CHAPTER 2

TRANSPARENT AND ACCOUNTABLE GOVERNMENT IN THAILAND

I. Background and Introduction

Passing through the chain of three turbulent political events, namely, money politics in the Chatichai Chunhavan government, the then military coup and subsequent violent upsurge known as Black May in the early-1990s, Thailand demanded that the public sector administration and politics as a whole be reformed to be efficient and incorrupt. The idea of "Good Governance" popularised by the World Bank of which emphasis is on transparency and accountability has, indeed, served that reform purpose in Thailand.

The transparency and accountability need legislation. It was Anand Panyarachun administration that started to develop and to make many efforts for laying down the legal framework for transparency and accountability in public sector administration. The government initiated the policy on the transparency and accountability as its principle in administration. Pursuant to the policy, the government order issued by Anand Panyarachun himself required that government agencies disclose their information under their possession to the public and the media.

The highlighted case indicating the effort dealing with the transparency and accountability in government action in the Anand government is the open process of the negotiation between the government and the private-owned C.P. Telecom Co. Ltd. for reviewing and revising the 3-million telephone line concession contract. As a resolution of the Council of Ministers, the process thereof was ordered open to the public and media for the purpose of comprehensive check-up and publication.

The real action by the Anand government regarded as the major initiative for transparency and accountability was drafting three laws: (a) a law guaranteeing the right to know (later completed in the General Chawalit Yongchaiyut government as

the Official Information Act, B.E. 2540 (1997)), (b) the Act on Private Participation in State Undertaking, B.E. 2535 (1992) and (c) the Act on Promoting and Conserving Environmental Quality B.E. 2535 (1992).

In the case of the Act on Private Participation in State Undertaking, B.E 2535 (1992), the Anand government imposed the definite criteria for permitting private sector to join the government and a State agency in a public enterprise project exceeding 1 billion baht in value. Previously, any private sector could participate in any public enterprise mega project or could obtain a concession only when it secured approval from one person, that is, the Minister concerned. The approval was, in effect, a matter of favouritism rather than a fair rule for all. One possibility the favouritism always brings is the corruption problem. The introduction of the definite criteria is a solution for the old-fashioned approval based on favouritism.

In the case of the Act on Promoting and Conserving Environmental Quality B.E. 2535 (1992), it requires that the information concerning environmental matters be available to the public.

Another important development is the public hearing implementation in Banharn Silpa-acha government. The development is supported by the imposition of the Rule of the Office of the Prime Minister on Hearing Public Opinions by Means of a Public Hearing Process B.E. 2539 (1996).

Upon the promulgation of the new constitution, the well-established legal framework for transparency and accountability is visualized, as will be expounded below.

II. Legal Framework for Transparency and Accountability in Thailand

Before the emergence of the new constitution and the Official Information Act under which the right of the people to know official information was, for the first time, recognised in 1997, public access to government-held information or documents has been very limited. This limitation resulted from the enforcement of

many laws empowering state agencies and officials to make a closure of information on the ground that the disclosure of that information might affect the public safety and national security. Moreover, a closure of information was regarded as a kind of official discipline. Subject to the Rule on National Safety Maintenance B.E. 2517 (1974), that is the most important instrument for a closure of official information as it imposes the criteria and method for information classification in terms of confidentiality, the contents of official information are always deemed confidential. Also, the National Statistics Act B.E. 2508 (1965) prohibits competent officials from disclosing to any person statements or numerical data, except such statements or numerical data as provided by laws. Officials also considered that their functions or performance should be of internal affairs and that they had the discretionary power in approving any disclosure. As a result, the decision making process in the public sector administration has been kept out of public sight, thereby providing much room for corruption.

As far as the freedom of the press is concerned, there were many laws giving authority to the government to examine news contents, to forbid the publication of undesirable printed matters and to close down the pressing house. The Publication Act, B.E. 2484 (1941), the Anti-Communism Act, B.E. 2495 (1952) and the Order of the National Reform Council No. 42 were among these laws.

