

REIMAGINING THE PHILIPPINE OMBUDSMAN AS AN INVESTIGATOR, CRITIC AND REFORMER*

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ABSTRACT

This Article discusses the classical concept of the ombudsman as understood in different jurisdictions around the world—as a representative of the common people. It then contends that the Philippine Ombudsman has departed from this concept of the classical ombudsman, evolving into a single-minded grand prosecutor. In analyzing this departure, the Article makes use of five factors for an effective ombudsman, which are: (1) political independence, (2) accessibility and expedition, (3) investigatory power, (4) absence of revisory jurisdiction and (5) the ability to influence. This paper argues that the Philippine Ombudsman’s deficiency in several factors has lessened its effectiveness in improving public service in the Philippines. Several reforms are proposed that could solve the deficiency in these factors. Following such proposed reforms, the Article not only argues that the Philippine Ombudsman already possesses all the necessary legal powers to effect the necessary change to become a more effective “representative” of the people for public reform and improve public service, but also identifies possible obstacles a reimagined Philippine Ombudsman may face. The Article concludes that the reforms for the Philippine Ombudsman can be summarized into the reimagining of the Philippine Ombudsman as an investigator, critic, and ultimately, a reformer.

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I. THE CLASSICAL OMBUDSMAN AND THE PHILIPPINE DEPARTURE INTO THE REDUNDANT PROSECUTOR

The word *ombudsman* comes from the Swedish word for representative¹—ideally, this is meant to be a representative of the people. There are numerous explanations of the concept of an ombudsman which have been proffered by legal scholars. The office has also seen different iterations and names.

The ombudsman has been defined as a “wholly independent, high-level official to whom anyone in the community can turn without cost to complain about administrative acts or failures to act” or “*as a critic of administration, but a critic whose views carry tremendous weight and are likely to be translated into official acts.*”² It is the office tasked with “*investigat[ing] citizens’ complaints about bureaucratic action.*”³ An office sometimes has the same functions as an ombudsman, despite having a different name and being appointed in different manners.

Increasingly, the response to the need for a grievance machinery for handling complaints against unfair administrative action is the establishment of an office along the Swedish parliamentary ombudsman model.

The official title may be Ombudsman, Parliamentary Commission for Administration (U.K., Finland), Mediateur (France), Petitions Committee (F.G.R.), Commissioner for Complaints (Northern Ireland), Public Counsel (Nebraska), Public Protector (Quebec, Canada), Tanodbayan (Philippines), etc. As representative of parliament the ombudsman may be chosen by simple or extra-ordinary majority after every election (Denmark, Norway) or for a fixed term (Sweden, Thailand), appointment may be made by the crown on the advice of the Government (U.K.) by the Executive upon recommendation of the House of Representatives (N.Z.) or of the Prime Minister after consultation with leader(s) of the opposition (Fiji, Guyana). If appointed by the President alone would the grievance officer (ombudsman) be a

¹ Lester Orfield, *The Scandinavian Ombudsman*, 19 ADMIN. L. REV. 7, 7 n.2 (1966).

² Walter Gellhorn, *Ombudsman or Ombudsmania*, 14 STUDENT L. J. 14, 15 (1969). (Emphasis supplied.)

³ Karl Friedmann, *The Public and the Ombudsman: Perceptions and Attitudes in Britain and in Alberta*, 10 CAN. J. POL. SCI. 497, 497 (1977). (Emphasis supplied.)

representative of the executive, an independent officer, or a representative of the legislature?⁴

Ideally, the office of the ombudsman provides an avenue to accountability of public officials, which will then lead to the improvement of public service. That is, the public criticism of officials and the elevation of peoples' concerns to the public eye. However, has the ombudsman in the Philippine mold pursued this avenue of accountability? Based on history, the Philippine Ombudsman appears to have taken another avenue, but one which is already being performed by another government official: the prosecutor. The avenue to accountability of public officials paved by prosecutors runs on the presentation of damning evidence to convince judges of the offending public officer's guilt. The prosecutor's goal in court is to secure a public official's conviction, or a judicial ruling which holds the public official liable. Should that court pronouncement be the ultimate goal of an ombudsman as well?

There are several distinguishing factors between a prosecutor and an ombudsman. An ombudsman is primarily distinguished from the prosecutor because of its accessibility and freedom of action. "It is supposed to be *easy* and *cheap* to make a complaint to the ombudsman, and unlike court procedures, investigations by the ombudsman do not require the active participation of the plaintiff."⁵ The ombudsman is an "oversight" authority, which should be close to the public and approachable on the ground level.⁶ This is not the same as a prosecutor, which has the main function of representing the state or government in criminal proceedings.⁷ Prosecutors are not mandated to make it easy and accessible to file a pleading, testify in court, and be harrowed by a thorough cross-examination.

To elaborate, the classical ombudsman *appeals to moral authority* by exercising a "moral power" and relies on the "disposition of other state organs to accept its judgments and act on its behalf."⁸ The influence of the ombudsman usually depends entirely on their *appeal to reason*.⁹ In some

⁴ Irene Cortes, *Redress of Grievances and the Philippine Ombudsman (Tanodbayan)*, 57 PHIL. L. J 1, 4 (1982).

⁵ Fredrik Ugglå, *The Ombudsman in Latin America*, 36 J. LATIN AM. STUD. 423, 425 (2004). (Emphasis supplied.)

⁶ Erika Moreno, *The Contributions of the Ombudsman to Human Rights in Latin America, 1982–2011*, 58 LATIN AM. POL. & SOC'Y 98, 101 (2016).

⁷ *Prosecutor*, Black's Law Dictionary (8th ed., 2004). See RULES OF COURT, Rule 110, § 5; *People v. Montierro*, G.R. No. 254564, July 26, 2022.

⁸ Ugglå, *supra* note 5, at 428.

⁹ Gellhorn, *supra* note 2, at 16.

countries in Latin America, even without a legal case, politicians and bureaucrats fear being branded with noncompliance with the ombudsman's judgments, which come in the form of resolutions.¹⁰ Even if prosecutors may receive complaints from ordinary citizens, they are not allowed to give a reminder to public officials through reprimand or advice for the future.¹¹ Prosecutors appeal to legal reason and rely on courts to make proper dispositions of cases. Prosecutors keep within the judicial process of courts, whereas ombudsmen are generally not bound by the same restriction.

Another common avenue that the Philippine Ombudsman chooses to drive the accountability of public officials is through exercising its disciplinary authority. This disciplinary authority was granted to ensure that the Philippine Ombudsman would not be a "toothless animal."¹² However, the Philippine Ombudsman's exercise of its disciplinary authority may still be brought to the courts on appeal. If appealed, the Philippine Ombudsman would have to defend its position before a court and seek its final pronouncement on the matter.

Several countries have adopted the ombudsman model which is not focused on prosecution. They have taken the avenue to public accountability based on appeal to reason and public sensibility. An ombudsman's main purpose globally has been to promote better public administration by substituting admonition for prosecution or disciplinary action against officers proven at fault.¹³ In Japan, the equivalent of the office of the ombudsman is the administrative management agency/bureau,¹⁴ which focuses on inspecting administrative activity and recommending improved procedure or organization to appropriate authorities.¹⁵ In the United Kingdom, the creation of the Parliamentary Commissioner for Administration was designed to provide a discrete, non-legal, and informal procedure that operates where legal redress was unavailable.¹⁶ The constant resort to legal processes is contrary to the intended nature of the ombudsman process, because it was meant to be a quick, inexpensive, informal, and

¹⁰ Uggla, *supra* note 5, at 446.

¹¹ Walter Gellhorn, *Finland's Official Watchmen*, 114 U. PA. L. REV. 327, 345 (1966).

¹² Ledesma v. Ct. of Appeals [hereinafter "*Ledesma*"], G.R. No. 161629, 465 SCRA 437, July 29, 2005, *citing* 2 RECORD CONST. COMM'N, 268 (July 26, 1986).

¹³ Hing Yong Cheng, *The Emergence and Spread of the Ombudsman Institution*, 377 ANNALS AM. ACAD. POL. & SOC. SCI. 20, 23 (1968).

¹⁴ Walter Gellhorn, *Settling Disagreements with Officials in Japan*, 79 HARV. L. REV. 685, 698 (1966).

¹⁵ *Id.* at 698.

¹⁶ Jason Varuhas, *Governmental Rejections of Ombudsman Findings: What Role for the Courts?*, 72 MOD. L. REV. 102, 113 n.80 (2009).

investigatory path to redress in the political sphere, whereas legal processes were usually lengthy and costly.¹⁷

In Latin America, several ombudsmen choose to work in a less formal and judicial manner, instead aiming to influence public policies and gain more influence in the political sphere, even if it means not going to court.¹⁸ According to Gellhorn, “[t]he reality is that genuine trial proceedings are outside the scope of the ombudsman’s work. His job is not to supersede other responsible officials, but to see that others do their jobs completely and justly.”¹⁹

Although the prosecution of criminal cases plays its part in weeding out erring public officials, it is only one of the many ways in which a public official may be held accountable so that public service is improved. The prosecutorial power could have been withheld from the Office of the Ombudsman in the Philippines, as it has in many jurisdictions, and the ombudsman could still retain its essence as a public advocate.²⁰

A. History of the Ombudsman in the Philippines

Prior to the current version of its Ombudsman, the Philippines has had several iterations of a “complaint/grievance-handling” office for its citizens. There was the Integrity Board, created by President Quirino in 1950; the Presidential Complaints and Action Commission, established during the term of President Magsaysay; the Presidential Committee on Administration Performance Efficiency, created by President Garcia; the Presidential Anti-Graft Committee, founded by President Diosdado Macapagal, and lastly, the Presidential Agency on Reforms and Government Operations, created by President Marcos, Sr.²¹ The President established these offices pursuant to the power of control and supervision over the executive branch of government and local governments.²² All these offices were also more akin to the classical ombudsman model,²³ which was not focused on prosecution.

¹⁷ *Id.* at 114.

¹⁸ Uggla, *supra* note 5, at 442.

¹⁹ Walter Gellhorn, *The Ombudsman’s Relevance to American Municipal Affairs*, 54 A.B.A. J. 134, 138 (1968).

²⁰ See Salvador Carlota, *The Ombudsman: Its Effectivity and Visibility Amidst Bureaucratic Abuse and Irregularity*, 65 PHIL. L. J. 12, 28 (1990).

²¹ *Id.* at 20–23; Cortes, *supra* note 4, at 5–6.

²² Cortes, *supra* note 4, at 6.

²³ *Id.* at 7.

The most immediate predecessor of the Office of the Ombudsman, the *Tanodbayan*, was created under the Tanodbayan Decree of 1977.²⁴ During this time, there was a shift of focus from simply complaint- or “grievance-handling” to an office focusing primarily on prosecution,²⁵ which was how President Marcos Sr. conceived it.

