

**POWER AND PARADOX:  
DECONSTRUCTING OMBUDSMAN INDEPENDENCE AMIDST THE  
THICKET OF THE CONSTITUTION, LAW AND JURISPRUDENCE**

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*“Nation or government cannot achieve salvation where the rights of the depressed, destitute and suppressed are not guarded, and where mighty and powerful persons are not forced to accede to these rights.”*

– Hazrat Ali,  
Epistle to Malik Ashtar<sup>1</sup>

Ovidor, Defensor del Pueblo, Parliamentary Commissioner for Administration, Médiateur de la République, Public Protector, Volksanwaltschaft, Public Complaints Commission, Provedor de Justiça, Difensore Civico, Investigator-General, Citizen’s Aide, Wafaqi Mohtasib, Lok Ayukta, Board of Grievances, Procurador de los Derechos Humanos, Procurador Para la Defensa de los Derechos Humanos, Comisión Nacional de Derechos Humanos, Office of the Ombudsman. Their titles may vary, but they all connote one institution—an impartial investigator, an enabler-facilitator, a broker-negotiator, and a citizen-advocate<sup>2</sup> who serves as the ‘watchdog’ designed to look into the entire workings of administrative cases, bringing the lamp of scrutiny to otherwise dark places even over the resistance of those who would draw the blinds.<sup>3</sup>

<sup>1</sup> <http://www.policy.hu/bokhari/OmbuIntro.html> (visited on October 17, 2006).

Hazrat Ali, the Great Khalif of Islam, and the first in the line of the Imam, apart from his abiding contribution to spiritual thought, is known to the Arabic world as a great jurist and man of letters. According to the historian Masudi (Murooj-uz-Zahab Masudi Vol. II, p. 33. Egypt), Hazrat Ali is credited with no less than 480 treatises, lectures and epistles on a variety of subjects dealing with philosophy, religion, law and politics, as collected by Zaid Ibn Wahab in the Imam’s own life time. So highly valued are these contributions both for their contents and their intrinsic literary worth that some of his masterpieces have formed throughout the course of Islamic history subjects of study in centers of Muslim learning. Indeed, his reputation seems to have traveled into Europe at the time of the Renaissance. Edward Powcock (1604-1691) a professor at the University of Oxford, published the first English translation of his “Sayings” and delivered in 1639 a series of lectures on his “Rhetoric”. (<http://www.amaana.org/ismaali.html#Subordinate%20Judiciary> [visited on November 24, 2006]).

<sup>2</sup> Wafaqi Mohtasib Annual Report (<http://www.policy.hu/bokhari/OmbuIntro.htm>, [visited on October 17, 2006]).

<sup>3</sup> *Ibid.*

Commenting on the role of Ombudsman, which was challenged in 1970 in Alberta, Canada, Chief Justice Milvain said “... the basic purpose of an Ombudsman is provision of a ‘watchdog’ designed to look into the entire workings of administrative cases. ... [h]e can bring the lamp of scrutiny to otherwise dark places even over the resistance of those who

The merits of the ombudsman concept are considerable. It is proven as an effective means of protecting the citizens' interests and right to fair administration and good practice in the government. The flexibility of the original Swedish concept allows the system to be adapted to the activity to which it is applied, taking into account any cultural, legal, geographical or historical circumstance.<sup>4</sup>

Given the ideals that embody the ombudsman concept, it is not difficult to understand why countries would wish to imitate such an institution in their respective jurisdictions and the Philippines is not an exception. As a matter of fact, what actually is the Office of the Ombudsman now is a product of a process of evolution of the different agencies established throughout the history of the country.

The Permanent Commission in the Revolutionary Government may be considered a precursor of the present Office of the Ombudsman. This was created on June 23, 1898, after the declaration of the Philippine Independence. Succeeding administrations likewise provided for the creation of agencies to handle cases of corruption in the government service. These agencies are the Integrity Board which was created by President Elpidio Quirino in 1950, Presidential Complaints and Action Commission created by President Ramon Magsaysay in 1957, the Presidential Committee on Administration Performance Efficiency by President Garcia in 1958, the Presidential Anti-Graft Committee by President Diosdado Macapagal in 1962, the Presidential Agency on Reforms and Government Operations by President Ferdinand Marcos in 1966, and the Presidential Administrative Assistance Committee again by President Marcos in 1971.<sup>5</sup>

All of these attempts to create a "protector of man" in the street against injustice, against arbitrariness and against the abuse of power seemed futile,<sup>6</sup> until the emergence of the Office of the Ombudsman

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would draw the blinds. If [his] scrutiny and reservations are well founded, corrective measure can be taken in due democratic process, if not no harm can be done in looking at that which is good."

<sup>4</sup> David Peppiatt, *Research Paper: An Ombudsman Overview*, Briefing Paper for the Ombudsman Project Inter-agency Steering Group Meeting on November 21, 1997 at the British Red Cross. <http://www.hapinternational.org/hapgeneva/OMBUDSMAN/OmbudP1.html> (visited on October 17, 2006).

<sup>5</sup> <http://www.ombudsman.gov.ph/page.php?pid=4> (visited on October 17, 2006).

<sup>6</sup> <http://www.policy.hu/bokhari/OmbuIntro.html> (visited on October 17, 2006).

embodied in the 1973 Constitution.<sup>7</sup> Although the 1973 Constitution did not last long, its effect reverberated in the 1987 Constitution which also institutionalized the Office of the Ombudsman, this time however, giving it more power and means to actualize its mission.

Indeed, under the 1987 Constitution, the Philippines has created an ombudsman with more powers than the original ombudsman in Sweden. With the creation of an independent Office of the Ombudsman, the powers of this institution cannot be overemphasized. As protector of the people, it is armed with the power to prosecute erring public officers and employees, giving it an active role in the enforcement of laws on anti-graft and corrupt practices and such other offenses that may be committed by such officers and employees.<sup>8</sup> Addressing the problem of creating a toothless tiger for an ombudsman, the Constitution has given him enormous amount of power. These powers were expanded through its enabling law, Republic Act No. 6770 or The Ombudsman Act of 1989.<sup>9</sup> More so, the powers of the Ombudsman continue to grow through jurisprudence promulgated by the Supreme Court.

These powers given to the Ombudsman were, nevertheless, given with great caution. Great powers come with great responsibilities, and it is none other than the Supreme Court with its expanded power,<sup>10</sup> which is tasked to watch over the 'bureaucratic watch dog' and ensure that there is no grave abuse of discretion committed by the Ombudsman. These safeguards are embodied in the provisions of R.A. 6770 as well as the Rules of Court. Taking a closer view of this scenario, an inevitable paradoxical conclusion arises—that the independence that the Office of the Ombudsman ought to have been diminished. Not only are its decisions subject to review, its actions may moreover be further declared to have

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<sup>7</sup> One key feature of the ombudsman is its independence. (<http://www.hapinternational.org/hapgeneva/OMBUDSMAN/OmbudP1.html> [visited on October 17, 2006]). The inclusion of the Office of the Ombudsman in the Constitution itself makes the Office beyond the reach of any other government agency. It can be said, therefore, to be the first and most important step in achieving a lasting system to fight against graft and corruption.

<sup>8</sup> *Uy v. Sandiganbayan*, 354 SCRA 651 (2001), at 664.

In *Uy*, the Supreme Court of the Philippines stated that "the Philippine Ombudsman departs from the classical Ombudsman model whose function is merely to receive and process the people's complaints against corrupt and abusive government personnel." (At 666)

<sup>9</sup> Hereinafter referred to as R.A. 6770.

<sup>10</sup> CONST., art. VIII, § 1.

been done with grave abuse of discretion amounting to lack or excess of jurisdiction.

The Office of the Ombudsman has been in existence for almost two decades now. And given the fact that the ombudsman in the Philippines is probably the most powerful in terms of enforcing its decision, it is a source of wonder, or disappointment perhaps, that the Philippines is still topping the list of the corrupt government administrations in the world.<sup>11</sup> It can only mean that the Office of the Ombudsman's potentials are yet to be exploited; its powers are not yet being fully used for its purpose. Corruption is still very much prevalent in the bureaucracy and in politics.

Filipinos have been known for changing the meaning of words. A foreign word used in the Philippines is more or less bound to lose its original meaning or connotation.<sup>12</sup> Thus, the local saying "Only in the

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<sup>11</sup> *Philippines received a rating of 2.5 from the 2006 Transparency International Corruption Perceptions Index.* The index defines corruption as the abuse of public office for private gain and measures the degree to which corruption is perceived to exist among a country's public officials and politicians. It is a composite index, drawing on 12 polls and surveys from 9 independent institutions, which gathered the opinions of business people and country analysts. The scores range from ten (squeaky clean) to zero (highly corrupt). A score of 5.0 is the number Transparency International considers the borderline figure distinguishing countries that do and do not have a serious corruption problem. Haiti is perceived to be the most corrupt with a rating of 1.8 while Finland, Iceland, and New Zealand are perceived to be the world's least corrupt countries with a rating of 9.6. (<http://www.infoplease.com/ipa/A0781359.html> [visited on January 9, 2007]).

<sup>12</sup> The word "salvage" illustrates this Philippine adage. "Salvage" means to rescue or save especially from wreckage or ruin (Merriam-Webster's 11<sup>th</sup> Collegiate Dictionary, Copyright 2003). A contrary meaning developed in the Philippines. It is used to refer to extra-judicial killings rather than to saving or rescuing.

In the case of *First Philippine International Bank v. Court of Appeals*, (252 SCRA 259 [1996]) the Supreme Court also had the occasion to enunciate how forum shopping evolved in the Philippines. Forum-shopping originated as a concept in private international law, where non-resident litigants are given the option to choose the forum or place wherein to bring their suit for various reasons or excuses, including to secure procedural advantages, to annoy and harass the defendant, to avoid overcrowded dockets, or to select a more friendly venue. To combat these less than honorable excuses, the principle of *forum non conveniens* was developed whereby a court, in conflicts of law cases, may refuse impositions on its jurisdiction where it is not the most "convenient" or available forum and the parties are not precluded from seeking remedies elsewhere.

In the Philippines, forum shopping has acquired a connotation encompassing not only a choice of venues, as it was originally understood in conflicts of laws, but also to a choice of remedies. As to remedies, aggrieved parties, for example, are given a choice of

Philippines.” The Philippine Ombudsman is one of the proofs to this aphorism. The original connotation of the word “ombudsman” is an impartial and incorruptible official. Unfortunately, in the Philippines, it is perceived as one of the centers of corruption.<sup>13</sup> This is true only in the Philippines.

The effectiveness of the Ombudsman is hanging in the balance. With this at hand, there is a need to rethink the integrity and leadership in the office and to review some decisions of the Highest Tribunal to help regain the incorruptibility of the Office of the Ombudsman. It is thus very vital to revisit the Ombudsman in the Philippine setting, to trace its origin, to traverse its developments in this jurisdiction and to analyze the impact on these advancements on the most important element to have an effective Ombudsman—its independence.

### GENESIS OF THE OMBUDSMAN

Although the figure of Ombudsman, with its current characteristics, owes its origin from Sweden, its traces may be found in ancient history.<sup>14</sup>

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pursuing civil liabilities independently of the criminal, arising from the same set of facts. A passenger of a public utility vehicle involved in a vehicular accident may sue on *culpa contractual*, *culpa aquiliana* or *culpa criminal*—each remedy being available independently of the others—although he cannot recover more than once.

Consequently, where a litigant (or one representing the same interest or person) sues the same party against whom another action or actions for the alleged violation of the same right and the enforcement of the same relief is/are still pending, the defense of *litis pendencia* in one case is bar to the others; and, a final judgment in one would constitute *res judicata* and thus would cause the dismissal of the rest. In either case, forum shopping could be cited by the other party as a ground to ask for summary dismissal of the two or more complaints or petitions, and for imposition of the other sanctions, which are direct contempt of court, criminal prosecution, and disciplinary action against the erring lawyer.

