

PROTECTING THE PUBLIC TRUST: A FRAMEWORK FOR ONLINE ANTI-CORRUPTION CROWDSOURCING*

NOTE

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ABSTRACT

Philippine democracy has long been debilitated by systemic corruption. It is a problem which has metastasized to the various levels of the public sector. This paper tackles the challenges we face in search for a cure for this problem—one rooted in a history weighed down by state capture. Finding parallels between anti-corruption legislation and the remedies a principal can invoke against an erring agent, this paper proposes to view corruption from the perspective of an agency problem in order to recognize the sovereign Filipino people's place in the democratic stratum. Working within the current legal framework, it proposes the development of a populist online anti-corruption crowdsourcing site as a democratic tool to implement the remedies available against officials who violate their duties. This tool aims to enhance the ability of the public (as principal) to protect the public trust by providing a remedy for direct participation in ensuring that the government (as agent) acts pursuant to its mandate.

“So a crowd is, on numerous occasions, actually a better judge than one man, whoever he may be.”

—Aristotle¹

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¹ ARISTOTLE, THE POLITICS 190 (Trevor J. Saunders ed., T.A. Sinclair trans., 1981) (c. 350 BC).

“The law has ‘its epoch of ebb and flow.’ One of the flood seasons is upon us. Men are insisting, as perhaps never before, that law shall be made true to its ideal of justice. Let us gather up the driftwood, and leave the waters pure.”

—Benjamin N. Cardozo²

INTRODUCTION

Corruption is the cancer to an otherwise healthy democracy. It obstructs economic development, destroys the legitimacy of public offices, and makes a mockery of the rule of law. In the Philippines, our history has developed in a way that corruption has evolved into a systemic problem. As corrupt practices metastasize to the various levels of the public sector, Band-Aid solutions cannot be sufficient. Looking through the corrupt system that we have inherited and the corruption that continues to perpetuate to this day, our task, as hopeful citizens, is to explore the possibilities of striking the problem at its core, while acknowledging that there is no single remedy for this problem.

Perhaps, history itself will reveal the answer. In light of the nation’s history of success using mass action as a political remedy, we can explore one possible solution from the basic premise of any democratic institution: the people are the sovereign.

Our present democratic framework is comprised of elective officials—representatives—who represent the voice of the people. For efficiency and for the orderly administration of government affairs in the modern age, this set-up is ideal if not necessary. These representatives represent the crowd. But this same crowd from which the representatives derive their authority is itself a living, breathing creation. And in certain instances, the people can represent themselves.

One need not look far back. The EDSA Revolution remains the epitome of the power of the crowd. With the progress of technology, mobile phones and the Internet have become potent partners in the Filipino people’s

² Benjamin N. Cardozo, *A Ministry of Justice*, 35 HARV. L. REV. 113, 126 (1921).

exercise of collective action.³ Recent corruption scandals in the country have served as a catalyst for the active online presence of citizens who, in turn, condemned the said depraved acts,⁴ pressuring the administration to prosecute those involved. A well-informed citizenry tends to be more critical and more active in advocating for an honest government. Thus, transparency and full public disclosure as enshrined in the Constitution continue to be the foundation of any anti-corruption measure.

But transparency cannot stand alone. An ideal anti-corruption campaign digs deeper into the cultural mindset of the people, and concludes with corrupt officials behind bars. While strengthening transparency efforts, anti-corruption advocates must also push for an efficient way to acquire and use information on corruption—information which has the potential not only for increasing public awareness but also for ultimately prosecuting the corrupt actors. This information can be used directly by the government to prosecute those involved. It can also be used by the citizens to alert their government to the ongoing corruption, a strategy that can either motivate or pressure the government to act accordingly. Either way, the task is to ensure that information does not become a silent witness.

The focus of this article is not just forging an effective democratic tool that can complement existing efforts against corruption; ultimately, it is to recognize the people's proper place in our democratic stratum. This article is divided into three parts. The first part discusses the status of corruption and anti-corruption measures in the Philippines, and highlights the concept of state capture as a fundamental problem faced by the nation today. The second part discusses corruption from the perspective of an agency problem, and suggests a framework for anti-corruption based on a principal's action against an erring agent. In light of the discussion on state capture and agency problem, the last part of this paper features the use of the concept of online anti-corruption crowdsourcing as a grassroots movement and why this method, when it correctly harnesses information technology, will be an effective tool against corruption. This part highlights several factors that make anti-corruption crowdsourcing successful, and concludes with an enumeration of challenges and recommendations.

³ Julius Court, *People Power II in the Philippines: The First E-Revolution?* (January 2001) (working paper), at <http://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/4114.pdf>.

⁴ "Comments on the Internet decried the young Napoles' lifestyle and accused her of using pork barrel money obtained by her mother to sustain it." Natashya Gutierrez, *Napoles Daughter Blogs about Lavish Lifestyle*, *RAPPLER*, July 27, 2013, at <http://www.rappler.com/nation/34895-napoles-daughter-blogs-lavish-lifestyle>.

I. STATE OF CORRUPTION AND ANTI-CORRUPTION EFFORTS IN THE PHILIPPINES

A. Corruption in the Philippines

In this jurisdiction, the definition of corruption is covered by an enumeration of corrupt practices embodied in various laws such as the Anti-Graft Act and Corrupt Practices Act⁵ and the Code of Conduct and Ethical Standards for Public Officials.⁶ The Revised Penal Code also defines bribery,⁷ along with other crimes that may be committed by public officers.⁸

For the purpose of this article, corruption simply refers to the misuse of a public office for private gain.⁹ “Misuse of public office” refers to unauthorized, not necessarily illegal, acts of public officials. The element of “gain” should necessarily cover pecuniary or non-pecuniary interests, as it depends on individual motivation of public officials. This definition will sufficiently cover the broad list of corrupt activities in the statutes.

Corruption in the Philippines is systemic, cultural, and endemic. One author argues that the Spanish system of governance during the colonial period may possibly be the root of corruption in the country.¹⁰ During the Spanish Colonial period, bureaucrats treated public offices as a business and expected to profit from it.¹¹ For some reason, this practice never left the Filipino psyche. Corruption had become so commonplace that it even infected the way Filipinos exercise their right to suffrage; some Filipinos vote not because the candidate is the best for public office, but because of their perceived “proximity” to the candidate—an expectation that they can simply knock on their *compadre’s* door to ask for a favor.¹² What is more disturbing is that seeing corrupt practices done openly in government frontline offices is no longer shocking to one’s conscience.

⁵ Rep. Act No. 3019 (1960), §§ 3-4.

⁶ Rep. Act No. 6713 (1989), § 7.

⁷ REV. PEN. CODE, art. 210, 211, 211-A, 212.

⁸ REV. PEN. CODE, tit. seven.

