

INTEGRITY AND INDEPENDENCE OF JUDGES, PROSECUTORS AND LAW ENFORCEMENT OFFICIALS

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The prosecution of offences committed by public officers is vested in the Office of the Ombudsman. Integrity connotes being consistent in doing the right thing in accordance with the law and ethical standards every time.¹ To insulate the Office from outside pressure and improper influence, the Constitution, as well as Republic Act No. 6770,² has endowed it with a wide latitude of investigatory and prosecutory powers virtually free from legislative, executive or judicial intervention.³ The independence which the Office of the Ombudsman is vested with was intended to free it from political considerations in pursuing its constitutional mandate to be a protector of the people.⁴

I. COUNTRY EXPERIENCE

In the case of the Office of the Ombudsman of the Republic of the Philippines, safeguards to its independence have either been built-in or added during its four decades of operation in order to address the institutional vulnerabilities and sometimes, human frailties, in the performance of functions. The Office of the Ombudsman Philippines relies on two approaches – legislative measures and programmatic interventions.⁵

A. Legislative Measures⁶

The basic legal framework of the Philippines, the 1987 Constitution, is by far the most potent weapon and shield of the Ombudsman Philippines in ensuring its independence. The creation of the Office of the Ombudsman is enshrined in the 1987 Philippine Constitution, in response to the people's clamour to restore familiar structures of democracy⁷ that would

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¹ *Republic of the Philippines v. Maria Lourdes P.A. Sereno*, G.R. No. 237428, 11 May 2018.

² *The Ombudsman Act of 1989*.

³ *Espinosa v. Office of the Ombudsman*, 397 Phil. 829, 831 (2000), cited in *Angeles v. Desierto*, 532 Phil. 647, 656 (2006).

⁴ *Emilio A. Gonzales III v. Office of the President of the Philippines*, G.R. No. 196231, 4 September 2012 and *Wendell Barreras-Sulit v. Paquito N. Ochoa, Jr. et al.*, G.R. No. 196232, 4 September 2012.

⁵ *Panel Discussion on Maintaining Independence and Surviving Threats* by Samuel R. Martires, Associate Justice of the Supreme Court (Ret.) and Ombudsman of the Republic of the Philippines during the International Seminar Commemorating the 20th Anniversary of the Establishment of the Thai Ombudsman and Signing Ceremony for the Memorandum of Intent of the South East Asian Ombudsman Forum (SEAOFF), 12 February 2020.

⁶ *Panel Discussion on Maintaining Independence and Surviving Threats* by Samuel R. Martires, Associate Justice of the Supreme Court (Ret.) and Ombudsman of the Republic of the Philippines during the International Seminar Commemorating the 20th Anniversary of the Establishment of the Thai Ombudsman and Signing Ceremony for the Memorandum of Intent of the South East Asian Ombudsman Forum (SEAOFF), 12 February 2020.

⁷ Based on the speech of former Commissioner Christian S. Monsod, one of the framers of the 1987 Constitution, delivered during the 25th Anniversary Forum of the Constitutional Fiscal Autonomy Group (CFAG).

guarantee the preservation of rights and dignity. As such, the Office of the Ombudsman acquires its legitimacy from the blessing of the people and that of the Constitution.

It was the vision of the framers of the Constitution for the Office of the Ombudsman to go beyond politics; thus, it was removed from the bureaucratic structure and was made into a constitutional office.⁸ Being an independent constitutional office, its abolition cannot be simply subjected to the power of the legislative branch and would require a much more taxing amendment of the Constitution.

Pursuant to the Constitution, Executive Order No. 243 was issued decreeing the formal organization of the Office of the Ombudsman, followed by the passage of “The Ombudsman Act of 1989”, or Republic Act No. 6770, which further strengthened its independence in the discharge of its mandate.