<sup>13</sup> In the recent Philippine Investigative Journalism (PCIJ) publication, *The PCIJ Guide to Government*, it was reported that during the term of Aniano Desierto as the country’s Ombudsman, rumors became rife that the Office of the Ombudsman was intentionally filing flawed information with the Sandiganbayan, giving it reason to withdraw these afterwards. Pundits called the supposed practice “deposit-withdraw” or “ATM” hinting that the motive behind it was all about money. It was also reported that the Ombudsman withdrew 664 from the anti-graft court between 1988 to July 31, 1997. This translated to nearly a tenth of the total number of accused who had their cases terminated during that period. Legal experts had estimated that the usual rate of withdrawal of cases ran between a mere two to three percent. (Chua and Coronel, eds., *The PCIJ Guide to Government* Philippine Investigative Journalism, 2003 at 197).

<sup>14</sup> <http://www.policy.hu/bokhari/OmbuIntro.html> (visited on October 17, 2006).

The genesis of the institution may be in Sparta and Athens, where the office of the “*eflore*” and the “*euthynoi*” respectively controlled the governmental activities performed and municipal actions. The Romans installed an officer called the ‘tribune’ to protect the interests and rights of the plebeians against the patricians. In China, during the Yu and Sun dynasty, an officer called “Yuan” was appointed to report the voice of the people to the Emperor and to announce the Emperor’s decrees to the people.<sup>15</sup> During the time of the Persian Empire, King Cyrus charged the “*O Olho de Rei*” with the duty to supervise the activity of all his officials. During the fifteenth century, the Council of the Ten in Venice was mandated to control the bureaucratic excesses committed in the city.<sup>16</sup>

It is believed, however, that the influence of the basic foundation of the ombudsman was actually from the Islamic tradition. Before the times of Prophet Muhammad, there was no administration in the proper sense of the word. It was the Prophet who first introduced administrative authorities. He appointed governors of the provinces, judges and tax collectors, who were all accountable to him. The Prophet bequeathed trust, justice and effectiveness as well as the combination of authority and responsibility to these appointees, which are the essential principles of government and administration.<sup>17</sup>

It was Omer, the Second Caliph of Islam, however, who created the Institution of Mohtasib.<sup>18</sup> He enjoyed complete independence and functioned within the framework of an institution called “hisbah”, whose role was to ensure the observance of religious principles in daily life. This goes back to the Koran which expounds the principles of political and administrative system in its verses.<sup>19</sup>

In Egypt this institution existed up to the middle of the 19<sup>th</sup> century. An interesting fact in this context is that the institution of “hisbah” and

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<sup>15</sup> Satyanand, Anand, *Growth of the Ombudsman Concept*, Journal of South Pacific Law, article 1 of Volume 3, 1999, School of Law, University of South Pacific. (<http://www.policy.hu/bokhari/OmbuIntro.html> [visited on October 17, 2006]).

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> *Mohtasib* means a person, who conducts accountability. Its function was to be a guardian of public morals in many fields of life, especially in the towns and above all in the market place. He was the market supervisor, the Sahib as-sup, as well as the settler of disputes. (<http://www.policy.hu/bokhari/OmbuIntro.html>. [visited on October 17, 2006]).

<sup>19</sup> *Ibid.*

its functions were also adopted by the Crusaders in Jerusalem. They even used the Arab word “Mohtasib” although they changed it into “Mathessep.”<sup>20</sup>

During his exile in Turkey, the King of Sweden, Charles XII, observed the working of Diwan-al-Mazalim, which possessed the ombudsman functions at that time. Upon the restoration of his kingdom, the King ordered the establishment of a similar institution in Sweden.<sup>21</sup> Eventually, such office was institutionalized in 1809 with the title “*Justitieombudsman*.”

### *Enlightenment in Sweden*

The concept of the ombudsman evolved during the Swedish enlightenment of 1719 to 1772 where democracy, humanitarianism and individual liberty were emphasized against state absolutism, injustice and abuse or misuse of public power.<sup>22</sup>

In 1713, King Charles XII of Sweden, preoccupied with fighting the Great Northern War, had not set foot in Sweden in over a decade. In order to reestablish the domestic administration which had fallen into disarray, he instituted the office of His Majesty’s Supreme Ombudsman. The role of the King’s Ombudsman was to ensure that judges and public officials acted in accordance with the laws, proficiently discharged their tasks, and to initiate legal proceedings for dereliction of duty against erring officials.

The autocratic rule of Gustav III of Sweden which ended half a century of parliamentary supremacy in 1772, prompted the Riksdag of the Estates<sup>23</sup> to institute an ombudsman who was independent of the executive power in 1809.<sup>24</sup> The King’s Ombudsman, who in 1719 had been

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<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

In the same report, it was stated that according to Ibrahim al-Wahab, “of course one could not draw definite conclusion regarding the origin of any institution anywhere .... But being aware of the history of complaint handling in the Islamic law system and the fact that during the time of King Charles XII in Turkey this system was existing, the influence seems to be evident”.

<sup>22</sup> <http://www.policy.hu/bokhari/OmbuIntro.html> (visited on October 17, 2006).

<sup>23</sup> The *Riksdag* is the Parliament of Sweden.

<sup>24</sup> The Ombudsman was instituted after Gustav IV Adolf of Sweden, successor and son of Gustav III, was deposed in 1809, which was also the year when the constitution was enacted. Since then the Riksdag has appointed ombudsmen to protect citizens from

given the new title of Chancellor of Justice, was to be accompanied by a Parliamentary Ombudsman. The office of the Parliamentary Ombudsman was established by the Instrument of Government of 1809 and its role was preserved in the new Instrument of Government in 1974.<sup>25</sup>

The first Justitieombudsman office was constitutionally established in Sweden in 1809, and in 1919, Finland instituted a similar office of a Parliamentary Ombudsman.<sup>26</sup> Until 1950, these Scandinavian offices remained the only two existing ombudsmen but over the last forty years the idea has gained world-wide credence and the institution of the ombudsman has become a feature of civil society.<sup>27</sup>

### *Spread of the Ombudsman Paradigm*

The ombudsman concept is one which has grown rapidly in a variety of constitutional settings throughout the world.<sup>28</sup> This is attributable to the emergence of liberal democracy as a system of government.<sup>29</sup> This surge of democratic values placed prime importance upon the personal responsibility of officials towards their citizens. The role of the ombudsman is to ensure that all public officials performed their duties with justice, honesty and public responsibility and to hold them accountable for incorrectly applying laws, overstepping their authority, and failing in their obligations to the citizens.

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illegal or incompetent use of power by government officials (The World Book Encyclopedia, Copyright 1992).

<sup>25</sup> <http://www.wikinfo.org/wiki.php?title=Ombudsman&printable=yes> (visited on October 17, 2006).

<sup>26</sup> M. Seneviratne, *Ombudsman in the Public Sector*, Open University Press, Buckingham, 1984. ([http://www.ombudsmanforum.ca/events/2003\\_conference/nathalie\\_desrosiers\\_speech\\_e.asp](http://www.ombudsmanforum.ca/events/2003_conference/nathalie_desrosiers_speech_e.asp), [visited on October 17, 2006]).

<sup>27</sup> <http://www.hapinternational.org/hapgeneva/OMBUDSMAN/OmbudP1.html> (visited on October 17, 2006).

<sup>28</sup> Satyanand, Anand, Growth of the Ombudsman Concept, *Journal of South Pacific Law*, article 1 of Volume 3, 1999, School of Law, University of South Pacific. (<http://www.policy.hu/bokhari/OmbuIntro.html> [visited on October 17, 2006]).

<sup>29</sup> The transition of many countries to democracy and democratic structure of governance over the past two decades has led to the establishment of more ombudsman offices. Sir John Robertson has commented on the usefulness of the institution with respect to transition of countries from a non-democratic to democratic government in his written work *"The Ombudsman and the World"* published in *"Twenty Years of Commonwealth Ombudsman 1977-1997"* (Commonwealth Ombudsman, Canberra, 1997, at 67).

The ombudsmen nowadays take many different forms. They work in different ways and they dwell in variety of habitats.<sup>30</sup> By the year 2004, ombudsman offices existed in approximately 120 countries around the world.<sup>31</sup> Some countries have ombudsman offices at the national and sub-national level,<sup>32</sup> while other nations have ombudsman offices only at the sub-national level.<sup>33</sup>

The concept is constantly modified to suit a wide variety of sectors and organizations. There are public sector ombudsmen, created by statute and private sector ombudsmen, created as voluntary schemes, legislative ombudsmen and executive ombudsmen, all-purpose ombudsmen and specialized ombudsmen. Some ombudsmen can investigate on their own initiative while others can only act upon complaints. There are ombudsmen who conduct their own investigations and there are others who rely on a team or panel to investigate on their behalf. Ombudsmen are now found in the north and the south, in capitalist economies and socialist economies, as well as in unitary states and federal states.<sup>34</sup>

The vast majority of ombudsmen operate only within a national jurisdiction. There are, however, some ombudsman offices that have international responsibility. The European Community Ombudsman, formed through the Maastricht Treaty, for instance, is responsible for investigating complaints of mal-administration in the activities of Community institutions or bodies.<sup>35</sup>

The ombudsman concept has developed and has been consistently embraced by other countries. Throughout its history and development,

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<sup>30</sup> Gregory Roy and Giddings Philip, "The Ombudsman, The Citizen and Parliament", A History of the Office of the Parliamentary Commissioner for Administration and Health Service Commissioners, Politico Publishing (<http://www.policy.hu/bokhari/OmbuIntro.html>, [visited on October 17, 2006]).

<sup>31</sup> International Ombudsman Institute website ([www.law.ualberta.ca/centres/ioi/eng/eng\\_home.html](http://www.law.ualberta.ca/centres/ioi/eng/eng_home.html), [visited on October 17, 2006]).

<sup>32</sup> Countries like Australia, Argentina, Mexico, Pakistan, Spain and United Kingdom have ombudsman at the national level while Canada, India and Italy have established ombudsmen at a sub-national level. (<http://www.policy.hu/bokhari/OmbuIntro.html> [visited on October 17, 2006]).

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

one thing has remained invariable—that is, the element of independence. From the ancient times to the 18<sup>th</sup> century when it was established in Sweden, measures were taken in order to ensure that the ombudsman enjoyed complete independence, free from the reins of any other governmental body. This grant of independence is only but natural considering the purpose of the ombudsman, which is to provide safeguard that every citizen will be provided an avenue to voice his concern and grievances and to permit opportunity for resolution prior to seeking remedy within the costly, cumbersome and backlogged judicial system.<sup>36</sup> The independence of the ombudsman, thus, is not merely fiscal independence, but an independence which emanates from the fact that it is not a part of any other branch or instrumentality of the government, one which would lend it credence of impartiality that would consequently give power to its mere recommendation.

The operational mode of the ombudsman varies greatly according to the activity and environment. However, regardless of the kind and activity that an ombudsman would be engaged in, the independence of the ombudsman must never be compromised. As stated by David Peppiatt,<sup>37</sup> “The original Swedish conception of the ombudsman as a third party remains the most important feature of all ombudsman systems. *As an independent, nonpartisan officer the ombudsman can ensure the confidence of all concerned and is in a position to adjudicate, investigate, mediate, monitor or referee according to the relevant jurisdiction and role.*”<sup>38</sup> Taking this to account, it is now proper to examine the Philippine Ombudsman to determine whether the independence that is of prime importance was encapsulated in the Constitution, in the law and in jurisprudence.

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<sup>36</sup> Lifted from Mobeen Ahmed Khan’s “A Commentary on Ombudsman, Law, Scope and Prospects,” published by Asia House in 2001. (<http://www.policy.hu/bokhari/OmbuIntro.html> [visited on October 17, 2006]).

<sup>37</sup> Peppiatt was the Project Researcher in “The Ombudsman Project Inter-agency Steering Group Meeting” held on November 21, 1997 at British Red Cross. (<http://www.hapinternational.org/hapgeneva/OMBUDSMAN/OmbudP1.html> [visited on October 17, 2006]).

<sup>38</sup> *Ibid.* (Emphases supplied).

