴.

Complaints about land issues

In 2006, the National Authority of Land Conflict Resolution (NALCR) was established, and by the end of 2008 there were 1500 complaints registered with the authority. The NALCR takes complaints regarding land from citizens and forwards them to the relevant offices and ministries. Its role is to coordinate all land disputes, and the general secretary can conduct

²⁰ Royal Kram 0301/05, Chapter 5. Article 53. In addition, Article 49 of Royal Kram 0301/05 shows that "the resolutions [of complaints] of a commune/Sangkat shall be effective for the implementation within its territory only. The resolutions of a commune/sangkat shall not be contradictory to the Constitution, laws, Royal decrees, sub-decrees and proclamations and concerned legal instruments shall be abrogated"²⁰.

²¹ Royal Kram 0508/017, Section 6. Article 91.

²² Royal Kram 0301/05, Chapter 5. Article 55

²³ Mansfield, C. and Macleod, K. (2004). *Commune Councils and Civil society*. (Pact Cambodia; Phnom Penh, Cambodia)

²⁴ Ojendal, J and Sedara, K. (2011). *Real Democratization in Cambodia? An Empirical Review of the Potential of a Decentralization Reform*. (ICLD; Swedish International Centre for Local Democracy)

investigations and inspections following complaints and to halt work on land where conflict has taken place. There is little evidence available on whether complaints were satisfactorily resolved or which types of complaints were resolved.

The Ministry of National Assembly and Senate Inspection and Relations (MONASRI) and other government ministries

MONASRI works to ensure accountability and transparency of other ministries and institutions. The general department of inspection has a full mandate to conduct inquiries and inspections and mediate in complaints against the administration. The complaints department fields all complaints against public institutions and tries to investigate and solve them, compiling a file to hand to the Prime Minister to make the final decision. Most cases regard land issues. MONASRI also does substantial work in checking on the performance of government institutions, especially regarding expenditures.

There are also internal complaints/inspections departments in national-level ministries. Handling of internal complaints generally follows the same procedure: complaints are firstly verified by the inspection department; then a hearing is held between the parties; then the department delivers a recommendation with the final decision made by the minister. Where cases are complex and hard to resolve, a working group is set up to investigate. Problems with these departments include the lack of public information and systematic processes that transmit information about the work that these offices undertake, and the lack of available statistics on types of complaints and their resolution.

Business-related complaints

There is also a complaints office (the Dispute Settlements Office) in the Ministry of Commerce that can be used for businesspeople who do not agree with the decisions of the Ministry. However, indications are that this office is not widely used, is difficult to locate and that as yet it has not been issued with clear regulations regarding resolving disputes²⁵. Businesspeople can also address complaints to the relevant ministry responsible for licensing, which are then dealt with following similar procedures as normal complaints to ministries, or can call a special hotline for business-related complaints. This allows them to register complaints quickly and without long waiting times or administrative processes, and complaints are then forwarded to the relevant office.

Civil society organisations

²⁵ Council for Legal and Judicial Reform (2009).

NGOs and civil society organisations can play a vital role in a number of areas and help resolve disputes about different issues such as land claims, domestic violence, inheritance and repayment of loans. They can create networks of other NGO partners and commune councils and help commune councils to link together to learn from actions taken in different areas and promote information flow between local authorities and civil society. They can also help to inform commune councils and citizens about official mechanisms to submit complaints, about legislation and ways to address different issues. They can offer advice to citizens and monitor progress of complaints and different cases²⁶.

Civil society organisations such as LICHADO aim to work within complaints guidelines, advising citizens on how to submit complaints to the relevant authorities. However, if the cases are related to their areas of competency they can help citizens by advising them how to complain through the legal process courts and can provide them with lawyers to assist them in the complaint-resolution process. ADHOC aims to assist in complaints resolution by conducting investigations to collect evidence and then intervening with the relevant ministry or institution should the case fall within ADHOC's area of jurisdiction. If this does not happen, ADHOC provides citizens with advice and allows them to consult with ADHOC staff about how their case can proceed. They can also make contact with lawyers and offer a service where victims are given advice free of charge.

The Office of the High Commissioner for Human Rights (OHCHR) receives many inquiries and complaints and requests for legal advice and assistance in disputes. It mainly fields complaints about land, domestic violence, the situation in prisons and other human rights abuses. It gives information to citizens about where they can find recourse for such complaints and supports NGOs that address these different issues. Representatives of the OHCHR feel that citizens do not trust other complaints mechanisms, and therefore citizens turn to NGOs and other institutes when they complain²⁷.

V. The role of the parliament in handling complaints from constituents

The parliament plays a key role in assisting the government to conduct examinations on the performance of other government ministries or institutions in order to ensure accountability and transparency to assist the people. The Ministry of National Assembly and Senate Inspections and Relations (MONASRI) is one way in which the parliament can become

²⁶ Ayres, D. and Macleod, K. (2004). Partnership Handbook. (Pact Cambodia; Phnom Penh, Cambodia)

²⁷ Council for Legal and Judicial Reform (2009).

involved in complaint resolution, as it is the government body mandated to address complaints, and has full power under the general department of inspection to investigate and mediate complaints against the administrative bodies raised by citizens²⁸.

The parliament can also ensure accountability of public authorities through playing its representation role. The National Democratic Institute (NDI) assessed representation activities undertaken by parliamentarians which aim to uncover the priority issues of citizens at local levels. Following these dialogues, parliamentarians submit a report to prepare themselves to find solutions to the problems raised. NDI observed that these were successful and that parliamentarians worked to follow up on complaints raised by citizens at the local level by fielding reports or writing letters to relevant government institutions, although in certain cases parliamentarians intervened directly and met with local authorities to find solutions to disputes.

VI. Research findings

It must be noted that most complaints mechanisms – the DO and PAWG - are very new and that they are not yet well-established in the eyes of citizens. Many were established at the end of the 2000s and as yet are not functioning in a fully effective manner. However, they represent a significant shift towards greater accountability at all levels and show that the government is making firm efforts towards greater transparency and to give citizens the possibility to check on key decisions made by the public administration. Despite this, evidence suggests that contacting commune councils through village representatives remains the most common and timely method that citizens use when submitting complaints, and official mechanisms may have to overcome trust, resource, capacity and procedural problems in order to be fully effective.