1. Transparency in the Thai Context

Whenever the term “transparent government” is discussed, there are three major pillars concerned. The first is the widest possible access of the general public to documents in the possession of state agencies and officials. This will guarantee that activities of decision-making political bodies and the administration are conducted under the control and observation of the public. The second is the freedom of the press and the last one is the public consultation by which the people can take part in the government’s key decision-making process.

In the case of Thailand, provisions supporting transparency can be seen in the new constitution, the Official Information Act, B.E. 2540 (1997) and the Rule of the Office of the Prime Minister on Hearing Public Opinions by Means of a Public

Hearing Process, B.E. 2539 (1996). The people's accessibility to official information is affirmed as a citizen right as provided in section 58[1] of the Constitution while the freedom of the press is guaranteed in section 39[2] and the public hearing is accepted in section 59[3].

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[1] **Section 58:** A person shall have the right to get access to public information in possession of a State agency, State enterprise or local government organisation, unless the disclosure of such information shall affect the security of the State, public safety or interests of other persons which shall be protected as provided by law.

[2] **Section 39:** A person shall enjoy the liberty to express his or her opinion, make speeches, write, print, publicise, and make expression by other means.

The restriction on liberty under paragraph one shall not be imposed except by virtue of the provisions of the law specifically enacted for the purpose of maintaining the security of the State, safeguarding the rights, liberties, dignity, reputation, family or privacy rights of other person, maintaining public order or good morals or preventing the deterioration of the mind or health of the public.

The closure of a pressing house or a radio or television station in deprivation of the liberty under this section shall not be made.

The censorship by a competent official of news or articles before their publication in a newspaper, printed matter or radio or television broadcasting shall not be made except during the time when the country is in a state of war or armed conflict; provided that it must be made by virtue of the law enacted under the provisions of paragraph two.

[3] **Section 59:** A person shall have the right to receive information, explanation and reason from a State agency, State enterprise or local government organisation before permission is given for the operation of any project or activity which may affect the quality of the environment, health and sanitary conditions, the quality of life or any other material interest concerning him or her or a local community and shall have the right to express his or her opinions on such matters in accordance with the public hearing procedure, as provided by law.

1.1 The Official Information Act and the Public Access

The purposes of the Official Information Act, B.E. 2540 (1997)[4] are twofold: (1) guaranteeing that the people will have broad opportunities to obtain access to official information for exercising their political rights effectively and for protecting their interest, and 2) guaranteeing that the individuals will have access to personal information of which they are subject held on by government agencies.

According to the section 7 of the Official Information Act B.E. 2540 (1997), the people can get access to major official information involving the government activities.

"**Section 7.** A State agency shall at least publish the following official information in the Government Gazette:

(1) the structure and organisation of its operation;

(2) the summary of important powers and duties and operational methods;

(3) a contacting address for the purpose of contacting the State agency in order to request and obtain information or advice;

(4) by-laws, resolutions of the Council of Ministers, regulations, orders, circulars, Rules, work pattern, policies or interpretations only insofar as they are made or issued to have the same force as by-laws and intended to be of general application to private individuals concerned; … "

Moreover, those who are not interested persons can get access to other important official information for inspection as provided in section 9. The list established by this section includes the following:

(1) a result of consideration or a decision which has a direct effect on a private individual including a dissenting opinion and an order relating thereto;

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[4] This Act has taken effect as from 9th December 1997 during General Chawalit Yongchaiyut government.

(2) a policy or an interpretation which does not fall within the scope of the requirement of publication in the Government Gazette under section 7 (4);

(3) a work-plan, project and annual expenditure estimate of the year of its preparation;

(4) a manual or order relating to work procedure of State officials which affects the rights and duties of private individuals;

(5) a concession contract, agreement of a monopolistic nature or joint venture agreement with a private individual for the provision of public services;

(6) a resolution of the Council of Ministers or of such Board, Tribunal, Commission or Committee as established by law or by a resolution of the Council of Ministers; provided that the titles of the technical reports, fact reports or information relied on in such consideration shall also be specified.