⁹ Susan Rose-Ackerman, *Corruption*, in READINGS IN PUBLIC CHOICE AND CONSTITUTIONAL POLITICAL ECONOMY 551 (C.K. Rowley & F.G. Schneider eds., 2008).

¹⁰ DAMON WOODS, THE PHILIPPINES: A GLOBAL STUDIES HANDBOOK 156-157 (2006).

¹¹ Jose Endriga, *Historical Notes on Graft and Corruption in the Philippines*, 23 PHIL. J. PUB. ADM. 241, 247-249 (1979).

¹² See generally John S.T. Quah, *Curbing Corruption in the Philippines: Is this an Impossible Dream?*, 54 PHIL. J. PUB. ADM. 10 (2010).

The Philippines' inability to take off from its third-world status can be attributed to corruption and bad governance.¹³ In the 2014, the country ranked 85th in the Transparency International's ("TI") Corruption Perception Index.¹⁴ This is an improvement from its previous rankings, which according to TI was mainly due to the improved government processes and reduction of red tape.¹⁵ But the issue remains: the state of corruption in the Philippines is far from what is ideal. This is more apparent when one compares the performance of the Philippines with some of its Asian neighbors.¹⁶

In 2015, a survey conducted by the Social Weather Station ("SWS") found that among the 36 Philippine government agencies made subject of the survey, the Bureau of Customs is considered the most corrupt.¹⁷ The five bottom-dwellers which received a "poor" rating in terms of their sincerity in fighting corruption are the Land Transportation Office, House of Representatives, Department of Public Works and Highways, Philippine National Police, and Department of Agriculture.¹⁸ Although the percentage of businessmen who experienced corrupt transactions with the government slid down to a record low of 32%, the same businessmen also think that many corrupt officials remain unpunished.¹⁹

The fairly recent pork barrel scandals that rocked the country show how institutionally entrenched and prevalent the problem still is. Notwithstanding the unconstitutionality of lump sum allocations in the form of the Priority Development Assistance Fund (PDAF) and Disbursement Acceleration Program (DAP), the national budget still reeks with a number of unprogrammed, lump sum appropriations.²⁰ As the PDAF scandal has

¹³ Paolo Montecillo, *ADB: Weak governance, corruption stunt development*, PHILIPPINE DAILY INQUIRER, Sep. 30, 2014, available at <http://business.inquirer.net/179599/adb-weak-governance-corruption-stunt-development>.

¹⁴ Transparency International, *Corruption Perception Index 2014: Results*, TRANSPARENCY INTERNATIONAL, available at <http://www.transparency.org/cpi2014/results> (last accessed Oct. 28, 2015). The Corruption Perception Index ranks countries and territories based on how corrupt their public sector is perceived to be.

¹⁵ *Id.* The Philippine 2014 Score is 38 on a scale of 0 (highly corrupt) to 100 (very clean). The country scored 36 in 2013 and 34 in 2012.

¹⁶ *Id.* In the 2014 list, Singapore scored 84, Japan 76, Hong Kong 74, Taiwan 61, South Korea 55, and Malaysia 52. Thailand scored the same as the Philippines at 38.

¹⁷ Social Weather Stations, *The 2014/15 SWS Survey of Enterprises on Corruption*, SWS WEBSITE, Aug. 27, 2015, available at <https://www.sws.org.ph/pr20150827.htm>. The survey was conducted from November 14, 2014 – May 12, 2015.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Dateline Philippines, *2015 Budget is an Election Budget-Social Watch Philippines*, ASIANJOURNAL.COM, July 31, 2014, available at <http://www.asianjournal.com/news/2015-budget-is-an-election-budget-social-watch-philippines>. Social Watch Philippines observed that

shown, these funds are vulnerable to corruption because they can easily be converted as legalized sources of corruption. From the lowly clerk to the senators of the land, the problem manifests.

1. *Fundamental Problems in Corruption*

The persistent problem of corruption besetting the country is deeper than what is immediately apparent. State capture and the country's lack of sufficient fundamental safeguards such as freedom of information and whistleblower laws raise the level of difficulty in combating corruption. Meanwhile, the Filipino cultural values of *utang na loob*, the *compadre* and patronage systems, and the importance of kinship ties sustain its chronic nature.

a. State Capture

State capture, as defined by a World Bank study, is “[s]haping the formation of laws, rules, decrees and regulations through illicit and nontransparent private payments to public officials.”²¹ The study differentiated state capture from mere *influence* and from petty administrative corruption.²² It contemplated interactions between private firms and government instrumentalities.²³ This concept of state capture, however, “[f]alls short of mapping in precise strokes the realities in the country[.] [I]t ultimately extends to the appointee-appointing power relations.”²⁴

This article espouses a broader definition: state capture is a phenomenon in which an interest group, whether public or private, influences a state's decision-making and ministerial functions to further its own agenda. This will portray the realities in the Philippines where state capture extends to the appointee-appointing power relations. A captured firm is an agency of the government that favors a person or a group of persons, ultimately punishing persons without connections by depriving them of services to which they are entitled.

almost half of the 2015 budget can be considered lump sum appropriations “due to lack of details and mechanisms for clear accountability.”

²¹ Joel J. Hellman et al., *Seize the State, Seize the Day: State Capture, Corruption, and Influence in Transition*, World Bank Policy Research Working Paper No. 2444, 2 (2000).

²² *Id.*

²³ *Id.*

²⁴ San Juan, Santos, Paras, Herrera, Cruz & Chan, *Civil Action Against Corruption: Empowering the Filipino People in a Captured State Situation*, 1 HARVARD LIDS GLOBAL: Issues in Combating Transnational Corruption, 53-74 (2014).

Considering that anti-corruption bodies such as the Ombudsman, the Department of Justice, and even judges and justices of the judiciary are also susceptible to capture, state capture becomes a very serious issue. The Philippines offers various examples that illustrate state capture. For one, we can look to the case of Former Ombudsman Merceditas Gutierrez. Gutierrez was impeached on the ground that she had allegedly failed to take prompt and immediate action on complaints filed against her patron and appointing officer, former President Gloria Macapagal-Arroyo, regarding corruption-laden, high-profile government projects.²⁵ Just recently, we have seen the level of pressure and influence a religious group such as the Iglesia ni Cristo (INC) has over the government. It unabashedly asked the government to stop the ongoing investigation against its ministers, albeit couched in the form of a protest against the purported government intrusion into their religious freedom.²⁶ It is widely known and highly publicized that the said religious group votes as a single bloc. While bloc voting is not bad per se, trends in previous elections show that it can be used as a proverbial carrot to curry favors, and to influence government policies to the detriment of the public. In the conduct of elections, we can see a lot of political and economic elites huddle for their respective candidates with the end goal of profiting when their supported candidate wins. *Quid pro quo*.

