



## ASIA-PACIFIC RIGHTS AND JUSTICE INITIATIVE

Case Studies on Access to Justice by the Poor and Disadvantaged

# The National Ombudsmen Commission (NOC) as the custodian and the conscience system of access to justice for the underprivileged in Indonesia

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## SUMMARY BOX

### Categorization of lesson:

Lessons learned from the efforts of the NOC in struggling for the fulfilment of rights and justice for the under-privileged. The case presents how the NOC has tried to best attempt maintaining the fulfilment of rights and justice and promoting the awareness of state apparatuses on the matter.

### Critical lessons for the sub-practice:

- ❖ ***Creating the legal framework has been the most difficult assignment in the capacity building of the NOC.*** Even though it was instructed by the Decree of the National Assembly and that a draft of bill has been formulated and presented to the National Parliament, the fact that the drafting authority lies with the Government has made the deliberation processes very slow. Alternative thrust must be established by the Parliament having the authority to make the law. In addition, promotion would also be needed to make regional parliaments better prepared in making similar actions for institutionalising regional ombudsmen. If this institutional precondition cannot be fulfilled, efforts to establish justice systems will always be hampered by institutional problems, because committed and competent fighters of justice could never get clarity on mandates and authorities.
- ❖ ***Weak political motivation could be detrimental to institutionalising access to justice by the ombudsmen.*** The political shift at the national level followed by less preference to creating better access to justice has proven its detrimental impact to the NOC. In addition to the slow follow up on the proposed bill draft, the Government has not granted sufficient financial facilities to the NOC. The reason could be that the work of the NOC did make lots of kickbacks to various governmental institutions. The efforts of the NOC to involve the claim holders (including the NOC members and affiliates themselves) during the formulation and implementation processes should be as important and urgent for capacitating justice systems as the facilitations for the duty bearers in reorienting themselves to new values and in making institutional transformation. To some extent the NOC realises that its authority and influence have not been sufficient to ensure supports by the most important wide spectrum of stakeholders, even from the governmental side. Therefore, a sound regulatory framework established must be properly socialised.
- ❖ ***In such a large, diverse and poor country, promoting regional ombudsmen commission is needed.*** For a country as wide as Europe, a single ombudsmen institution trying to help thousands of injustice complaints will not be sufficient. The formation of the provincial-based ombudsmen commissions would be very important for closing accesses to justice for the poor and should be more seriously supported. The promotion of regional commissions fits to the decentralisation policy. The promotion and formation of regional commissions relate to the establishment of regulatory frameworks that will assure sufficiency of resources and authorities.
- ❖ ***Low-cost and accessible services and assistance to access justice are needed by the under-privileged, but how to best making it viable?*** Until recently, the target beneficiaries that have been served mostly are those having information and knowledge on the presence, functions and tasks of the NOC. The real poor and under-privileged have in the majority not been able to access such services. However, looking at the total number of population and potentials of complaints, could the financial supports from both international donors and the state financing sources be made available for many years? Is the lack of financing capability the most fundamental problem for the poor to access justice? Which one could be more important: the surety of the poor to get justice or the financing of it? Without sufficient financial supports the works of justice and right custodian institutions like the NOC would not be effective and generate the expected results.
- ❖ ***International supports are important both for policy formulation and for moral support.*** More participation from the duty bearers is needed in formulation of programme follow up so that more tangible commitments could be promoted. However, such supports must know its own limitation and therefore bridging the process from output to outcome and adapting unwanted realities need proper attribution strategy. Mastery on policy implementations that are connected to attribution strategies will be very important as the basis of institutional arrangement in programme supports. Adjustment to international standards of human rights and access to justice is important, but in realities project implementations were forced to orient the struggle for access to justice to local values and standards, which is easier and more pragmatic to deal with.
- ❖ ***Starting is easier than sustaining the momentum of programme supports.*** Mainstreaming human rights and access to justice are needed for this kind of project to improve the substantive quality and promoting relevance for global exchange. However, the key element should be the ownership of access to justice programme by stakeholders. Therefore, governmental institutions need further facilitations to make themselves aware of the many dimensions of obligations that should be fulfilled. Programme supports should be as comprehensive and realistic as possible; taking into consideration the awareness and consistency of duty bearers. In addition, ICT functions as an efficient instrument for information dissemination and complaint management. The information system, effective communication and participation of stakeholders in every process have been very meaningful, but further improvements are needed.