There may be a need for an overall national accountability authority. Many complaints directed to PAWGs are similar to those submitted to other organisations with responsibilities to resolve problems between the public and authorities, so these efforts should be better coordinated. This would give cohesion to accountability efforts and ensure that different authorities have the resources they need²⁹.

²⁸ Pre-Assessment on Ombudsman and other Complaint Systems in Cambodia (2009), Council for legal and Judiciary reform

²⁹ Graham (2010)

It would also answer one problem regarding the overlapping roles of the DO and the PAWG. At present the types of complaints submitted shows that there is possible confusion over their mandates. Issues to be resolved if this does take place include:

- How to design the reporting system that allows for the dual roles of the DO as an elected person responsible to an election committee primarily determined by the district/municipal council;
- What aspects of the mandate can be combined and what aspects should be kept separate. There should either be a clear division of labour or each mechanism should be assigned types of complaints based on its comparative advantage. For example, complaints that may require independence and neutrality are best resolved through mediation by the DO; those that are more technical may be better addressed by the PAWG;
- How to balance the fact that DO are independent but accountable to local authorities yet the PAWGs are composed of local authority members, and to ensure the independence of the DO. It is important that further linkage of the PAWG and sub-national councils is established to enhance democratic accountability of the PAWG to local levels and citizens. Ways should be explored to link together the PAWG and the commune councils in resolving complaints under their mandates;
- How to overcome differences in coverage across the country between the two mechanisms³⁰.

Other recommendations include:

- More information needs to be made available to citizens regarding the mandates of both the PAWGs and the DO as at present many complaints are submitted to both institutions that fall outside their mandates. Citizens should know that there are other authorities as well which can field complaints on issues such as irregular business practices and land.

³⁰ DOs are active in only 17 municipalities (out of 195 District/Municipalities/Khans); PAWGs are active in all 23 provinces and the capital. Information taken from planning documents for DFGG Project: Terms of Reference for Consultant on One Window Service and Ombudsman Project (OWSO) Study on the Alignment of the District Ombudsman (DO) and the Provincial Accountability Working Group (PAWG)

- Communication practices between PAWGs and DO and between the two mechanisms in different provinces should be enhanced to allow those working at sub-national level to learn comparative best practices.
- Funding should at a minimum ensure that complaint mechanism members can adequately travel to investigate complaints and legal material and communications equipment should also be made more available.
- The process for complaint resolution for PAWGs should be speeded up. This will involve redesigning the complaint system for the PAWGs. Options include using lower levels of authority to collect and deal with complaints more frequently, such as sub-groups at district level or the complaint resolution committees at commune level, which are often seen as quicker and more effective.
- The way the DO operates could be improved by including a box for submission of complaints in public areas where it is clearly visible. This could be in collaboration with PAWG boxes with DO responsible for collection of complaints in their jurisdiction. However, how this works in regards to the DO being neutral and the PAWG comprising representatives from the local administration would have to be considered. Moreover, there should be further information about the Ombudsman's role, and a possible expansion of the competencies of the Ombudsmen³¹.
- Civil society organisations should interact more frequently with representatives from the DO and the PAWG and with parliamentarians in forums at the local level. These could be used to discuss common citizen complaints; where complaints are generally submitted to; why citizens may not use complaint mechanisms; problems that complaint mechanism members have in fielding complaints and how the parliament can become better involved in dealing with local problems.

³¹ Council for Legal and Judicial Reform (2009)

Part 2 Comparative Study on Regional Experiences of Complaint Handling and their Resolutions

I. Complaint Handling Mechanisms in Southeast Asia

The growth of constitutionalism and democracy has given rise to the concept of administrative accountability and responsibility. In all countries, it is important that people know how to take action when decisions or actions of officials may adversely affect them. To ensure the public administration performs its tasks effectively in practicing rule of law, accountability, and transparency, mechanisms to check their actions should be in place. Often people complain for two reasons: because there has been an abuse of power, or because they feel a decision is not in the public interest.

Most Southeast Asian countries have complaint mechanisms at various stages of maturity. Formal mechanisms for complaints are located within the administration or the court system; and informal mechanisms supplement formal mechanisms and are often independent of the administration. The most common form is an Ombudsman's Office. They differ in terms of how the public can access them; the powers they have and the types of complaints they can receive; what the outcomes of complaints are; and whether they can make binding decisions or merely recommendations. The benefits of complaint mechanisms are that they free lower courts of the burden of investigating public officers; are an inexpensive resolution of disputes; strengthen people's trust in the government; and lead to a more efficient and accountable public administration. Some key factors for success are that the mechanism is impartial and independent; resolves cases quickly; and is publicly known and accessible by all³².

This paper examines and compares the complaint mechanisms in Vietnam, Thailand, and the Philippines. It considers the legal basis for the complaint mechanisms, their structures, procedures and the challenges they face. In each system it must be remembered that the mechanism, be it an Ombudsman or otherwise, is only one instrument within the full administrative system. As the complaint mechanisms in the Kingdom of Cambodia are still in their infancy the paper concludes by outlining lessons learned from the other jurisdictions

³²Jorg Menzel. "Citizen Complaint Mechanisms and Handling in Germany," (paper presented at the workshop on Administrative Complaint Mechanism in ASEAN, Siem Reap, Cambodia, June 3-4, 2013).

examined that might be helpful when considering the development of Cambodia's complaint mechanisms.

II. Vietnam

Legal framework, procedures and types of complaints

The legal basis for public complaints in Vietnam is provided in Constitution with the administrative structures addressed in the 1998 Law on Complaints and Denunciations (hereinafter 'the Law'). As prescribed in Article 75 of the Law, complaints must be submitted at 'citizen-receiving places'. Although not clearly specified in the law, these are locations that State bodies shall make available for citizens to come and make complaints in person, file written complaints or submit reports related to complaints or denunciation. Timetables and rules of complaint are posted in the receiving places³³.