State capture is further entrenched by various forms of reciprocity in the Filipino cultural values: *compadre* system, patronage system, and *utang na loob*. These cultural values hide the true face of corruption, making it appear acceptable and seemingly irrepressible.

The *compadre* system, as generally understood, is the extension of kinship ties to a *compadre* who is usually a prominent man in the community chosen as the godfather of one's child.²⁷ It works as an aide of corruption: the *compadre*, influential as he is, acts as an intermediary in government dealings, resulting in a transaction favorable to one but disadvantageous to another.²⁸

Meanwhile, patronage is the custom of filling government positions with relatives or persons of the incumbent's own choosing, regardless of qualification. It is another practice deeply embedded in Filipino culture,

²⁵ Mark Marueñas & Amita Legaspi, *House transmits impeachment articles to Senate*, GMA NEWS ONLINE, Mar. 23, 2011, available at <http://www.gmanetwork.com/news/story/215977/news/nation/house-transmits-impeachment-articles-to-senate>.

²⁶ Jonathan de Santos, *Iglesia ni Cristo protesters intend to occupy EDSA until Monday*, GMA NEWS ONLINE, Aug. 28, 2015, available at <http://www.gmanetwork.com/news/story/534769/news/nation/iglesia-ni-cristo-protesters-intend-to-occupy-edsa-until-monday>.

²⁷ Quah, *supra* note 12, at 14.

²⁸ *Id.* at 10.

attributed to the Filipino's reverence for family and *utang na loob*.²⁹ *Compadre* system and patronage politics were particularly prevalent during the time of Ferdinand Marcos, and more recently during the presidency of Joseph Ejercito Estrada. The common characteristic of these two practices is the concept of reciprocity, which is best explained in the context of the Filipino cultural value of *utang na loob*.

The term *utang na loob*, a concept without any direct equivalent in English, is a Filipino brand of duty which implies a deep sense of obligation on the part of the receiver of a favor to reciprocate when the appropriate time comes.³⁰ Applied in a captured state situation, the appointee cannot be expected to go after the one who appointed him as this will constitute an act of ingratitude; in Filipino parlance, "*walang utang na loob*."

With state capture institutionalized, mere reliance on the existing anti-corruption measures may only steer us to a circuitous cycle—cutting at the margins but never reaching the malignant roots—which will eventually leave us in the same situation. It is therefore insufficient to rely solely on the political will of government officials to prosecute their peers in the government, as well as private individuals who wield considerable influence over them.³¹

b. Other Problems

Other fundamental problems which, taken by themselves or taken together with state capture, make corruption insurmountable are as follows: the lack of a comprehensive freedom of information law and the country's weak whistleblower program.

The policy behind the Freedom of Information ("FOI") Bill³² is the recognition of the right of the people to information on matters of public concern, and the concrete implementation of a policy of full public disclosure of all transactions involving public interest. This bill recognizes the role of the citizens in checking abuses in government.³³ This kind of public activism promotes a brand of citizen engagement which does not end in the electoral process, but extends to the active monitoring of the post-election conduct of

²⁹ *Id.* at 15.

³⁰ RICHARD LANGSTON, *BRIBERY AND THE BIBLE: APPLIED TO THE PHILIPPINES*, 74 (1991).

³¹ San Juan et al., *supra* note 24.

³² S. No. 1733. 16th Cong., 1st Sess. (2013). People's Freedom of Information Act of 2013, ["FOI Bill"]. The FOI Bill was passed on the third and final reading by the Philippine Senate last March 10, 2014.

³³ *Id.* at § 2.

government officials. Recent events, however, show that the bill is practically dead for the rest of President Benigno Aquino's term.³⁴ President Aquino, who promised an FOI law during his election campaign, reportedly blames Congress for its non-passage.³⁵ Without an FOI law, it would be very difficult to implement the vague constitutional right to information. The non-passage of the law would leave the public relying on jurisprudential and judicial imprimatur to exercise their right to information on matters of public concern.³⁶

There is also the disadvantage of having a weak whistleblower protection program. While we have two laws on whistleblower protection i.e. P.D. No. 749,³⁷ and the Witness Protection Security and Benefit Act,³⁸ both laws have been criticized for being greatly ineffective in ensuring the personal safety of the informant.³⁹ One key weakness of our current whistleblower protection laws is that in order for an informant to be entitled to the benefits under either law, he is required to testify as a witness, thus surrendering his anonymity. To remedy this problem, there have been several bills filed to expand the coverage of these laws to whistleblowers who do not wish to testify as witnesses at trial, but are able to provide information sufficient for a finding of probable cause.⁴⁰ These bills further enhance the protection granted to informers/whistleblowers.⁴¹ However, none of these bills pending before congress are close to being passed into law.

³⁴ Charissa Luci, *Solon concedes FOI bill already 'dead' in Congress*, MANILA BULLETIN, Nov. 2, 2015, available at <http://www.mb.com.ph/solon-concedes-foi-bill-already-dead-in-congress>.

³⁵ Natashya Gutierrez, *Aquino on FOI bill passage: Look at Congress not me*, RAPPLER, Aug. 28, 2014, at <http://www.rappler.com/nation/67494-aquino-foi-bill>.

³⁶ *Infra* note 84. CONST. art. III, §7, and art. II, §28; *See also* Valmonte v. Belmonte, G.R. No. 74930, Feb. 13, 1989; Chavez v. PCGG, G.R. No.130716. Dec. 9, 1998. *See also* Neri v. Senate Committee, G.R. No. 180643, Mar. 25, 2008; Sabio v. Gordon, G.R. No. 174340, 504 SCRA 704 Oct. 17, 2006; Akbayan v. Aquino, G.R. No. 170516, July 16, 2008; Bantay Republic Act v. Comm'n on Elections, G.R. No. 177271, May 4, 2007; The Province of North Cotabato v. Republic of the Philippines Peace Panel on Ancestral Domain, G.R. No. 183591, Oct. 14, 2008; Antolin v. Domondon, G.R. No. 165036, July 5, 2010; IDEALS, Inc. v. PSALM, G.R. No. 192088, Oct. 9, 2012.

³⁷ Pres. Dec. No. 749 (1975).

³⁸ Rep. Act No. 6981 (1991). Witness Protection Benefit and Security Act.

³⁹ *What is the Whistleblower's Protection Bill?*, GMA NEWS ONLINE, Sep. 27, 2012, available at <http://www.gmanetwork.com/news/story/275917/newstv/bawalangpasaway/what-is-the-whistleblowers-protection-bill>.

⁴⁰ Six bills are currently pending before the senate, while nine bills are pending before the House of Representatives. *See* S. No. 1614, 16th Cong., 1st Sess. (2013). Whistleblower Protection, Security and Benefit Bill of 2013.