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## **CATEGORISATION OF LESSON**

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## **BACKGROUND**

The Indonesian societies have expected good public services, clean government and fair access to justice hopelessly for decades until President Wahid established the National Ombudsman Commission (NOC) in March 1999. The general public has responded with enthusiasm and big hope, as the law enforcement and the civil service have not worked properly ever since. According to the Presidential Decree No.44/2000 the NOC shall act as channel for citizen complaining on mal-administration in the executive and judiciary, and through case decision and advocacy, to promote less discretionary decision-making processes in those institutions.

UNDP support to the NOC concerned with the four mandates of the newly established institution, i.e. (i) To accommodate the creation of a clean and efficient civil service and efficient administration of justice; (ii) To promote the protection of individuals in seeking justice and public service, and to defend their rights against illegal actions and irregular practices resulting from the abuse of power, corruption, collusion, discrimination, undue delay, deviation and improper discretion; (iii) To enhance the supervision of the governmental institutions and agencies, including the judiciary, by asking the reported institutions for clarification, and to monitor the follow up by these institutions of the recommendations of the NOC; (iv) To prepare the transformation of the NOC into a more effective, completely independent Parliamentary Ombudsmen, by drafting the Bill regarding the NOC to be expeditiously submitted to the National Parliament within six months.

During the early stage of assistance, UNDP has identified that the NOC had only a limited national resource allocated by the state budget. Therefore, international assistance are very important for developing and implementing programmes. The NOC has then sought supports to ensure the proper and efficient administrative operation; ensure effective case management processes; support the development of an institutionalisation statute as well as a possible constitutional basis; commence a pilot initiative to establish a regional ombudsman offices; socialize the concept and services of the NOC; coordinate international assistance; and provide comparative international research and development services through studies, seminars and studies. It was expected that through its oversight role, the NOC could bridge a shift to a less discretionary approach to internal administrative and judicial decision-making processes. It is expected that by the end of the assistance period, the NOC would be able to effectively execute its mandate in sustainable manners.

These core elements of good administrative governance cross into various specific components of the Ombudsman process. In mid-2000, the Partnership for Governance Reform in Indonesia (an institution that was established by UNDP, World Bank and ADB and has managed UNDP Governance Trust Fund) recognized the critical role of the NOC in the process of administrative reform, thereby committing itself to forming a support programme which would not only support immediate objectives for consolidating the NOC's role, but also the sustainability of the NOC as a national institution. Owing to the importance of regulatory decision-making frameworks in moving from crisis to sustainability, the successes achieved since the inception of the NOC and the Partnership for Governance Reform, and the potentials for this cooperation in GOI's subsequent reform strategies, NOC welcomes this initiative to strengthen its institution and thereby support the move to a rule of law in Indonesia.

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At the end of the programme, it is expected that NOC will have sufficient capacity to undertake its legal mandate based on a new legislatively enacted institutional mandate, secured either by Constitution or by legislation. Finally, and perhaps most importantly, civil society will have greater awareness of and access to NOC's procedures and NOC will have gained the capacity to effectively utilize the media in support of its mandate. The NOC will act as a fully functional independent body to promote administrative reforms in the executive and the judiciary.

A key strategy for the project is to interact with related administrative reform advocates and targets in government and civil society. This will involve forming institutional linkages with the ongoing and future programmes of the Ministry of Law and Legislation, the Ministry for Administrative Reform, the Attorney General, the Supreme Court, various civil society organizations such as the Institute for Judicial Independence, the National Law Commission and the National Parliament. UNDP and the Partnership also established project supports in governance reforms.