To outline the elements of independence as contained in the Ombudsman Act, we will be following some of the defining elements of independence that have been summarized in the International Framework of the Ombudsman Institution, a research effort by the Catalan Ombudsman (Síndic de Greuges de Catalunya) describing some of the international frameworks on the ombudsman’s core characteristics.⁹

The first element is on personal and professional qualities and eligibilities. Similar to the international models which commonly define an Ombudsman to be of exemplary record of independence and impartiality and not engaged in political activities, the Ombudsman Act requires top Ombudsman officials to be of recognized probity and independence, and must not have been candidates for any elective office in the immediately preceding election.¹⁰

The second is on the term of office. The top officials serve for a fixed term of seven (7) years without reappointment, and are not qualified to run for any public office in the elections immediately succeeding their cessation from office. A fixed term avoids the probability of the ombudsmen compromising themselves by the interest of gaining future appointment,¹¹ as what is also being advocated by the Venice Commission.¹²

The third is on appointment and remuneration. The Ombudsman and the Deputies are appointed by the President from a shortlist of at least three nominees for every vacancy to be submitted by the Judicial and Bar Council (JBC), the same body that screens nominees to the judiciary. Per the Constitution, such appointments require no congressional confirmation from the Commission on Appointment¹³ as is usual in the case of Cabinet members. Even the salaries of the top Ombudsman officials have been insulated from

⁸ Based on the sponsorship speech of Commissioner Jose C. Colayco during the 1986 Constitutional Commission explaining the independence of the Office of the Ombudsman.

⁹ *International Framework of the Ombudsman Institution*. Rafael Ribó (Catalan Ombudsman and member of the Board of the International Ombudsman Institute), et al. Síndic de Greuges de Catalunya. April 2016.

¹⁰ Section 5, *The Ombudsman Act of 1989*, Republic Act No. 6770.

¹¹ *International Framework of the Ombudsman Institution*. Rafael Ribó (Catalan Ombudsman and member of the Board of the International Ombudsman Institute), et al. Síndic de Greuges de Catalunya. April 2016.

¹² Venice Commission is the Council of Europe’s Commission for Democracy through Law providing legal advice to its Member States.

¹³ Section 8, Article 10 – Accountability of Public Officers. *1987 Philippine Constitution*.

pressure and undue threats by stipulating in the Constitution that their salaries shall not be decreased during their term of office.¹⁴

The fourth is on dismissal. The mode of removing an Ombudsman is only by impeachment, and the Ombudsman cannot be forcibly dismissed unless for culpable violation of the Constitution.¹⁵ Since the Ombudsman is not subject to the disciplinary authority of the President, the Ombudsman is not beholden to anyone, even the appointing authority.

The fifth is on guarantees of activity, pertaining to cooperation with the Ombudsman. As part of its official functions and duties, the Office of the Ombudsman may “request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.”¹⁶

The sixth is on organizational autonomy. The Office’s position structure and staffing pattern is to be approved and prescribed by the Ombudsman, who is also the appointing authority of Ombudsman employees.¹⁷ Direct recruitment of staff by the Ombudsman is the preferred solution to preserve independence.¹⁸

The seventh is on budgetary autonomy. The Constitution and the Ombudsman Act grants fiscal autonomy to the Office of the Ombudsman. Its approved annual appropriations shall be automatically and regularly released,¹⁹ and Congress cannot slash its budget. This is an additional constitutional guarantee to further strengthen and insulate the Office of the Ombudsman from politics and other pressures.

Based on the research made on the International Frameworks of Ombudsman Institution, some earlier international texts have “minimal reference” or “lesser intensity” as to the need for an ombudsman to be endowed with adequate resources.²⁰ When ombudsman institutions, however, are not given the rightful resources to discharge their functions, it will not only pose a threat to its independence, but budgetary reasons may potentially be used to justify its disappearance,²¹ if pursued by certain parties.

As can be seen, in the case of the Philippines, the legal background is adequate to afford independence to the Office of the Ombudsman. Perhaps, the real challenge is its honest-to-goodness application, including the willpower and conviction to assert independence at all times, and to stand by it even in the midst of tremendous pressure.²²

¹⁴ Ibid., Section 10, Article 10.

¹⁵ Ibid., Section 8.

¹⁶ Ibid., Section 5.

¹⁷ Ibid., Section 11.