Responsibility for handling complaints is given to the state administrative organs with which the complaints are filed. Separate inspectorates also assist the state administrative organ in addressing complaints. The heads of administrative organs make decisions to settle complaints, but transfer all the tasks concerning the process of reviewing, inspecting and concluding cases to inspectorate bodies³⁴.

Citizens can make complaints in writing or in person, or through their legal representatives³⁵. Article 74 of the Law details the appropriate method of submitting a complaint in person, noting that it is the responsibility of the heads of the state administrative organs to appoint officials with good qualifications and professional knowledge to handle the complaint. Upon receiving the complaints, the authority must provide relevant guidance to citizens to make sure that they can fully exercise their rights, and observe strict confidentiality rules, including protecting the identity of the complainants³⁶. By law, the presidents of the commune shall meet citizens at least one day a week, and representatives must be available to address complaints at least two days a month at the district level and at least one day a

³³Socialist Republic of Vietnam, Law on Complaints and Denunciations, National Assembly, 09/1998/QH10, Hanoi, December 2, 1998, accessed June 1, 2013, http://www.moj.gov.vn/vbpg/en/Lists/Vn%20bn%20php%20lut/View_Detail.aspx?ItemID=1265. Article 75.

³⁴Ngoc Giao Hoang, "The Mechanism to Settle Administrative Complaints in Vietnam: Challenges and Solutions," The Asia Foundation and The Policy, Law and Development Institute, August 2009, 13.

³⁵Vietnam, Law on Complaints, Article 74.

³⁶Ibid., Article 77.

month at the provincial level. Regarding the timeframe for answering the complaint filed, the Law clearly states that there has to be a decision on whether to address complaints within 10 days of receiving the complaint³⁷. Article 35 and 36 describe in more detail how long it takes complaints to be settled. Usually, there should be some resolution within 60 days of the complaint being received³⁸.

Until recently the number of citizens' complaint letters filed annually had been increasing, creating an urgent need to effectively and quickly settle the complaints in all fields³⁹. However, in 2011, records show that the number of complaints filed in Vietnam decreased by 8.07% from the previous year, with 123,905 complaint letters filed and 104,133 cases being taken up for investigation. Amongst those figures, the majority of complaints (80%) relate to land management. They focus on issues such as receiving compensation at market prices when land is taken by the government and requests for the houses and property. Other complaints topics include the implementation of social policies (compensation for loss of a military relative, retirement funds, etc.), the environment, and the conduct of government⁴⁰. Complaints about judicial issues accounted for 10.16% of complaints; housing 3.4%; cultural and social issues 3.1%⁴¹. There was decline of 6.2 % in complaints and denunciation combined between 2010 and 2011.

Challenges with the mechanisms

Despite there being a law on complaints and denunciation, there are limits to the subjects citizens can complain about, such as documents issued by the state's organs that directly impact citizen's lives. However, according to the Law the complainant may only make complaints about an administrative decision or action⁴². Confusion is created as this restriction on the kinds of complaints that can be filed itself violates the Vietnamese Constitution which stipulates: "Citizens have the right to lodge with any competent State

³⁷ Ibid., Article 34.

³⁸ Ibid., Articles 35-36.

³⁹ Hoang, "Administrative Complaints in Vietnam," 2.

⁴⁰ Ibid., 3.

⁴¹ Nguyen Duc Hanh, "Identifying People's Concerns from the Daily Flow of Complaints and Contribute to Systemic Improvements," Government Inspector of Vietnam, (presentation at the 5th Session of the 12th Asian Ombudsman Association Conference, Japan, December 5-8, 2011).

⁴² The Hoang, "Administrative Complaints in Vietnam, 7.

authority a complaint or denunciation regarding transgressions of the law by any State body, economic or social organization, people's armed forces unit or any individual"⁴³.

In addition, submitting an application of complaint as a group is not acceptable. To have more than one person as complainants, a collective complaint is not allowed, even if more than one person has the same topic of complaint. As prescribed in the Law, each complainant must write a separate complaint letter⁴⁴. Finally, it is problematic that the inspectorate bodies are not independent from state administrative organs, which are the bodies responsible for decisions on how complaints are to be settled. These organs hand down all tasks associated with settling complaints to the inspectorate bodies. The complexity regarding responsibilities for addressing complaints causes confusion about where and with whom citizens should file their complaints.

In conclusion, the administrative complaint settlement mechanism in Vietnam faces many challenges due to its complexity, unclear structure and procedures, limited rights to make complaint about certain issues, and the inability to submit collective complaints.

III. Thailand

Legal framework, procedures and types of complaints

The 1997 Constitution of Thailand established the ombudsman as an independent constitutional organization, with the first ombudsman appointed in 2000. The office is headed by three Ombudsmen who are appointed by the King on the advice of the Senate. Each ombudsman functions as an independent actor, and has responsibility for a different area of the country. The Office is authorized to investigate complaints on maladministration, unlawful performance and unfair practices (whether unlawful or not) by public officials⁴⁵. The action of maladministration can refer to negligence of power, the excessive use of power, unfair decisions made by government agencies and whether decisions are legitimate or not.

⁴³Socialist Republic of Vietnam, The Constitution of the Socialist Republic of Vietnam, National Assembly, April 15, 1992, accessed May 30, 2013, <http://www.na.gov.vn/htx/English/C1479/#H3UT027CqkTm>, Article 74.

⁴⁴Hoang, "Administrative Complaints in Vietnam," 12.

⁴⁵Panit Nitithanprapas, "Daily Complaint Handling Towards a Systemic Approach: Thai Ombudsman Experience," (paper presented at the 12th Asian Ombudsman Association Conference, Japan, December 5-8, 2011), accessed June 6, 2013, http://www.soumu.gov.jp/main_content.