⁴¹ §§ 5, 9, 10, 11, 14, 15, 17. Among benefits granted by the bill are immunity and protection from liability from suits arising from the disclosure or in relation to the acts disclosed, the availability of privileged communication as a defense regarding the disclosure, confidentiality of the whistleblower's identity and the subject of his disclosure, protection from

2. Status of Anti-Corruption Measures

That corruption is prevalent in the Philippines does not mean the country lacks anti-corruption measures. On the contrary, John S.T. Quah observed that the Philippines has one of the biggest numbers of anti-corruption measures in Asia.⁴² Since 1930, more than 40 anti-corruption laws and policies have been passed, and since 1950, around 20 anti-corruption bodies have been organized and constituted.⁴³ Apart from the constitutionally mandated Office of the Ombudsman, other government agencies formed to combat corruption include the Presidential Anti-Graft Commission, the Anti-Money Laundering Council, and the Lifestyle Check Coalition.⁴⁴ In fact, in his first executive order, President Aquino, attempted to establish another fact-finding body, the “Truth Commission,” in 2010, to investigate the corrupt practices of the preceding administration.⁴⁵ However, despite this long list of paper safeguards, the country still plays junior to other countries in terms of anti-corruption effectiveness.

In 1997, it was found that compared to its Philippine counterpart, a person committing a corrupt offense in Hong Kong was 33 times more likely to be detected and punished through the efforts of Hong Kong’s Independent Commission Against Corruption.⁴⁶ In 2004, former Ombudsman Simeon Marcelo revealed that the conviction rate of cases filed before the Sandiganbayan was a miserable 6%.⁴⁷ Over the past decade, the Philippine government has reported some promising figures, such as the finding that between 2009 and 2011, the Sandiganbayan disposed of 694 cases, compared to the 377 cases filed and revived during the same period.⁴⁸ These figures, however, did not paint the complete picture, since the cases disposed of, as indicated in the figures, were likely filed prior to the period surveyed.

disciplinary action or reprisals from the workplace, protection of the whistleblower’s security, as well as a financial reward.

⁴² Quah, *supra* note 12, at 17.

⁴³ Alex Brillantes, Jr. & Maricel Fernandez, *Toward a Reform Framework for Good Governance: Focus on Anti-Corruption*, 54 PHIL. J. PUB. ADM. 91-92 (2010).

⁴⁴ Business Anti-Corruption Portal, Philippines Country Profile. See more at <http://www.business-anti-corruption.com/country-profiles/east-asia-the-pacific/philippines-version/initiatives/public-anti-corruption-initiatives.aspx>.

⁴⁵ Exec. Order No. 1 (2010). This creates the Philippine Truth Commission of 2010. This was later struck down by the Supreme Court as unconstitutional in *Biraogo v. The Philippine Truth Commission*, G.R. No. 192935, 637 SCRA 78, Dec. 7, 2010.

⁴⁶ Quah, *supra* note 12, at 14.

⁴⁷ *Id.*

⁴⁸ United Nations Office on Drugs and Crime, Country Review Report of the Philippines, at 31 (2012), available at http://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2013_11_28_Philippines_Final_Country_Report.pdf.

As of 2013, the Office of the Ombudsman reports that it had a conviction rate of 49.5%.⁴⁹ This figure hides the fact that it includes only the convictions vis-à-vis acquittals in the total cases decided over the past year. It does not include cases that were dismissed, archived or withdrawn. Taking the latter into consideration would show that of the 378 cases disposed of by the Sandiganbayan in 2013, convictions were handed down in only 12.2% of the cases. Over 75% of the cases were dismissed, archived, or withdrawn, while in 12.4% of the cases, the accused was acquitted.⁵⁰ This marks a high level of uncertainty for successful prosecution of corruption cases. One major problem, as revealed by some Ombudsman prosecutors, is that they are able to gather only evidence sufficient for a finding of probable cause and nothing else, thus leading to acquittals during trial for failing to meet the burden of proof beyond reasonable doubt.⁵¹

Further, in over 20 years since its founding in 1988, the Ombudsman can hardly point to any case against a high-ranking official that resulted in a conviction. With the exception of former President Estrada who was later on pardoned, no high-ranking official has been penalized, let alone imprisoned for corruption.⁵² In contrast, the Corruption Eradication Commission of Indonesia (“KPK”) has an astonishing 100% conviction rate which includes high-profile cases against high-ranking officials, with duration of disposition of about 8 months.⁵³ In the Philippines, the median duration for the disposition of a corruption case that goes up to the Supreme Court is 9.8 years.⁵⁴

The above discussion shows the problems surrounding anti-corruption efforts, the next part of this article will focus on understanding these problems from the perspective of the principle that “a public office is a public trust.”

⁴⁹ Office of the Special Prosecutor, *Accomplishment Report for Calendar Year 2013*, at 2 (2014), available at http://www.ombudsman.gov.ph/docs/statistics/references/OSP_2013.pdf.

⁵⁰ *Id.*

⁵¹ Emil Bolongaita, *An Exception to the Rule? Why Indonesia's Anti-Corruption Commission succeeds where others don't—a comparison with the Philippines' Ombudsman*, 4 U4 ANTI-CORRUPTION RESEARCH CENTER 15 (2010).

⁵² *Id.* at 5.

⁵³ *Id.* at 9-10.

⁵⁴ *Id.* at 4, 18.

II. THE AGENCY PROBLEM AND A DEMOCRATIC REMEDY

A. A “Public Trust” and the Agency Problem

Under the social contract theory, governments are formed through the voluntary consent of the people⁵⁵ to embody their ideals and aspirations, and to promote the common good.⁵⁶ In this set-up, the people, through the constitution, collectively remain the source of government’s authority. Thus, as ordained and promulgated by the people in our fundamental law, the Philippine government acts merely for and in behalf of the sovereign people.⁵⁷ We argue that this is a fiduciary relationship *par excellence*.

Under Philippine laws, this fiduciary relationship is embodied in the constitutional precept of “a public office is a public trust.”⁵⁸ In this relationship, the sovereign Filipino people are the principal and their Government⁵⁹ acts as an agent on their behalf to carry out state functions and to maintain a working community. The Constitution made it clear that government officials and employees have the basic responsibility of managing the affairs of the government with “efficiency and integrity, and must at all times be accountable to the people, serving with utmost responsibility, integrity, loyalty, and efficiency.”⁶⁰ In *Dumduma v. Civil Service Commission*, the Supreme Court explained that “[o]nly those who can live up to the constitutional exhortation that public office is a public trust deserve the honor of continuing in public service.”⁶¹

Public service covers both elective and appointive government employees. Using the general definition of agency, appointment does not create a relationship between the appointed and the public. While elective officials directly receive their mandate from the electorate when they are chosen by election, appointive officials receive their mandate indirectly through the intervention of an appointing power. In these cases, strictly speaking, the public can be considered merely as the beneficiary but not the principal; the latter pertains to the appointing power. However, the principle

⁵⁵ E. Burke, *State Formation and Social Contract Theory: Rwenzururu and the Southern Sudan*, Paper Delivered to the African Studies Association Conference, Denver (1971).