## THE PHILIPPINE OMBUDSMAN

Public office is a public trust.<sup>39</sup> This is the guiding principle for the creation of the Office of the Ombudsman as embodied in the 1987 Constitution, Article XI, Section 5, to wit:

There is hereby created the *independent* Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy, at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed. (Emphasis supplied)

The Constitution is clearly worded that the Office of the Ombudsman must be independent. This is further stressed by the subsequent provisions in the Constitution regarding the qualifications of the Ombudsman and his Deputies,<sup>40</sup> their appointment,<sup>41</sup> their salaries,<sup>42</sup> their term of office,<sup>43</sup> and the fiscal autonomy of the office of the Ombudsman.<sup>44</sup>

By providing the aforementioned sections, the 1986 Constitutional Commission deliberately aspired to create an independent body and eliminated the possibility of control or political pressure that might be employed by other government bodies on the Office of the Ombudsman. A stark contrast must be highlighted between the 1987 and 1973 Constitutions when it comes to the Ombudsman provisions. The 1973 Constitu-

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<sup>39</sup> CONST., art. XI, § 1.

<sup>40</sup> CONST., art. XI, § 8, ¶ 1. "The Ombudsman and his Deputies shall be natural-born citizens of the Philippines, and at the time of their appointment, at least forty years old, of recognized probity and *independence*, and members of the Philippine Bar, and must not have been candidates for any elective office in the immediately preceding election. The Ombudsman must have ten been a judge or engaged in the practice of law in the Philippines." (Emphasis supplied)

<sup>41</sup> CONST., art. XI, § 9. "The Ombudsman and his Deputies shall be appointed by the President from a list of at least six nominees for every vacancy thereafter. Such appointments shall require no confirmation. All vacancies shall be filled within three months after they occur."

<sup>42</sup> CONST., art. XI, § 10. "The Ombudsman and his Deputies shall have the rank of Chairman and Members, respectively of the Constitutional Commissions, and they shall receive the same salary, which shall not be decreased during their term of office."

<sup>43</sup> CONST., art. XI, § 11. "The Ombudsman and his Deputies shall serve for seven years without reappointment. They shall not be qualified to run for any office in the election immediately succeeding their cessation from office."

<sup>44</sup> CONST., art. XI, § 14. "The Office of the Ombudsman shall enjoy fiscal autonomy. Its approved annual appropriations shall be automatic and be regularly released."

tion merely provides under Article XIII, Section 6 that: “The Batasang Pambansa shall create an office of the Ombudsman, to be known as the *Tanodbayan*, which shall receive and investigate complaints relative to the public office, including the government-owned and controlled corporations, make appropriate recommendations and in case of failure of justice as defined by law, file and prosecute the corresponding criminal, civil or administrative case before the proper court or body.” While the 1987 Constitution provides for elaborate standards for the creation of an autonomous ombudsman, the 1973 Constitution left to the Legislative the determination of the standards for the creation of the Ombudsman, which in turn, had the effect of obliterating the identity of the ombudsman—creating a powerful ombudsman but with less, if not hampered, independence.<sup>45</sup>

Although the 1987 Constitution provided for the standards for the creation of the Office of the Ombudsman as well as its powers and functions, it also gave authority to Congress to expand these powers and functions under Article XI, § 13 (8), stating the Ombudsman shall exercise “such other powers or perform other functions as may be provided by law,” and the Congress did so by enacting R.A. 6770. True enough, the powers of the Ombudsman in the Constitution<sup>46</sup> were expanded through

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<sup>45</sup> It is worthy to take note that although the 1973 Constitution gave the power to create the Ombudsman to the Batasang Pambansa, it was still President Marcos, who exercised legislative powers when the Philippines was placed under Martial Law, who promulgated the enabling law for the creation of the Ombudsman through Presidential Decree No. 1487 on June 11, 1978. He also issued decrees for the amendments to P.D. 1487. (<http://www.ombudsman.gov.ph/page.php?pid=4> [visited on October 17, 2006]).

<sup>46</sup> Article XI, § 13 of the 1987 Constitution provides for the powers, functions and duties of the Office of the Ombudsman, to wit:

1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.

3) Direct the Officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents

R.A. 6770. As expressed by the Supreme Court in the recent case of *Estarija v. Ranada*.<sup>47</sup>

Rep. Act No. 6770 provides for the functional and structural organization of the Office of the Ombudsman. In passing Rep. Act No. 6770, Congress deliberately endowed the Ombudsman with the power to prosecute offenses committed by public officers and employees to make him a more active and effective agent of the people in ensuring accountability in public office.

*Estarija* further provided that the Constitution does not restrict the powers of the Ombudsman in Section 13, Article XI of the 1987 Constitution but rather allows the legislature to enact a law that would spell out the powers of the Ombudsman. With this, the legislature has vested the Ombudsman with broad powers to enable him to implement his own actions. Through the enactment of R.A. 6770, specifically Section 15 thereof,<sup>48</sup> the Congress

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relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.

5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.

6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.

7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.

8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

<sup>47</sup> 492 SCRA 652 (2006), at 670 citing *Uy v. Sandiganbayan* (354 SCRA 651 [2001]).

<sup>48</sup> "SEC. 15. *Powers, Functions and Duties*. – The Office of the Ombudsman shall have the following powers, functions and duties:

"(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;

"(2) Direct, upon complaint or at its own instance, any officer or employee of the Government, or of any subdivision, agency or instrumentality thereof, as well as any government-owned or controlled corporations with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties;

"(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty

stretched the powers of the Ombudsman more than what is already provided for in the Constitution.

In examining the provisions of R.A. 6770, it is important to note the intention of the framers of the Constitution to provide an independent office of the Ombudsman. But more importantly, the architects of the Constitution desired to have an ombudsman who, according to the words of Commissioner Monsod,<sup>49</sup> has “prestige and persuasive powers,” an

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required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: *Provided*, That the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer;

“(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as it may provide in its rules of procedure, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action;

“(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;

“(6) Publicize matters covered by its investigation of the matters mentioned in paragraphs (1), (2), (3) and (4) hereof, when circumstances so warrant and with due prudence: *Provided*, That the Ombudsman under its rules and regulations may determine what cases may not be made public: *Provided, further*, That any publicity issued by the Ombudsman shall be balanced, fair and true;

“(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government, and make recommendations for their elimination and the observance of high standards of ethics and efficiency;

“(8) Administer oaths, issue *subpoena* and *subpoena duces tecum*, and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records;

“(9) Punish for contempt in accordance with the Rules of Court and under the same procedure and with the same penalties provided therein;

“(10) Delegate to the Deputies, or its investigators or representatives such authority or duty as shall ensure the effective exercise or performance of the powers, functions, and duties herein or hereinafter provided;

“(11) Investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth amassed after February 25, 1986 and the prosecution of the parties involved therein.

“The Ombudsman shall give priority to complaints filed against high ranking government officials and/or those occupying supervisory positions, complaints involving grave offenses as well as complaints involving large sums of money and/or properties.”

<sup>49</sup> *Acop v. Office of the Ombudsman*, 248 SCRA 566 (1995), at 578.

ombudsman who can have the chance to really “function as a champion of the citizen” and *an ombudsman with powers to make him more effective*. Thus, came the provision under Section 13 (8), which serves as a compromise between the desire to create a *pure ombudsman*<sup>50</sup> and an *effective ombudsman*.<sup>51</sup>

Pursuant to the power given to the Congress, a powerful and proactive ombudsman was created. Despite the modifications made by the 1987 Constitution and the expansive power given by the Congress under R.A. 6770, the Philippine Ombudsman remains to be a pure ombudsman. It has theoretically been considered as non-partisan, a separate entity that is functionally autonomous and a legally established government institution. Evolution and developments, however, are inevitable. These developments not only give more power to the Ombudsman, but they also gradually take away the identity and more importantly, the independence of the Ombudsman—an element which is vital to its existence as well as to its effectiveness.

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<sup>50</sup> Professor Larry B. Hill, in his address delivered at the 1997 Spring Meeting of the American Bar Association Section of Administrative Law and Regulatory Practice, Hotel Washington, Washington D.C., entitled “American Ombudsmen and ‘Wannabe’ Ombudsmen”, has enumerated the following characteristics of the pure ombudsman:

- a. Established as separate entity that is functionally autonomous.
- b. Operationally independent of both the legislature and the executive.
- c. Ombudsman is a legally established governmental official.
- d. A monitoring specialist.
- e. Administrative expert and professional.
- f. Non-partisan.
- g. Normatively universalistic.
- h. Client-centered, but not anti-administration.
- i. Popularly accessible and visible.
- j. High status institutions
- k. Have extensive resources to perform his mission.

(<http://www.policy.hu/bokhari/OmbuIntro.html> [visited on October 17, 2006]).

<sup>51</sup> The members of the Constitutional Commission obviously have reservations about creating an overly powerful ombudsman. It was expressly stated by Commissioner Monsod that they “want to give the concept of a pure Ombudsman a chance under the Constitution.” However, it also apparent that they see the weakness of a pure ombudsman with neither punitive or prosecutory powers, but merely persuasive powers, in fear of raising the hopes of the people and then later on disappointing them due to possible lack of action. This can be inferred from the Records of the Constitutional Commission as cited in the case of *Estarija v. Ranada* at 492 SCRA 652 (2006), at 672.

### *A Toothless Tiger No More*

Instructive are the words of Senator Edgardo Angara<sup>52</sup> in examining the evolution and expansion of the powers of the Philippine Ombudsman. In his explanation during the deliberations on Senate Bill No. 534, he stated that he does not agree that the bill is going beyond what the Constitution has prescribed for the Ombudsman and that in fact, it was left to the Legislature to determine the powers and functions allocated in the Ombudsman. Persuasively, he articulated that:

[T]he question one must always ask, if he wants this institution of the Ombudsman to be effective, rather than simply be the other watchdogs the past administration created. Then we believe, the Committee believes, that *we must give the Ombudsman the necessary teeth in order to implement its own decision*. We believe that it is in full accord with the Filipino custom and tradition, and based on our historical experience. *Short of not giving the Ombudsman the disciplining authority, I think we might as well kiss the system goodbye, because it will be like the same watchdogs created in the past—toothless and inutile.*<sup>53</sup>

More than just a recommendatory body, the Office of the Ombudsman is likewise envisioned by the Constitution to serve as the **principal and primary** complaints and action center for the aggrieved layman baffled by the bureaucratic maze of procedures. For this purpose, it was **granted more than the usual powers given to prosecutors**. It is vested with the power to investigate complaints against a public office or officer on its own initiative, even without a formal complaint lodged before it.<sup>54</sup> It can inquire into acts of government agencies and public servants based on reports in the media and those which come to its attention through sources other than a complaint. The method of filing a complaint with the Ombudsman is direct, informal, speedy and inexpensive. All that may be required from a complainant is sufficient information detailing the illegal or improper acts complained of. The ordinary citizen, who has become increasingly dependent on public agencies, is put to minimal

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<sup>52</sup> Senator Angara is one of the sponsors of Senate Bill No. 534, which was later on consolidated with House Bill No. 13646 and to become R.A. 6770 otherwise known as "The Ombudsman Act of 1989." (Records of the Senate, Vol. II, No. 5, August 1, 1988, at 141).

<sup>53</sup> *Ibid.*

<sup>54</sup> CONST., art. XI, §13 ¶1.

expense and difficulty in getting his complaint acted on by the Office of the Ombudsman.<sup>55</sup>

The Supreme Court has enunciated that the power to investigate and to prosecute granted by law to the Ombudsman is *plenary and unqualified* and that the jurisdiction of the Office of the Ombudsman should not be equated with the limited authority of the Special Prosecutor under Section 11 of R.A. 6770.<sup>56</sup> Indeed, it must be stressed that the powers granted by the legislature to the Ombudsman are very broad and encompass all kinds of malfeasance, misfeasance and nonfeasance committed by public officers and employees during their tenure of office as Section 15 of R.A. 6770 gives the Ombudsman primary jurisdiction over cases cognizable by the Sandiganbayan. The law defines such primary jurisdiction as authorizing the Ombudsman “to take over, at any stage, from any investigatory agency of the government, the investigation of such cases.”<sup>57</sup>

Still with regard to the strengthened power of the Ombudsman, the cases which the Ombudsman may investigate, however, are not limited to criminal cases. They include those involving acts and omissions of public officials which are alleged to be merely “unjust, improper or inefficient.” It may further act on complaints filed with that office “in any form, either verbal or in writing.”<sup>58</sup> This is in accordance with its designation as “protector of the people” and the mandate of the Constitution requiring the Ombudsman and his deputies to “act promptly on complaints filed *in any form or manner* against public officials and employees.”<sup>59</sup> Moreover, in permitting the filing of complaints “in any

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<sup>55</sup> *Estarija v. Ranada* citing *Concerned Officials of the Metropolitan Waterworks and Sewerage System (MWSS) v. Vasquez*, 240 SCRA 502 (1995), at 522-523.