In the 2007 constitution, the ombudsman was given extra responsibilities to conduct proceedings in relation to the ethics of persons holding political and state positions, and to investigate any omission to perform duties or unlawful performance of duties of the Constitutional organizations or agencies in the justice administration (excluding judicial trials and adjudication of the courts). The Thai Ombudsman's office has a unique responsibility: it can monitor, evaluate and prepare recommendations on issues of constitutionality, either upon complaint or upon its own initiative, and make recommendations to the Constitutional Court.

In Thailand's ombudsman office, various channels were introduced to facilitate complaint-lodging service such as:

- Walk-in complaints submitted in person;
- Internet-based complaints;
- Telephone and Fax: Telephones are set up throughout the country for individuals concerned with the cost of telephone calls and a frontline toll free call center provided;
- Post: Citizens need to identify the subject of complaint. They can either give their contact information (address and telephone number), or keep this confidential;
- Members of the House of Representatives or Senators: If complaints are submitted to elected representatives, the parliamentarians then submit the complaints to the Office of the Ombudsman during the state opening of the National Assembly; and
- Networks of the Office of the Ombudsman Thailand: There are a number of offices apart from the Ombudsman that act as an alternative channel for people to have legal advice or submit complaints. These are the Office of Lawyers Council, Office of the Attorney General, offices of Peoples' Rights Protection and Legal Aid, and Provincial State Attorney Offices nationwide⁴⁶.

Each complaint must be addressed within 6 months. However, a complaint may also be rejected by the ombudsmen if it does not meet the requirements prescribed in Sections 28 and 29 of the 2009 Organic Act on Ombudsman. As depicted in Annex C, the ombudsman then informs the complainant about the rejection and may also submit the rejected

⁴⁶ "Office of the Ombudsman Thailand, "How to Make a Complaint," accessed May 7, 2013, <http://www.ombudsman.go.th/10/eng/howtocomplaint.asp>.

complaint to the institute that the complaint was lodged against for their consideration. If a complaint is valid, both parties will be requested to give statements and present evidence in relation to their statement. After completing any complaint investigation, the ombudsman prepares a report and sends it to the relevant agencies so that they are informed of the proceeding and can implement any resolution proposed by the ombudsman⁴⁷. The 2007 Constitution also authorized the Thai ombudsman to conduct investigations whether a complaint has been made or not. This allows the ombudsman to investigate issues that affect the public interest and to take the initiative to conduct a study or research where they feel there is a need⁴⁸.

Complaints are investigated by the ombudsman through the following methods:

- Site surveys and visits;
- Mediation through meetings;
- Settlement by phone; and
- Document and official correspondence.

From April 2000 until the end of May 2013, the ombudsman received 29,716 complaints. 28,000 cases (94%) were settled, while 1,799 cases (6%) are under investigation⁴⁹. Complaints were made about a variety of issues, primarily concerning the police, land, local administration, and infrastructure development.

Challenges with the mechanism

Although the ombudsman is regarded as independent under the constitution, it still has to request a budget from the government. This has caused a problem as occasionally the ruling party in parliament has not always supported the Ombudsman in its activities as a watchdog where complaints have been submitted against the government. This has occasionally limited the ombudsman's budget. This shows how political considerations can cause problems for the mechanism. Legitimacy and neutrality may not be enough for the effective functioning of the office, and how to show that the office is complainants-centered but not

⁴⁷ Kingdom of Thailand, Organic Act on Ombudsmen, B.E 2552, 2009, accessed May 25, 2013, http://www.ombudsman.go.th/10/eng/7_2.asp.

⁴⁸ "Office of the Ombudsman Thailand, "Activities: Case Handling Methods," accessed May 7, 2013, http://www.ombudsman.go.th/10/eng/5_1.asp

⁴⁹ Siracha Chareonpanij, "Economic, Financial and Social Benefits of a Transparent and Effective Complaint Mechanism and Handling Systems" (paper presented at the workshop on Administrative Complaint Mechanism in ASEAN, Siem Reap, Cambodia, June 3&4, 2013).

anti-administration is a problematic issue. The office has to attempt equilibrium to keep the support of all stakeholders⁵⁰.

The Asian Legal Resource Centre has stated that the Thai government may ignore complaints related to abuse against state officials⁵¹. They are not aware of a single complaint leading to a satisfactory investigation and prosecution of the suspected perpetrators that involved the police, military or other officials. They argue that this is due to the absence of a truly independent unit to receive and investigate such complaints⁵². Overall, independence and financial support may be a factor for the Ombudsman's office in Thailand.

IV. Philippines

Legal framework, procedures and types of complaints

In the Philippines, the ombudsman's office is the lead anti-corruption agency of the government. It was created in the 1987 Philippines Constitution, Article XI, Section 5. It was intended as an office "that can act in a quick, inexpensive and effective manner on complaints against administrative inaction, abuse and arbitrariness of government officials and employees"⁵³. The ombudsman office gives priority to complaints filed against high-ranking government officers or employees⁵⁴. Those include employees of government-owned or controlled corporations. The ombudsman is supported by a Deputy Ombudsman at central level and three Deputy Ombudsmen with responsibility for Luzon, the Visayas and Mindanao (Island groups that consist of 17 regions). There is also a Deputy Ombudsman for the military and other law enforcement agencies. Problems are filtered up from the *barangay* level to the central Ombudsman's Office.

The office is mandated with four major functions:

⁵⁰Chareonpanij. "Economic, Financial and Social Benefits."

⁵¹"UN HR Council/Thailand: Serious Lack of a Complaint Mechanism in Thailand," *Human Rights Solidarity* 16:2 (2006), accessed May 6, 2013.

<http://www.hrsolidarity.net/mainfile.php/2006vol16no02/2518/>

⁵² Ibid.

⁵³Republic of the Philippines. Constitution of the Republic of the Philippines. R.A. 6770, 1987. Accessed May 15, 2013, <http://www.lawphil.net/consti/cons1987.html>.

⁵⁴Republic of the Philippines, An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for other purposes, R.A. 6770, November 17, 1989, accessed May 29, 2013, www.doj.gov.ph/files/6770.pdf, Section 15.