A careful look at the Letters of Instructions relating to the Office of the *Tanodbayan*, the Revised Rules of Procedure and Guidelines to Systematize [sic] the procedure in the handling of *Tanodbayan* cases reveals how the office *is geared towards receiving complaints, investigating them, [and] filing and prosecuting cases to determine the culpability of public officials.*

The President directed the National Intelligence and Security Authority in addition to its functions under the law to serve as the intelligence arm of the *Tanodbayan*, the Criminal Investigation Service and the National Bureau of Investigation in addition to their functions provided by law to be investigating arms of the *Tanodbayan*. On the day the *Tanodbayan* was appointed the President also directed that the Complaints and Investigation Office under the Office of the President in addition to its functions under the existing law was to serve as the administrative arm of the *Tanodbayan*. Both issuances *referred to the power of the Tanodbayan to receive complaints from any person against any administrative agency, public official or employee for the purpose of determining his culpability.*²⁶

After the People Power Revolution, the 1987 Constitution created the Office of the Ombudsman with several additional powers and additional guarantees of independence.²⁷ Its powers, functions, and duties were further defined in Republic Act (“R.A.”) No. 6770²⁸ or the “The Ombudsman Act.” We now discuss the Ombudsman’s role as it has carried out its mandate as the agent and representative of the people.

B. The Philippine Ombudsman in Recent Practice

The Ombudsman is the agent of the people in ensuring accountability in public office.²⁹ The Ombudsman has primarily carried out its duty of “ensuring accountability” as the agent of the Filipino people in a

²⁴ Pres. Dec. No. 1487 (1978).

²⁵ *Id.* at 9, *citing* Pres. Dec. No. 1607 (1978).

²⁶ *Id.* at 11–12. (Emphasis supplied, citations omitted.)

²⁷ *See* CONST. art. XI, § 5 and succeeding sections.

²⁸ Rep. Act No. 6770 (1989) [hereinafter “The Ombudsman Act”].

²⁹ *Uy v. Sandiganbayan*, G.R. No. 105965, 354 SCRA 651, 660 n.6, Mar. 20, 2001.

four-fold manner: (1) through the prosecution of criminal cases against public officials; (2) the investigation and determination of administrative liability with the subsequent disciplinary action; (3) the prosecution of forfeiture cases for ill-gotten wealth and (4) the taking-in of people's complaints which do not lead to civil, administrative or criminal liability—represented by Requests for Assistance.

Based on the Annual Report of the Ombudsman from 2004 to 2019, below is a table of newly-docketed cases received by the Ombudsman.³⁰

Table 1: Docketed Cases for the Office of Ombudsman from 2004–2019

Year	New Administrative Cases Docketed	New Criminal Cases Docketed	New Requests for Assistance Docketed	New Forfeiture Cases Docketed
2004	7,869	4,645	11,227	N/A
2005	4,039	4,537	9,242	N/A
2006	13,602*		N/A	N/A
2007	10,824*		N/A	N/A
2008	13,225*		N/A	N/A
2009	12,736*		N/A	N/A
2010	13,057*		935	N/A
2011	16,987*		469	N/A
2012	3,461	3,168	N/A	N/A
2013	2,491	2,412	13,524	26
2014	2,667	2,573	4,344	20
2015	2,833	2,496	4,254	29
2016	3,433	2,607	4,943	88
2017	2,915	2,765	4,227	29
2018	2,464	2,462	3,469	24
2019	1,382	1,156	2,595	N/A

* For 2006–2011, only aggregated “Complaints” were reported. No breakdown was provided in the Annual Report of whether they were docketed as criminal or administrative cases.

³⁰ See Ombudsman, *Annual Reports* (2004–2019), available at <https://www.ombudsman.gov.ph/annual-report/>.

First, we discuss the Philippine Ombudsman ensuring accountability through the prosecution of criminal liability. The Ombudsman has the duty to investigate *and prosecute* any act or omission of any public officer or employee, office or agency, either on its own or on complaint by any person.³¹ The Ombudsman must conduct a preliminary investigation to establish whether probable cause exists to file an information against the accused.³² The Philippine Ombudsman has primary jurisdiction to investigate and prosecute acts or omissions of public officials within the Sandiganbayan’s jurisdiction (salary grade 27 and higher).³³ Primary jurisdiction means that it may take over, at any stage, the investigation of such cases from any investigatory agency of the government.³⁴ Meanwhile, the Ombudsman also has concurrent administrative jurisdiction over cases of public officials not falling within the Sandiganbayan’s jurisdiction.³⁵ Table 1 shows that from 2004–2019, the Ombudsman consistently received complaints docketed for the conduct of preliminary investigation. However, in the 2010s, the number of docketed criminal cases hovered around the range of 2,500 cases, which seemed to be less than the average in the 2000s.³⁶

Several Ombudsmen generally start their Annual Report with the prosecution’s highlight: the conviction of “high profile” public officials. For instance, in the 2004 Annual Report of Ombudsman Simeon Marcelo, he noted the filing of an information for plunder against a Major General from the Armed Forces of the Philippines (AFP) for properties grossly out of proportion to his salary, and several other cases filed for violation of R.A. No. 3019 against mayors, vice-mayors, and other officials.³⁷ Meanwhile, in the 2008 Annual Report of Ombudsman Merceditas Gutierrez, she highlighted criminal cases filed against: (1) several city mayors in Cebu in connection with the purchase of exorbitantly priced lampposts; (2) the Mayor of Capas, Tarlac for the misuse of the municipality’s Municipal Development Fund and Countrywide Development Fund; (3) the Senior

³¹ The Ombudsman Act, § 15(1). Note however that “and prosecute” was only added by the Legislature and is not in the powers and functions of the Ombudsman provided in the Constitution; *see* CONST. art. XI, § 13(1).

³² Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto [hereinafter “*Behest Loans*”], G.R. No. 135715, 648 SCRA 586, 603, Apr. 13, 2011.

³³ The Ombudsman Act, § 15(1); Rep. Act No. 7975 (1995), § 2, *amended* by Rep. Act No. 10660 (2014), § 2.

³⁴ *Ombud. v. Brevia*, G.R. No. 145938, 482 SCRA 182, 191, Feb. 10, 2006.

³⁵ *Ledesma*, 465 SCRA 437, 450.

³⁶ I emphasize the use of the word “seemed,” since the breakdown of statistics from 2006 to 2011 is not as accurate.

³⁷ Ombudsman, *2004 Annual Report*, at 10, *available at* <https://www.ombudsman.gov.ph/docs/annualreport/Annual%20Report%202004.pdf>.

Vice President of the Government Service Insurance System (GSIS) for an anomalous contract award for a building construction; (4) two members of the customs police who connived to misdeclare a shipment of 50 laptop computers; and (5) the Head of the Procurement Bids and Awards Committee (“PBAC”) of the Department of Environment and Natural Resources (DENR) for awarding a renovation contract to an unregistered construction company without bidding.³⁸ Then, in the 2014 Annual Report of Ombudsman Conchita Carpio-Morales, she highlighted the filing of cases against: (1) an ex-Chief Justice for perjury and violation of Republic Act No. 6713³⁹ for the failure to file true and detailed Statement of Assets, Liabilities and Net Worth (“SALN”) from 2003–2010; (2) a former Iloilo Governor and other officials for graft arising from overpayment of unconsumed electricity; and (3) three incumbent senators for plunder and graft arising from the Priority Development Assistance Fund (“PDAF”) scam.⁴⁰

These statistics show that the Ombudsman has been vigilant in filing Informations and proceedings against public officials in court to seek their criminal liability. In this manner, public officials are held accountable to a certain extent for their criminal acts when they come within the Ombudsman’s jurisdiction. However, one should note that the number of new criminal cases docketed has been stagnant throughout the 2010s, without any clear trend upward or downward.

Second, we discuss how the Philippine Ombudsman has also held public officers accountable using its awesome disciplinary power. The Ombudsman can also recommend the removal, suspension, demotion, fine, censure, and prosecution of an erring official.⁴¹ The Ombudsman’s power of removal can be exercised through an administrative proceeding based on the causes for removal provided for by the Civil Service Law.⁴² The order of direct removal issued by the Ombudsman is mandatory and not merely advisory.⁴³ The Ombudsman is even given the power to discipline officials who refuse to follow its order to carry out the penalty against their

³⁸ Ombudsman, *2008 Annual Report*, at 35, available at <https://www.ombudsman.gov.ph/docs/annualreport/Annual%20Report%202008.pdf>.

³⁹ Rep. Act No. 6713 (1989). This is the Code of Conduct and Ethical Standards for Public Officials and Employees.

⁴⁰ Ombudsman, *2014 Annual Report*, at 2, available at <https://www.ombudsman.gov.ph/docs/annualreport/Annual%20Report%202014.pdf>.

⁴¹ CONST. art. XI, § 13, ¶ 3; The Ombudsman Act, § 15(3). See *Ledesma*, 465 SCRA 437, 449.

⁴² Pres. Dec. No. 807 (1975); The Ombudsman Act, § 25.

⁴³ *Ombud. v. Santiago*, G.R. No. 161098, 533 SCRA 305, 312, Sept. 13, 2007.

subordinates.⁴⁴ Related to the power of removal is the power of preventive suspension. The preventive suspension pending an investigation can last until the case against the public officer is terminated, or for a maximum of six months without pay.⁴⁵ A preventive suspension pending investigation does not even require a prior hearing.⁴⁶

Table 1 shows that the average number of administrative cases docketed for the 2010s, much like the criminal cases docketed, seems to be less than the average of administrative cases docketed for the 2000s.⁴⁷ Again, we refer to some highlights made in the Annual Reports of Ombudsmen to identify the highlights of administrative cases resolved after their docketing.

Ombudsman Marcelo highlighted the dismissal from public service of an Attorney V from the Bureau of Internal Revenue (BIR) for acquiring property and money which is manifestly out of proportion to his salary and other lawful income; the dismissal of a Director from the Law Division of the Department of Foreign Affairs (DFA) for demanding and accepting the amount of PHP 200,000 in exchange for the processing of a visa; and the dismissal of an officer-in-charge of the Provincial Environment and Natural Resources Officer (“PENRO”) of DENR for allowing the release of misdeclared cargo in a bill of lading.⁴⁸

Ombudsman Gutierrez underlined the dismissal from public service of several kinds of public officials from the public service (without specifying the charge), such as: (1) a municipal mayor; (2) a Land Management Bureau (DENR–LMB) assistant director; (3) a Register of Deeds; (4) a Department of Agriculture – Bureau of Fisheries and Aquatic Resources (DA–BFAR) regional director; (5) a BIR regional director; (6) BIR revenue district officers; (7) Department of Public Works and Highways (DPWH) regional directors; (8) a state college president; and (9) Department of Education (DepEd) school principals.⁴⁹

Ombudsman Carpio-Morales emphasized the dismissal from public service of a Professional Regulations Commission (PRC) Chairperson and Commissioner for grave misconduct and serious dishonesty for failure to follow procurement rules; a ranking Bureau of Customs official at the Port

⁴⁴ The Ombudsman Act, § 15(3).

⁴⁵ The Ombudsman Act, § 24.

⁴⁶ *Castillo-Co v. Barbers*, G.R. No. 129952, 290 SCRA 717, 723, June 16, 1998.

⁴⁷ *See* same reasoning in *supra* note 36. That reasoning is also applicable here.

⁴⁸ *Supra* note 37, at 20, 21, 24.

⁴⁹ *Supra* note 38, at 32.

of Manila for dishonesty; and an assistant DPWH regional director for grave misconduct.⁵⁰

These highlights and statistics regarding administrative cases emphasize that the Ombudsman generally exercises its disciplinary authority to uphold the accountability of public officers. Interestingly, there are more administrative cases docketed compared to criminal cases. However, the reasons thereof are unclear and could be the subject of another study. Much like criminal cases, it seems that there is no clear trend for newly docketed administrative cases in the 2010s.