Regarding the latter two partners, as far as possible, the project support has tried to explore linkages with the parliamentary support projects, particularly on the legal institutionalisation of the mandates and establishment of the constitutional ombudsmen. Linkages would also be developed with the National Law Commission project in terms of forming proper inter-institutional linkages regarding the legal aspects of administrative reforms. Finally, the projects have facilitated the interactions with other parallel assistance to the NOC by the donor communities.

The NOC has been surprised that even in a very short time since its establishment there are more than 1.200 grievances reported to the Commission. 34 percent of the cases are related to the courts' practices. This indicates that the judiciary system in Indonesia has failed in performing its duties to provide justice for all. Already for decades, the people already helplessly witnessed and could not tolerate that the courts have been used as a part of political tools. With the available resources, the NOC could process approximately 80 percent out of the reported cases, which covered the courts, governmental organisations, police, prosecution office, local government and public corporation affairs. The complaints are mostly on undue delay, grafts and corruption, abuse of power, improper procedures, and illegal ownership.

Hyperlinks:

<http://www.ombudsman.or.id>

<http://www.partnership.or.id>

[http://www.asiafoundation.org/Locations/indonesia\\_projects.html](http://www.asiafoundation.org/Locations/indonesia_projects.html)

## FINDINGS AND CONCLUSIONS

### *Lessons on Output/Outcome*

Establishment of a better regulatory legal framework for the NOC is one of the key factor to the sustainability of access to justice for the under-privileged.

One of the most important function of the Commission is the formulation of the draft of Law, which will give better assurance to its existence, roles, functions and tasks. The draft has been developed and discussed with the members of parliaments and the public to check both the substantive and systematisation aspects. Even though it was not targeted, further to this effort a draft of clause to include the Commission in the Constitution (thus to make it as a constitutional ombudsmen) has also been prepared. The draft was presented and discussed with the public and the National Assembly (the highest political institution in the country). Some factions responded positively, some other saw it sufficient to be regulated with a law. In these activities UNDP-Partnership supports have done a lot. However, because the constitutional effort was not planned, the fail was not considered as an undesirable result of the support.

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The fact that until recently the government has not sent the proposed draft to the Parliament did indicate the undesired output of the project. The NOC could not go directly to the Parliament because the drafting of this law is under the responsibility of the Government, as agreed during the consultation process. This is clearly because of the political limitation of the NOC and the rigid division of task in the drafting of laws between the Parliament and the Government. The NOC has lobbied the State Secretariat on the matter but no good result generated. Through the project, it looked like that UNDP-Partnership will not be able to influence the process in the bureaucracy. But, an effort could be done through the parliamentary support.

Capacity improvement of the NOC to carry out its mandates is fast and effective to deal with the public demands.

The fact that the bureaucratic power and authority structures hamper the efforts of the NOC in struggling for better public services and justice did not reduce its courage. During the last three years of its full operation, the NOC has received approximately 2.500 complaints filed by individual citizens, legal entities, CSOs, governmental offices, lawyers from through 30 provinces. The Partnership has facilitated the socialisation of the NOC to the regions by conducting seminars and workshops. Various policy research and publications have also been supported in addition to various institutional capacity building activities.

The courts (the Supreme Court, High Courts, District Courts, Administrative Courts and Religious Courts), the Attorneys Offices (from the National to Local levels), and the Police have received the largest proportion of complaints. The second row has been the governmental offices and various state owned enterprises. Falsifying, collusion, intervention, prolonging processes, incompetence, abuse of power, and bribing are but a few examples of the filed cases. It has been certainly heavy for the NOC (having no clear legal standing and still under the control of the Government due to its founding decree) to enforce its recommendations as much as possible. Only 25 % of the duty bearers responded to the recommendations of the NOC and 50 % out of this was the courts. One of the causes could be that the NOC provided the supports to the claim holders free of charge. It has been only with the support of the project that the Commission has accomplished more optimum works.