<sup>56</sup> *Uy v. Sandiganbayan* (351 SCRA 651 [2001]).

R.A. 6770, § 11: “(4) The Office of the Special Prosecutor shall, under the supervision and control and upon the authority of the Ombudsman, have the following powers:

“(a) To conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan;

“(b) To enter into plea bargaining agreements; and

“(c) To perform such other duties assigned to it by the Ombudsman.”

The Special Prosecutor shall have the rank and salary of a Deputy Ombudsman.

<sup>57</sup> R.A. 6770, § 15 ¶ 1.

<sup>58</sup> Rule 1, § 3, Rules of Procedure of the Office of the Ombudsman.

<sup>59</sup> *Olivas v. Office of the Ombudsman*, 239 SCRA 283 (1994), at 294.

form or manner,” the framers of the Constitution took into account the “well-known reticence of the people which keep them from complaining against official wrongdoings. The Office of the Ombudsman is different from the other investigatory and prosecutory agencies of the government because those subject to its jurisdiction are public officials who, through official pressure and influence, can quash, delay or dismiss investigations held against them.”<sup>60</sup>

The Ombudsman is further emboldened by the Supreme Court in its decision in *Almonte v. Vasquez*,<sup>61</sup> in which the Court affirmed the power of the Ombudsman to obtain evidence from a government agency despite the latter’s claim of privilege or confidentiality. Therein, the High Court ruled:

At common law a governmental privilege against disclosure is recognized with respect to state secrets bearing on military, diplomatic and similar matters. This privilege is based upon public interests of such paramount importance as in and of itself transcending the individual interests of a private citizen, even though, as a consequence thereof, the plaintiff cannot enforce his legal rights.

Anent the disclosure policy is the case of *Ejercito v. Sandiganbayan*.<sup>62</sup> The case presented the issue of whether or not *subpoena duces tecum/ad testificandum* may be issued to order the production of statement of bank accounts even before a case for plunder is filed in court. Therein, the Supreme Court ruled that plunder is analogous to bribery, and therefore, the exception to R.A. 1405<sup>63</sup> must also apply to cases of plunder. The Court also reiterated the ruling in *Marquez v. Desierto*<sup>64</sup> that before an *in camera* inspection may be allowed there must be a pending case before a court of competent jurisdiction. Further, the account must be clearly identified, the inspection limited to the subject matter of the pending case before the court of competent jurisdiction.

The High Court, however, rejected the argument of petitioner Ejercito that the bank accounts which were demanded from certain banks

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<sup>60</sup> *Garcia v. Miro*, 397 SCRA 41 (2003), at 49-50.

<sup>61</sup> 244 SCRA 286 (1995), at 304.

<sup>62</sup> G.R. Nos. 157294-95, November 30, 2006.

<sup>63</sup> R.A. 1405 is also known as the “Bank Secrecy Law.”

<sup>64</sup> 412 Phil. 387 (2001), at 397.

even before a case was filed<sup>65</sup> before the proper court is inadmissible in evidence being fruits of poisonous tree. This is *because the Ombudsman issued the subpoenas bearing on the bank accounts of petitioner about four months before Marquez was promulgated on June 27, 2001*. “While judicial interpretations of statutes, such as that made in *Marquez* with respect to R.A. No. 6770 or the Ombudsman Act of 1989, are deemed part of the statute as of the date it was originally passed, the rule is not absolute.”<sup>66</sup> Thus, the Court referred to the teaching of *Columbia Pictures, Inc. v. Court of Appeals*,<sup>67</sup> that:

It is consequently clear that a judicial interpretation becomes a part of the law as of the date that law was originally passed, **subject only to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively** and should not apply to parties who relied on the old doctrine and acted in good faith.

The powers of the Ombudsman even extend to private acts committed by a public officer. As ruled by the Court in *Lastimosa v. Vasquez*,<sup>68</sup> the Ombudsman’s powers include the investigation and prosecution of any crime committed by a public official regardless of whether the acts or omissions complained of are related to, or connected with, or arise from, the performance of his official duty. It is enough that the act or omission was committed by a public official.

Moreover, *vis-a-vis* other prosecutors, the exercise by the Ombudsman of its power to investigate public officials is given **preference** over

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<sup>65</sup> *Ejercito v. Sandiganbayan*, G.R. Nos. 157294-95, November 30, 2006.

“As early as **February 8, 2001**, long before the issuance of the *Marquez* ruling, the Office of the Ombudsman, acting under the powers granted to it by the Constitution and R.A. No. 6770, and acting on information obtained from various sources, including impeachment (of then Pres. Joseph Estrada) related reports, articles and investigative journals, issued a *subpoena Duces Tecum* addressed to Urban Bank On February 16, 2001, Ms. Dela Paz, as interim receiver, furnished the Office of the Ombudsman certified copies of documents requested in compliance with the *sub poena duces tecum*. The Office of the Ombudsman then requested for the manger’s checks, detailed in the *subpoena Duces Tecum* dated **March 7, 2001**. The Office of the Ombudsman was provided copies of the manager’s checks requested under cover letter dated March 16, 2001.

<sup>66</sup> *Ibid.*, at 17, Advance Sheets.

<sup>67</sup> 261 SCRA 144 (1996), at 168.

<sup>68</sup> 243 SCRA 497 (1995), at 504.

other bodies, as held in the case of *Department of Justice (DOJ) v. Liwag*.<sup>69</sup> In this case, the Supreme Court had the occasion to resolve whether or not the DOJ has jurisdiction to conduct a preliminary investigation despite the pendency before the Ombudsman of a complaint involving the same accused, facts, and circumstances. The High Court ruled in the negative, stating that Section 13, Article XI of the Constitution specifically vests in the Office of the Ombudsman the **plenary power** to investigate any malfeasance, misfeasance or nonfeasance of public officers or employees. It also focused on the constitutionally endowed powers to the Ombudsman, rationalizing:<sup>70</sup>

To discharge its duty effectively, **the Constitution endowed the Office of the Ombudsman with special features which puts it a notch above other grievance-handling, investigate bodies.** First and foremost, **it extended independence to the Ombudsman and insulated it from the intrusions of partisan politics.** Thus, the Constitution provided for stringent qualification requirements for the selection of the Ombudsman and his deputies, *i.e.*, they should be natural-born citizens, **of recognized probity and independence** and must not have been candidates for any elective office in the immediately preceding election. The Ombudsman and his deputies were given the rank and salary equal to that of the Chairman and Members, respectively, of the Constitutional Commissions, with a prohibition for any decrease in their salary during their term of office. They were given a fixed term of seven years, without reappointment. Upon their cessation from office, they are prohibited from running for any elective office in the immediately succeeding election. Finally, unlike other investigative bodies, the Constitution granted the Office of the Ombudsman fiscal autonomy. **Clearly, all these measures are intended to enhance the independence of the Office of the Ombudsman.**

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The Office of the Ombudsman was likewise envisioned by the Constitution to serve as the **principal and primary** complaints and action center for the aggrieved layman baffled by the bureaucratic maze of procedures. For this purpose, it was **granted more than the usual powers given to prosecutors.** It was vested with the power to investigate complaints against a public office or officer on its own initiative, even without a formal complaint lodged before it.

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<sup>69</sup> 451 SCRA 83 (2005).

<sup>70</sup> *Id.*, at 96-97.

Thus, the Supreme Court concluded that the Ombudsman has **primary jurisdiction** over cases cognizable by the **Sandiganbayan** and **he has authority to take over, at any stage, from any investigatory agency, the investigation of such cases.**

Also connected with the expansive powers of the Ombudsman created under R.A. 6770 is the authority to preventively suspend a public officer under investigation. Under the said law, the Ombudsman is given the power to “preventively suspend any officer or employee under his authority pending an investigation, if in his judgment, the evidence of guilt is strong, and if (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent’s continued stay in office may prejudice the case filed against him.”<sup>71</sup>

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<sup>71</sup> R.A. 6770 § 24, which in whole provides:

“Sec. 24. *Preventive Suspension.* – The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment, the evidence of guilt is strong, and a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent’s continued stay in office may prejudice the case filed against him.

“The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.”

It is well settled that “there clear-cut distinction between suspension *as preventive measure* and suspension *as penalty*. The distinction, by considering the purpose aspect of the suspensions, is readily cognizable as they have different ends sought to be achieved ... Preventive suspension is merely a preventive measure, a preliminary step in an administrative investigation. The purpose of the suspension order is to prevent the accused from using his position and the powers and prerogatives of his office to influence potential witnesses or tamper with records which may be vital in the prosecution of the case against him.” *Quimbo v. Gervasco* at 466 SCRA 277 (2005), at 281.

It has also been recently held that only the Ombudsman and the Deputy Ombudsman has the power to place under preventive suspension government officials and employees under their authority pending an administrative investigation. The Special Prosecutor may recommend to the Ombudsman to place the said public officer or employee under preventive suspension. Section 24 of R.A. No 6770 makes no mention of the Special Prosecutor with respect to the grant of the power to preventively suspend. The obvious import of this exclusion is to withhold from the Special Prosecutor the same. Ombudsman and

As regards the prescription of offenses, the Supreme Court emphasized the clout of the Office of the Ombudsman by ruling that it is discretionary upon the Ombudsman whether or not to conduct an investigation on a complaint even if it was filed after one year from the occurrence of the act or omission complained. This was enunciated in recent case of *Filipino v. Macabuhay*.<sup>72</sup> Therein, the Court said that R.A. 6770 used the word “may” which is only permissive and operates to confer discretion, not “shall” which is imperative and imposes a duty which may be enforced.

Relevant to the extensive power of the Ombudsman is the ruling of the Supreme Court in *Uy v. Sandiganbayan*.<sup>73</sup> The *Uy* doctrine came about through the Resolution of the Supreme Court reconsidering and abandoning what it said in the penultimate paragraph<sup>74</sup> of the original decision<sup>75</sup> prompted by the Clarificatory Motion of then Ombudsman Aniano A. Desierto. In issuing the extended resolution, the High Tribunal reiterated that the power to investigate and to prosecute granted by the law to the Ombudsman is plenary and unqualified. It further stated that:

The law [R.A. 6770] does not make a distinction between cases cognizable by the Sandiganbayan and those cognizable by regular courts. It has been held that the clause “any illegal act or omission or any public official” is broad enough to embrace any crime committed by a public officer or employee.

Therein, the Court also said that the jurisdiction of the Office of the Ombudsman should not be equated with the limited authority of the Special Prosecutor and that the reference made by R.A. 6770 to cases

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the Deputy Ombudsmen have been granted the power to preventively suspend as the same inheres in their mandate under the Constitution. *Office of the Ombudsman v. Valera*, 471 SCRA 715 (2005), at 747-748.

<sup>72</sup> GR No. 158960, November 24, 2006.

<sup>73</sup> 354 SCRA 651 (2001).

<sup>74</sup> 312 SCRA 77 (2001), at 89.

The penultimate paragraph states: “In this connection, it is the prosecutor, not the Ombudsman, who has the authority to file the corresponding information/s against petitioner in the regional trial court. The Ombudsman exercises prosecutorial powers only in cases cognizable by the Sandiganbayan”.

<sup>75</sup> The original decision in *Uy v. Sandiganbayan* (312 SCRA 77 [1999]) was penned by Justice Pardo. He became the lone dissenter when the extended resolution was issued which overturned the original decision.

cognizable by the Sandiganbayan, particularly in Section 15 (1)<sup>76</sup> giving the Ombudsman primary jurisdiction over cases cognizable by the Sandiganbayan, and Section 11 (4)<sup>77</sup> granting the Special Prosecutor the power to conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan, should not be construed as confining the scope of the investigatory and prosecutory power of the Ombudsman to such cases. Section 15 of the said act gives the Ombudsman primary jurisdiction over cases cognizable by the Sandiganbayan. While the law defines such primary jurisdiction as authorizing the Ombudsman “to take over, at any stage, from any investigatory agency of the government, the investigation of such cases,” the grant of this authority does not necessarily imply the exclusion from its jurisdiction of cases involving public officers and employees cognizable by other courts. The exercise by the Ombudsman of his primary jurisdiction over cases cognizable by the Sandiganbayan is not incompatible with the discharge of his duty to investigate and prosecute other offense committed by public officers and employees.