In case a person exercises his or her right as provided by section 11[5] by making a request for any official information to any government agency, it will have to provide the information within a reasonable period of time.

However, the people can not get access to the information not subject to disclosure as provided by sections 14-20. The list of major information not subject to disclosure under those provisions includes the official information which may jeopardise the Royal Institution, the official information of which the disclosure will

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[5] **Section 11:** If any person making a request for any official information other than the official information already published in the Government Gazette or already made available for public inspection or already made available for public studies under section 26 [historical information held by the Fine Arts Department or other State agencies as specified in the Royal Decree] and such request makes a reasonably apprehensible mention of the intended information, the responsible State agency shall provide it to such person within a reasonable period of time, unless the request is made for an excessive amount or frequently without reasonable cause … .

jeopardise the national security, international relations or national economy or financial security, the information of which its disclosure will endanger the life or safety of any person, and will encroach upon the right of privacy.

In case any request by any person for the official information is rejected by the government agency making an order prohibiting the disclosure of that official information, the person whose request for the information has been rejected might appeal to the Information Disclosure Tribunal. The Tribunal is appointed by the Council of Ministers upon the recommendation of the Official Information Board (a body established by the Official Information Act).[6] It has the power and duty to consider and decide an appeal against an order prohibiting the disclosure of information under section 14[7] or section 15[8], order dismissing an objection under

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[6] See *infra*.

[7] **Section 14 :** Official information which may jeopardise the Royal Institution shall not be disclosed.

[8] **Section 15 :** A State agency or State official may issue an order prohibiting the disclosure of official information falling under any of the following descriptions, having regard to the performance of duties of the State agency under the law, public interests and the interests of the private individuals concerned :

(1) the disclosure thereof will jeopardise the national security, international relations, or national economic or financial security;

(2) the disclosure thereof will result in the decline in the efficiency of law enforcement or failure to achieve its objectives, whether or not it is related to litigation, protection, suppression, verification, inspection, or knowledge of the source of the information;

(3) an opinion or advice given within the State agency with regard to the performance of any act, not including a technical report, fact report or information relied on for giving opinion or recommendation internally;

(4) the disclosure thereof will endanger the life or safety of any person;

section 17[9] and order refusing the correction, alteration or deletion of personal information under section 25[10].

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(5) a medical report or personal information the disclosure of which will unreasonably encroach upon the right of privacy;

(6) an official information protected by law against disclosure or an information given by a person and intended to be kept undisclosed;

(7) other cases as prescribed in the Royal Decree;

An order prohibiting the disclosure of official information may be issued subject to any condition whatsoever, but there shall also be stated therein the type of information and the reasons for non-disclosure. It shall be deemed that the issuance of an order disclosing official information is the exclusive discretion of State officials in consecutive levels of command; provided that, a person who makes a request for the information may appeal to the Information Disclosure Tribunals as provided in this Act.

[9] **Section 17:** In the case where a State official is of the opinion that the disclosure of any official information may affect the interests of a person, the State official shall notify such person to present an objection within the specified period; provided that, reasonable time shall be given for this purpose which shall not be less than fifteen days as from the date of the receipt of the notification.

The person having been notified under paragraph one or a person knowing that the disclosure of any official information may affect his interests has the right to present an objection in writing against such disclosure to the responsible State official.

In the case where there is an objection, the responsible State official shall, without delay, consider the objection and notify the result thereof to the person presenting it. In the case where an order dismissing the objection is made, State officials shall not disclose such information until the period for an appeal under section 18 has elapsed or until the Information Disclosure Tribunal has made a decision permitting the disclosure of such information, as the case may be.