¹⁸ *Organizational Autonomy*, pages 17-18. *International Framework of the Ombudsman Institution*. Rafael Ribó (Catalan Ombudsman and member of the Board of the International Ombudsman Institute), et al. Síndic de Greuges de Catalunya. April 2016.

¹⁹ Section 14, Article 10 – Accountability of Public Officers. *1987 Philippine Constitution*; and Section 38. *The Ombudsman Act of 1989*, Republic Act No. 6770.

²⁰ Budgetary Autonomy. Page 18. *International Framework of the Ombudsman Institution*. Rafael Ribó (Catalan Ombudsman and member of the Board of the International Ombudsman Institute), et al. Síndic de Greuges de Catalunya. April 2016.

²¹ Ibid.

²² *Panel Discussion on Maintaining Independence and Surviving Threats* by Samuel R. Martires, Associate Justice of the Supreme Court (Ret.) and Ombudsman of the Republic of the Philippines during the

This brings us to another level of addressing threats to the independence of our Office. Although our laws guarantee independence, these laws, however, need to be complemented with measures that treat the sources of threat. Thus, our Office has developed programmatic interventions aimed to eradicate corruption – the evil that ombudsmans’ offices fight and also the source of threats to their independence.²³

B. Programmatic Intervention²⁴

Among the programmes implemented by our Office, the following are the most relevant ones in addressing threats sprouting from corruption:

1. Integrity, Transparency, Accountability in Public Service (ITAPS) Program

On corruption education, one of the notable initiatives of the Office is the Integrity, Transparency, Accountability in Public Service Program, or the ITAPS. Offered to government officials and employees, ITAPS uses interactive adult learning methods with modules which have been designed to provide a good understanding of corruption, accountability of public officers, penalizing corruption, and integrity in the public service.

It is the belief of the Office that certain maladministration and misconduct resulting to corruption offences are by-products of an under- or misinformed workforce, especially the rank-and-file employees who are usually underexposed to capacity-building opportunities. With the conduct of ITAPS, it is envisioned that government employees would be better informed, and that this would lessen, if not eliminate, corruption in government.

2. Integrity Management Program

In partnership with the Office of the President, our Office is implementing the Integrity Management Program, or the IMP, the flagship anti-corruption programme of the Philippine Government. It reviews and assesses the systems and processes of key government agencies in terms of their risks and vulnerabilities to corruption, and assists them in drawing up corrective and preventive measures with the aim of establishing a systematic approach in building, improving, reinforcing and sustaining a culture of integrity in the agency. In 2018, the implementation of the IMP covered fourteen (14) volunteer agencies and was initially introduced to thirteen (13) other public sector institutions.

At present, the IMP is at the pilot stage of implementation. After its assessment and evaluation, a closer look at its efficacy will be undertaken in order to advocate for its roll out to the rest of the bureaucracy. Once integrity measures are established in the whole of government, we believe that a significant decrease in corruption incidence can be expected.

3. National Household Survey on Experience with Corruption in the Philippines

In collaboration with the Philippine Statistics Authority (formerly the National Statistics Office), rider questions to measure the extent or pervasiveness of petty or bureaucratic corruption in the Philippines have been included in our country’s national household survey. It was successfully done in 2010, followed by surveys in 2013, 2016 and

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²³ Ibid.

²⁴ Ibid.

2017, and the latest of which is the survey in July 2019. Unlike most domestic and international surveys on corruption, the extent or pervasiveness of corruption is measured not on perception but on actual experience with corruption. The results of these surveys aid the Office of the Ombudsman in making targeted decisions when it comes to focusing its limited resources on various anti-corruption work.

4. Values-Formation Program

To institute lasting change, there is a need to focus on the root of the problem of corruption – our decaying values system. There is a need to go back to the basics, there is a need to once again promote good morals and right conduct, and there is a need to remind our countrymen to integrate values in our daily lives. As such, our Office runs certain values-formation programmes echoing this call.