Third, we briefly tackle the Ombudsman's power to file cases for the forfeiture of ill-gotten wealth. It is only the Ombudsman who has the authority to file cases for the forfeiture of ill-gotten wealth that was amassed after February 25, 1986.⁵¹ This is treated as a civil proceeding and filed with the courts pursuant to Republic Act No. 1379.⁵² Compared to the number of newly docketed administrative and criminal cases, the number of new cases for forfeiture of ill-gotten wealth is much smaller. Notably, cases for the forfeiture of ill-gotten wealth would also entail an investigation similar to that of a criminal case.⁵³

Lastly, Requests for Assistance ("RAS") refer to "any form of grievance or concern seeking redress, relief, or public assistance, which does not necessarily amount to a criminal, administrative, or forfeiture complaint."⁵⁴ In RAS, the Ombudsman is "mandated to intervene within the parameters of its powers, function, and jurisdiction."⁵⁵ It has also been described as "a complaint or request seeking redress or relief for an act or

⁵⁰ *Supra* note 40, at 3.

⁵¹ The Ombudsman Act, § 15(11), *in relation to* Garcia v. Sandiganbayan, G.R. No. 165835, 460 SCRA 600, June 22, 2005.

⁵² An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee and Providing for the Proceedings Therefor. This was enacted on June 18, 1955, as amended.

⁵³ *See* Rep. Act No. 1379, § 2. *See also* Spouses Miraflores v. Ombud, G.R. No. 238103, 928 SCRA 45, Jan. 6, 2020, and DOF–Revenue Integrity Protection Service v. Ombud., G.R. No. 240137, 952 SCRA 64, Sept. 9, 2020.

⁵⁴ Ombudsman, *2019 Annual Report*, at 15, available at <https://www.ombudsman.gov.ph/docs/08%20Resources/2019%20Ombudsman%20Annual%20Report.pdf>.

⁵⁵ *Id.*

omission that is unreasonable, unfair, oppressive, discriminatory, improper or inefficient, and does not necessarily amount to an offense.”⁵⁶

The Ombudsman’s completed RAS have also been highlighted in its Annual Reports, which are excerpted below:

1. *RAS-C-04-1217*

Mr. Noel Gumata sought the assistance of the Public Assistance and Corruption Office (“PACPO”) of the Public Assistance Bureau (“PAB”) [of the Ombudsman] regarding his problem with payments as a voluntary member of the Social Security System (SSS). On February 18, 2003, he paid the underpayment for seven months, from February 2003 to August 2003, under SBR No. 0761826 CK. Effective March 2003, the contributions increased from a minimum of PHP 84.00 per month to PHP 94.00 per month with a difference of PHP 10.00.

In February 2003, the same was posted, whereas for the remaining six months, it was not posted. On December 17, 2003, Gumata paid the underpayment under SBR No. 786701 CW in the amount of PHP 60.00 in connection with the remaining six months. Meanwhile, on December 22, 2003, he requested the posting of his contribution’s payment through the SSS Bacolod Office; however, there was still no progress. Thus, he made a request to the Office of the Ombudsman to facilitate the posting relating to the remaining six months so that he can retire.

PAB referred the matter to SSS President and CEO Corazon S. dela Paz. The SSS, through Senior Executive Assistant Estela G. Dimaculangan, informed the Office that the matter has been referred to Mrs. Celia B. Tiongson, Assistant Vice President, Operations Accounting. On July 27, 2004, PAB was furnished with a copy of the letter dated July 7, 2004 addressed to Mr. Noel B. Gumata informing him that his voluntary contributions have been posted and the branch office in Bacolod City is already processing his application for monthly retirement pension.⁵⁷

2. *RAS-M-04-2265*

⁵⁶ Ombudsman, 2011 Annual Report, at 20, available at <http://www.ombudsman.gov.ph/docs/annualreport/Annual%20Report%202011.pdf>.

⁵⁷ *Supra* note 37, at 39–40.

On May 28, 2004, a phoned-in request for assistance was received during the Ombudsman hour at the DXFE radio station, hosted by Rev. Arnel Tan with Ombudsman Director Rodolfo Elman. The caller is a member of the Board of Election Inspector (“BEI”) requesting Ombudsman–Mindanao to assist her in following up her pay for services rendered during the election.

Acting thereon, the Office of the Ombudsman communicated with the Commission on Election (COMELEC) Regional Office to follow up payment for the BEI’s services. On June 2, 2004, Atty. Marlon S. Casquejo, Election Officer IV, informed the Office of the Ombudsman that the payments were ready and may be claimed by the concerned BEI from her respective district supervisors.

Consequently, on June 3, 2004, on the same radio program, with Rev. Tan and Atty. Zuleika Lopez as co-hosts, a concerned caller thanked the Office for the immediate action on the said request. The caller gave the information that the payment for her services as a BEI member has been received; accordingly, the same was used to enroll her children.⁵⁸

3. *RAS-M-05-1537*

Requester Cresencia E. Famitanco, single, 82 years old, handicapped and a retired government employee, personally appeared before the Office of the Ombudsman to request for assistance pertaining to the release of her title to the lot situated in Purok Mahayag, Buhangin, Davao City from the National Housing Authority (NHA). Allegedly, Farmitanco used all her retirement benefits and savings to fully pay the said lot on July 26, 2001.

Farmitanco, who was bodily carried by her kindhearted neighbors up to the fourth floor of the building where the office was located, said that the NHA did not release the title because of one Sammy Moralde’s verbal complaint.

The Office of the Ombudsman called the NHA to inquire on the status of Farmitanco’s title and the basis for Moralde’s verbal complaint. The Office was informed that the said complaint was already filed with the barangay where no final settlement was reached. The NHA required the submission of a barangay certification of withdrawal or retraction. Consequently, on Farmitanco’s behalf, the Office sent a letter to Barangay

⁵⁸ *Supra* note 37, at 43.

Captain Claudia Salvador of Barangay Buhangin, Davao City and to the Lupong Tagapamayapa for the required certification.

After several follow-ups on the requester's behalf, this Office was informed that Famitanco finally received her title from the NHA on September 23, 2005.⁵⁹

4. RAS-C-11-2279

Leonor, an elementary school teacher, obtained a housing loan from GSIS. Because of her meager salary, she failed to pay the amortization. Subsequently, she received a notice of foreclosure of property from GSIS.

In January 2009, she retired from government service. When she applied for her retirement benefits, she was surprised to find out that the amount of unpaid amortizations had been deducted from her benefits even if the property had already been foreclosed. In dire need of money to support her family, she then wrote to the Ombudsman to request intervention to recover the deducted amount. Through proper representation of the Ombudsman with GSIS officials, Leonor eventually received her check for PHP 481,989.73.⁶⁰

These RAS cited show that the Ombudsman can assist citizens without "prosecuting" a liability through a judicial or quasi-judicial proceeding. The reception of RAS is most in line with the classical concept of the ombudsman in receiving complaints from the general citizenry. However, Table 1 shows that the number of RAS docketed with the Ombudsman has been trending downward since 2004. The number of new RAS received yearly is greater than newly docketed administrative cases or newly docketed criminal cases individually in the 2010s.

Adjunct to these four main avenues through which the Ombudsman takes to seek the accountability of public officers, the Ombudsman can also engage in investigation, which is represented by fact-finding cases. Fact-finding cases are those complaints received by the Ombudsman which are: (1) insufficient in form and substance; (2) require more supporting evidence; or (3) filed by anonymous persons. These are generally acted upon usually by referring them to the Field Investigation Office or its counterpart bureaus

⁵⁹ Ombudsman, *2005 Annual Report*, at 68, available at <http://www.ombudsman.gov.ph/docs/annualreport/Annual%20Report%202005.pdf>.

⁶⁰ *Supra* note 56, at 21.

in area/sectoral offices to build the case or gather additional facts, if the complaint contains enough leads or details.⁶¹ How the Ombudsman chooses to make use of the facts gathered through its broad investigatory power is an entirely different matter.

C. The Departure of the Philippine Ombudsman

The discussion above shows that in seeking public accountability, the Philippine Ombudsman has generally poured its resources into an avenue involving some sort of quasi-judicial (i.e., administrative cases) or judicial proceeding (i.e., criminal cases and forfeiture cases) or, in certain instances, more informal remedies (i.e., RAS), even though the use of informal remedies seems to be on a downward trend.

In choosing the first three avenues, the Ombudsman focuses on prosecuting a liability under law. The Philippine Ombudsman *is a departure* from the classical model of the ombudsman, because it does not only receive and process complaints from the public, but actively investigates *and prosecutes* for the people and in their behalf, civil, criminal and administrative offenses committed by government officers and employees.⁶² More narrowly, the Ombudsman has been described as the office created to investigate *all criminal complaints* against public officers, regardless of whether the acts or omissions complained of are related to or arise from the performance of their office's duties.⁶³ Does the Supreme Court mean that an ordinary citizen should only go to the Ombudsman when there is a criminal offense or when seeking the dismissal of an employee arising from the act or omission?

Based on the classical model, an ombudsman should not be known *only* as a prosecutor. The Ombudsman in the Philippines, however, has become the “grand prosecutor,” as described in the article of former University of the Philippines College of Law Dean Salvador T. Carlota.⁶⁴ This inference appears to be supported by the numbers in Table 1 above. Further, in its 2018 and 2019 Annual Reports, similar to previous annual reports, the Office of the Ombudsman lists as its achievements the filing of numerous Informations in court for criminal cases, the necessary complaints for forfeiture cases, and the disposition of administrative cases and the

⁶¹ *Supra* note 56, at 8.

⁶² *Uy*, 354 SCRA 651, 665.

⁶³ *Deloso v. Domingo*, G.R. No. 90591, 191 SCRA 545, 551, Nov. 21, 1990.

⁶⁴ Carlota, *supra* note 20, at 28.

convictions of accused.⁶⁵ Perhaps the obsession with resorting to litigation by the Philippine Ombudsman can be attributed to the fact that only lawyers are qualified for the office.⁶⁶

This obsession may also be partially attributed to the powers, functions, and duties granted to the Philippine Ombudsman. However, it must be emphasized that the power and duty *to investigate* can be separated from the power and duty *to prosecute*. The investigatory power is limitless, in that the Ombudsman can investigate even impeachable officers.⁶⁷ In the exercise of its adjunct fact-finding function, the Ombudsman may still decide which avenue to take to accountability—whether it be criminal, administrative, or civil liability or another avenue altogether. In practice, it appears that the Philippine Ombudsman has generally focused on these three avenues leading to liability. Notice that if you change the word “Ombudsman” into “grand prosecutor” in the sentences above, they would still be sensible, as if the Ombudsman was just another prosecutor within the government machinery.

D. Outline of Succeeding Sections

This Article will argue that the Philippine Ombudsman can be much more than a “grand prosecutor” and that a reversion to a classical ombudsman model would be better for the accountability of public officers in the Philippines. It can have a role to play as a reformer of public opinion and be the loudest voice on matters of public administration and the functioning of bureaucracy—as a true representative of the sentiments and thoughts of the people.