1. Investigation: investigate any acts or omissions of any public officer or agency, when such acts or omissions appears to be illegal, unjust, improper, or inefficient. The office can investigate both upon complaint or on its own initiative.
2. Prosecution: prosecute criminal cases before regular courts and initiate action for the recovery of unexplained wealth.
3. Public Assistance: provide public assistance through acting against official inaction or impropriety in the performance of official functions.
4. Corruption Prevention: implement graft prevention by determining the causes of mismanagement, fraud and corruption in government, and make recommendations for their elimination and the observance of a high standard of ethics by public officials⁵⁵.

The ombudsman's office of the Philippines plays an integral role in the country's campaign against graft and corruption. A 'lifestyle check' is an investigation strategy to determine the existence of ill-gotten and unexplained wealth of officials and employees of the government to see if they are illegally amassing wealth. It is vital for this role that the office remains independent and free from influence⁵⁶. The office has a grant from the government which ensures its fiscal autonomy. It also has the power to prescribe staffing structures and patterns and the Ombudsman can be removed only by impeachment⁵⁷. The Office enforces administrative, civil, and criminal liability in cases where the evidence warrants to ensure accountability of the public administration to the people.

Any individual, partnership, corporation or entity can file a complaint in writing or in person, but a letter stating the nature of complaint is required. The complainants can either file the application directly at the Ombudsman's central office or online through the ombudsman's website. Once a complaint is submitted, the office has ten days to decide whether to file position papers and investigate. A complaint that is sufficient in form and substance shall be subjected to preliminary investigation and/or administrative

⁵⁵ Philippines, Ombudsman Act.

⁵⁶ Harry Roque, "Has the Office of the Ombudsman lived up to its mandate as 'Champion of the People? The Philippine Experience,'" (paper presented at the Workshop on Administrative Complaint Mechanism in ASEAN, Siem Reap, Cambodia, June 3&4, 2013).

⁵⁷ Conchita Carpio Morales, "Ombudsman System: The Case of the Philippines," (paper presented at the Workshop on Administrative Complaint Mechanism in ASEAN, Siem Reap, Cambodia, June 3&4, 2013).

adjudication. Otherwise, the complaint will be referred for further fact-finding. If the complaint is in the nature of a grievance or request for assistance, it shall be referred to the ombudsman's public assistance offices⁵⁸. The fact-finding process entails gathering pertinent documents, which may be used as evidence; conducting visual inspections and/or surveillance operations; and interviewing persons who may have personal knowledge of the circumstances surrounding the allegation. The office has the power to impose administrative sanctions on erring public officials, in the form of dismissal from the service, suspension, reprimand and imposition of fines. Accessory penalties such as perpetual disqualification from holding public office and forfeiture of retirement benefits may also be imposed⁵⁹.

In 2011, the office received a total of 16,987 new complaints up by 30% from the previous year. The largest numbers of complaints are against officials and personnel of local government units and the Philippine National Police. This led to the investigations of lifestyle checks against 435 government officials and employees resulting in the filing of 39 criminal and 32 administrative cases⁶⁰. The total number of administrative cases adjudicated in 2011 was 4,680. About 25% of these cases resulted in the imposition of a penalty. In 297 cases, the maximum penalty was imposed – dismissal from the public service. Among those who were dismissed were the Chairman, Acting Administrator, and Acting Deputy Administrator of the Local Water Utilities Administration, former Chief Government Corporate Counsel, and a Regional Director of the Department of Public Works and Highways⁶¹.

As a key anti-corruption agency, awareness-raising is very important. A new website was launched in 2009, designed to be more organized, informative, and responsive to the needs of the public. Aside from the website, the ombudsman's office has several hotlines nationwide to make the office more accessible to the public, and to make reporting

⁵⁸ Ibid.

⁵⁹ Office of Ombudsman of the Philippines, 2009 Annual Report: Gaining Ground, Philippines, 2009, accessed May 20, 2013, <http://www.ombudsman.gov.ph/index.php?home=1&navId=Ng==&subNavId=NDg=>.

⁶⁰ Office of Ombudsman of the Philippines, 2011 Annual Report: Setting a New Direction, Philippines, 2011, accessed May, 2013, <http://www.ombudsman.gov.ph/index.php?home=1&navId=Ng==&subNavId=NDg=>.

⁶¹ Ombudsman of the Philippines, 2011 Annual Report.

easier for most people⁶². The ombudsman's office also produces and distributes information and education materials to students, representatives of other government agencies and the public every year regarding the office's activities. The office has a budget for television work, a lecture series on anti-corruption that travels the country, and junior graft programs which echo the activities of the ombudsman. In December 2009, the ombudsman's office also started producing one-page flyers/bulletins to better inform employees and the public of recent developments on corruption prevention, best practices/success stories and other important announcements. Finally, in 2009 the office launched the Citizen's Charter to embody the Office's commitment to promoting integrity, transparency, and accountability while rendering quality services. The Charter provides simple and user friendly step-by-step guides on how to use ombudsman services.

Challenges with the mechanism

A key problem with the ombudsman's office in the Philippines is that it has traditionally not been independent from the appointing authority. Of the first five ombudsmen, three were very closely linked with their appointing authority⁶³. This has caused problems for the office's anti-corruption function, as there is a need for the Ombudsman to have public success against a high-profile figure if it is to be taken seriously as an anti-graft institution. At present, there are very few convictions against senior officials, despite complaints being submitted. A 2008 Report by United Nations Special Rapporteur Phillip Alston concluded that the Ombudsman's office "has surrendered its constitutionally-mandated independence from the executive branch"⁶⁴.

To be effective, complaint mechanisms must ensure a speedy resolution of cases. In the Philippines, this often does not occur. For example, a famous case related to the murder of

⁶² Ombudsman of the Philippines, 2009 Annual Report.

⁶³ Roque. "Ombudsman's Mandate?"

⁶⁴ United Nations General Assembly. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston Addendum, Follow-up to country recommendations – Philippines. Human Rights Council, A/HRC/11/2/Add.8. Accessed June 1, 2013, <http://www.ihumanrights.ph/hr-mechanism/human-rights-bodies/charter-based-bodies/special-procedures/reportsrecommendations/report-of-the-special-rapporteur-on-extrajudicial-summary-or-arbitrary-executions-philip-alston/>.