More serious efforts are needed for the establishment of the regional ombudsmen institutions. There are several realities that make the support of UNDP-Partnership very important on this matter. Indonesia is a very large country with 30 provinces and more than 450 districts/cities spreading across the archipelago. The country has been implementing the decentralisation and regional autonomy to make public services closer to the people. But nowadays, efforts for re-centralisation has been indicated by some observers. Nevertheless, because most of the complaints have been submitted by people living in the regions, it should be appropriate if those regions would have their own ombudsmen to effectively and efficiently cope with problems related to public services and justice.

Some regional workshops have been conducted to promote the importance of ombudsmen institutions to help the poor people getting better public services and access to justice. The Partnership support targeted 5 provincial commission could be established by the end of the project. It looked like that the problem were similar, that is the formation of the legal basis for the foundation of regional commission. Financing the local ombudsmen will also be a major problem because it is related to the making of the regional laws or regulations.

***Lesson on process***

It has been much easier to involve the claim holders (including the NOC itself) than the duty bearers during the course of project formulation and implementation.

In a sense, the NOC itself is part of the claim holder system as it facilitate in the struggle of those people, society or institutions who have not enjoyed good public services or fair access to justice. The fact that the NOC is an independent institution of the government has been a favourable

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factor for its popularity. During the formulation stage, UNDP facilitated the NOC in the development of the programme documents as well as by providing inputs on the real problems of bad public services and justice through its projects. The NOC was facilitated in systematising and strategising its programme before they were put in the project document.

During the course of the project development, many workshops and seminars were conducted with the help of the Asia Foundation and the Danish Government, whereby various enriching materials were made available. With the Partnership getting more and more established and active in facilitating and nurturing the governance reform, the support to the NOC was gradually shifted to the Partnership. UNDP then facilitated the implementation of the project activities through other supports, e.g. through the support to the Parliament when discussing the draft of law on the NOC.

The involvement of the duty bearers has been very satisfying, even though it has been rather minimum (only 25 %) compared to the claims filed by the claim holders. The NOC has tried to involve the duty bearers (especially the courts, the police and the attorney offices) in implementing the project activities, i.e. to provide free of charge access to justice for the underprivileged. But, in general, the involvement of the duty bearers in sustaining the supports and in creating the legal and policy frameworks have still been insufficient.

The lack of sanction system for the negligence of duty bearers to the recommendations of the NOC has been unfavourable to the fulfilment of justice.

Without a strong legal basis, the political and legal position of the NOC has been very weak. There is no sanction system established for the negligence of various duty bearers of the state to the NOC recommendation. Thus, the positive response of those duty bearers happened on voluntary basis because there is no obligation regulated, neither in the Presidential Decree nor in the law.

The information system, effective communication and participation of stakeholders in every process have been very meaningful, but insufficient.

With the support of the project, the NOC has been able to undertake lots of socialisation to regions and the general public. The NOC normally invites close partnership with the claim holders in formulating recommendations and in negotiating way outs of those claimed cases. The NOC has also established a simple but meaningful web page where the public could see the general accomplishment of the NOC, including the claimants, the claimed institutions, the cluster of cases and the degree of responds. The web page also gives the general public to file the claim on electronic basis, making the mechanism much more efficient. A clear but simple guideline is given in the page.

The information provided through the web page basically provides the public with opportunities to join the participatory monitoring and to evaluate the overall performance. It is, however, realised that the monitoring and evaluation instruments to the accomplishment of the NOC still need further development.

The target beneficiaries served are mostly those having information and knowledge on the presence, functions and tasks of the NOC.

From the general observation and discussion, it has been learned that the under-privileged spread throughout the country have not been able to utilise the services provided by the NOC. The core cause is the available supporting resources. But, the more serious aspect has been that the socialisation on the functions and tasks of the NOC has not been able to reach the very wide spectrum of societies. That is why until recently only those people or societies having sufficient information about this institution could utilise its services.