Part II will discuss the framework of factors by which the Ombudsman’s effectivity will be measured. It will then discuss the determination of which factors the Philippine Ombudsman does or does not possess. Part III will recommend courses of action that the Philippine

⁶⁵ See Ombudsman, 2018 Annual Report, available at <https://www.ombudsman.gov.ph/docs/08%20Resources/2018%20Ombudsman%20Annual%20Report.pdf>. Its reported cases involve 2,462 criminal, 24 forfeiture, and 2,464 administrative cases. It reported that 443 convictions resulted out of the 627 decided criminal cases for 2018. See *supra* note 54. Its reported cases involve 1,156 criminal, 9 forfeiture, and 1,382 administrative cases. It reported that 308 convictions resulted out of the 753 decided criminal cases for 2019.

⁶⁶ CONST. art. XI, § 8.

⁶⁷ The Ombudsman Act, § 22; *Lastimosa v. Vasquez*, G.R. No. 116801, 243 SCRA 497, 500, Apr. 6, 1995 (Regalado, J., *concurring*).

Ombudsman may take within the current ambit of its powers, as well as reforms in the institution's structure that may help address factors it does not possess. Part IV discusses the possible challenges the reimagined Philippine Ombudsman may encounter in the implementation of reforms and makes possible recommendations. Part V concludes the Article and synthesizes the arguments made within.

II. THE FACTORS CONSTITUTING AN EFFECTIVE OMBUDSMAN

When measuring an institution's effectivity, it is first necessary to identify the factors that should be considered. Identifying these factors helps build the framework for testing the institution's effectivity. This Article will borrow from factors provided in past literature and will proceed to measure the current effectivity of the Philippine Ombudsman.

For the institution of the ombudsman to be effective, there are five factors (or variables if you are so minded) which it must possess: (1) political independence, (2) accessibility and expedition, (3) investigatory power, (4) absence of revisory jurisdiction,⁶⁸ and (5) ability to influence.⁶⁹

A. Factors the Philippine Ombudsman Possesses: Political Independence and Investigatory Powers

The Philippine Ombudsman already possesses both political independence and investigatory power. On one hand, political independence means that an ombudsman is "independent or autonomous from other political powers and can pursue its actions and strategies without their interference."⁷⁰ On the other hand, investigatory power refers to the power to make official inquiries.⁷¹

The 1987 Constitution gave more emphasis to the Ombudsman's independence when it granted fiscal autonomy to the office;⁷² made the Ombudsman an impeachable officer;⁷³ and provided the seven-year term of

⁶⁸ Carlota, *supra* note 20, at 23, *citing* THE 1971 CONSTITUTIONAL CONVENTION COMMITTEE REPORT ON THE OMBUDSMAN.

⁶⁹ Uggla, *supra* note 5, at 428.

⁷⁰ *Id* at 427.

⁷¹ *Investigate*, Black's Law Dictionary (8th ed., 2004).

⁷² CONST. art. XI, § 14.

⁷³ Art. XI, § 2.

the Ombudsman⁷⁴ to outlast the appointing President.⁷⁵ These legal entitlements of the Philippine Ombudsman ensure its independence in the political scene. For example, since it has fiscal autonomy, it cannot be threatened with the lowering of its budget. Additionally, since the appointed Ombudsman is an impeachable officer, this should mean that they could pursue investigations or speak out without fear of being removed from office.

Independence is not the be-all and end all for the effectivity of an ombudsman. An ombudsman with political independence but without the ability to influence is a “dead-end street,” whereas an ombudsman with the ability to influence but without political independence is just an “instrument for achieving the political goals of other actors.”⁷⁶

The Philippine Ombudsman has broad investigatory powers to carry out its mandate. It has the power to direct officers in government to furnish it with copies of documents relating to contracts or transactions entered into by their office;⁷⁷ to request any government agency for assistance and information necessary and to examine pertinent government records and documents;⁷⁸ to issue subpoenas *ad testificandum* and subpoenas *duces tecum* in any investigation;⁷⁹ and to examine and access bank accounts and records,⁸⁰ subject to bank secrecy laws. The public officer or employee from whom assistance has been requested has the duty to render the same.⁸¹ Even courts cannot issue writs of injunction to delay an investigation, unless there is *prima facie* evidence shown that the subject matter of the investigation is not within the jurisdiction of the Ombudsman.⁸² The general rule is that all provisional orders of the Ombudsman are immediately executory and effective.⁸³ This can be the subject of a motion for reconsideration filed with the Ombudsman on the limited grounds specified in the law.⁸⁴

⁷⁴ Art. XI, § 11.

⁷⁵ See CONST. art. XI, § 9.

⁷⁶ Uggla, *supra* note 5, at 428.

⁷⁷ The Ombudsman Act, § 15(4).

⁷⁸ § 15(5).

⁷⁹ § 15(8). It is arguable that this is a ministerial duty compellable by an action for mandamus if not heeded. However, that is not within the current scope of this Article.

⁸⁰ § 15(8).

⁸¹ § 33.

⁸² The Ombudsman Act, § 14.

⁸³ § 27, ¶ 1.

⁸⁴ § 27, ¶¶ 2–3.

Aside from all these tools to be used during the investigation, the Philippine Ombudsman's jurisdiction to investigate is expansive because they can act on *almost any act or omission of a public officer*. The enumeration in Section 19⁸⁵ of the Ombudsman Act provides for the acts or omissions of public officers over which the Ombudsman has jurisdiction to investigate. First, the enumeration is not exclusive, since it provides that “[t]he Ombudsman shall act on all complaints relating, but not limited to acts or omissions which: [enumeration follows].”⁸⁶ Second, even if the enumeration was exclusive, there is a catch-all clause providing that the Ombudsman can investigate acts or omissions that are “otherwise *irregular, immoral[,] or devoid of justification*.”⁸⁷ The Philippine Ombudsman can inquire on its own into any act or omission that it finds to be “objectionable” or “inefficiently performed” conduct.⁸⁸ It can receive complaints concerning public officials from any source and in whatever form.⁸⁹ It can investigate *all kinds of malfeasance, misfeasance and non-feasance*.⁹⁰ In short, the Philippine Ombudsman can investigate almost anything within the bounds of its legal powers. More than that, the Philippine Ombudsman can investigate even impeachable officials, if it is in view of filing a verified complaint for impeachment.⁹¹

B. Deficient Factors of the Philippine Ombudsman: Accessibility and Expedition, Absence of Revisory Jurisdiction and Ability to Influence

The three factors of (1) accessibility and expedition, (2) absence of revisory jurisdiction and (3) ability to influence are what are deficient in the Philippine Ombudsman.

1. Accessibility and Expedition

Accessibility and expedition refer to the office being within the reach of persons to whom “more imposingly formal means of redress are uncongenial.”⁹² The persons referred to here are usually the poor who have not readily seized opportunities to gain formal review of unsatisfactory administrative determinations and have distaste for trial-like hearings and

⁸⁵ § 19.

⁸⁶ § 19, ¶ 1.

⁸⁷ § 19(6).

⁸⁸ § 26(1)(f).

⁸⁹ § 26(2).

⁹⁰ *Laxina v. Ombud.*, G.R. No. 153155, 471 SCRA 542, 553, Sept. 30, 2005.

⁹¹ The Ombudsman Act, § 22.

⁹² Gellhorn, *supra* note 19, at 138.

other “legal” procedures.⁹³ As already alluded to above, the Philippine Ombudsman as a “grand prosecutor” is not within the reach of persons to whom more imposingly formal means of redress are uncongenial. Drafting complaint-affidavits, preparing evidence that will pass the tests of admissibility in court, and going to trial for years are not exactly the most inviting prospects for many Filipinos.

The RAS is an example of a program which is more accessible and expeditious for many citizens. Note that the problems encountered by citizens in their everyday lives regarding government services do not always need any formal proceeding. Despite the existence of the RAS program through which the Ombudsman aids normal citizens, the program has seemingly been neglected based on the downward trend of new docketed RAS. An RAS may not be a “high profile” and “significant” case, but they are concerns of the ordinary person that nonetheless make a big difference in their lives. This service of the Ombudsman is relatively of lower cost and more responsive to the common Filipino’s everyday problems. The generally higher number of RAS received in Table 1 compared with administrative and criminal cases possibly points to its higher accessibility as a service.

2. *Absence of Revisory Jurisdiction*

Absence of revisory jurisdiction means that there is no reexamination or careful review for correction or improvement⁹⁴ of the ombudsman’s actions, decisions, or opinions. To some extent, the absence of revisory jurisdiction already exists in the Philippine Ombudsman since they may act up to a certain point and decide whether to initiate prosecutorial court actions against erring public officials. However, the filing of an Information is subject to the Supreme Court’s review:

True, the Ombudsman *is a constitutionally created body with constitutionally mandated independence*. Despite this, however, the Ombudsman comes within the purview of the Court’s power of judicial review—a peculiar concept of Philippine Ombudsman, embodied in Article VIII, Section 1 of the 1987 Constitution — which serves as a safety net against its capricious and arbitrary acts. Thus, in *Garcia-Rueda v. Pascasio*, the Court held that “*while the Ombudsman has the full discretion to determine whether or not a criminal case is to be filed, the Court is not precluded from reviewing the Ombudsman’s action when there is grave abuse of discretion.*” This is because, “while the

⁹³ *Id.*

⁹⁴ *Revision*, Black’s Law Dictionary (8th ed., 2004).

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.”⁹⁵

A Philippine Ombudsman who consistently acts as a “grand prosecutor” ultimately submits its decision and action to the courts for determination of liability and guilt. It is only the court (whether it be the Sandiganbayan or the Regional Trial Court) that will convict the public official, subject to appeal to the Supreme Court. Forfeiture cases would need to be filed with the proper Regional Trial Court or Sandiganbayan as the case may be.⁹⁶ Likewise, the forfeiture of illegally acquired wealth in favor of the State requires a judicial order.

In comparison to its foreign counterparts, the Philippine Ombudsman wields disciplinary authority, which most other ombudsmen do not have. However, the exercise of this disciplinary authority is subject to the courts’ revisory jurisdiction. Administrative disciplinary cases decided by the Office of the Ombudsman are appealable to the Court of Appeals, and eventually, to the Supreme Court.⁹⁷ This means that two possible courts will review the Ombudsman’s decision in the exercise of this “awesome” disciplinary power, which was granted by the Constitution nonetheless.⁹⁸ The only exception to this is that any order, directive, or decision imposing the penalties of either public censure or reprimand or suspension of not more than one month’s salary shall be final and unappealable.⁹⁹ In one case, the Supreme Court overturned the penalty of dismissal meted out by the Ombudsman, stating:

All told, inasmuch as the Office of the Ombudsman enjoys independence, it cannot and should not lose sight of our laws, which it is bound to uphold and obey. The Ombudsman is as much the protector of the innocent as it is the sentinel of the integrity of the public service; the zeal of prosecution must, at all times, be tempered with evidence. In this case, the cavalier attitude of the Ombudsman in distilling the facts and meting out the most

⁹⁵ *Behest Loans*, 648 SCRA 586, 598. (Emphasis supplied, citations omitted.)

⁹⁶ *See* Rep. Act No. 1379 (1955), § 2, and Pres. Dec. No. 1606 (1978), § 4, *as amended* by Rep. Act No. 10660 (2015), § 2; SANDIGANBAYAN INT. RULES, Rule XI, § 1(a).

⁹⁷ The Ombudsman Act, § 27, *in relation to* *Fabian v. Desierto*, G.R. No. 129742, 295 SCRA 470, Sept. 16, 1998.