The general belief is that another way to institute lasting change is to focus on the root of the problem, which is the Filipino values system. The identified solution is to strike a balance between fear and inspiration such that integrity-building and institutional values formation become prime and the vision is for inspiration to stem from the example set by an institution. The challenge then is for the Office to be an acceptable and indomitable example of moral ascendancy directly drawn from observable practice in order to serve as inspiration to the people of the Philippines.²⁵

As such, a return to values already started within the halls of the Office of the Ombudsman by capacitating its personnel through the Values Enrichment Seminars being conducted by its training arm and through an active enrolment of its relevant personnel to Ethical Leadership Training. Apart from this, systems are also being improved to make it conducive to the workings of an institution of integrity, i.e. the centralization of a records repository system and of administrative services.²⁶

In an effort to ensure a capacitated workforce, continuous capacity-building initiatives are being held, particularly for our lawyers and investigators on trial advocacy skills, legal draftsmanship, case analysis and specialized investigative areas such as fraud audit, forensic accounting, forensic engineering, environmental assessment tools and anti-money-laundering laws.²⁷

Monitoring and tracking of cases is essential to anti-corruption efforts. Another opportunity for the institution is to strengthen a database system and other tracking systems, which can effectively detect and flag cases that may be deliberately delayed. This could prevent internal corruption, such as alleged internal corrupt practices conducted to deliberately delay cases.²⁸

The Campus Integrity Crusaders programme of our Office aims to empower students in their involvement in corruption prevention initiatives by developing their leadership skills and instilling the values of integrity and social responsibility. For those in the private sector, on the other hand, our Office conducts Integrity Caravans and multi-sectoral

²⁵ *Country Report on Anti-Corruption Best Practices, Success Stories, Challenges, Strategies and Others* by Rodolfo M. Elman, Deputy Ombudsman for Mindanao, Office of the Ombudsman during 15th Southeast Asia Parties Against Corruption (SEA-PAC), 8-10 October 2019.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

meetings wherein stakeholders air their views on how to better fight corruption and, more importantly, commit to implementing these measures.

At this point, it is also worth mentioning that a key anti-corruption strategy that has worked for the Office for so many years is interagency collaboration. Just recently, the President has ordered the creation of a Mega Task Force to pin down corruption among all government agencies. There may have been camps looking at this as duplication of work, overstepping boundaries or creating unclear grounds but for institutions that have worked closely for several years now, rapport and respect of jurisdiction is both a written and unwritten rule. In interagency cooperation, the focus should not only be on good work but on institutional relationships that mature over time such that the work never becomes a competition but a complementation.²⁹

II. CONCLUDING NOTE

The understanding of the pervasiveness of threats among ombudsman institutions should steer continuous studies and exchanges on (1) the dimensions of threat, (2) the different means to address and manage them, and (3) the available aid or assistance to ward them off.³⁰

In addition to legal measures, the independence of Prosecutors – and even Judges and Law Enforcement Officials – depends on the individual’s integrity and core values to insulate them from outside pressure and improper influence. Hence the need for promotion of good morals and right conduct, integration of values in our daily lives, continuous education, training and study of the best practices and strategies of other agencies and countries, regular monitoring of the cases, and transparency in the conduct of investigations, prosecutions and trial of cases.

Vital to this endeavour is also cooperation from all the concerned parties in order to ensure the detection and prevention of corruption. Each and every one of us must always do the right thing in accordance with the law and ethical standards and contribute in our own way in order to win the fight against corruption.

²⁹ *Presentation of Anti-Corruption Progress* by Cornelio L. Somido, Deputy Ombudsman for Luzon, Office of the Ombudsman during the 16th Principals Meeting of the ASEAN Parties Against Corruption (ASEAN-PAC), 9 December 2020.

³⁰ *Panel Discussion on Maintaining Independence and Surviving Threats* by Samuel R. Martires, Associate Justice of the Supreme Court (Ret.) and Ombudsman of the Republic of the Philippines during the International Seminar Commemorating the 20th Anniversary of the Establishment of the Thai Ombudsman and Signing Ceremony for the Memorandum of Intent of the South East Asian Ombudsman Forum (SEAOFF), 12 February 2020.