⁵⁶ CONST., preamble.

⁵⁷ Art. II, §1.

⁵⁸ Art. XI, §1.

⁵⁹ This includes personnel whether duly elected or appointed.

⁶⁰ CONST. art. XI, §1.

⁶¹ *Dumduma v. Civil Service Commission*, G.R. No. 182606, 658 SCRA 469, 481, Dec. 4, 2011. *See also* *Duque v. Veloso*, G.R. No. 196201, 673 SCRA 676, June 19, 2012.

that public office is a public trust does not make any distinction between elective and appointive officials. Thus, appointive officials are bound by their fiduciary duty to the public as much as elective officials are.

University of the Philippines College of Law Professor Leandro Angelo Aguirre has applied the agency framework—which explores these fiduciary relations—in the case of state-owned enterprises in the Philippines.⁶² He argues that since these state-owned enterprises or Government-Owned and Controlled Corporations (GOCCs) exist for the benefit of the Filipino people, the latter should be considered as both the ultimate shareholder and the principal of the GOCCs, while directors and officers should be considered as the people's agents.⁶³

State capture, however, immediately comes into play from the moment of election or appointment as government officials and employees engage in *quid pro quo* concessions with their respective sponsors. Their goals shift from rendering public service to the advancement of their own interests or those of their sponsors. This is where corruption in terms of using public office for public gain enters the picture. This situation is made more complex by the Filipino cultural values earlier discussed, resulting in the systemic capture of the government, where officials are spurred to action only to further their own and their sponsors' interests. The public and their interests consequently suffer, and the fiduciary relations clear in the beginning suddenly appear hazy.

This situation draws a parallel to an *agency problem*, which arises whenever there is a difficulty in motivating the agent to act in the principal's interest.⁶⁴ In other words, a conflict of interest between that of the principal and that of an agent arises. This is usually viewed from the perspective of the principal, which is proper considering that the principal is the source of the agent's authority, and that the relationship is created primarily for the benefit of the principal. Though this concept is more commonly applied in the context of commercial agency relationships, there is no reason why this concept may not as well apply in the government setting, where public officials acting as agents violate the public trust and start pursuing their own interests at the expense of their principal, the people.

⁶² Leandro Angelo Aguirre, *Shifting Paradigms: The Need to Recognize Agency Problems in Government-Owned and Controlled Corporations in the Philippines*, 87 PHIL. L.J. 820, 833 (2013).

⁶³ *Id.* at 834.

⁶⁴ REINIER KRAAKMAN ET AL., *THE ANATOMY OF CORPORATE LAW: A COMPARATIVE AND FUNCTIONAL APPROACH* 35 (2009 ed.).

A similar analogy was employed by one author from Cornell Law School suggesting the use of the fiduciary relationship in order to prosecute legislators involved in insider trading,⁶⁵ the recognition of fiduciary relations being necessary to establish the ground for prosecution.

1. *Principal's Remedy*

The law abhors a vacuum. For that reason alone, we know that a principal should have a remedy against a dishonest and corrupt agent—a remedy that motivates the agent to perform his duty and that prevents him from preferring his interest over that of his principal.

In the case of elective officials, their continued stay in office is contingent on their satisfactory performance; their constituents take their performance into account in considering their reelection. The consequence, however, is not immediate since the public necessarily has to wait until the end of the official's term. The case of appointive officials, on the other hand, is more complex. Since they receive their mandate indirectly through the intervention of an appointing power, the opinion of the public as regards their continued stay in office is reduced to almost naught, making appointive officials less subject to the public's control. This view of course recognizes the existing administrative and criminal mechanisms to indict erring officials. This paper, however, will focus on exploring an *immediate* remedy of the principal against the agent, taking into consideration the existence of state capture.

A closer examination of the different laws governing agency and other fiduciary relations would show the principal's remedy when ordinary procedures fail, that is, when the agent starts pursuing an interest different from that of the principal.

Under the law of agency under the Civil Code, rights and obligations are set forth to provide safeguards versus the corrupt practices of agents against their principals, and also give the latter remedies against the former in case of such breach. Thus, the principal has a cause of action against the agent if the agent: (1) prefers his own interest in case of a conflict of interest;⁶⁶ (2) fails to render an accounting and deliver to the principal what he has received by virtue of the agency;⁶⁷ or (3) commits fraud or negligence in the conduct

⁶⁵ Kim, Sung Hui, *The Last Temptation of Congress: Legislator Insider Trading and the Fiduciary Norm Against Corruption*, 98 CORNELL L. REV. 845 (2013).

⁶⁶ CIVIL CODE, art. 1889.

⁶⁷ Art. 1891.

of his agency,⁶⁸ among others. Should the principal find that the agent has been guilty of corrupt practices, he may, as a general rule, revoke the agency at will.⁶⁹

In the law of partnerships, the partners are considered agents of each other. The law prevents conflict of interests by prohibiting an industrial partner from engaging in any kind of business for himself⁷⁰ and a capitalist partner from engaging in the kind of business in which the partnership is engaged.⁷¹ The law likewise provides transparency mechanisms such as allowing access to partnership books,⁷² rendering on demand true and full information of all things affecting the partnership,⁷³ accounting of partnership profits derived by the partner without the consent of the other partners,⁷⁴ and a provision for formal accounting as to partnership affairs in reasonable circumstances,⁷⁵ among others.

Under the Corporation Code of the Philippines, a stockholder has the right to ask for an examination of the records, including all business transactions, stock transfers and minutes of the meetings of the Board.⁷⁶ He can also acquire the most recent financial statements for his scrutiny.⁷⁷ Failure of the corporation or any of its officers to give effect to this right opens them to actions for damages. Also, a stockholder can sue a corporate officer who caused the watering down of his stocks.⁷⁸ And when all else fails, he can institute a derivative suit on behalf of the corporation wherein he holds stocks in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued, or hold the control of the corporation.⁷⁹ Looking at the structure of a corporation, the underlying reason for giving a cause of action to stockholders is, undeniably, the violation of fiduciary duties.

A close look at these statutory provisions shows that the law always gives the principal the means to monitor and correct the conduct of his agent. The failure of the agent to abide by these statutory mandates exposes him to

⁶⁸ Art. 1909.

⁶⁹ Art. 1920.

⁷⁰ Art. 1789.

⁷¹ Art. 1808.

⁷² Art. 1805.

⁷³ Art. 1806.

⁷⁴ Art. 1807.

⁷⁵ Art. 1809.

⁷⁶ CORP. CODE, § 74.

⁷⁷ § 75.

⁷⁸ § 65.