[10] **Section 25:** Subject to section 14 and section 15, a person shall have the right to get access to personal information relating to him. When such person makes a request in writing,

Since the promulgation of the Official Information Act, B.E. 2540 (1997), a large number of people have exercised their rights to inspect the government information. Two cases deserve a mention here. The first is concerned with a request made by a lady, Mrs Sumalee Limpaowat, to the Kasetsat University Demonstration School for disclosure of the documents evincing the examination result. The second is one in which the representatives of the press and the non-governmental organisations made a request to the National Counter Corruption Commission for the disclosure of the investigatory information involving the corrupted procurement of medicine products within the Ministry of Public Health.

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the State agency in control of such information shall allow him or his authorised representative to inspect or obtain a copy of the same, and section 9 paragraph two and paragraph three shall apply *mutatis mutandis.*

In the case where there exists a reasonable ground to disclose a medical report relating to any person, State officials may disclose it only to doctors entrusted by such person.

A person who considers that any part of personal information relating to him is incorrect shall have the right to make a request in writing to the State agency in control of such information to correct, alter or delete that part of information. The State agency shall consider the request and notify its result to such person without delay.

In the case where the State agency fails to correct, alter or delete the information pursuant to the request, such person shall have the right to appeal to the Information Disclosure Tribunal within thirty days as from the date of the receipt of the notification of the order refusing to correct, alter or delete the same. The appeal shall be submitted through the Official Information Board and, in any case, the person who is the subject of the information shall have the right to require the State official to attach his request to the relevant part of the information.

Such person as specified in the Ministerial Regulation shall have the right to take action under section 23, section 24 and this section on behalf of a minor, an incompetent person, a quasi-incompetent person or the deceased person who was the subject of the information.

In the above-mentioned cases, the problems of the enforcement and the interpretation of the provisions in the Official Information Act are raised. The problems have resulted in conflicts between the State agencies holding the information requested and the persons making a request for the official information and among the State agencies.

As for the purpose of the disclosure of official information, the Official Information Act sets up the Official Information Board which has powers and duties as follows: (1) to supervise and give advice with regard to the performance of duties of State officials and State agencies for the implementation of the Act, (2) to give advice to State officials or State agencies with regard to the implementation of this Act as requested, (3) to give recommendations on the enactment of the Royal Decrees and the issuance of the Ministerial Regulations or the Rules of the Council of Ministers under this Act, (4) to consider and give opinions on the complaints under section 13, (5) to submit a report on the implementation of this Act to the Council of Ministers from time to time as appropriate but at least once a year, (6) to perform other duties provided in this Act and (7) to carry out other acts as entrusted by the Council of Minister or the Prime Minister.

According to section 27, the Official Information Board consists of Minister entrusted by the Prime Minister as Chairman, Permanent Secretary for the Office of the Prime Minister, Permanent Secretary for Defence, Permanent Secretary for Agriculture and Co-operatives, Permanent Secretary for Finance, Permanent Secretary for Foreign Affairs, Permanent Secretary for Interior, Permanent Secretary for Commerce, Secretary-General of the Council of State, Secretary-General of the Civil Service Commission, Secretary-General of the National Security Council, Secretary-General of the House of the Representatives, Director of the National Intelligence Agency, Director of the Bureau of the Budget and nine other qualified persons appointed by the Council of Ministers from the public sector and the private sector as members.

1.2 Public Consultation

As far as transparency is concerned, the government is not only required to provide as wide access as possible to information held by it, but is also required to consult the public in the formulation and implementation of policies, especially when carrying out any project affecting the environment and the interested party.

Thailand has been applying the public hearing method since the Banhan Silpa-acha government. In this connection, the government has introduced the Rule of the Office of Prime Minister on Hearing Public Opinions by Means of the Public Hearing Process, B.E. 2539 (1996).