⁹⁸ One may just refer to the litany of cases that a law student will encounter in his study of Public Officers to fathom the number of administrative cases decided by the Ombudsman that are eventually appealed.

⁹⁹ The Ombudsman Act, § 27.

severe penalty of dismissal cannot go unnoticed; the dismissal of an officer based on nothing but conjecture and a talismanic invocation of conspiracy is, aside from being manifestly unjust, a gross disservice to its mandate. To be sure, the cleansing of our ranks cannot be done at the expense of a fair and just proceeding.¹⁰⁰

In short, any time the Ombudsman prosecutes a case in court or administratively disciplines a public official, it would be subject to the revisory jurisdiction of the judiciary system. Despite Philippine Ombudsman's legal power, what makes them less effective compared to their foreign counterparts is they are less powerful *morally* than their foreign counterparts. The moral condemnation of public officials is not subject to the revisory jurisdiction of any court.

3. Ability to Influence

Ability to influence means that the ombudsman must be able to “act effectively to counter abuses by issuing resolutions or initiating court action.”¹⁰¹ Again, to a certain extent, the Philippine Ombudsman already has this ability, since it can initiate court action independently and discipline public officials. However, it is arguable whether initiating court action has been effective in countering abuses. The issuance of resolutions is an action which the Philippine Ombudsman has not yet consistently taken but should consider, as will be discussed below.

The administrative law luminary, Walter Gellhorn, once propounded an interesting hypothetical to Japanese lawyers, businessmen, and others when he was conducting studies in Japan:

Mr. X is the proprietor of a very small restaurant. He desires to hang a large sign over the street near his establishment, to advertise its presence. He applies to a suitable official for permission, which is brusquely denied. He thinks that he has seen similar signs elsewhere and that he should be allowed to carry out his business plans. What would he do? Time after time, those who were not themselves officials immediately responded that Mr. X would seek to enlist the help of someone important or, failing in that, would simply give up. “He would go to the most influential person he knows and tell him the problem,” said a leading professor. “Then,

¹⁰⁰ PNP—Criminal Investigation and Detection Group v. Villafuerte, G.R. No. 219771, 880 SCRA 305, 336, Sept. 18, 2018. (Emphasis and citations omitted.)

¹⁰¹ Ugbla, *supra* note 5, at 427.

if that person believed him, he would act in his behalf, to right his wrongs. But if Mr. X doesn't live in an old and established neighborhood where everyone knows everyone else, he would probably just accept the wrong."¹⁰²

Professor Gellhorn later commented on that hypothetical that no legal remedies were mentioned in the responses.¹⁰³ If applied in an American city, the Americans would not answer that they would look for an influential person but answer in the following manner: "I would try to find somebody who knows his way around City Hall to look into the matter for me."¹⁰⁴

If the hypothetical were applied in the Philippine setting, the answer of one Juan dela Cruz would likely not be the Ombudsman's office. It would be more likely that he would look for some relative who knows someone in the mayor's office or if he is of a certain disposition, he would threaten to bring up the matter to Raffy Tulfo in "Wanted sa Radyo" on Radyo5 92.3 News FM or in his Facebook page, "Raffy Tulfo in Action."¹⁰⁵ The popularity of Mr. Tulfo and the Filipino people's belief in his brand of public condemnation is confirmed by the fact that he recently placed 3rd in the Senatorial Elections held in 2022 garnering a total of 23,396,954 votes.¹⁰⁶

Despite the existence of the RAS program, it seems that it has not become popular among the people. Even the number of complaints in total (including administrative and criminal cases) in relation to the population leads to the conclusion that the Filipino people do not see the Ombudsman as the one-stop shop for all complaints regarding government inefficiencies, injustices, and wrongs. For a total population of around 100 million people, complaints received in the thousands would only be equivalent to a very low percentage—around 0.01%¹⁰⁷—of the Filipino people coming to the Ombudsman to complain. The Office of the Ombudsman is ideally the first

¹⁰² Gellhorn, *supra* note 14, at 694–95.

¹⁰³ Gellhorn, *supra* note 2, at 14.

¹⁰⁴ *Id.*

¹⁰⁵ This is my own opinion and assumption. It would be an interesting study to conduct the same hypothetical survey in the Philippines. See Raffy Tulfo in Action, FACEBOOK, at <https://www.facebook.com/raffytulfoinaction/>.

¹⁰⁶ See COMELEC, *Senatorial Summary Statement of Votes by Region (By Rank)*, COMELEC WEBSITE, May 27, 2022, at https://comelec.gov.ph/?r=2022NLE/ElectionResults/_/SenatorialSummaryStatementofVotes.

¹⁰⁷ Liberally granting, for example, that the number of complaints received by the Ombudsman was somewhere near 100,000, it would only be 0.01% of the approximate Philippine population of 113 million people in 2021.

person to whom ordinary citizen runs whenever they encounter problems with the bureaucracy of government. However, in the Philippine setting, the Ombudsman may not even be a name that crosses a person's mind when such problems arise. This will not change if *only* the Philippine Ombudsman as another "grand prosecutor" is maintained.

III. ACTIONS FOR THE PHILIPPINE OMBUDSMAN: CRITICIZE, PUBLICIZE, AND INVESTIGATE

In this portion of the Article, recommended courses of action for the Ombudsman to improve its effectivity are discussed. These all aim to address the deficient factors that can be improved in the Philippine Ombudsman, as discussed in Part II.

A. The Publication of Condemnatory Opinions and Public Admonitions Based on Findings in Investigations

In Sweden, condemnatory opinions are statements made by ombudsmen addressed to the concerned official that certain actions were faulty. These opinions neither initiate nor compel any prosecution.¹⁰⁸ This practice has been extended to issuing the condemnatory opinion in the ombudsman's official report either to the legislature or the executive branch, so that the officials concerned are subject to both private criticism and reprimand in an official document.¹⁰⁹ In not compelling prosecution, the ombudsman can attach the stigma of a reprimand to an official without need to secure examination of the question by a court.¹¹⁰ Thus, in issuing a condemnatory opinion, the ombudsman is technically bypassing the courts in making a final legal interpretation and "succeeds in compelling obedience without recourse to prosecution."¹¹¹

In Bolivia, high compliance rates are reported with the orders of the ombudsman because of the practice of publishing the names of noncompliant individuals and government agencies in its yearly reports and in the national media.¹¹² The ombudsman, in issuing such opinion, can sound

¹⁰⁸ Stig Jägerskiöld, *Swedish Ombudsman*, 109 U. PA. L. REV. 1077, 1088 (1961).

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 1090.

¹¹¹ *Id.*

¹¹² Moreno, *supra* note 6, at 101, citing Thomas Pegram, *Weak Institutions, Rights Claims and Pathways to Compliance: The Transformative Role of the Peruvian Human Rights Ombudsman*, 39 OXFORD DEVELOPMENT STUDIES 229 (2011).

the alarm and “shame” government officials *into being held accountable*. In this respect, the ombudsman “functions in a manner much like the media, the ‘fourth estate,’ because of its close links to the public and its ability to shame officials.”¹¹³

The Philippine Ombudsman has boundless investigatory powers that give it the potential to function as an even stronger “fourth estate.” As noted above, the Ombudsman can legally compel government officials to provide information. Thus, a Philippine Ombudsman who decides to use these investigatory powers and publish their opinions for the general public would be a “grand investigatory journalist”—with an appetite for the latest stories concerning corruption or inefficiencies of public officials that could never be satiated. A grand investigatory journalist in the mold of Raffy Tulfo who could sway the Filipino people’s opinion could counter abuses by public officials simply by speaking and publicizing their opinion. If an Ombudsman in that mold and with that amount of public sway were to be molded, then the factor of ability to influence would be improved.

Latin American ombudsmen have issued condemnatory opinions on numerous reasons. In Honduras, the ombudsman issued an opinion on the misuse of disaster relief funds allocated to help the victims of Hurricane Mitch, the second deadliest Atlantic hurricane.¹¹⁴ In Colombia, the ombudsman has publicly criticized the military for failing to respond to threats to the civilian population, while questioning the biological effects of the pesticides employed for eradicating coca plantations.¹¹⁵ In Peru, the ombudsman issued an opinion accusing the ruling party of authoritarian then-President Fujimori of electoral fraud.¹¹⁶

An ombudsman can issue condemnatory opinions on anything involving public administration and act through such opinion, even if there is no legal cause of action. Thus, the use of condemnatory opinions provides the ombudsman a flexible tool in addressing the wrongs of public officials. With the consistent issuance of condemnatory opinions or admonitions, the ombudsman gradually creates a body of “[o]mbudsman laws” for government officials by which their conduct will be guided.¹¹⁷

¹¹³ Moreno, *supra* note 6, at 101.

¹¹⁴ Uggla, *supra* note 5, at 437.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Cheng, *supra* note 13, at 23.

Lastly, the issuance of condemnatory opinions helps strengthen the ombudsman in two key factors: accessibility and expedition, and absence of revisory jurisdiction. As noted by Dean Carlota, “[t]o a poor man, the idea of going to court to vindicate his right is, more often than not, meaningless. The judicial process is not only cumbersome and time-consuming but also expensive.”¹¹⁸ A condemnatory opinion or admonition does not require courts. As soon as the ombudsman publicizes the opinion, there is, theoretically, redress for the ordinary citizen’s complaint.

Since it is not an administrative decision or an opinion issued in a legal case, there is no revisory jurisdiction by the judiciary. Courts would not have the final say whether the ombudsman’s opinion based on the facts gathered is erroneous or not, as only the general public consuming the information would deliver the final verdict. This appeal to the Filipino public’s reason may even be more powerful and resounding in terms of swaying public opinion than the initiation of a legal action in court.

The Philippine Ombudsman has the power to issue condemnatory opinions, since it is mandated and empowered to publicize matters covered by its investigation when circumstances warrant and with due prudence.¹¹⁹ With the Internet and social media, the public condemnation of the public official or an erroneous system would be instantaneous. The Ombudsman’s investigatory power, when used in conjunction with issuances of condemnatory opinions, would give the public the opportunity to learn about the details and inner workings of corruption and wrongdoing within public offices—details that are not readily available, even in formal proceedings. Such issuances and admonitions are in line with the Ombudsman’s duty to make recommendations for the elimination of causes of inefficiency, red tape, mismanagement, fraud, and corruption in the government.¹²⁰ These powers and duties, which have been neglected by the insistent focus on prosecution, simply need to be brought back into the fore through a Philippine Ombudsman’s choices.

B. Increasing Public Awareness of the Office of the Ombudsman and its Activities

The condemnatory opinion or admonition will only be effective if the public is aware of the ombudsman’s work. This is because both moral

¹¹⁸ Carlota, *supra* note 20, at 25.

¹¹⁹ CONST. art XI, § 13(6); The Ombudsman Act, § 15(6).