⁷⁹ *Gamboa v. Victoriano*, G.R. No. 40620, 90 SCRA 40, 47, May 5, 1979.

corrective and punitive actions by the principal, such as an action for damages or the revocation of the agency relations. This observation finds relevance in understanding possible remedies to corrupt activities preparatory to the punitive and disciplinary mechanism of the state—a remedy readily available to the principal.⁸⁰

Across the three types of fiduciary relations discussed, we can identify at least three classifications of remedies available to the principal: (1) a remedy for transparency,⁸¹ (2) a remedy for revocation,⁸² and (3) a remedy against fraud or negligence.⁸³ The Corporation Code also provides for a distinct remedy in the form of a derivative suit—a remedy for direct participation. Drawing parallels to the remedies available to the principal in contracts of agency, partnership, and relations governed by the Corporation Code, various rights and statutes provide the people some remedies akin to those expressly available in these statutes. For instance, for the remedy requiring transparency, the constitutional right to information,⁸⁴ individual citizens as members may obtain a certain degree of accountability and transparency on matters of public concern. Meanwhile, for the remedy which allows for the revocation of the agency, elective officials are subject to reelection at the end of their term; or in some instances, recall⁸⁵ or impeachment.⁸⁶ And for the remedies against fraud or negligence, legislative enactments such as the Ombudsman Act,⁸⁷ the Code of Conduct and Ethical Standards for Public Officials and Employees,⁸⁸ along with the country's various anti-corruption laws provide some measures by which erring public officers can be disciplined at the instance of the state.

⁸⁰ See generally Rep. Act. No. 6770 (1989). The Ombudsman Act of 1989; Rep. Act. No. 6713 (1989). Code of Conduct and Ethical Standards for Public Officials and Employees.

⁸¹ CIVIL CODE, art. 1805, 1806, 1809, 1891; CORP. CODE, §§ 74-75.

⁸² CIVIL CODE, art. 1789, 1920.

⁸³ CIVIL CODE, art. 1807, 1891, 1909; CORP. CODE, §§ 32-34.

⁸⁴ CONST. art. III, § 7, art. II, § 28. See also *Valmonte v. Belmonte*, G.R. No. 74930, 170 SCRA 256, Feb. 13, 1989; *Chavez v. PCGG*, G.R. No.130716, 299 SCRA 744, Dec. 9, 1998. The Constitution provides:

Sec. 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

Sec. 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

⁸⁵ CONST. art. X, § 3; Rep. Act No. 7160 (1991), §§ 69-75.

⁸⁶ CONST. art. XII, §§ 2-3.

⁸⁷ Rep. Act No. 6770 (1989).

⁸⁸ Rep. Act No. 6713 (1989).

However, what is currently lacking from the legal framework are statutes that empower the public (as principals) to directly participate in ensuring that the government (as agent) acts pursuant to its mandate in protecting the interests of the principal over its own. This is made more glaring by the fact that there is currently no direct remedy available to the principal when the officer involved is an appointive official.

To this end, the legislature ought to carefully examine and advocate for the passage of certain proposals to enhance the current anti-corruption remedies available. The remedy ensuring transparency may be supplemented by the passage of an appropriate FOI Law which shall facilitate the requests of private citizens for access to public information, and to allow this to be done in a streamlined, efficient, and consistent manner. The legislature may also examine proposals to create a private right of action against corruption⁸⁹—akin to a derivative suit in corporation law. This will allow members of the public to directly participate in actions to protect or vindicate the public's rights whenever the agent is engaged in corruption.

This paper, however, will focus on exploring a means which works within the current legal framework, but will function in such a way as to allow for the strengthening of each of the classes of remedies identified. The goal is to encourage the principal's direct participation in a manner which promotes transparency, allows the principal to continue to have some degree of direct participation in the "revocation" of the relations with the erring agent, and serves as a deterrent for further acts of fraud or negligence.

A World Bank study observed that authority is susceptible to misuse when "control functions are weak; citizens are illiterate, disorganized, or uninformed about what they should expect; and those in power use corruption to establish a network of allies in order to strengthen their power base."⁹⁰ Corruption persists because most corrupt practices remain condoned. From an agency problem perspective, an agent would less likely be corrupt if the cost (i.e. the propensity of getting caught and punished) of doing corrupt acts and preferring the agent's own or a third person's interest is greater than just following the mandate of the principal. The solution therefore lies with empowering the principal himself by soliciting his active participation in anti-corruption. Aside from creating a well-informed citizenry, it will necessarily strengthen control functions by increasing the number of people monitoring an official's performance.

⁸⁹ San Juan et al., *supra* note 24.

⁹⁰ TINA SØREIDE, DRIVERS OF CORRUPTION: A BRIEF REVIEW 10 (2014).

This finds legal support under the U.N. Convention Against Corruption (“UNCAC”) in which the Philippines is a signatory.⁹¹ Under this Convention, the Philippines made a commitment to the international community to undertake to “consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.”⁹² In *Laurel v. Civil Service Commission*, the Supreme Court imparted that “[a]n ordinary citizen who brings to the attention of the appropriate office any act or conduct of a government official or employee which betrays the public interest deserves nothing less than the praises, support[,] and encouragement of society.”⁹³

Notably, indictment in cases of corruption and other maladministration is coursed through the Office of the Ombudsman, in cases concerning high-ranking public officers, or through the Supreme Court, in cases concerning judicial officers. And though current government efforts by the incumbent Ombudsman and the Administration point to a positive outlook in terms of prosecuting corrupt officials, the earlier discussion on state capture would show that it is not always possible to rely solely on this structure. There must be a remedy readily available to the people within the current legal framework—not necessarily a cause of action to enable one to file a case, but at the very least a monitoring mechanism where the people can air their grievances and hopefully correct the actions of their agent.

III. KEEPING UP WITH TECHNOLOGY: ANTI-CORRUPTION CROWDSOURCING

An effective monitoring activity requires citizens to mobilize into social movements. From a historical standpoint, this will not be difficult considering the nation’s history of mass action. From the 300 year struggle for independence with the Spanish colonizers to the brief but brutal war with the Americans, the Filipino people showed grit in fighting oppression. When the nation’s democracy was trampled by the dictatorial regime of President Ferdinand Marcos, the people rallied to EDSA to once again reclaim and restore democracy.

⁹¹ United Nations Convention against Corruption, Dec. 9, 2003, GA Res. 58/4, UN Doc. A/58/422 (2003), S. Treaty Doc. No. 109-6, 43 I.L.M. 37 (2004). This treaty was signed by the Republic of the Philippines on December 9, 2003, and ratified on November 8, 2006.

⁹² Art. 39, ¶ 2.

⁹³ *Laurel v. Civil Service Commission*, G.R. No. 71562, 203 SCRA 195, Oct. 28, 1991.