In the Banhan Silpa-acha adminstration, the Political Reform Committee chaired by Chumpol Silpa-acha was set up to design the political reform plan. The committee set up the so-called Sub-committee Considering the Improvement of the Constitutional Provisions, Laws, Rules, Regulations, Orders and Practices hindering the Political Reform. The Sub-committee, headed by the then Minister to the Office of the Prime Minister (Dr. Pokin Polakul), carried out the study of the public hearing method and drew up the draft Rule of the Office of the Prime Minister on Hearing Public Opinions by Means of Public Hearing Process, B.E. …. as a guideline for State agencies in conducting a public hearing in the government projects that may affect the environment, community and interested parties before the final decision-making. The draft Rule was approved by the Council of Minister in the Banhan Silpa-acha administration and has come into effect as from 3rd February 1996.

Under such Public Hearing Rule, the advisory committee on the public hearing has been set up and has powers and duties to supervise the public hearing process, to design rules and means of the public hearing, to answer any inquiries about the matters provided in the Rule and to prepare the annual report on the result of the public hearing process for the Council of Ministers.

According to the said Rule, the public hearing process should be applied in respect of any government project that may harm the environment, culture, vocation, safety or ways of lives or endanger the community or may cause the controversy

among many parties. Indeed, after the introduction of the Rule, the public hearing method has been applied to a plethora of cases.[11]

2. Accountability under the New Constitution

Under the new Constitution, several major organs are erected to, *inter alia*, promote accountability of the government. Of significant importance are the Constitutional Court, the Ombudsman and the Administrative Court.

2.1 Accountability under the Constitutional Court

Under the new Constitution, the Constitutional Court has powers to consider laws and guarantee that they are not contrary to or inconsistent with the Constitution and has other functions as provided by laws. The powers and functions of the Constitutional Court may not candidly deal with the inspection of the exercise of State power and powerful officials. However, thorough analysis reveals that the powers and functions of the Constitutional Court under the provisions of the new Constitution can in some way lead to such inspection.

In principle, the major function of the Constitutional Court is to consider the constitutionality. It will consider and decide whether any statement in the bill or in the organic law bill is contrary to or inconsistent with the Constitution, or whether any enacted legislation is at variance with the provisions in the new Charter.

But the Constitutional Court is unable to raise by itself the issue about the constitutionality for its consideration and decision. Such issue needs to be referred to the Constitutional Court through organs or persons specified in the Constitution. In this respect, no private individual is entitled to submit the issue about the

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[11] Two outstanding cases are, firstly, the case of the draft law on community forests (in which the commission called "the Public Hearing Commission on the Community Forests Bill" was appointed by the government to supervise the public hearing process) and, secondly, the case of the controversial Thai-Malaysia Gas Pipeline Project.

constitutionality to the Constitutional Court, simply because the Constitution does not confer such right to the people. Notwithstanding, individuals have some indirect ways to submit the issue as to the constitutionality to the Constitutional Court for its consideration and decision.

In the first place, the people can resort to the Ombudsman channel. In this instance, they can lodge a complaint stating the unconstitutionality issue to the Ombudsman. The Ombudsman will, then, submit the issue to the Constitutional Court for its determination. In other words, the Ombudsman will take action as a representative of the complainant-people.

Next, apart from the Ombudsman strait, the Constitution provides for a referral by certain bodies or organs of the constitutionality issue to the Constitutional Court, so that people can bring any given unconstitutionality to the attention of such bodies or organs with a view to its further referral to the Constitutional Court for making the determination. Under the Constitution, the right to make a referral of the constitutionality issue to the Constitutional Court is exercisable by the President of the National Assembly, the President of the House of Representatives, the President of the Senate or the Prime Minister where it is considered that provisions of any bill or of organic law bill are contrary to or inconsistent with the Constitution or the provisions of the Constitution (section 262[12] and section 263)[13]. In addition, any

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[12] **Section 262:** After any bill or organic law bill has been approved by the National Assembly under section 93 or has been reaffirmed by the National Assembly under section 94, before the Prime Minister presents it to the King for signature:

(1) if members of the House of Representatives, senators or members of both Houses of not less than one-tenth of the total number of the existing members of both Houses are of the opinion that provisions of the said bill are contrary to or inconsistent with this Constitution or such bill is enacted contrary to the provisions of this Constitution, they shall submit their opinion to the President of the House of Representatives, the President of the Senate or the President of the National Assembly, as the case may be, and the President