¹²⁰ CONST. art XI, § 13(7); The Ombudsman Act, § 15(7).

authority and appeal to reason depend on the public's opinion. Hence, the basis of authority of the ombudsman only grows stronger if the public supports the ombudsman. In Alberta, Canada, for example, the results of a survey showed that people who knew more about the ombudsman and its functions tended to be more supportive of the ombudsman idea.¹²¹

The first thing that an ombudsman should do to increase public awareness about their office is maintain good relations with the press. Not only may a supportive press provide the necessary publicity to the ombudsman's findings and recommendations, but it may also provide the stimulus for a vigorous and enthusiastic exercise of their power.¹²² In Latin America, the media provides the ombudsman with the means to ensure that it is not ignored, since the ombudsmen's opinions are usually not binding.¹²³ The ombudsman of El Salvador once remarked that she lacked power because newspapers were not interested in her work.¹²⁴ The Swedish ombudsman, usually considered the model ombudsman, makes it a point to maintain a cordial relationship with the press.¹²⁵ Nurturing such a relationship means that prosecutions, reprimands, and recommendations are widely reported in the daily news and are thus noticed by many officials who would not receive or read an official report,¹²⁶ such as the annual reports published in the Philippine Ombudsman website.¹²⁷ More than that, the journalists' response to what the ombudsmen do creates, in turn, a larger public response to their efforts.¹²⁸

In the Philippines, the Ombudsman has the discretion to establish a good relationship with the press and maintain it. It should be a top priority for an ombudsman who wants to reach the office's full potential. Several things can be done to improve press relations. These include having weekly opinion or update columns in newspapers in the online and print edition, doing interviews with journalists regarding investigations, and having those interviews posted online. The Ombudsman can also allow access to documents of public interest, such as the statements of assets and liabilities

¹²¹ Friedmann, *supra* note 3, at 520.

¹²² Carlota, *supra* note 20, at 20.

¹²³ Uggla, *supra* note 5, at 439.

¹²⁴ *Id.*, citing an interview with Salvadorean ombudsman Beatrice Alamanni de Carrillo with the author (Nov. 17, 2001).

¹²⁵ Carlota, *supra* note 20, at 20.

¹²⁶ Gellhorn, *supra* note 11, at 359–60.

¹²⁷ *See supra* note 30.

¹²⁸ Gellhorn, *supra* note 11, at 360.

of public officials.¹²⁹ It can even disclose terms of what it finds to be anomalous government contracts to the press so that they can be criticized by the public, subject to laws on government secrets.¹³⁰

A good example of a press takedown is that of former Makati mayor and former Philippine Vice President, Jejomar Binay. Binay has faded from the political scene ever since the scandal of the 2.2 billion peso parking lot building in Makati, which was heavily reported by news outlets such as ABS-CBN. Until now, the graft case, which was filed by the Ombudsman (Conchita Carpio Morales at the time), in 2015¹³¹ concerning the said building is still pending with the Sandiganbayan.¹³² However, public opinion did not wait for any court decision, as Binay lost in the local congressional elections in Makati, which was once seen as his stomping ground.¹³³ If every investigation was as well-publicized as that of Jejomar Binay's, the Ombudsman's influence in the public eye would grow exponentially.

The second thing that should be done to increase public awareness of the ombudsman is to tackle big cases and scandals attracting national and press attention. The Philippine Ombudsman's poor visibility can be attributed to their failure to assert their power of investigation in major government scandals.¹³⁴ In Honduras, the ombudsman gained immense popularity when, right after its creation, it chose to publish several exposés on *desaparecidos* during the military regime and denounced the role of public authorities in the atrocities.¹³⁵ In Peru, the ombudsman established its place in the public eye by its persistent work with different groups, such as women and internal refugees, during the authoritarian regime of former President Fujimori.¹³⁶

¹²⁹ The Ombudsman Act, § 15(6) *in relation to* CONST. art. XI, § 17 and Rep. Act No. 6713 (1989), § 8.

¹³⁰ § 15(6) *in relation to* § 15(4).

¹³¹ Ombudsman, *VP Binay & Mayor Binay, Jr., 22 others face criminal charges for Makati carpark case*, Integrity Watch, July–Dec. 2015, at 1, at https://www.ombudsman.gov.ph/docs/references/IWN_Jul-Dec2015.pdf

¹³² CNN Philippines Staff, *Sandiganbayan denies Binays' motion to suspend graft trial*, CNN PHILIPPINES, Sep 12, 2019, at <https://www.cnnphilippines.com/news/2019/9/12/sandiganbayan-binay-makati-parking-building-graft.html>.

¹³³ *Id.*

¹³⁴ Carlota, *supra* note 20, at 28–29.

¹³⁵ Uggla, *supra* note 5, at 447, *citing* interviews with Leo Valladares (Nov. 19, 2001) & Germán Calix from Cáritas Honduras (Nov. 21, 2001).

¹³⁶ *Id.* at 448.

In Alberta, Canada, many citizens were of the opinion that the ombudsman was doing his job effectively because he got into a protracted conflict with the government concerning the Philipzyk case.¹³⁷ The public praised the Alberta ombudsman because despite being summoned by the Commission on Inquiry—a body created by the cabinet to investigate issues of national interest—he refused to provide testimony and documents relating to his investigation on the Philipzyk complaint.¹³⁸

The incumbent Philippine Ombudsman could have relentlessly pushed himself into the public limelight by investigating many malfeasances committed by public officials during the COVID-19 pandemic, as well as the years thereafter. He could have asserted his power during the police's shooting of Winston Ragos,¹³⁹ the Debold Sinas *mañanita* amidst a strict lockdown,¹⁴⁰ the non-renewal of the ABS-CBN franchise,¹⁴¹ the 15 billion peso PhilHealth scandal,¹⁴² the Pharmally scandal,¹⁴³ and perhaps issued an opinion on the agricultural sector's failure to address the rising price of onions.¹⁴⁴ The Philippine Ombudsman should have investigated the scandals or public issues that gathered national attention and issued condemnatory opinions and admonitions addressed to the general public about the public officials concerned. In general, the Philippine Ombudsman should have no

¹³⁷ Friedmann, *supra* note 3, at 509–10.

¹³⁸ Alex Weir, *The Legislative Ombudsmen*, 14 ALBERTA L. REV. 256, 259 (1979).

¹³⁹ CNN Philippines Staff, *Cop faces homicide raps for fatally shooting Army veteran in checkpoint*, CNN PHILIPPINES, Apr. 24, 2020, at <https://www.cnnphilippines.com/news/2020/4/24/Winston-Ragos-shooting-police-Daniel-Florendo-case.html>.

¹⁴⁰ ABS-CBN News Staff, *Police official's lockdown party a 'big no-no': DILG*, ABS-CBN NEWS, May 13, 2020, at <https://news.abs-cbn.com/news/05/13/20/debold-sinas-birthday-party-a-big-no-no-dilg-coronavirus-lockdown>.

¹⁴¹ Jason Gutierrez, *Philippine Congress Officially Shuts Down Leading Broadcaster*, NEW YORK TIMES, July 10, 2020, at <https://www.nytimes.com/2020/07/10/world/asia/philippines-congress-media-duterte-abs-cbn.html>.

¹⁴² Glee Jalea & Janine Peralta, *Whistleblower claims ₱15 billion stolen by PhilHealth execs in fraud schemes*, CNN PHILIPPINES, Aug. 4, 2020, at <https://cnnphilippines.com/news/2020/8/4/PhilHealth-P15-billion-stolen-mafia-execs.html>.

¹⁴³ Cristina Eloisa Baclig, *2021: Pharmally scandal rubs salt on pandemic wounds*, INQUIRER.NET, Dec. 7, 2021, at <https://newsinfo.inquirer.net/1532484/2021-pharmally-scandal-rubs-salt-on-pandemic-wounds>.

¹⁴⁴ Kathleen Magramo, *Onions are so expensive in the Philippines they're being smuggled into the country*, CNN PHILIPPINES, Jan. 10, 2023, at <https://edition.cnn.com/2023/01/10/business/philippines-onion-inflation-intl-hnk/index.html>.

fear in issuing such opinions since they enjoy sufficient independence and cannot be disciplined or removed from office, except by impeachment.¹⁴⁵

Third, the Philippine Ombudsman can increase awareness of its office by having a stronger information drive, centered on sharing with the public key details on its powers, functions, and activities. In the past, Latin American ombudsmen devoted “a relatively large share of their resources to education, the production of printed materials, television and radio spots, and similar actions.”¹⁴⁶ This is aimed at encouraging people to approach it or informing the citizens about their rights in matters of substance and procedure.¹⁴⁷ In some cases, the ombudsman has “published magazines of its own (Guatemala), contributed a weekly column in the official bulletin (Peru) or placed regular supplements in existing media (Bolivia).”¹⁴⁸ In Japan, the equivalent of the ombudsman in the 1970s presented semimonthly television playlets, distributed radio scripts for local broadcasting, arranged for door-to-door delivery of handbills advertising its services, and also publicized their availability by speaking at meetings, posting signs, or persuading local governments to spread the word.¹⁴⁹

Dean Carlota already lamented in 1990 that the Ombudsman suffers from poor visibility in the public eye. This was attributed to the failure to investigate the major scandals that have rocked the government and the failure to be put in the media limelight, unlike some inquiries in aid of legislation.¹⁵⁰ In contrast to 1990, during which the limelight was controlled by TV and radio stations, the advent of the Internet has changed media consumption. Today, news spreads like wildfire with one click of a button.

All the activities mentioned above could take a new dimension in the media avenues of the Internet, such as Facebook, Twitter, Instagram, and Tiktok. As most youth will know today, sometimes, all it takes is a single video or sound bite to go viral to achieve internet fame. The reach of social media in the digital age is immense especially in the Philippines, considering that country appears to be keen on its use.¹⁵¹ Videos and media content

¹⁴⁵ CONST. art. XI, § 2.

¹⁴⁶ Uggla, *supra* note 5, at 443.

¹⁴⁷ *Id.*

¹⁴⁸ Uggla, *supra* note 5, at 439.

¹⁴⁹ Gellhorn, *supra* note 14, at 706–07.

¹⁵⁰ Carlota, *supra* note 20, at 15, 28–29.

¹⁵¹ See Cristina Eloise Baclig, *Social media, internet craze keep PH on top 2 of world list*, INQUIRER.NET, Apr. 29, 2022, at <https://newsinfo.inquirer.net/1589845/social-media-internet-craze-keep-ph-on-top-2-of-world-list>.

summarizing how the Ombudsman has helped several ordinary citizens with their everyday problems or hammered on the conviction of a corrupt politician could be uploaded so that its visibility among Filipinos could be increased. This could be done in partnership with accredited online news sites, journalists, or even vloggers.

Aside from targeting the public through its information drives, the ombudsman could directly target public officers and employees through publications in the bulletins of different government agencies. The knowledge of public officials and employees themselves leads to a reinforcing effect that they should not commit malfeasances, because an ombudsman “watchman” is around. Other than circulating publications, the ombudsman can even call the attention of the public official in charge to certain acts or omissions which reflect a subordinate’s inept discharge of responsibilities, which the superior officer might have never learned otherwise.¹⁵² For example, a prison administrator in Finland stated that the guards’ behavior patterns have been greatly affected by their knowledge that prisoners have ready access to the ombudsman.¹⁵³ Meanwhile, a police officer stated that after hearing about the prosecution of a police chief in another city for unnecessarily keeping a sick man in jail, their command immediately decided to improve their system of dealing with sick prisoners in fear of being investigated by the ombudsman like the other police chief.¹⁵⁴

This could be complemented by the Philippine Ombudsman’s existing programs, since the Resident Ombudsman (“RO”) program has already been implemented. An RO may be appointed for a department, bureau, office, commission, a government-owned or controlled corporation, or any unit of the national government, provincial, city or municipal governments.¹⁵⁵ ROs are given the power to conduct fact-finding inquiries in matters falling within their functions and, for such purpose, shall be deemed empowered to issue *subpoena* and *subpoena duces tecum*.¹⁵⁶

To provide context, ROs were installed in 2004 in the following agencies: the Public Attorney’s Office (PAO), Board of Pardons and Parole (BPP), Bureau of Fire Protection (BFP), National Food Authority (NFA), Maritime Industry Authority (Marina), Sugar Regulatory Authority (SRA),

¹⁵² Gellhorn, *supra* note 19, at 136.