With this ruling, the Supreme Court elucidated that:

**\*\*\* [T]he Philippine Ombudsman departs from the classical Ombudsman model whose function is merely to receive and process the people’s complaints against corrupt and abusive government personnel.** The Philippine Ombudsman, as protector of the people, is armed with the power to prosecute erring public officers and employees, giving him an active role in the enforcement of laws on anti-graft and corrupt practices and such other offenses that may be committed by such officers and employees. \* \* \* **Recog-**

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<sup>76</sup> R.A. 6770, § 15.

“(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;”

<sup>77</sup> R.A. 6770, § 11 ¶ 4 states that the Office of the Special Prosecutor shall, under the supervision and control and upon the authority of the Ombudsman, have the following powers: (a) to conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan; (b) to enter into plea bargaining agreements; and c) to perform such other duties assigned to it by the Ombudsman.

<sup>78</sup> 354 SCRA 651 (2001), at 666 (Emphases supplied).

**nizing the importance of this power, the Court cannot derogate the same by limiting it only to cases cognizable by the Sandiganbayan. It is apparent from the history and the language of the present law that the legislature intended such power to apply not only to cases within the jurisdiction of the Sandiganbayan but also those within the jurisdiction of regular courts.<sup>78</sup>**

There is no question as to why the Philippines adopted the ombudsman concept. There has always been a need to safeguard law and order for the individual as an appellate institution for citizens who come in conflict with the administrative agencies.<sup>79</sup> Moreover, the history of the Philippines shows that political stability is yet to be achieved. Indeed, as shown by jurisprudence and law, the Ombudsman has and is continually being empowered. The developments mentioned, however, all stand behind the authority decreed by the Supreme Court to be possessed by the Ombudsman in the case of *Ledesma v. Court of Appeals*,<sup>80</sup> which reverberated in the above mentioned recent case of *Estarija v. Ranada*.<sup>81</sup>

Words which form the laws indeed have their meanings and applications in different situations. From the words in the Constitution and R.A. 6770, the Supreme Court interpreted the same and conferred powers upon the Office of the Ombudsman. But as stated, none of these powers had the same influence as the dominion given by the High Court to the Ombudsman in the case of *Ledesma*. With the authority laid down in *Ledesma*,<sup>82</sup> a metamorphosis of power followed and the Philippine Ombudsman evolved into a creature of strength, dominance and supremacy more than its authors imagined.

### ***Words and Phrases: Recommendations as "Directives"***

Since the ombudsman's powers lie essentially in recommendation, there is a genuine concern that the ombudsman lacks 'teeth'.<sup>83</sup> This

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<sup>79</sup> This came from International Handbook of Ombudsman by Lars Nordskov Nielsen, a former Ombudsman in Denmark. (<http://www.policy.hu/bokhari/OmbuIntro.html> [visited on October 17, 2006]).

<sup>80</sup> 465 SCRA 437 (2005).

<sup>81</sup> 492 SCRA 652 (2006).

<sup>82</sup> 465 SCRA 437 (2005).

<sup>83</sup> <http://www.hapinternational.org/hapgeneva/OMBUDSMAN/OmbudP1.html> (visited on October 17, 2006).

problem has been addressed by the Constitutional Commission by specifying the powers of the Ombudsman in the Constitution itself and further providing power to the Congress to broaden these powers through legislative acts.<sup>84</sup> Although R.A. 6770 did specify the creation of an *independent* body as conferred by the Constitution, the act nonetheless provided for certain standards which would ensure that the Office of the Ombudsman remain an independent body. Although the Congress has, in a way, disregarded the intention of the framers of the Constitution of not letting the Ombudsman deteriorate into a prosecutory arm,<sup>85</sup> still, the establishment of the Office of the Special Prosecutor as a branch of the Office of the Ombudsman gave the latter a greater leverage in performing its mandate to be proactive and to fight corruption in the bureaucracy.

The identity of the Ombudsman remained all throughout these developments that enlarged the his powers, encapsulating the intention of the framers of the 1987 Constitution to form an ombudsman seen as a civil advocate or a champion of the citizens against the bureaucracy. Throughout these developments, the ombudsman continued to be the tangible, independent avenue for processing public complaints and

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<sup>84</sup> *Estarija v. Ranada*, 492 SCRA 652 (2006).

<sup>85</sup> Records of the Constitutional Commission show the apprehension of the Commissioner Monsod about the Ombudsman turning into a prosecutory body. The deliberation goes:

MR. RODRIGO: And precisely, Section 12(6) says that among the functions that can be performed by the Ombudsman are "such functions or duties as may be provided by law." \* \* \*

MR. COLAYCO: Madam President, that is correct.

MR. MONSOD: Madam President, perhaps it might be helpful if we give the spirit and intendment of the Committee. What we wanted to avoid is the situation where it deteriorates into a prosecution arm. We wanted to give the idea of the Ombudsman a chance, with prestige and persuasive powers, and also a chance to really function as a champion of the citizen.

However, we do not want to foreclose the possibility that in the future, the Assembly, as it may see fit, may have to give additional powers to the Ombudsman; we want to give the concept of a pure Ombudsman a chance under the Constitution.

MR. RODRIGO: Madam President, what I am worried about is, if we create a constitutional body which has neither punitive nor prosecutory powers but only persuasive powers, we might be raising the hopes of our people too much and then disappoint them.

(RECORDS OF THE CONSTITUTIONAL COMMISSION, Vol. II, at 950).

grievances relating to maladministration or malpractice, investigating grievances and reporting the findings and recommendations to the complainant and organization concerned.<sup>86</sup> This identity, however, changed with the advent of the *Ledesma* doctrine. From a fang-less being, it evolved into a *Shere Khan*,<sup>87</sup> a brutal tiger who can use *and* abuse his power to get what he wants.

The *Ledesma* case came about with the suspension of the Chairman<sup>88</sup> of the First Division of the Board of Special Inquiry of the Bureau of Immigration and Deportation (BID) for conduct prejudicial to the interest of the service. Petitioner Ledesma insisted that the word “*recommend*” be given its literal meaning; that is, that the Ombudsman’s action was only advisory in nature rather than one having any binding effect, citing *Tapiador v. Office of the Ombudsman*.<sup>89</sup> The Supreme Court, however, disagreed and declared that:

Several reasons militate against a literal interpretation of the subject constitutional provision. Firstly, a cursory reading of *Tapiador* reveals that the main point of the case was the failure of the complainant therein to present substantial evidence to prove the charges of the administrative case. The statement that made reference to the power of the Ombudsman is, at best, merely an *obiter dictum* and, as it is unsupported by sufficient explanation, is susceptible to varying interpretations, as what precisely is before us in this case. Hence, it cannot be cited as a doctrinal declaration of this Court nor is it safe from judicial examination.

Taking a longer leap, the Court said that:

We note that the proviso [R.A. 6770, § 15, ¶ 3] above qualifies the “order” “to remove, suspend, demote, fine, ensure, or prosecute” an officer or employee – akin to the questioned issuances in the case at bar. That the refusal, without just cause, of any officer to comply

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<sup>86</sup> <http://www.hapinternational.org/hapgeneva/OMBUDSMAN/OmbudP1.html> (visited on October 17, 2006).

<sup>87</sup> *Shere Khan* is a fictional Bengal tiger of the Indian jungle, named after a Pashtun Prince (Sher Khan Nasher) Rudyard Kipling encountered on his trips to Afghanistan. Shere Khan is the chief enemy in two of Rudyard Kipling’s Jungle Book stories ([http://en.wikipedia.org/wiki/The\\_Jungle\\_Book#Characters](http://en.wikipedia.org/wiki/The_Jungle_Book#Characters) [visited on January 26, 2007]).

<sup>88</sup> The petitioner Atty. Ronald P. Ledesma was ironically the investigator in the case involving *Tapiador v. Sandiganbayan*. Now in this case, he is charged for the alleged anomalies surrounding the extension of the Temporary Resident Visas (TRVs) of two (2) foreign nationals.

<sup>89</sup> 379 SCRA 322 (2002).

with such an order of the Ombudsman to penalize an erring officer or employee is a ground for disciplinary action, is ***a strong indication that the Ombudsman's "recommendation" is not merely advisory in nature but is actually mandatory*** within the bounds of law. This should not be interpreted as usurpation by the Ombudsman of the authority of the head of office or any officer concerned. \* \* \* By stating therefore that the ***Ombudsman "recommends" the action to be taken against an erring officer or employee, the provisions in the Constitution and in RA 6770 intended that the implementation of the order be coursed through the proper officer***, which in this case would be the head of the BID.<sup>90</sup>

And, as if to dispel any further doubts as well as to emphasize that the controlling rule is presently the *Ledesma Doctrine*, the Supreme Court in the fairly recent case of *Office of the Ombudsman v. Court of Appeals*<sup>91</sup> buttressed that the ruling in *Tapiador* is a mere *obiter dictum*. The Court categorically pronounced that the statement in *Tapiador* on the Ombudsman's power is at best, merely an *obiter dictum*, and as such cannot be cited as a doctrinal declaration of the Supreme Court. It was further held by the High Court that notwithstanding the term "recommend", the provision construed together with the pertinent provisions

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<sup>90</sup> 465 SCRA 437 (2005), at 449-450 (Emphases supplied).

In deciding the landmark case *Ledesma*, the Supreme Court took into consideration §13(3) of Article XI of the 1987 Constitution which provides that the Office of the Ombudsman shall have the power, function and duty to "[d]irect the officer concerned to take appropriate action against a public official or employee at fault, and ***recommend*** his removal, suspension, demotion, fine, censure, or prosecution, and ***ensure compliance therewith***." (Emphases supplied)

<sup>91</sup> 491 SCRA 92 (2006).

A criminal complaint in violation of Article 281 (Other Forms of Trespass) under the Revised Penal Code was filed with the Office of the Ombudsman against certain employees of Department of Environment and Natural Resources (DENR) Regional Office in Mandaue City, alleging that the employees conspired to enter the parcel of land owned by the Corominas family without seeking permission from the latter or their representative and despite the big "NO TRESPASSING" sign attached to the fence enclosing the property. The case was also treated as administrative conduct for abuse of authority. Subsequently, the Office of Ombudsman dismissed the criminal complaint but ruled that some of the DENR employees involved are guilty of simple misconduct and imposed a penalty of suspension for one month. The Court of Appeals, however, granted the petition for *certiorari* filed by the suspended employees and ruled that Ombudsman's power is limited only to recommendation of the penalty. The Supreme Court, reversed the Court of Appeals decision and affirmed the power of Ombudsman to impose administrative sanctions in the exercise of its administrative disciplinary authority.

of R.A. 6770 is **not merely advisory in nature but is actually mandatory** within the bounds of law. Taking note of the power of the Ombudsman under the R.A. 6770, the High Court pronounced:

All these provisions in Republic Act No. 6770 taken together reveal the manifest intent of the lawmakers to bestow upon the Office of the Ombudsman full administrative disciplinary authority. These provisions cover the entire gamut of administrative adjudication which entails the authority to, inter alia, receive complaints, conduct investigations, hold hearings, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending the investigation, **determine appropriate penalty imposable on the erring public officers or employees as warranted by evidence, and necessarily, impose the said penalty.**<sup>92</sup>

In *Office of the Ombudsman v. Court of Appeals*,<sup>93</sup> the Court concluded that the legislative history of R.A. 6770 shows that the Office of the Ombudsman was intended to possess full administrative disciplinary authority, including the power to impose the penalty of removal, suspension, demotion, fine, censure or prosecution of a public officer or employee found to be at fault. The Office of the Ombudsman now is what the legislature envisioned it to be an “activist watchman,” not merely a passive one.

The affirmation and magnification of the powers of the Ombudsman came with the ruling of the Supreme Court *En Banc* in *Estarija v. Ranada*.<sup>94</sup> There, the full Court said that through the enactment of R.A. 6770, specifically Section 15, par. 3, the lawmakers gave the Ombudsman such powers to sanction erring officials and employees, except members of Congress and the Judiciary. Holding that Sections 15, 21, 22 and 25 of Republic Act No. 6770 are constitutionally sound, the High Court unanimously ruled that:

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<sup>92</sup> 491 SCRA 92 (2006), at 116 (Emphases supplied).