Court, in its trial and adjudication, can stay proceedings and refers the matter to the Constitutional Court when it is of the opinion, or when the party raises an objection, that the provisions of any law to be applicable to the case before it is unconstitutional.[14] In effect, several other provisions of the Constitution mandate

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of the House receiving such opinion shall then refer it to the Constitutional Court for decision and, without delay, inform the Prime Minister thereof;

(2) if not less than twenty members of the House of Representatives, senators or members of both Houses are of the opinion that the provisions of the said organic law bill are contrary to or inconsistent with this Constitution or such organic law bill is enacted contrary to this Constitution, they shall submit their opinion to the President of the House Representatives, the President of the Senate or the President of the National Assembly, as the case may be, and the President of the House receiving such opinion shall then refer it to the Constitutional Court for decision and, without delay, inform the Prime Minister thereof;

(3) if the Prime Minister is of the opinion that the provisions of the said bill or organic law bill are contrary to or inconsistent with this Constitution or it is enacted contrary to the provisions of this Constitution, the Prime Minister shall refer such opinion to the Constitutional Court for decision and, without delay, inform the President of the House of Representatives and the President of the Senate thereof.

[13] **Section 263:** The provisions of section 262 (2) shall *apply mutatis mutandis* to draft rules of procedure of the House of Representatives, draft rules of procedure of the Senate and draft rules of procedure of the National Assembly which have already been approved by the House of Representatives, the Senate or the National Assembly, as the case may be, but remain unpublished in the Government Gazette.

[14] **Section 264:** In the application of the provisions of any law to any case, if the Court by itself is of the opinion that, or a party to the case raises an objection that, the provisions of such law fall within the provisions of section 6 and there has not yet been a decision of the Constitutional Court on such provisions, the Court shall stay its trial and adjudication of the case and submit, in the course of official service, its opinion to the Constitutional Court for consideration and decision.

certain bodies to refer the constitutionality question to the Constitutional Court. An illustration is a referral to be made by the National Counter Corruption Commission where this Commission prescribes necessary regulations for the performance of its duties in the implementation of the Constitution.[15]

In the case where the Constitutional Court is of the opinion that the objection of a party under paragraph one is not essential for decision, the Constitutional Court may refuse to accept the case for consideration.

[15] **Section 321:** The Commission of Counter Corruption and the Office of the Commission of Counter Corruption under the law on counter corruption shall be the National Counter Corruption Commission and the Office of the National Counter Corruption Commission under this Constitution, as the case may be, until the National Counter Corruption Commission has been appointed or the Office of the National Counter Corruption Commission has been established in accordance with the provisions of this Constitution, which shall be done within two years as from the date of the promulgation of this Constitution.

For the purpose of implementing this Constitution, the National Counter Corruption Commission under paragraph one shall prescribe necessary regulations for the performance of its duties under this Constitution. Such regulations shall be submitted to the Constitutional Court for consideration of their constitutionality before their publication in the Government Gazette and shall be in force until the organic law on counter corruption comes into force.

In the initial period, while there is no the President of the Supreme Administrative Court, the Selective Committee for members the National Counter Corruption Commission under section 297 paragraph three shall have fourteen members consisting the President of the Supreme Court of Justice, the President of the Constitutional Court, Rectors of all State higher education institutions which are juristic persons, being elected among themselves to be seven in number, and representatives of all political parties having a member who is a member of the House of Representatives; provided that each party shall have one representative and all such representatives shall elect among themselves to be five in number.

The scrutiny by the Constitutional Court of compliance with constitutional requirements is not only in the form of the Constitutional Court overseeing that legislation or draft legislation will not run counter to provisions of the Constitution. In many instances, the Constitution expressly states that violation of its provisions must be referred to the Constitution Court for decision thereon, as envisioned, for example, in the case of failure by a holder of a political position to submit the account showing assets and liabilities.[16]

2.2 Accountability under the Ombudsman

The people can lodge to the Ombudsman their complaint stating their grievance and suffering resulting from unjust practice by the functions and duties of the State.