Navy Ensign Phillip Pestano on board BRP Bacolod in 1995 was only filed during the term of ombudsman Morales in 2012⁶⁵.

There has been a historic low conviction rate, especially against high profile officials. Before the current Ombudsman, Ombudsman Morales, conviction rates ranged from 3.19% during the term of Ombudsman Desertio (1995-2002) to 5.48% during the term of Ombudsman Gutierrez (2005-2011)⁶⁶. The low conviction rate can be explained by a highly centralized system, a weakened office and demoralized staff⁶⁷. This leads to bad image of the ombudsman and thus its growing unpopularity. However, despite the challenges faced by the Ombudsman's office, the ombudsman in the Philippines has played a significant role in contributing to improving public trust, has been granted significant independent powers, and under the incumbent ombudsman Morales, has increased its conviction rate significantly.

V. Comparison of the Complaint Mechanisms

Based on the research across the three countries, a number of critical success factors, best practices, and lessons learned have emerged.

Legislation

All of the countries that were compared have the right for citizens to complain set out in legislation. In all cases, the right of citizens to complain is entrenched in the constitution. Both Thailand and the Philippines explicitly state the role of ombudsman in the process, while the Vietnamese constitution (2001) further entrenches the responsibility of the state to respond to complaints and denunciations effectively and promptly. The Philippines, Vietnam, and Thailand have also developed very comprehensive pieces of legislation outlining the mechanisms for their country (Philippines: An Act providing for the functional and structural organization of the Office of the Ombudsman and for other purposes, 1989; Thailand: The Organic Act Law on the Ombudsman, 1999; and, Vietnam: Law on Complaints

⁶⁵Roque. "Ombudsman's Mandate?"

⁶⁶ Ibid.

⁶⁷Transparency and Accountability Network, "The Office of Ombudsman: Is there institutional weakness?" Human Development Network, PHDR Technical/Issue Note 2008/2009 No. 2, 2009, accessed May 25, 2013, hdn.org.ph/wp-content/uploads/2009/05/tin02_tan.pdf.

and Denunciations, 1998). This ensures that the mechanism in question is less vulnerable to changes in government or policy that could affect their existence or dramatically alter their scope.

Functions

Thailand and the Philippines offer good examples of the types of functions that complaint mechanisms should be given, however these are not always upheld in practice. In Vietnam there are restrictions on group complaints and complaints that are of a non-administrative or normative nature. In Thailand, while citizens are not restricted in what they can complain about, complaints related to abuse by public officials are systemically neglected. In the Philippines, despite having mechanisms to allow complaints from sub-national levels, the Office of the Ombudsman primarily deals with complaints regarding high-ranking officials. However, it has wide powers of investigation, prosecution, public assistance and corruption prevention. The office can translate a complaint into a criminal cases but this often takes considerable time and is therefore not a commonly used response.

Enforcement

The ability to enforce action following investigation differs quite widely by country, and is strongest in Thailand and the Philippines. In the case of Vietnam the complaint-receiving authority can only make recommendations regarding possible sanctions to the office or the supervisor of the official against whom the complaint has been made. In Vietnam, the body/individual accused has to submit a report about the actions they have taken to address the complaint, but the office itself does not have enforcement powers. In Thailand, the ombudsmen can take action in a wide range of instances covering misuse of power, inaction by the administration, and constitutional legitimacy of decisions. There is also sufficient means available to allow for a range of methods of investigation to be used to settle cases. However, the Office of the ombudsman does have the power to impose penalties that include the withholding of pay, dismissal, forfeiture of benefits and imposing a fine against the offending party⁶⁸. In the Philippines the ombudsman has quasi-judicial powers and can enforce criminal liability, although this is often dependent on the political status of those accused. Historically, the well-connected have escaped punishment⁶⁹.

Independence

⁶⁸Philippines, Ombudsman Act.

⁶⁹Roque. "Ombudsman's Mandate?"

Legislation produced to support the mechanism must also ensure a key factor for its success: independence from the administration. There must also be the appearance of independence in the eyes of the public. In all countries, independence is problematic in different ways, with Thailand probably the best example of an independent mechanism. The mechanism in Vietnam is not fully independent, as in the main, the administration is given the responsibility for handling complaints, and inspectorates are not independent from the administration. In Thailand, the Ombudsman faces fiscal difficulty as the government occasionally does not support the ombudsman and its activities, and it has to request a budget from the parliament, affecting its financial independence as well. Moreover, some evidence suggests that complaints about top government officials are not followed through⁷⁰. In the Philippines, the office has traditionally been seen as too close to ruling powers and unable to effectively prosecute high-profile cases, however this may be changing under the incumbent ombudsman Morales.

Complaint process

The ways citizens can complain and the time taken to deal with complaints are key issues. The mechanism in Vietnam offers the ability to complain in person, although how to do this is not clearly specified. Complaints can also be written or transferred through local representatives of the state. However, officials are compelled to meet the public regularly at all sub-national levels to listen to their complaints, and this is a useful stipulation. Thailand demonstrates a strong example of the variety of ways citizens can complain. There are six separate methods that can be used to submit complaints at national and sub-national level and complaints must be addressed within six months. In the Philippines, individuals, groups and businesses can submit complaints, and this can be in person or online. Although the ombudsman's office has to decide quickly whether to investigate complaints, in reality, complaints can take a long time to reach conclusion, especially in high-profile cases.

Public awareness

Public awareness about the complaint process is problematic in Vietnam, which has complex and parallel procedures which may cause confusion among the public. A lack of funding and capacity can also reduce accessibility and public understanding, potentially a problem in Cambodia, Vietnam and to a lesser extent Thailand. The Philippines is notable in their recent

⁷⁰Chareonpanij, "Economic, Financial and Social Benefits."

success with a public education campaign and increasing the availability of information about the office of the ombudsman. Overall, lack of awareness by the public, as well as slow response times, can reduce the accessibility and legitimacy of complaint mechanisms.