Citizen participation against government officials who acted outside the bounds of their authorities need not reach the extreme situation exemplified by EDSA People Power. But just like the situations cited above, it must be organized and unified. Channeling people's participation into a productive collective action is a good complement to the existing prosecutorial process. Filipino citizens, as the principal, must "take ownership of the well-being of the country by taking an active part in sharing their ideas and in participating in the governance process,"⁹⁴ as well as in checking government abuses.

To operationalize such collective action, technology and the Internet can be used to create a system where ordinary citizens report and organize information on corrupt activities with the goal of compelling anti-corruption agencies to act. One way to do this is through a crowdsourced anti-corruption initiative which allows people to contribute their expertise, knowledge and effort in the fight against corruption. An online crowdsourcing site can serve as a "complaint-and-action" center monitoring corrupt activities to build formidable evidence against corrupt actors.

A. Anti-Corruption Crowdsourcing: Definition and Initiatives

Online crowdsourcing is the "process of obtaining needed services, ideas, or content by soliciting contributions from a large group of people, and especially from an online community, rather than from traditional employees or suppliers."⁹⁵ This is well-known among the present tech-savvy generation and is said to be expanding fast in Asia.⁹⁶ While originally used as a tool to gather ideas and funds, it can also be used as an anti-corruption measure through monitoring corrupt activities and storing incriminating information which can be later used by anti-corruption agencies of the government. As an anti-corruption tool, crowdsourcing has been used by a number of countries, including the Philippines, to great effect. Anti-corruption crowdsourcing sites come in many forms: some sites serves as a mere repository for feedback for government transactions, others publicize the feedback received, and a number of these sites take the next steps by causing the filing complaints upon gathering sufficient evidence.

⁹⁴ Brillantes & Fernandez, *supra* note 43.

⁹⁵ *Crowdsourcing*, MERRIAM-WEBSTER DICTIONARY, at <http://www.merriam-webster.com/dictionary/crowdsourcing> (last visited Oct. 24, 2015).

⁹⁶ Alec Lynch, *Crowdsourcing is Booming in Asia*, TECHCRUNCH.COM, at <http://techcrunch.com/2012/12/08/asias-secret-crowdsourcing-boom> (last visited Dec. 30, 2014).

India has *I Paid A Bribe (IPAB)*,⁹⁷ an anti-corruption crowdsourcing site that allows anonymous reporting of actual corrupt acts. The website features reporting of corrupt as well as honest government officials usually in frontline government offices. This program is considered by many as a model of successful anti-corruption crowdsourcing.

The Indonesian government established *Lapor*⁹⁸ to encourage reporting of improper conduct of its public servants. The platform is more interactive as it allows communications between the complainants and the government agencies concerned facilitated by a monitoring group under the Office of the President of Indonesia.

RosPil⁹⁹ is a state procurement monitoring site in Russia. The site boasts a number of government contracts and tenders which are scrutinized by online volunteers for signs of corrupt activities. These volunteers include engineers, IT experts, lawyers and other professionals. The lawyer-volunteers then file a corresponding lawsuit if they believe that they have accumulated enough evidence against those involved.

In Pakistan, the government supports Citizen Feedback Monitoring Program (CFMP)¹⁰⁰ which gives its citizens a chance to report their experience after every visit to a government office through automated telephone calls.

Unknown to some, the Philippines has its own anti-corruption crowdsourcing platforms already in place. *Idulog*¹⁰¹ is the Philippine government's premiere crowdsourcing initiative. The website enables citizens to file a complaint against corrupt frontline agencies, request a message from the President himself, ask for an official document, and give suggestions, compliments, or follow-up individual concerns.

Check My School (CMS)¹⁰² allows citizens to monitor public school projects and services in the Philippines. The result of its pilot year of implementation is promising. According to a study made by World Bank Institute, CMS complements the government's efforts in encouraging school

⁹⁷ See IPAB WEBSITE at <http://www.ipaidabribe.com>.

⁹⁸ See LAPOR WEBSITE at <http://www.lapor.ukp.go.id>.

⁹⁹ See ROSPIL WEBSITE at <http://www.rospil.info>.

¹⁰⁰ See CFMP WEBSITE at http://pitb.gov.pk/CFMP_Reviving_Democracy_in_Pakistan.

¹⁰¹ See IDULOG WEBSITE at <http://www.gov.ph/feedback/idulog>.

¹⁰² See CHECK MY SCHOOL WEBSITE at <http://www.checkmyschool.org>.

administrators to involve the community in school affairs.¹⁰³ It also taps into local networks of socially-active individuals and mobilizes volunteers to conduct data validation activities.¹⁰⁴

Even the Philippine Department of Finance and Bureau of Customs have started using crowdsourcing through *Customs ng Bayan*¹⁰⁵ a website designed to support their transparency and accountability operations. In essence, the online portal features regular releases of trade activities of 17 main collection districts of customs. It invites the general public to join the monitoring and has a mechanism where people can report irregularities in customs.

That most agencies of the government have anonymous hotline numbers is also a form of crowdsourcing.

B. Factors for Success

The success of any crowdsourcing site depends on several factors which have varying levels of importance. Ankit Sharma developed the 'Critical Success Factor Model' (CSFM)¹⁰⁶ to provide a model for a successful crowdsourcing platform. He identified "motive alignment" as a critical factor in the success of any crowdsourcing model,¹⁰⁷ and defined it as the extent to which a crowd is able to associate with long term objective of crowdsourcing initiative thereby encouraging its wider participation.¹⁰⁸ In his model, motive alignment is affected by several peripheral factors such as infrastructure, linkages and trust, human capital, external environment, and vision and strategy, and has a reciprocal relationship with the success of a crowdsourcing program.¹⁰⁹ Building on this model, the authors have identified and analyzed key factors, drawn from research articles, case studies and Philippine experience, to devise an equivalent model specifically for anti-corruption crowdsourcing in the Philippines. Since CSFM was created with the broad concept of commercial crowdsourcing in mind, certain modifications of the original model must be made in order to fit the local context.

¹⁰³ Jennifer Shkabatur, *Check My School: a Case Study on Citizens' Monitoring of the Education Sector in the Philippines* (2012) (working paper), available at <http://documents.worldbank.org/curated/en/2015/10/25228227/check-school-case-study-citizens%E2%80%9999-monitoring-education-sector-philippines>.