The NOC has functioned totally on a non-discrimination principle and even more so given more emphasis to the disadvantaged groups and people. The critical factor will be the ability of the NOC to properly follow up the claims. The progress that has been achieved to date is very

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satisfying. But what will happen if the public figure out that only 25 % of the duty bearers have been or would be willing to follow up the NOC recommendations? The negative impact of such this condition could lead to disappointment and then to worsening credibility.

Even though the NOC is a state institution, its power and influence in imposing the recommendations have not been always effective.

This is directly connected to the structure and degree of decision-making capacities in the claim-holders (the NOC and the claimants) and duty-bearers. This aspect was not yet well addressed during the programme formulation, as the stressing was more on the preparedness and quality of services by the NOC. The claims submitted to the NOC were numerous, but yet the government did not give sufficient financial support to it.

In realities, the interactions between the claimants, the NOC and the duty bearers could generate complications. For example, to make a follow up on a certain case, the district courts have to consult the local government and the upper line institutions before they could end with proper decisions. In other words, the NOC is not yet in the position to influence the decision making processes in carious governmental institutions so that its recommendations could be properly follow up. This aspect needs further attention during reviews and evaluation, which are normally done for the formulation of follow up supports.

Orienting the struggle for access to justice to local values and standards is easier and more pragmatic to address real demands of claim holders.

The work of the NOC in general and the project support in particular have been oriented simply to the local or practical sense of justice and not yet to the global values of human rights. The claimants have sent their complaints and claims on the basis that they are not satisfied either with the works of governmental offices or that the decisions by for example the courts differ from the sense of justice, and that for this improper practices were identified. In general observation, those demands are in line with the global principle and standards of human rights. But, refinements would be needed to truly place which accomplishments fit to certain clusters of rights.

### ***Operational lessons***

The authority and influence of the NOC have not been sufficient to ensure supports by the most important wide spectrum of stakeholders.

Through direct and electronic socialisations as well as international dialogues and exchange, the NOC could mobilise the supports from various claim holders and supporters. However, it has been facing serious difficulties in mobilising supports from governmental institutions. It could be caused by the fact that the works of the NOC could potentially jeopardise those responsible duty bearers. But, the question is until when those international supporters commit to provide support to this institution?

Bridging the process from output to outcome and adapting unwanted realities need proper attribution strategy.

The core question is which interventions are or could be placed directly under the responsibility of the technical assistance and the NOC? On the output part, the NOC has delivered almost all planned activities, which then lead to the improvements of direct services to claim holders and draft of policies to duty bearers as well as enhancement of institutional capacities of the NOC. But, it seems very difficult to really measure the outcome (impact) of the support because the outcome has factually been attributed to many institutional contributors.

Too-low-costing and limited financing capability of claim holders could hamper the quality of the works of the Commission.

The programme and financial planning of the project are very general and programmatic. They were developed not based on the quantity of works that should be done by the NOC resulted by the quantity of complaints. For example, the NOC has received complaints from many provinces (the archipelago country has 30 provinces and more than 450 districts/cities). To make sure that

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the local duty bearers follow the recommendations, close monitoring and advocacy have been widely needed. However, the project and state budget allocations for this purpose has been very limited. That is why regionalisation has been seen strategic; but not yet yielding.

Strong sense of ownership does not necessarily mean assurance of sustainability.

The project support has been implemented with the full control by the NOC (NEX). With the technical and financial assistance provided by UNDP and the Partnership, the Commission could implement and diverse its programmes, instruments and services. In terms of political and expertise commitments, there is no doubt that the NOC will be able to sustain the implementation and sustainability of the programmes. However, the limited financial commitment by the State Budget that should be made available by the government would potentially hamper further advancement of this institution.