Parliamentary involvement in complaint handling

Regarding parliamentary involvement in complaint handling, in Thailand, complaints can be submitted through elected representatives in parliament. However, this may cause a conflict of interest as the Ombudsman's Office can also investigate complaints against parliamentarians, and the ombudsmen themselves are put forward by the Thai Senate and parliament approves the office's budget. The submission of complaints through parliament to the ombudsman's office in Thailand is also applicable in Cambodia. Commission 1 of the parliament⁷¹ in Cambodia plays a critical role in collecting complaints from their constituents during the implementation of their functions. It gives recommendations on the draft law related to the fields under its jurisdiction. According to the decision made by the commission, the commission has a right to ask for clarification and follow up action from the relevant entities to the complaint filed⁷².

⁷¹ Committee for Free and Fair Elections in Cambodia, *Directory of the Fourth National Assembly of Cambodia (2008-2013)*, Phnom Penh, 2009, 15.

⁷² Cambodian Human Rights Committee, "National Human Rights Bodies in Cambodia," CCHR Institutions Series, Vol. 3, March 2012, accessed June 1, 2013, http://www.cchrcambodia.org/admin/media/factsheet/factsheet/english/2012_03_30_CCHR_Institutions_Series_Factsheet_National_Human_Rights_Bodies_ENG.pdf.

Conclusion

The fulfilment of the decentralization policy in Cambodia depends in part on appropriate accountability mechanisms. To ensure that public administrations do their job well in practicing the rule of law, accountability, and transparency, they must operate with fairness and include the ability for the public to address their grievances. It is therefore essential for complaints mechanisms to have adequate powers to perform their functions effectively. Such powers should be stated in the relevant law or administrative issuance⁷³.

Lessons can be learnt in the case of Cambodia. The complaint mechanism must be clearly defined, robust and independent. This requires comprehensive legislation that defines the scope of practice and authority of the complaint institution. Additionally, the fewer restrictions placed on what the public is allowed to complain about the more effective and legitimate the institution will be. A streamlined and easily understood process of complaining benefits both the public and the administration. Streamlining the complaint filing and investigation process would help with public uptake and cost reduction. This should be supported by public awareness campaigns in a variety of formats. Finally, to ensure success, the institution supporting the complaint mechanism must be well-funded, adequately staffed and resourced, and have employees that understand the institution and their roles in order to respond to public inquiries and address the complaints filed.

Specific steps Cambodia can take to improve the complaints mechanism in the country include: the adoption of legislation creating a single, independent complaint mechanism body/institution; a public education campaign that includes online resources regarding the complaint mechanism process; and ensuring the institution supporting the complaints processes is well-funded and resourced to fully investigate complaints and to achieve reasonable response times on complaints filed. In Cambodia, regular meetings with complaint mechanism officials to deal with complaints could be considered, as is the case in Vietnam. This is especially important where group issues are concerned.

⁷³United States Ombudsman Association, "Governmental Ombudsman Standards," Ron Adcock, William Angrick II, and Becky Chia, Dayton, Ohio, 2003, accessed May 25, 2013, www.usombudsman.org/documents/PDF/.../USOA_STANDARDS.pdf.

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On 28th, August 2012 with Ms. SAO Chamhorm and Mr. AM Sam Ath, Monitoring Coordinator and Monitoring Technical Supervisor. LICAHDO

On 31th, August 2012 with Mr. Douk Nareth, Accountability Consultant Mr. HUOT Leappiseth and Mr. CHEA Vannda, National Support Officer. NCDD

On 5th, September 2012 with Mr. NY Chakrya, Inquiries Program Manager. ADHOC

On 11th, September 2012 with Mr.LEE Sothearayuth, Program Manager. NDI

Annex A: Complaints submitted through the PAWG, DO and civil society organisations

The total number of complaints received in 2010 and the first two quarters of 2011 are as follows⁷⁴:

| | Number of complaints received | Number of complaints within PAWG's mandate | Number of complaints resolved |
|-------------------|-------------------------------|--|-------------------------------|
| 2010 | 1,216 | 639 | 224 |
| Q1 and Q2 of 2011 | 346 | 98 | 21 |

Between April and June 2012 220 complaints were submitted using different methods, with accountability boxes seen to be the most popular way of submitting complaints.

| | First quarter 2012 | | Second quarter 2012 | |
|---------------------------|--------------------|------|---------------------|------|
| | Number | % | Number | % |
| Accountability Box | 258 | 99% | 218 | 99% |
| Phone | 0 | 0% | 0 | 0% |
| Other method | 2 | 1% | 2 | 1% |
| Total | 260 | 100% | 220 | 100% |

Source: Second trimester report in year 2012 of National Accountability Working Group

The complaint selection was followed by an investigation procedure and complaint resolution. The result of the complaints selection is as follows:

| | First trimester 2012 | | Second trimester 2012 | |
|--|----------------------|------|-----------------------|------|
| | Number | % | Number | % |
| Complaints that have been settled | 177 | 68% | 117 | 53% |
| Complaints that have not been settled | 83 | 32% | 103 | 47% |
| Total | 260 | 100% | 220 | 100% |

Source: Second trimester report in year 2012 of National Accountability Working Group

Overall, there are nine types of complaints that are mainly submitted⁷⁵:

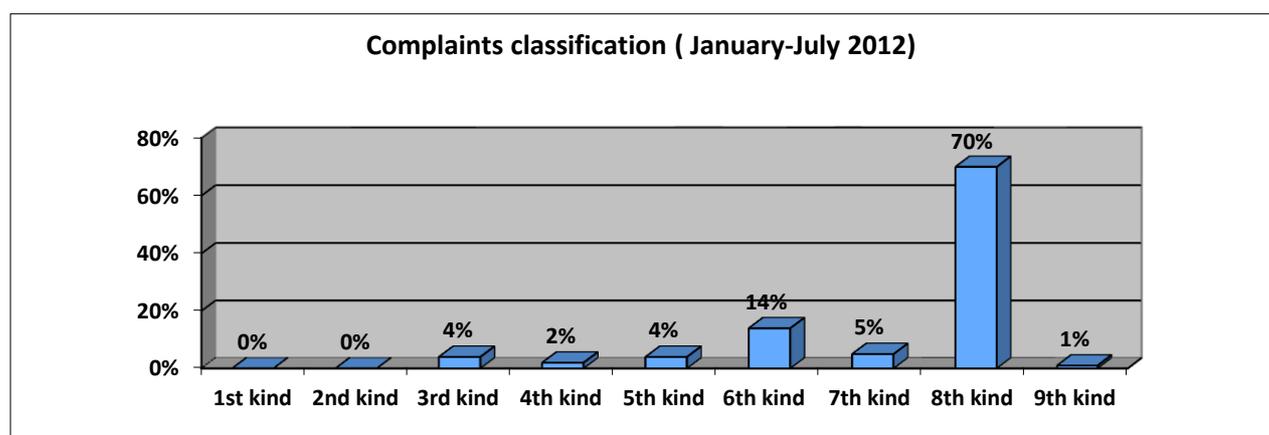
1. Irregularities in use of the budget in the capital and provinces
2. Irregularities in use of the budget in the cities and districts
3. Irregularities in use of the budget in the commune/sangkat councils
4. Complaints about the role and duties of capital and province administration members

⁷⁴ Information taken from planning documents for DFGG Project: Terms of Reference for Consultant on One Window Service and Ombudsman Project (OWSO) Study on the Alignment of the District Ombudsman (DO) and the Provincial Accountability Working Group (PAWG)

⁷⁵ Interview with Accountability Working Group

5. Complaints about the role and duties of city, district and Khan administration members (council member, administrator group and staff of commune/sangkat council)
6. Complaints about the role and duties of commune/sangkat members (council members and staff of commune/sangkat councils)
7. Complaints about the role and duties of commune/sangkat assistants/staff
8. Complaints about the role and duties of ministry, institutions and other authorities that work under local administrations
9. Complaints about the role of NGO partners at capital and provincial level

The graphic and table of details which types of complaints are most common in the first half of 2012:



Source: Second trimester report in year 2012 of Accountability Working Group

| NO. | Classification | January- July | |
|-----|--|---------------|-----|
| | | Number | % |
| 1 | Irregularities in use of by capital and province | 0 | 0% |
| 2 | Irregularities in use of budget by city and district | 1 | 0% |
| 3 | Irregularities in use of budget by commune/sangkat councils | 13 | 4% |
| 4 | Complaints about the role and duties of capital and province administration | 6 | 2% |
| 5 | Complaints about the role and duties of city, district and Khan administration members (council members, administration group and staff of commune/sangkat councils) | 12 | 4% |
| 6 | Complaints about the role and duties of the commune/sangkat (council members and staff of commune/sangkat councils) | 42 | 14% |
| 7 | Complaints about the role and duties of commune/sangkat assistants/staff | 14 | 5% |
| 8 | Complaints about the role and duties of ministry, institutions and other authorities that work under local administrations | 216 | 70% |
| 9 | Complaints about the role of NGO partnersat capital and | 4 | 1% |

| | | | |
|--|----------------|-------|----------|
| | province level | | |
| | | Total | 308 100% |

Source: Second trimester report in year 2012 of Accountability Working Group

Complaints through the DO office

| | Complaints received | Number | Percentage |
|---|--|--------|------------|
| 1 | Dissatisfaction about service provision | 31 | 8 |
| 2 | Complaints about too limited services provided by OWSO | 69 | 17 |
| 3 | Complaints about other service provider (e.g. Municipality and line departments) | 7 | 2 |
| | Sub-total | 107 | 27 |
| | Other communications | | |
| 4 | Expression of admiration | 75 | 19 |
| 5 | Request for Information about OWSOs' and other services | 216 | 54 |
| | Sub-total | 291 | 73 |
| | Total | 398 | 100 |

Complaints from civil society organisations

LICHADO: Complaints in the first 6 months of 2012⁷⁶:

Cases already solved:

- Human rights: 180 cases: 3 cases solved through the courts, 40 cases solved through the local authority (police, commune sangkat).
- Cadastral committee related to land: 3 cases

Cases in the process of being solved: 131 cases:

- 78 cases solved at the local authority; 49 cases solved at the court
- Cadastral committee related to land: 4 cases
- Case related to gender: 108 cases: domestic violence 67 cases, rape 38 cases, Indecent-Assault 1 case and acid attack 1 case.
- Case relate to children: 120: rape 99 cases and 21 other cases.

ADHOC: Complaints in 2011⁷⁷

According to reports on 532 cases surveyed by ADHOC in 2011, domestic violence remains a serious issue. Most victims who suffer from domestic violence are women and children who are vulnerable. In the same year there are 476 cases of rape. There was a decrease of around 501 cases since 2010.

In 2011 cases of violations of male/female migrant workers' rights increased twofold from 2010. In 2010, there were only 51 cases while the figure reached 102 cases in 2011. These cases are based on complaints received by ADHOC and investigation and interventions it carried out through its 24 offices throughout Cambodia's provinces/municipalities.

⁷⁶ Interview with LICADHO 29th August 2012

⁷⁷ ADHOC Report , 2012. Women's and Children's Rights in Cambodia: Situation report 2011

National Democratic Institute

NDI have the Constituency Dialogues Program to enhance parliamentary accountability and provide an avenue for more meaningful engagement between citizens and their elected representatives. Currently NDI holds dialogues in the following provinces: Banteay Meanchey, Battambang, Kampong Cham, Kampong Chhnang, Kampong Speu, Kampong Thom, Kampot, Kandal, Kratie, Prey Veng, Siem Reap and Takeo. Across 12 provinces, dialogue participants echoed the same three problems affecting their lives: land conflicts, infrastructure and irrigation needs, and corruption and unequal enforcement by local authorities.

Annex B: Organizational chart of the Thai complaint mechanism