¹⁵³ Gellhorn, *supra* note 11, at 349.

¹⁵⁴ *Id.* at 350.

¹⁵⁵ Ombud. Adm. Order No. 10-01 (2001) [hereinafter “Resident Ombudsman AO”], § 1. Guidelines on the Installation of Resident Ombudsman (Non-Organic).

¹⁵⁶ § 7.

Bureau of Food and Drugs (BFAD), National Labor Relations Commission (NLRC), Employees Compensation Commission (ECC), and National Conciliation and Mediation Board (NCMB).¹⁵⁷ ROs may choose to actively investigate perceived inefficiencies or mistakes within the agency or government unit to which they are assigned.¹⁵⁸ These ROs are theoretically close to the ground and should be able to increase their visibility within the offices with a more vigorous exercise of their powers.

Increasing the Filipino public's awareness of the Office of the Ombudsman and its activities will contribute to the office's accessibility and its ability to influence. To drive home the point, an ombudsman will only be able to serve well if the entire community knows of its existence and its functions.¹⁵⁹ Information campaigns targeting those who have not heard of the office before must be made to equalize access to an ombudsman.¹⁶⁰

The Philippine Ombudsman's ability to influence will increase primarily because *public awareness is the basis of the moral authority* of the ombudsman. The appeal to reason is directed to the public, not to a court of law. The ombudsman will never be supreme when it appeals strictly to legal power, because this is within the realm of the judiciary.¹⁶¹ If they are able to establish a sufficient public awareness of the dealings, function, and track record of their office, then they can become *supreme when appealing to the public opinion* and drawing upon their established moral authority.

C. The Division of the Office of the Ombudsman into Specialized Offices

As societies become more complex and government participation and intervention grow daily in everyday life, bureaucrats may further impinge on citizens' rights.¹⁶² Several countries have created new specialized ombudsman offices to address specific fields of government administration that have become a problem in the people's eyes.

In 1915, Sweden decided to adopt the Military Ombudsman when the size of the armed forces grew.¹⁶³ As early as 1971, Sweden established

¹⁵⁷ *Supra* note 37, at 33–34.

¹⁵⁸ § 6(b).

¹⁵⁹ Gellhorn, *supra* note 14, at 706.

¹⁶⁰ Friedmann, *supra* note 3, at 522–23.

¹⁶¹ CONST. art. VIII, § 1.

¹⁶² *See* Cheng, *supra* note 13, at 30.

¹⁶³ Jägerskiöld, *supra* note 108, 1095 n.55.

the Consumer Ombudsman which was meant to receive complaints concerning marketing practices and regulations.¹⁶⁴ In 2009, Sweden established the Equality Ombudsman to cover compliance with the Discrimination Act and to specifically receive and consider complaints from individuals asserting that they have been the victims of discrimination.¹⁶⁵ By the end of the 20th century, the United Kingdom had at least 24 different ombudsmen, including the Police Complaints Commission, a prisons ombudsman, and a banking ombudsman.¹⁶⁶

These examples show that the concept of the ombudsman can apply to specific societal contexts with the connected bureaucracy, because the public must deal with the growing number of government regulators and bureaucracies in the different facets of daily life. In creating these ombudsman offices, the legislature recognizes that one ombudsman cannot possibly handle every field of government administration that a citizen encounters. Thus, the office must evolve as public concerns evolve.

The creation of specialized ombudsmen offices will help strengthen expediency. With specialization and division of work, complaints could be processed faster and dealt with accordingly. In the Philippines, several specialized deputy ombudsmen could be created under the Ombudsman. The Constitution already recognizes that a separate Deputy for the military establishment could be appointed.¹⁶⁷

In fact, the Philippine Ombudsman has already created a special office before called the Investment Ombudsman (“IO”).¹⁶⁸ Creating the IO aimed to “encourage local and foreign investment in the country and improve global competitiveness through prompt action on investors’ grievance [sic] and speedy resolution of investors’ complaints.”¹⁶⁹ The IO is tasked to handle: (1) delay in the delivery of frontline services relating to the establishment or conduct of business; (2) issuance of licenses, permits, and certificates in relation to business to any person not qualified or legally entitled; (3) solicitation, demand, or request by a government official in exchange for the issuance of licenses, permits, and certificates, the release of

¹⁶⁴ Donald B. King, *The Consumer Ombudsman*, 79 COM. L. J. 355 (1974).

¹⁶⁵ *Om DO*, DISKRIMINERINGSOMBUDSMANNEN WEBSITE, available at <https://www.do.se/om-do/>. This source is originally in Swedish.

¹⁶⁶ Glen O’Hara, *Parties, People, and Parliament: Britain’s “Ombudsman” and the Politics of the 1960s*, 50 J. BRIT. STUDIES 690, 710 (2011).

¹⁶⁷ CONST. art. XI, § 5.

¹⁶⁸ Ombud. Order No. 327 (2014).

¹⁶⁹ *Id.*

shipments and cargoes, as well as the arbitrary assessment of fees for the conduct of business; and (4) any other delay or refusal to comply with the referral or directive of the Investment Ombudsman team.¹⁷⁰

From the policy and the scope of complaints within its concerns, it can be gleaned that the IO is a specialized ombudsman specifically for doing business—whether it be regarding regulatory agency licenses or a license to do business within a locality. Despite the IO being a good idea in theory, it seems to have failed in implementation. In 2019, or five years after its creation, the IO only reported a total new case load of nine cases.¹⁷¹ In fact, only the IO in Visayas reported any workload and disposition of cases.¹⁷²

In line with this idea, data would need to be gathered about the ordinary Filipino citizen's most pressing concerns, whether it be drugs, policemen, gender-based discrimination, environmental concerns, and disaster relief for typhoons or any other field of government that would concern the public. These offices would then go beyond determining probable cause for offenses of public officers, such as violations of the Revised Penal Code,¹⁷³ the Anti-Graft and Corrupt Practices Act,¹⁷⁴ the Code of Conduct and Ethical Standards,¹⁷⁵ the Forfeiture of Unexplained Wealth,¹⁷⁶ the Civil Service Decree,¹⁷⁷ and the Local Government Code.¹⁷⁸ These offices would be concerned with *compliance with special laws governing a specific field* regulated by the government. Breaking from the box that is the Philippine Ombudsman's *grand prosecution* office could allow it to address concerns not even punished yet by law. To build upon the past, studies would need to be made on why the IO's implementation failed.

A citizen's primary concern is not usually to have a public official go to jail, but rather that there is a well-functioning and fair bureaucracy abiding by the rule of law. In the Philippines, the Office of the Special Prosecutor nested in the Office of the Ombudsman should already be the body specially dedicated to conducting preliminary investigations and prosecuting criminal

¹⁷⁰ *Id.*

¹⁷¹ *Supra* note 54, at 15.

¹⁷² *Id.*

¹⁷³ *See* REV. PEN. CODE, art. 204–245, which define Crimes of Public Officers.

¹⁷⁴ Rep. Act No. 3019 (1960).

¹⁷⁵ Rep. Act No. 6713 (1989).

¹⁷⁶ Rep. Act No. 1379 (1955).

¹⁷⁷ Pres. Dec. No. 807 (1975).

¹⁷⁸ LOCAL GOV'T CODE, § 514 *in relation to* § 89.

cases within the Sandiganbayan's jurisdiction.¹⁷⁹ Not every single ombudsman must be focused on finding criminal causes of action against public officials or on disciplining officials through administrative proceedings. For example, a specialized Ombudsman could be established just to ensure compliance with the Code of Conduct and Ethical Standards¹⁸⁰ and admonish erring public officials when needed without dismissing them.

IV. LIMITATIONS AND CHALLENGES TO PROPOSED REFORMS

All these proposed reforms are already within the Ombudsman's current power, either granted by the Constitution itself or by the Ombudsman Act.

To summarize: *Firstly*, the issuance of condemnatory opinions fall within the Ombudsman's power to "[p]ublicize matters covered by its investigation when circumstances so warrant and with due prudence."¹⁸¹ *Secondly*, increasing the public's awareness of the Ombudsman falls within the Ombudsman's discretion in choosing (i) what to investigate, subject to the limits of the jurisdiction of the Office, and (ii) what to publicize within the bounds of power.¹⁸² *Lastly*, the formation of specialized Ombudsman offices within its structure are pursuant to its other powers of performing such functions or duties as may be provided by law¹⁸³ and of organizing such directorates for administration and allied services as may be necessary for the effective discharge of its functions.¹⁸⁴

Thus, there would be no need for constitutional reform or an amendment of the law before the Philippine Ombudsman could effect these reforms. However, although these proposed reforms may sound good in theory, it is appropriate to recognize some challenges and limitations that these reforms may face.

The beginning of the issuance of any condemnatory opinion would be the gathering of information, which would entail the use of the Ombudsman's power to investigate. The Ombudsman's power to investigate has already been clipped by the Supreme Court, specifically by limiting the

¹⁷⁹ The Ombudsman Act, § 11, ¶ (4)(a).

¹⁸⁰ Rep. Act No. 6713 (1989).

¹⁸¹ CONST. art XI, § 13(6).

¹⁸² Art. XI, § 13(6).

¹⁸³ Art. XI, § 13(8).

¹⁸⁴ The Ombudsman Act, § 11(1).

exercise of such power of investigation in relation to bank deposits. In *Marquez v. Desierto*¹⁸⁵ (“Marquez Decision”), the Supreme Court ruled that the Ombudsman cannot issue a *subpoena* to a bank official to produce documents pertaining to a bank account of a public officer under investigation, pursuant to the bank secrecy law and pending the filing of an Information in court. To wit:

In the case at bar, there is yet no pending litigation before any court of competent authority. *What is existing is an investigation by the office of the Ombudsman. In short, what the Office of the Ombudsman would wish to do is to fish for additional evidence to formally charge Amado Lagdameo, et. al., with the Sandiganbayan.* Clearly, there was no pending case in court which would warrant the opening of the bank account for inspection.

Zones of privacy are recognized and protected in our laws. The Civil Code provides that “[e]very person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons” and punishes as actionable torts several acts for meddling and prying into the privacy of another. It also holds a public officer or employee or any private individual liable for damages for any violation of the rights and liberties of another person, and recognizes the privacy of letters and other private communications. The Revised Penal Code makes a crime of the violation of secrets by an officer, the revelation of trade and industrial secrets, and trespass to dwelling. Invasion of privacy is an offense in special laws like the Anti-Wiretapping Law, the Secrecy of Bank Deposits Act, and the Intellectual Property Code.¹⁸⁶

Former Ombudsman Marcelo called the Marquez Decision a clear blow to the Ombudsman’s investigatory power:

[It is] a blow to the Office of the Ombudsman’s assured trait of autonomy and self-reliance. It engendered dependence on the Judiciary even in the area of fact-finding and evidence build-up. It remains the controlling jurisprudence on the matter of bank secrecy and the Ombudsman’s investigatory powers. Banks have since declined production of records or information on accounts that are either the link or the receptacles of evidence sufficient for a successful indictment. *Graft investigations conducted by the Office of the Ombudsman in this regard have since been hampered, if not met with a blank wall or a dead*

¹⁸⁵ [Hereinafter “*Marquez*”], G.R. No. 135882, 359 SCRA 772, June 27, 2001.