## RECOMMENDATIONS

- ❖ Establishing legal and regulatory frameworks should be given with much higher priority, as it is an important factor for institutional capacity building and sustainability for any institution dealing with access to justice. Assurance for access to justice for the under-privileged is a must and facilitation on this matter could not be done on ad-hoc basis. Laws and regulations at the national and regional levels (especially for diverse societies) are needed to make sure that sufficient authorities are legally granted to those institutions helping the poor to get justice; such as the NOC. Especially for the institutions of the state, laws and regulations on access to justice could also assure the availability of the necessary resources. In addition, sanction system built in them will make the enforcement of corrective remedies less complicated.
- ❖ The formation of the provincial-based ombudsmen commissions is very important for closing access to justice for the poor and should be more seriously supported. Distance, ratio of servicing capacity and constellation of institutional power could enormously increase the transaction costs and thus be detrimental to the good purpose of helping the poor in getting justice. In line with the decentralisation policy, the establishment of regional ombudsmen commission should be possible. If this is made, division of tasks and responsibilities as well as coordination mechanism are needed.
- ❖ Programme supports should be as comprehensive and realistic as possible; taking into consideration the awareness and consistency of duty bearers. Enthusiasm to help poor people in accessing justice has made the programme assistance more focused to this aspect and thus neglecting the importance of facilitating the awareness building and institutional transformation of the duty bearers. While the NOC capacity to accommodate the claims has been enhanced, much less or hardly any support has been given to undertake necessary efforts to make institutional adjustments on the side of the duty bearers, making them incapable to respond to new demands and challenges in establishing better justice system. With UNDP moving forward to up-stream policy advocacy, this kind of effort should be taken into consideration when developing programme supports to institutions dealing with justice reform.
- ❖ More participations from the duty bearers are needed in formulation of programme follow up so that more tangible commitments could be promoted. It is, therefore, important to involve duty bearers in the programme formulation, even if their attitudes or point of views have not been conducive or in accordance to the promotion of justice reform programmes. Though it would be good if it could be done since the earlier stage, their involvements during reviews and refinements of programme support strategies deserve serious considerations. Commitment could be made even with more limited number of duty bearers, because the most important outcome is the formulation of systems,

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models and policies that could be advised to governmental and non-governmental institutions at the national and regional levels.

- ❖ Ownership of access to justice promotion has many dimensions of obligations that should be fulfilled by all stakeholders. Programme ownership could start with the steering and control of the programme by the host partner institutions. But ownership is more than independency in programme management. The fulfilment of obligations by key stakeholders is the key to long-term sustainability. The free-of-charge service of the NOC could be good, but this could make the organisation dependent upon external resources and the claim holders do not really realise that there are costs that should be fulfilled in getting justice well established. On the other side, duty bearers also neglect that justice is the right of the people and that they are obliged to establish the systems and maintain them. The reality that in a bureaucratic-authoritarian country justice is not seen as a right but a gift by the authorities should be reformed to the one that it is the obligation of the authority to create and maintain justice systems. In brief, the position, functions and tasks of all stakeholders, the duty bearers and the claim holders must be identified and understood since the beginning. This is needed to avoid programme assistance that is too focused on capacitating one side while neglecting others.
- ❖ Clear attribution strategies should be well elaborated and understood by key stakeholders as the basis of institutional arrangement in certain programme supports. The NOC and other key players in the justice systems have their own mandates, authorities and intervention capacities. This set of institutional entitlements should be the proper basis for defining the attribution strategies. Attribution strategies could help in determining the accomplishment output and outcome (or activities and results) that fall under the direct responsibilities of certain stakeholders and the purpose and ultimate goal that are the impacts to which the programme assistance contributes. Stakeholders must realise these matters and their consequences to the realisation of justice systems that fall under their responsibilities.
- ❖ Mainstreaming human rights and access to justice are needed for this kind of project to improve the substantive quality and promoting relevance for global exchange. Though it was stated earlier that the NOC based its services free of charge, on the feeling of justice and the existing rules and regulations that bind them, future learning and knowledge management in the communities of practice would require experiences and practical cases of this project be translated according to the global human rights and justice standards. Looking at the width of working scope of human rights, proper mainstreaming of various programmes in governance and sustainable human development should be the utmost importance.