<sup>93</sup> *Ibid.*

<sup>94</sup> 492 SCRA 652 (2006).

Estarija claimed that his dismissal was unconstitutional since the Ombudsman did not have direct and immediate power to remove government officials, whether elective or appointive, who are not removable by impeachment. He maintained that under the 1987 Constitution, the Ombudsman’s administrative authority is merely recommendatory, and that R.A. 6770 is unconstitutional because it gives the Office of the Ombudsman additional powers that are not provided for in the Constitution.

The powers of the Ombudsman are not merely recommendatory. His office was given teeth to render this constitutional body not merely functional but also effective. Thus, we hold that under Republic Act No. 6770 and the 1987 Constitution, the Ombudsman has the constitutional power to directly remove from government service an erring public official other than a member of Congress and the Judiciary.

### ***Ripples Creating Waves: Unintended Effect of Ledesma Doctrine***

What has been decreed in the past will inevitably affect the present and eventually, the future. Court decisions create changes which are ripples in the Philippine case law. Ripples, no matter how small they are, can produce waves which can touch and influence even the farthest aspect of the Philippine society.

With the landmark cases of *Ledesma* and *Estarija*, the Supreme Court affirmed that the Ombudsman is indeed a unique creation of the 1987 Constitution and without a doubt made the Philippine Ombudsman more powerful than most of the ombudsmen in the world. But then, there are always two sides of a story. There can be advantages and disadvantages of the decisions laid down by the High Court.

It must be remembered that the intent of the framers 1987 Constitution was to give the Office of the Ombudsman additional powers through an enabling law. These additional powers must be read, however, with the main aim of the Constitution, which is to establish an ***independent body***. Giving the Ombudsman a prosecutory arm has more than strengthened the Office of the Ombudsman. Additional powers, such as the authority to initiate a complaint on its own have given the Ombudsman a greater force than its predecessors. However, giving it the power to *directly* dismiss a public official is already over-reading the intent of the

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This ruling is reiterated in the case of *Office of the Ombudsman v. Lucero* (G.R. No. 168718), which was decided on November 24, 2006. In this case, the Supreme Court held that in the exercise of its administrative disciplinary authority under Section 12, Article XI of the 1987 Constitution and R.A. 6770, the Office of the Ombudsman is empowered not merely to recommend, but to impose penalty of removal, suspension, demotion, fine, censure or prosecution of a public officer or employee found to be at fault. With this, it is clear that *Ledesma* has become fully plated in Philippine jurisprudence. It becomes more and more embedded in the Philippine case law every time the power of the Office of the Ombudsman to directly impose sanction is questioned before the Supreme Court.

Constitution. It destroys the identity and impairs the independence of the Ombudsman most crucial to its function.

Making *recommendations* for systemic change is a function shared by all categories of ombudsmen.<sup>95</sup> Yet in the Philippines it is the most overlooked function of the ombudsman and worse, even seen as a weakness rather than a strength of the said office.<sup>96</sup> Notably, that the Ombudsman's recommendations are not binding on authorities is what sets it apart from the more formal dispute resolution mechanism such as the courts. However, this should not be seen as a weakness.<sup>97</sup> As Daniel Jacoby<sup>98</sup> writes, "The advantage of an ombudsman, as opposed to a court of law, is that it does not have the power to enforce its decisions. *The power only to recommend gives it the power of moral suasion.* [Moreover,] Authorities appear satisfied that the ombudsman has no means of coercive action. This ma[k]es it seem 'less dangerous' than a court."<sup>99</sup>

It has been similarly argued that the lack of the power to enforce its decisions is a major advantage of the institution. As noted in Marten Oostings's "A Global View", "most ombudsmen are not vested with the power to make legally binding decisions. This might, at first, seem to be a serious handicap. But if the ombudsman were to possess such powers, he would, in fact, be little more than another court. ***And it is precisely from the fact that it is not a court that the institution derives its identity.*** The ombudsman is, generally speaking, more flexible and has more room to maneuver than a court which is, after all, bound by the rules of procedural law. ***Furthermore, although it is important for the ombudsman to make clear what the consequences of his finding should be, he has to leave it to the government to decide what action to take about those consequences. This demands an active stance on***

<sup>95</sup> <http://www.policy.hu/bokhari/OmbuIntro.html>, (visited on October 17, 2006).

<sup>96</sup> *Ibid.*

<sup>97</sup> [http://www.ombudsmanforum.ca/events/2003\\_conference/nathalie\\_desrosiers\\_speech\\_e.asp](http://www.ombudsmanforum.ca/events/2003_conference/nathalie_desrosiers_speech_e.asp) (visited on October 17, 2006).

<sup>98</sup> Daniel Jacoby served as Protecteur du Citoyen in Quebec. Protecteur du Citoyen is equivalent to Ombudsman in the Philippines. ([http://www.ombudsmanforum.ca/events/2003\\_conference/nathalie\\_desrosiers\\_speech\\_e.asp](http://www.ombudsmanforum.ca/events/2003_conference/nathalie_desrosiers_speech_e.asp), visited on October 17, 2006).

<sup>99</sup> D. Jacoby, "The Future of the Ombudsman", *The International Ombudsman Anthology*, 1999, at 36-37 (Emphasis supplied).

*the part of the government.* What might at first sight appear to be a weakness is, in fact, the key to the significance of the ombudsman.”<sup>100</sup>

True, the operational mode of the ombudsman depends entirely upon the environment, framework and jurisdiction where it is defined<sup>101</sup> and the ombudsman concept crucially depends upon a recognized code or framework which the relevant sector agrees to be held accountable, such as statutory laws, codes of practice and others.<sup>102</sup> However, this fact does not excuse the deviation and destruction of the concept of the ombudsman in the Philippines.

In decreeing the *Ledesma* doctrine, the Supreme Court has made the Ombudsman another court, which is rather contrary to the very nature of the Ombudsman. It may be inadvertent, but the *Ledesma* doctrine made Ombudsman vulnerable. The ripples of this doctrine created large waves considering the independence and the expanded power of the Supreme Court under the present Constitution.

### THE COURT SPEAKS: Judicial Review over Ombudsman Independence

Learning from the lessons of the past and ever mindful that absolute power corrupts absolutely,<sup>103</sup> the 1986 Constitutional Commission put up a safety net against capricious and arbitrary acts, which is embodied in Article VIII, Section 1 of the 1987 Constitution— the expanded power of judicial review of the Supreme Court. Verily, under the said provision of the Constitution, judicial power includes the duty of the

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<sup>100</sup> [http://www.ombudsmanforum.ca/events/2003\\_conference/nathalie\\_desrosiers\\_speech\\_e.asp](http://www.ombudsmanforum.ca/events/2003_conference/nathalie_desrosiers_speech_e.asp), visited on October 17, 2006 (Emphasis supplied).

<sup>101</sup> <http://www.policy.hu/bokhari/OmbuIntro.html> (visited on October 17, 2006).

<sup>102</sup> *Ibid.*

<sup>103</sup> This statement was made by Lord Acton, a British historian of the 19<sup>th</sup> and early 20<sup>th</sup> centuries. ([www.bartelby.com/59/13/powertends.html](http://www.bartelby.com/59/13/powertends.html) [visited December 13, 2006]). This declaration is actually an epic warning that political power is the most serious threat to liberty. The whole quotation goes, “Liberty is not a means to a higher political end. It is itself the highest political end ... liberty is the only object which benefits all alike, and provokes no sincere opposition... The danger is not that a particular class is unfit to govern. Every class is unfit to govern... Power tends to corrupt, and absolute power corrupts absolutely.” (<http://www.libertystory.net/LSTHINKACTON.html> [visited on November 24, 2006]).

courts of justice to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

Despite its constitutionally mandated independence, the Office of the Ombudsman comes within the purview of the High Court's power of judicial review. Pertinent to this is the ruling of the High Court in *Garcia-Rueda v. Pascasio*<sup>104</sup> that “[w]hile the Ombudsman has the full discretion to determine whether or not a criminal case is to be filed, the Supreme Court is not precluded from reviewing the Ombudsman's action when there is an abuse of discretion.” This can only be explained by the fact that while the Ombudsman enjoys, as it must, complete independence, it cannot and must not lose track of the law, which it is bound to uphold and obey.

Time and again, it has been said that there is only one Supreme Court to which all judicial and quasi-judicial bodies must take their bearings. By the oath of their office, public officials like the Ombudsman are bound to respect and obey the decisions of the Supreme Court.<sup>105</sup> It must be remembered that Supreme Court decisions form part of the law of the land.<sup>106</sup> As such, they are binding even on the independent and impartial Ombudsman. True, the Ombudsman is a constitutionally created body with constitutionally granted functions. However, the actions of all constitutional bodies are subject to certiorari proceedings before the Supreme Court and even appellate review by the Court of Appeals in so far as administrative cases are concerned.<sup>107</sup> Thus, the Court may intervene with, strike down or modify actions of the Ombudsman.

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<sup>104</sup> 278 SCRA 769 (1997), at 776.

<sup>105</sup> AM No. 03-8-22 SC-Re: EM No. 03-010- Order of the First Division of the Commission on Elections dated August 15, 2003, Supreme Court Resolution dated September 16, 2003.

<sup>106</sup> CIVIL CODE, art. 7.

<sup>107</sup> See *Fabian v. Desierto*, 295 SCRA 470 (1998).

In *Fabian*, the High Court struck down as unconstitutional Section 27 of R.A. 6770 which expanded the jurisdiction of the Supreme Court by authorizing an *appeal* to this Court from decisions of the Office of the Ombudsman in administrative disciplinary cases. The Court ruled that administrative cases decided by the Office of the Ombudsman should be taken to the Court of Appeals under Rule 43 of the Revised Rules of Civil Procedure in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies adopted therein.

Its being subject to judicial review can be said to be the most peculiar feature of the Philippine Ombudsman. The forerunner of the ombudsman concept, the *Justitieombudsman* of Sweden, was never under judicial control.<sup>108</sup> The ombudsman in Sweden continually expands, as there is even an ombudsman for children in the said country, but never in its history was the said institution under the judicial power or any other branch of the government for that matter. The most complex

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<sup>108</sup> The very nature of the Swedish Ombudsman negates being under judicial control. It was precisely established by the Parliament to assist it in its dealings with the Executive and the Judiciary. Apparently, it may be considered that the *Riksdag* (Swedish Parliament) felt inability to satisfactorily exercise its oversight on the activities of other branches of government. In order to carry out its role as representative of the people, the Swedish Parliament felt that it needed an officer who could actively deal with complaints made by the public about action being taken by Executive and the Judiciary.

The functions of the ombudsmen in other jurisdiction likewise makes judicial review or control over the Ombudsman unnecessary. The core business of public sector ombudsman remains receiving, investigation and redress of citizen's complaints related to maladministration of government agencies or their functionaries. *An interesting feature of ombudsman institution is that it does not compete with the courts, or act as a further body to which those unsuccessful in the courts can appeal.* The primary function of the Ombudsman is generally to examine: (a) a decision, process, recommendation, act of omission or commission which is contrary to law, rules or regulations, or is a departure from established practice or procedure, unless it is bona fide and has valid reason; is perverse, arbitrary or unreasonable, unjust, biased, oppressive or discriminatory; based on irrelevant grounds; or, involves the exercise of powers or the failure or refusal to do so for reasons of corrupt or improper motives such as bribery, jobbery, favoritism, nepotism, and administrative excesses; and (b) neglect, inattention, delay, incompetence, inefficiency and ineptitude in the administration or discharge of duties and responsibilities.

The criteria set by the ombudsmen also it quite impossible to have any judicial intervention. Ombudsman Offices around the world receive a bulk of complaints each year. Out of these, a large number of complaints are rejected on the ground that they fall outside the ombudsman jurisdiction. Ombudsmen have to operate within the jurisdiction set out in their legislation. Common criteria for accepting or rejecting complaints largely include the following questions:

- a) Is the complaint within the Ombudsman's jurisdiction at all?
- b) Has the person complaining exhausted the other remedies available to them? (The Ombudsman should be a last resort, not a first port of call.) If not, is it reasonable to expect them to have done so?
- c) Has the complainant sufficient personal interest in the subject matter of the complaint?
- d) Is the matter already before the courts? If so, is it appropriate for the Ombudsman to become involved?
- e) On the face of the complaint, does it appear that the person complaining is not acting in good faith?