¹⁸⁶ *Id.* at 782. (Emphasis supplied, citations omitted.)

*end the paper trail ending with banks clothed with the impenetrable cloak of confidentiality.*¹⁸⁷

This doctrine has become an entrenched doctrine in Philippine jurisprudence,¹⁸⁸ thus preventing the Ombudsman from investigating the bank accounts of any public official *incognito*, since an Information must first be filed with the proper court before a public official's bank records may be inspected, pursuant to a court order. Therefore, regarding bank deposits, this effectively placed the Ombudsman's investigatory power reliant upon the power of the court.¹⁸⁹ An amendment to the Bank Secrecy Law¹⁹⁰ and the Foreign Currency Deposit Act of the Philippines¹⁹¹ would be needed to cure the blow to the Ombudsman's investigatory power.

It is within the realm of possibility that a reimagined Ombudsman exercising its investigative power more vigorously could be faced with Court action invoking the right to privacy.¹⁹² However, the Marquez Decision's doctrine should be limited to cases involving bank deposits and the narrow application of bank secrecy laws. The Supreme Court's ruling therein "was influenced by the strong language used by the bank secrecy law and the corollary need to construe all exceptions thereto strictly, especially since an individual's right to privacy was involved."¹⁹³ As a counterweight to the possible invocation of the "right to privacy," emphasis must be placed on the people's right to information to matters of public concern, as enshrined in the Constitution.¹⁹⁴ Therefore, as long as the matter subject of the Ombudsman's investigation can be reasonably construed as a matter of "public concern" and not concerning a bank deposit, the information should be susceptible to being revealed by the Ombudsman's compulsory process.

Another limitation that the Ombudsman may face in the exercise of their investigatory powers, especially with high-level public officers in the executive branch, is the doctrine of executive privilege as explained in the

¹⁸⁷ Simeon Marcelo, *Challenges to the Coercive Investigative and Administrative Powers of the Office of the Ombudsman*, 78 PHIL. L. J. 611, 615 (2004). (Emphasis supplied.)

¹⁸⁸ *See* Dep't of Interior & Loc. Gov't v. Gatuz, G.R. No. 191176, 772 SCRA 383, Oct. 14, 2015; *Ombud. v. Valencia*, G.R. No. 183890, 648 SCRA 753, Apr. 13, 2011; *Ejercito v. Sandiganbayan*, G.R. No. 157294, 509 SCRA 190, Nov. 30, 2006.

¹⁸⁹ Marcelo, *supra* note 187, at 615.

¹⁹⁰ *See* Rep. Act No. 1405 (1955), § 2.

¹⁹¹ *See* Rep. Act No. 6426 (1974), § 8, as amended by Pres. Dec. No. 1035 (1976) and further amended by Pres. Dec. No. 1246 (1977).

¹⁹² *See* CONST. art. III, § 3(2)–(3).

¹⁹³ Marcelo, *supra* note 187, at 614.

¹⁹⁴ CONST. art. III, § 7.

case of *Neri*.¹⁹⁵ An executive official's refusal to provide information based on the invocation of this privilege would likely need to be challenged in court, which again would render the Ombudsman's investigatory power inutile—at least with regard to the matter covered by the privilege.

Meanwhile, the issuance of condemnatory opinions could possibly subject the Ombudsman to criminal liability for libel and even cyber libel.¹⁹⁶ It is very possible that the statements of the Ombudsman about certain public officers made in a condemnatory opinion would be considered as a malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor. However, since the statements would be regarding public officers, then the actual malice rule in libel cases would apply.¹⁹⁷

Relatedly, a possible stumbling block in the Ombudsman's initiative to speak out would be that the Ombudsman does not appear to have the same immunities previously granted to the *Tanodbayan*. The *Tanodbayan*'s immunities included: (1) immunity from review in any court of any proceeding, opinion, or expression of the *Tanodbayan* or any member of his staff, and (2) immunity from any civil action against the *Tanodbayan* or any member of his staff for anything done or said or omitted, in discharging the responsibilities contemplated by the *Tanodbayan* decree.¹⁹⁸ There is also no similar provision in the 1987 Constitution, nor is there a provision in the Ombudsman Act granting such immunities. There is no case ruling yet as to whether an incumbent Ombudsman can be sued for libel during their tenure, nor is there any clear case ruling as to whether the Ombudsman would enjoy immunity for expressing "opinions or expressions" in discharging the functions of the office. If the threat of a libel charge hangs over an Ombudsman's head, even with the defense of actual malice, then it would likely make the Ombudsman think twice before issuing a damning opinion. This would be better resolved with a clear grant of statutory immunity through amending the Ombudsman Act.

Lastly, all of the Ombudsman's actions are subject to the Supreme Court's expanded jurisdiction to correct grave abuses of discretion

¹⁹⁵ *Neri v. Senate Comm. on Accountability of Pub. Officers and Investigations*, G.R. No. 180643, 564 SCRA 152, Sept. 4, 2008.

¹⁹⁶ REV. PEN. CODE, art. 353–360, *in relation* to Rep. Act No. 10175 (2012), § 4(4).

¹⁹⁷ *Guinguing v. Ct. of Appeals*, G.R. No. 128959, 471 SCRA 196, 210, Sept. 30, 2005. Actual malice is defined as "with knowledge that the statement was false or with reckless disregard as to whether or not it was true."

¹⁹⁸ Pres. Dec. No. 1630 (1979), § 19.

amounting to the lack of or excess of jurisdiction.¹⁹⁹ Although the Ombudsman is clothed with ample authority to pass upon criminal complaints involving public officials and employees, their act is not immune from judicial scrutiny in the Court's discharge of its own constitutional power and duty.²⁰⁰ Theoretically, the Supreme Court could be petitioned to prohibit or enjoin the Ombudsman's actions in any capacity, based on the theory that there was a grave abuse of discretion amounting to lack of or excess of jurisdiction.

V. CONCLUSION: REIMAGINED "LEGAL" SOLUTIONS FROM A REIMAGINED OMBUDSMAN

The complaints of citizens come in all forms, and not all give rise to causes of action upon which a suit may be brought. Issues possibly presented to the oversight authority, such as an ombudsman, are substantially broader than those susceptible of administrative appeal or judicial review, both of which deal with narrowly defined illegality or injustice.²⁰¹ Sometimes, complaints may just concern "actual" action instead of "legal action."²⁰²

The ombudsman is a legal creation endowed with legal powers, but the remedy to possible complaints received from the everyday citizen does not always require a strictly "legal" solution. A "legal" solution, such as prosecution, although good, *is not necessarily the best in every case*.

Some examples where a non-legal solution was better can be taken from our Asian neighbors, the Japanese. A father who had been receiving welfare payments for his disabled son complained when the payments stopped because of the father's misstatements when applying. It was concluded by the officer equivalent to an ombudsman that misstatements had indeed been made, but that a genuine need for assistance nonetheless existed. He brought this to the attention of the Social Insurance Office, which ultimately resumed welfare payments.²⁰³ The ombudsman's equivalent office in Japan, without resorting to legal processes, has also successfully persuaded tax authorities to revise an estate tax assessment imposed on registered land, which had become submerged due to a disastrous river flood,

¹⁹⁹ CONST. art. III, § 1, ¶ 2. *See also* Araullo v. Aquino, G.R. No. 209287, 752 Phil. 716 (2014).

²⁰⁰ Espaldon v. Buban, G.R. No. 202784, 861 SCRA 651, 663, Apr. 18, 2018.

²⁰¹ Gellhorn, *supra* note 14, at 709.

²⁰² *Id.*

²⁰³ *Id.* at 713.

owned by the deceased.²⁰⁴ Imagine if the Philippine Ombudsman decided to institute an administrative proceeding against the official and advised the family to file a tax refund case in the Philippines. It would be *years* before they saw a penny. Our Ombudsman's RAS function should be revitalized and put at the forefront to increase the number of people coming to the Ombudsman for a solution to their problems with the government.

The proposed changes are not aimed at holding more public officials or employees civilly, administratively, or criminally liable in court or through legal proceedings.²⁰⁵ They are instead aimed at revitalizing the overarching mandate of the Office the Ombudsman, which *is to promote efficient service by the Government to the people*.²⁰⁶

The Philippine Ombudsman has had to rely on Supreme Court interpretations of the provision "ensure compliance therewith" to give its orders legal binding effect.²⁰⁷ The ombudsmen abroad issue condemnatory opinions and can "ensure compliance therewith" because of its *moral* binding effect and the appeal to the reason of the people. *That is the distinguishing factor of a classical ombudsman who influences the public and those in the service of the public.* In the Constitution, there is no mention of the duty of the ombudsman to prosecute. All the Ombudsman is mandated to do is to act promptly on complaints filed and to notify the complainants of the action taken and the result thereof.²⁰⁸ The action to be promptly taken *is not limited to legal remedies and rightly so.*

The three courses of action—(1) issuing condemnatory opinions and publicizing the results of investigations, (2) increasing public awareness, and (3) creating specialized offices within the Office of the Ombudsman—do not require a complete overhaul of the law, but *only a reimagining* of the way the Ombudsman uses the powers already granted by law. These courses of action will contribute to improving the factors deficient in the Philippine Ombudsman: (1) accessibility and expedition, (2) ability to influence, and (3) the absence of revisory jurisdiction. Despite possible limitations and challenges, it is not wrong to strive for a better and more effective Philippine Ombudsman to contribute to better public service.

²⁰⁴ *Id.*

²⁰⁵ The Ombudsman Act, § 12.

²⁰⁶ § 12.

²⁰⁷ *Ledesma*, 465 SCRA 437.

²⁰⁸ CONST. art. XI, § 12.

The Ombudsman acting as grand prosecutor and disciplinary authority has a major influence in individual cases. The Ombudsman acting as the spokesperson of the people and the investigator and publicist of inefficiency, red tape, mismanagement, fraud, and corruption will have an even greater influence on the people and on the public servants—as well as on the view of public service.

An ombudsman can isolate mistakes, point out better pathways to goals most rightminded people want to reach, and suggest new applications of already-accepted concepts.²⁰⁹ What an Ombudsman cannot do is compel unwilling officials to adopt an outlook that he himself has freshly dictated.²¹⁰ If a country has become habituated to corruption as its way of life, it had better turn first to a sweeping reform movement—not to an ombudsman.²¹¹

In the Philippines, the Ombudsman can be a vital part of that reform movement if the Ombudsman *is reimagined not just as a grand prosecutor and disciplinary authority but as a grand investigator, critic, and reformer*. The reforming of the minds of the people and of public servants regarding institutions and the government's role will protect people more than a guilty verdict on one erring official ever will.

To echo the words written in 1982 by the former Dean of the UP College of Law and Justice of the Supreme Court, Irene Cortes:

As it operates today the [Ombudsman] is a far cry from the classic ombudsman concept, but in time it may yet develop into a people's counselor, a grievance-agency to whom the humblest may find immediate response and whom the mightiest will heed.²¹²

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²⁰⁹ Gellhorn, *supra* note 19, at 135.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² Cortes, *supra* note 4, at 25.