Unlike other constitutional organs in charge of the inspection of the exercise of the State power (such as the Administrative Court and the Court of Justice), Ombudsmen have no power to issue an order or adjudication. But Ombudsmen may present their report and suggestions to other organs especially Parliament to exercise the power for the purpose of political control over the state agency and/or to present them to the press and the public with a view to public opinions.

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[16] **Section 295:** Any person holding a political position who intentionally fails to submit the account showing assets and liabilities and the supporting documents as provided in this Constitution or intentionally submits the same with false statements or conceals the facts which should be revealed shall vacate office as from the date of the expiration of the time limit for the submission under section 292 or as from the date such act is discovered, as the case may be, and such person shall be prohibited from holding any political position for five years as from the date of the vacation of office.

When the case under paragraph one occurs, the National Counter Corruption Commission shall refer the matter to the Constitutional Court for further decision, and when the decision of the Constitutional Court is given, the provisions of section 97 shall apply *mutatis mutandis*.

Ombudsmen have only a single power, that is, presenting the report about the complaint stating the issue of the constitutionality to Parliament and publishing and distributing the report to the public for information.

The new Constitution has the provisions governing the power and duty of the Ombudsmen in sections 197 and 197 as follows:

(1) to consider and inquire into the complaint for fact-findings in the following cases:

(a) failure to perform in compliance with the law or performance beyond powers and duties as provided by the law of a Government official, an official or employee of a State agency, State enterprise or local government organisation;

(b) performance of or omission to perform duties of a Government official, an official or employee of a State agency, State enterprise or local government organisation, which unjustly causes injuries to the complaint or the public whether such act is lawful or not;

(c) other cases as provided by law;

(2) to prepare reports and submit opinions and suggestions to the National Assembly;

(3) In case where the Ombudsman is of the opinion that the provisions of the law, rules, regulations or any act of any person under sections 197 (1) begs the question of the constitutionality, the Ombudsman shall submit the case and the opinion to the Constitutional Court or Administrative Court for decision in accordance with the procedure of the Constitutional Court or the law on the procedure of the Administrative Court, as the case may be.

From the above provisions, it can be seen that the Ombudsman channel can be resorted to by the people for the purpose of inspecting the exercise of the State power.

2.3 Accountability under the Administrative Court

As stated in section 276 of the Constitution,[17] the Administrative Court has the power to try and adjudicate cases of dispute between a private individual on one part and State agency and State official on the other part on the administrative act, the administrative order and the administrative juristic act. The Administrative Court will make a decision as to whether any administrative act, any administrative order or any administrative juristic act complained of by the aggrieved persons is lawful or not.

The Administrative Court is, therefore, a kind of mechanism to control the exercise of the state power in order to maximise the efficiency of the administration and to create justice in the government. In effect, under the inquisitorial procedure of the Administrative Court, the court will have to find facts in the case and evidence from all parties including third persons. The burden of proof is thus not absolutely placed on the aggrieved litigant, As a consequence, the inspection of the exercise of the State power through an administrative action is much feasible.

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[17] **Section 276:** Administrative Courts have the powers to try and adjudicate cases of dispute between a State agency, State enterprise, local government organisation, or State official under the superintendence or supervision of the Government on one part and a private individual on the other part, or between a State agency, State enterprise, local government organisation, or State official under the superintendence or supervision of the Government on one part and another such agency, enterprise, organisation or official on the other part, which is the dispute as a consequence of the act or omission of the act that must be, according to the law, performed by such State agency, State enterprise, local government organisation, or State official, or as a consequence of the act or omission of the act under the responsibility of such State agency, State enterprise, local government organisation or State official in the performance of duties under the law, as provided by law.

There shall be the Supreme Administrative Court and Administrative Courts of First Instance, and there may also be the Appellate Administrative Court.

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