(<http://www.policy.hu/bokhari/OmbuIntro.html> [visited on October 17, 2006]).

ombudsman, the Ombudsman of the European Community, is likewise not under any instrumentality of the said international body.<sup>109</sup>

But then, what differentiates the Philippine Ombudsman from the rest of the ombudsmen in the world is the fact that it has been given such vast amount of powers which continue to expand through jurisprudence interpreting both the Constitution and its enabling law. As its powers continue to grow, so does the need to continually guard it against the corruption of its own system. This atypical, non-conforming characteristic of the Philippine Ombudsman makes up the paradox that the more powerful it becomes, the more it becomes paralyzed, as its independence is compromised.

Admittedly, the actual autonomy of an Ombudsman appointed by the government is always the subject of much discussion, but inevitably the work of an Ombudsman who exercises his position in public organizations will always be scrutinized by the citizens. *If the Ombudsman is not fulfilling his role according to the basic principles ensuring effective protection of citizen rights, she or he will become discredited*

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<sup>109</sup> The Whereas Clause of the **Decision of the European Parliament on the regulations and general conditions governing the performance of the Ombudsman's duties** provides:

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"Whereas the Ombudsman must perform his duties with *complete independence* and give a solemn undertaking before the Court of Justice of the European Communities that he will do so when taking up his duties; whereas activities incompatible with the duties of Ombudsman should be laid down as should the remuneration, privileges and immunities of the Ombudsman;"

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Article 9 of the said Decision further provides:

"1. The Ombudsman shall perform his duties with *complete independence, in the general interest of the Communities* and of the citizens of the Union. In the performance of his duties he shall neither seek nor accept instructions from any government or other body. He shall refrain from any act incompatible with the nature of his duties.

"2. When taking up his duties, the Ombudsman shall give a solemn undertaking before the Court of Justice of the European Communities that he will perform his duties with complete *independence and impartiality* and that during and after his term of office he will respect the obligations arising therefrom, in particular his duty *to behave with integrity and discretion* as regards the acceptance, after he has ceased to hold office, of certain appointments or benefits." (<http://www.ombudsman.europa.eu/lbasis/en/statute.htm> [visited on October 17, 2006]) (Emphases supplied).

*before the community that she or he is bound by duty to represent.*<sup>110</sup> This scrutiny is most reflected in the resolution in *Information Technology Foundation of the Philippines v. COMELEC* dated March 28, 2006 wherein the Supreme Court noted the delay of the Office of the Ombudsman in resolving the criminal liability, if any, of the public officials and conspiring private individuals, if any are involved, in the Resolution and Contract entered into by the Commission on Elections (COMELEC) with Mega Pacific eSolutions, Inc (MPEI). In a strongly worded resolution, the Court ordered the Ombudsman, under the pain of contempt, to report on a regular basis, that is, once every three months, the steps she<sup>111</sup> has taken and the corresponding results of her actions in determining such criminal liability.<sup>112</sup>

The aforementioned resolution of the High Court only indicates the implications of judicial power and control over the Ombudsman. The strength of the ombudsman's work lies in the independence and impartiality of his investigation.<sup>113</sup> The Supreme Court's decision pointing to the commission of grave abuse of discretion amounting to lack or excess of jurisdiction is like saying that the Ombudsman can be capricious and whimsical or can act in an arbitrary or despotic manner by reason of passion or personal hostility that is so patent and gross as to amount to an evasion of positive duty or virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.<sup>114</sup>

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<sup>110</sup> <http://www.aneel.gov.br/368.html> (visited on October 17, 2006).

<sup>111</sup> The present Ombudsman is Ma. Merceditas Gutierrez.

<sup>112</sup> The Supreme Court further said that in "*deference to [Supreme] Court's simple order should have prompted the Ombudsman to act on its responsibility to inform us of its actions regarding this case. Thus, we strongly remind it to be more prudent in performing its basic constitutional duty and in following the directives of this Court.*" (Emphases supplied)

<sup>113</sup> Stated by Mr. Ellicott during his delivery of the second reading speech of the Ombudsman Bill to the House of Representatives of Australia in June 1976. Therein, he said that the most important element of the new legislation was that it would provide the citizen with a legitimate complaint about official action with access to an impartial investigator to inquire into the matter. ([http://www.comb.gov.au/commonwealth/publish.nsf/Content/aboutus\\_ourhistory](http://www.comb.gov.au/commonwealth/publish.nsf/Content/aboutus_ourhistory) [visited on October 17, 2006]).

<sup>114</sup> This is the definition of grave abuse of discretion enunciated in the case of *Perez v. Court of Appeals*, 480 SCRA 411 (2006), at 416, citing *Banal III v. Panganiban* (475 SCRA 164).

Indeed, the Office of the Ombudsman has exhibited acts which show patent abuse of power. In the case of *Lapid v. Court of Appeals*,<sup>115</sup> the Office of the Ombudsman rendered a decision in the administrative case finding the petitioner administratively liable for misconduct and held that the same is immediately executory. The Supreme Court, however, reversed the decision stating that there is no general legal principle that mandates that all decisions of quasi-judicial agencies are immediately executory. Where the legislature has seen fit to declare that the decision of the quasi-judicial agency is immediately final and executory pending appeal, the law expressly so provides.

As regards the contention of the Office of the Ombudsman that under Sec. 13(8), Article XI of the 1987 Constitution, the Office of the Ombudsman is empowered to “(p)romulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law,” suffice it to note that the Ombudsman rules of procedure, Administrative Order No. 07, mandate that decisions of the Office of the Ombudsman where the penalty imposed is other than public censure or reprimand, suspension of not more than one month salary or fine equivalent to one month salary are still appealable and hence, not final and executory. Under these rules, which were admittedly promulgated by virtue of the rule-making power of the Office of the Ombudsman, the decision imposing a penalty of one year suspension without pay on petitioner Lapid is not immediately executory.

The *Lapid* case was decided in 2001. On September 15, 2003, the Rules of Procedure of the Office of the Ombudsman was amended by Administrative Order No. 17<sup>116</sup> signed by Ombudsman Simeon Marcelo. Pertinent provision on the execution of decisions pending appeal is now reads:

Section 7. Finality and execution of decision. –

\* \* \*

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preven-

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<sup>115</sup> 334 SCRA 738 (2000).

<sup>116</sup> Cited in passing in *IN THE MATTER TO DECLARE IN CONTEMPT OF COURT HON. SIMEON A. DATUMANONG in the latter's capacity as Secretary of the Department of Public Works and Highways*, G.R. No. 150274, August 4, 2006.

tive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer.

With this, an unavoidable conclusion is inferred. The power granted to the incorruptible Office of the Ombudsman could be abused and misused. One would be reminded of the words of Justice Sandoval-Gutierrez<sup>117</sup> in her dissenting opinion in the case of *Ejercito v. Sandiganbayan*,<sup>118</sup> to wit:

By the natural scheme of things, the Office of the Ombudsman can hardly be characterized as detached, disinterested and neutral. Its mandate is to investigate and prosecute any act or omission of any public officer or employee, office or agency that appears to be illegal, unjust, improper or inefficient.<sup>119</sup> In carrying out such mandate, it is expected to act with vigor and aggressiveness.

This vigor and aggressive character of the Ombudsman was again manifested with the decision of then Ombudsman Aniano Desierto dated May 2, 1997 which ordered the dismissal of the criminal charges against the alleged Marcos crony Herminio Disini and several others.<sup>120</sup> This decision was reversed by the Supreme Court on January 23, 2007 with the High Court ruling that the Office of the Ombudsman committed grave abuse of discretion when it ordered the dismissal of the complaint filed by Presidential Commission on Good Government (PCGG), noting that Ombudsman Desierto ignored vital evidence in dismissing the case against Disini.<sup>121</sup>

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<sup>117</sup> Justice Sandoval-Gutierrez's dissenting opinion was joined by Justice Ynares-Santiago and Justice Garcia.

<sup>118</sup> G.R. Nos. 157294-95, November 30, 2006, at 28.

<sup>119</sup> Section 15 of R.A. 6770.

<sup>120</sup> The Presidential Commission on Good Government (PCGG) filed a complaint alleging that Disini, a personal friend and golfing partner of then President Marcos gave the latter shares of Vulcan Industrial Mining Corp. (VMC) and The Energy Corp. (TEC) worth P40M and P25M respectively, in violation of R.A. 3019, the anti-graft law. See *Republic of the Philippines v. Disierto* (GR No. 135123, January 2, 2007).

<sup>121</sup> *Ibid.*

The Office of the Ombudsman has also been tapping its powers to suspend local elective officials. On January 12, 2007, the Ombudsman issued dismissal orders against three local elective officials<sup>122</sup> and suspension<sup>123</sup> upon a public officer also occupying elective post. Indeed, the Ombudsman is showing vigor and attentiveness with her continually expanding power, but then her boisterous show of power only reflects the impaired concept of independence that the Ombudsman now has—one with enormous power that is susceptible to abuse, and therefore, the need to watch and suppress this power when needed.

An Ombudsman is supposed to use standards or guidelines for good governance. The standards can be summed up as the imposition of a broad duty of care. These are manifested in certain accepted standards for administrative processes and the conduct of public servants in relation to the public. They include the requirement to act without undue delay; to supply the individual with relevant information; **to treat people fairly and respectfully; and to be unbiased and helpful.**<sup>124</sup> If the Ombudsman who is supposed to be an epitome of fairness and incorruptibility commits an act which is considered grave abuse of discretion, then it cannot protect the citizens' interests.

Moreover, while it is conceded that the oversight powers of the Ombudsman is necessary to counter the powers given to the same institution, its unintended or unforeseen side-effects cannot be ignored. Control or power over the Ombudsman makes it more a part of the judicial institution in the country rather than separate and autonomous body. As noted in the Philippine Investigative Journalism's "PCIJ's Guide to Government,"<sup>125</sup> the Ombudsman is a part of the judicial institutions in the country. It was not regarded as a constitutionally created body. This only indicates that the role of the Ombudsman in the Philippines is not clearly defined. Without such proper definition, its

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<sup>122</sup> Iloilo Governor Neil Tupas, Mayor Trinidad Wenceslao Trinidad of Pasay City and Mayor Antonio Esquivel of Jaen, Nueva Ecija were given dismissal orders. (*Philippine Daily Inquirer*, January 23, 2007, at A1 and A-4).

<sup>123</sup> *Ibid.*

Governor Antonio Sanchez of Batangas was given suspension order.

<sup>124</sup> <http://www.policy.hu/bokhari/OmbuIntro.html> (visited on October 17, 2006).

<sup>125</sup> Chua and Coronel (eds.), *The PCIJ Guide to Government*, Philippine Investigative Journalism, 2003, at 173.

independence cannot be assured and its mission to promote integrity and efficiency will never be truly fulfilled.

What is therefore at hand, are two ends—the independence of the Ombudsman and the grant of enormous power to the ombudsman warranting safeguards against the ombudsman itself. The original Swedish conception of the ombudsman as a third party remains the most important feature of all ombudsman systems. *Only as an independent, nonpartisan officer can the ombudsman ensure the confidence of all concerned and be in a position to adjudicate, investigate, mediate, monitor or referee according to the relevant jurisdiction and role.*<sup>126</sup> The exceptional characteristic of the ombudsman of being a powerful and dominant institution must be taken into consideration. Despite its independence, it is not above the law and its failure to obey these laws and decisions would warrant certain sanctions, which include not only administrative reprimands but also repercussions of having the citizens doubt his or her integrity and impartiality. This is the scenario that at all cost must be avoided, for when the mandated protector of the people fails, there will be no one else to shield the nation from the seemingly perennial problem of corruption. The citizens' last recourse will fail.

Certainly, neither the independence nor the safeguards must give way. With the distinctive features of the power of the Philippine Ombudsman, it can be safely concluded that one is the necessary consequence of the other. But the big question remains, how could the two ends meet? There is only one way to make sure that these ends will not clash; that is, to fulfill the universal craving for the compelling integrity and its necessary consequence—genuine leadership in the Office of the Ombudsman.

#### OF INTEGRITY AND LEADERSHIP: RISING EXPECTATIONS AND LOST HOPES

Ulf Lundvik, a former Swedish ombudsman, pointed out that the redress of grievances is the not the main concern of the Ombudsman. His or her main task remains to be that of maintaining good standard

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<sup>126</sup> <http://www.hapinternational.org/hapgeneva/OMBUDSMAN/OmbudP1.html>, (visited on October 17, 2006).

within the public service.<sup>127</sup> Indeed, with the citizens' need to access information, the complexity in government business and the wish of the people to participate more in decision making processes, which affect the direction of their life, governments have an obligation to facilitate transparency and consultation and to give adequate reasons for their action.<sup>128</sup> That is where the ombudsman comes in.

It has been earlier stated that if the Ombudsman is not fulfilling his or her role according to the basic principles ensuring effective protection of citizen rights, she or he will become discredited before the community that she or he is bound by duty to represent.<sup>129</sup> Related to this is the criticism against the ombudsman office that its effectiveness tends to depend upon the *character and personality of the ombudsman himself or herself* rather than the system as a whole. Regardless of their organizational framework, the offices of the ombudsmen are highly personalized institutions and *success demands an individual or a team who is perceived as independent and impartial*, with relevant qualifications and in-depth knowledge of the sector, and *can command respect and trust from all parties*.<sup>130</sup> This is also where the aspects of integrity and leadership must be considered in balancing the equation of independence and power resulting in the establishment of certain safeguards against it.

In taking his or her actions, the Ombudsman faces a major challenge experienced in newer democratic countries, like the Philippines—that is, to carve out his or her own place within the existing system, and to demonstrate that he or she is indeed necessary and useful. In newer democracies, where the rest of the government infrastructure is also still being established, *the ombudsman as a new institution will need to gain a firm foundation, such as enshrinement in the constitution in order to be insulated from political uncertainty*.<sup>131</sup> Moreover, the ombudsman in a newer democracy will have to be conscious of not giving rise

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<sup>127</sup> Lundvik Ulf, *International Anthology of Ombudsman*, New Zealand (<http://www.policy.hu/bokhari/OmbuIntro.html>) [visited October 17, 2006].

<sup>128</sup> *Ibid.*

<sup>129</sup> <http://www.aneel.gov.br/368.htm> (visited on October 17, 2006).

<sup>130</sup> <http://www.hapinternational.org/hapgeneva/OMBUDSMAN/OmbudP1.html> (visited on October 17, 2006).

<sup>131</sup> The Philippine has already accomplished this by establishing the Office of the Ombudsman in the 1987 Constitution. (CONST., art. XI, § 5)

to expectations he or she cannot meet. Rising expectations may lead to false hopes and lost dreams. Once that happens, not only the people, but the branches of the government as well, will lose their trust in the institution. Without trust, there is no moral suasion. Without such ascendancy, the effectivity of the Ombudsman is compromised.

When the aspects of good leadership and integrity have been attained, the development of a better, more effective, and more competent Ombudsman will be smoother. With good and incorruptible leadership, the citizens' trust and belief in the system of the ombudsman will be strengthened. Clothed with the identity of integrity and uprightness, it will not matter whether the Ombudsman can be impleaded in certiorari proceedings. More likely, the courts will uphold an Ombudsman decision for being fair and just. The people then will be encouraged to seek the Office of the Ombudsman's aid in cases of maladministration and abuse of power. Corruption will be hindered and ultimately, be eradicated.

The idea of developing an ideal ombudsman sounds too simplistic. The process of this evolution, is of course, another matter. With the Ombudsman imbedded in the 1987 Constitution, all changes, including the creation of more stringent qualifications of the Ombudsman, Deputy Ombudsmen and other high ranking officers of the institution as well as their own accountability, will have to be made through revision of the Constitution or amendment of the enabling law. Accountability of other officers and employees must likewise be fortified. Much work, thus, lie in the hands of the Philippine legislature.

Common threads run through the conceptual fabric of every ombudsman's office—all aim to humanize administration, to support fairness, accountability, and equity. All ombudsmen can be approached in confidence. Generally, no ombudsman has enforcement or disciplinary powers. *All depend on the power of persuasion, as well as the credibility of the office, which leads individuals to trust it.* Although the process of achieving objectives of fairness may differ, the product is the same: a chance for the ordinary people, those without power or prestige, to be heard and to get fair treatment.<sup>132</sup>

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<sup>132</sup> [www.policy.hu/bokhari/OmbuIntro.html](http://www.policy.hu/bokhari/OmbuIntro.html) (visited on October 17, 2006).

This is where the factors of integrity and leadership are most important. Even if the Philippine Ombudsman might have more power than all the other ombudsmen, these powers are all for naught if the people and other government institutions do not believe or trust in it, or worse, treat it dismissively as just one of those useless offices in a bureaucratic government. An Ombudsman without much power but who has the trust and credibility of the people is much better than an Ombudsman with all the power he or she can possess yet inefficient because he or she is not reliable as his or her powers can always be abused or misused. An Ombudsman drunk with power is detested, distrusted and resented. An upright Ombudsman with moderate powers is respected, admired and heeded.

It must be remembered that another important factor in the spread of the ombudsman institution is the growing public demand for greater transparency in the process of government.<sup>133</sup> When the people have no other recourse against people elected in government but to wait for the next election, there has to be an institution to address this concern. Again, if this institution is itself viewed as a corrupt and unreliable part of the government system, the people either let themselves suffer with officials in the government or go out on the streets and protest and this will inevitably result in political instability.

The role of the ombudsman is to ensure that all public officials perform their duties with justice, honesty and public responsibility. He or she should not succumb to political pressure and should not allow himself or herself to be used as a tool for harassment. The ombudsman is a unique instrument to represent the interests of citizens, protect basic human rights and improve the quality of public administration<sup>134</sup>—an institution that serves a valuable insurance against falling back into old habits and an influential oversight organization to ensure that the bureaucracy has a more human face.<sup>135</sup> Again, this role will not be

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<sup>133</sup> *Ibid.*

<sup>134</sup> *Ibid.*

<sup>135</sup> J. Robertson, *The Ombudsman and the World in Twenty Years of Commonwealth Ombudsman 1977-1997* KCMG CBE, Commonwealth Ombudsman, Canberra, June 1997, at 67.

possible if the integrity and the kind of leadership in the Ombudsman itself is not effective and trustworthy.

The Philippine Office of the Ombudsman envisions a truly independent office run by God-fearing men and women with the **highest degree of competence, honesty and integrity** and effectively serving as watchdog, mobilizer, official critic and dispenser of justice for the people it is constitutionally mandated to protect.<sup>136</sup> A realization of this vision statement would surely make the two poles of independence and power resulting in safeguards meet. But as of the moment, one can only utter a fervent prayer that this vision will become a reality before a total ruin of the Ombudsman concept happens in this jurisdiction.

#### CAPTURING THE ESSENCE OF THE OMBUDSMAN:

##### A Conclusion

Indeed, the mere presence of an ombudsman may serve to improve bureaucratic practice. By bringing administrative malpractice or just sheer poor public relations to the attention of public authorities, the ombudsman promotes administrative reform. Its very presence in the machinery of government *cautions* public servants to behave properly lest they personally and their agencies find themselves the subject of a complaint and all that it entails—confrontation, investigation, negotiation, unwelcome publicity and possibly government retaliation, professional disgrace and official disciplinary action.<sup>137</sup> However, the establishment of an Office of the Ombudsman will not provide the panacea to the problem of poor public accountability but simply an option, one of many mechanisms available that seek to strengthen the same.

True, the Philippine Ombudsman was given more than fiscal independence. It has been given power so that it can function on its own without fear of repercussions or reversals from a higher body. Its powers are not only recommendatory but were given total mandatory effect by the Supreme Court. The wordings of the Constitution imply that the Ombudsman must be given more teeth as the Constitution wanted to create an independent Ombudsman and such independence must be protected at all costs. Alas, there lies the paradox. There is a danger that

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<sup>136</sup> <http://www.ombudsman.gov.ph/page.php?pid=4> (visited on October 17, 2006).

<sup>137</sup> [http://www.ombudsmanforum.ca/events/2003\\_conference/nathalie\\_desrosiers\\_speech\\_e.asp](http://www.ombudsmanforum.ca/events/2003_conference/nathalie_desrosiers_speech_e.asp) (visited on October 17, 2006).

the function could become yet another bureaucratic body in an increasingly bureaucratized society. Since the Philippine Office of the Ombudsman has been given more powers than its counterparts, the more it is needed to be guarded against itself. Thus, the safeguards of the Constitution through the expanded judicial power of the Supreme Court. With the constraint of having to be under the oversight functions of another government body, its independence is compromised, its effectivity somehow defeated.

These are two ends, the two poles that need to meet in order to make the ombudsman paradigm work in the country. And these parallel will only find their rendezvous in integrity and leadership, which will give the Ombudsman the necessary moral suasion to render the system effective and efficient. Thus, in reading the independence of the Ombudsman in the Philippines, one must not only read its independence *per se*, the consequent safeguard and values of leadership and integrity must be read along with it. Only with this reading will the Ombudsman be understood; only with this reading will the Ombudsman be more effective in its role and mandate in the country.

Hazrat Ali in his *Epistle* said that a nation or government cannot achieve salvation where the rights of the depressed, destitute and suppressed are not guarded, and where mighty and powerful persons are not forced to accede to these rights. In the Philippines and other 120 countries all over the world, it is the Ombudsman who performs this task of guarding the people against oppression and wrong. But as has been said, the system will not work on its own without good people who embody the true ideals of the ombudsman. While the law may be perfect, poor implementation thereof will still destroy its essence. While the system may be flawless, having the wrong people in it will nevertheless eradicate what the system stands for. After the long journey of thoughts and discourses, it will still boil down to character—the integrity and leadership of the Ombudsman.

It is difficult to look for persons who are credible, impartial and independent. But then again, all is not lost. The system of the ombudsman still exists. It has proven to be effective and efficient in other countries. Perhaps, reforms still have to be made, not in the Office of the Ombudsman itself, but in the political culture in the country. Trust and confidence must be given to the people worthy thereof. And a little more advice from a person who has been there and done his best: “Proceed

carefully, plan properly, avoid exaggerated expectations, keep it simple and do not expect instant miracles.”<sup>138</sup>

The challenge will always be for the Ombudsman to capture the spirit of the original ombudsman concept and develop the function on the grounds of humanitarian values as a unique instrument that represents the interests of beneficiaries, protects basic human rights and improves the quality of humanitarian assistance.<sup>139</sup> But with leadership, integrity, honesty and devotion to his or her mission which will make the people and the government itself believe and trust in the Ombudsman, a task so heavy will not be as difficult or as formidable as it appears to be.

A last note on the heavy task of reforms, one might need to be reminded of what Ernest Hemingway once said:

“There are some things which cannot be learned quickly, and time, which is all we have, must be paid heavily for their acquiring. They are the very simplest things, and because it takes a man’s life to know them, the little new that each man gets from life is very costly and the only heritage he has to leave.”<sup>140</sup>

Making the much needed reforms will not be an easy task. There will be some falls, as there had been before. There really are things that cannot be learned quickly. The simple things such as leadership, honesty and integrity will be paid heavily for their acquisition. But then, it will all be worth it, for the little new thing that a man—a nation—gets may be very costly but certainly sterlingly valuable. An Ombudsman known for credibility, impartiality and independence is a valuable heritage he or she can proudly leave behind for posterity. With this, perhaps the passing generation will be more at ease, knowing that they left something good behind... that *someone* will be staunchly watching over the nation and its children who are to form the new generation, passing the torch to light the path for the others to follow.

Perhaps then, leaving a mark and writing *finis* would not be that difficult after all.

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<sup>138</sup> <http://www.hapinternational.org/hapgeneva/OMBUDSMAN/OmbudP1.html>, (visited on October 17, 2006).

<sup>139</sup> <http://www.policy.hu/bokhari/OmbuIntro.html> (visited on October 17, 2006).

<sup>140</sup> 1899-1961 (Ernest Hemingway Quotes at <http://search.freefind.com/find.html?id=7685396&pid=r&mode=ALL&n=0&query=Ernest+Hemingway> [visited on January 26, 2007]).