¹⁰⁴ *Id.*

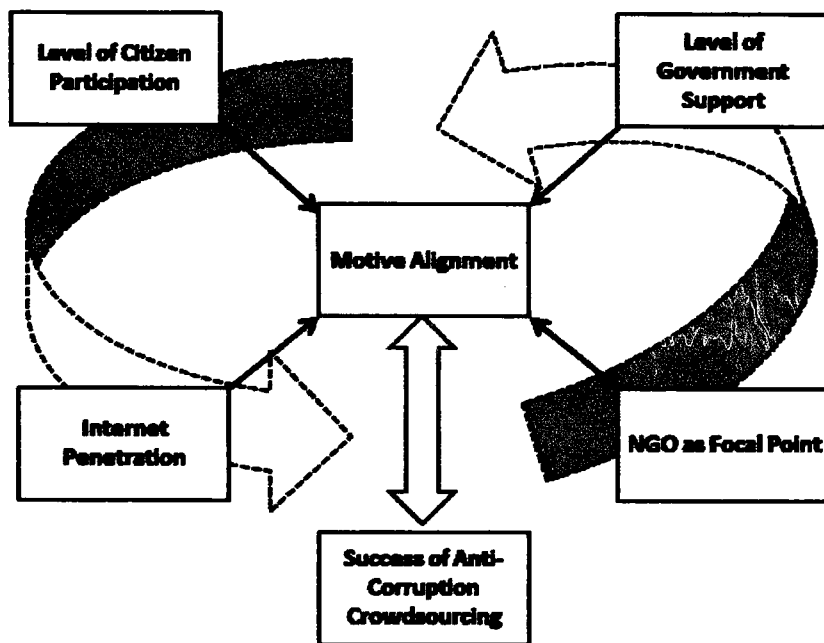
¹⁰⁵ See CUSTOMS NG BAYAN WEBSITE at <http://www.dof.gov.ph/customsngbayan>.

¹⁰⁶ Ankit Sharma, *Crowdsourcing Critical Success Factor Model: Strategies to Harness the Collective Intelligence of the Crowd* (2010) (working paper), available at <http://irevolution.files.wordpress.com/2010/05/working-paper1.pdf>.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*



Just like CSFM, motive alignment remains the single most important factor in the success of a Philippine anti-corruption crowdsourcing platform. But unlike the CSFM, the authors found that the peripheral factors are interrelated and affect one another. The authors likewise find applicable Sharma's proposition of a bilateral relationship between motive alignment and success of the crowdsourcing platform. The four peripheral factors that stand out as important component in strengthening motive alignment factor are the following: level of citizen participation, government support, Internet penetration and dedicated NGO as a focal point. These peripheral factors and motive alignment will be discussed in *seriatim*.

1. *Level of Citizen Participation*

Without the crowd, there is no crowdsourcing. The quality and quantity of citizen participation primarily drives any crowdsourcing site. In Sharma's model, the crowd's skills and abilities (human capital factor) enable them to participate meaningfully. In an anti-corruption setting, we found the quality of participation that enable meaningful participation requires very minimal technical skills. Of course, at minimum, the ability to use a computer and navigate the Internet is necessary. Moreover, the number of people participating primarily contributes to the program's success. In analyzing the

failure of China to replicate India's IPAB, University of Michigan Assistant Professor Yuen Yuen Ang identified the lack of motivation of the citizens and the quality of citizens' online participation in politics as among the main reasons of its failure.¹¹⁰ She noted that the website had been suffering internally due to the decreasing number of contributors to the site even before the government crackdowns.¹¹¹ She argues that this can be traced to the prolonged restrictions placed against free association under an authoritarian rule.¹¹² As a result, people were unable to organize an autonomous and professional NGO which was up to the task of handling an anti-corruption crowdsourcing site. In contrast, Indonesia's *Lapor* and India's IPAB enjoy tremendous public support. *Lapor* for instance was reportedly receiving almost a thousand crowdsourced reports per day.¹¹³ Take this example of an anonymous report in IPAB India: "Paid 15000 thousand rupees to get property Katha certificate located in Marenahalli Ward no. 25 to revenue inspector Chandraya on 12th Oct 2015."¹¹⁴ Almost all reports in IPAB follow the same format: the amount of bribe and brief details of bribery including in some cases the name of the corrupt official. Multiply this by tens of thousands and you have an effective reporting mechanism in IPAB. As of this writing, IPAB has received around 62,391 reports since its founding.¹¹⁵

From a historical standpoint, the Philippines has a promising outlook considering the nation's history of using mass action as a political remedy. The EDSA People Power is a perennial example. Also, the country's civil society sector is among the most vibrant in the world. It also hosts the largest number of non-government organizations per capita in Asia, with an estimated 60,000 SEC-registered NGOs.¹¹⁶ This reflects the Constitution's recognition of the right of the people and their organizations to effective and reasonable participation at all levels of social, political and economic-decision making.¹¹⁷

¹¹⁰ Yuen Yuen Ang, *Authoritarian Restraints on Online Activism Revisited: Why 'I-Paid-A-Bribe' Worked in India but Failed in China*, 47 COMP. POL. 21, 21-40, Nov. 2, 2013, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2244661.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Hans Nicholas Jong, *Gov't adopts LAPOR! Online public-service complaint system*, THE JAKARTA POST, Dec. 4, 2014, available at <http://www.thejakartapost.com/news/2014/12/20/govt-adopts-lapor-online-public-service-complaint-system.html>.

¹¹⁴ Report #79593 (Oct. 17, 2015), IPAB WEBSITE, at <http://www.ipaidabribe.com/reports/paid/i-paid-bribe-for-katha-transfer-bbmp#gsc.tab=0>.

¹¹⁵ See IPAB WEBSITE at <http://ipaidabribe.com> (last visited Oct. 25, 2015).

¹¹⁶ David Wurfel, *Civil Society and Democratization in the Philippines*, in GROWTH AND GOVERNANCE IN ASIA (Y. Sato ed.) 215 (2004), available at http://www.apcss.org/Publications/Edited%20Volumes/GrowthGovernance_files/Pub_Growth%20Governance/Pub_GrowthGovernancech17.pdf.

¹¹⁷ CONST. art. XIII, § 16.

2. *Level of government participation.*

Almost all successful anti-corruption crowdsourcing sites surveyed enjoy government support in one form or another. Government support, which forms part of the “external environment” factor in Sharma’s model, ensures the development of crowdsourcing program most especially in its infancy stage. According to Sharma, government support adds legitimacy and trust to the program.¹¹⁸

IPAB had been reportedly receiving positive reviews from a number of government officials which led to some government engagements in terms of improving government services.¹¹⁹ *Lapor* and CFMP are government-run crowdsourcing programs. Locally, CMS enjoys the Department of Education’s support, while *Customs ng Bayan* is run by the government. Finance Secretary Cesar Purisima has been quoted to consider crowdsourcing a radical change in data transparency policies and a valuable anti-corruption measure.¹²⁰ In fact, sponsoring a broader, more sophisticated, dedicated anti-corruption crowdsourcing site may well be in line with the recent memorandum of agreement between the Office of the President and the Office of the Ombudsman, establishing a Joint Technical Working Group whose functions include “[mobilizing] the support of the private sector, the academe, media, and civil society organizations in implementing the state’s obligations under the UNCAC[...].”¹²¹

On the other hand, government censorship and prohibitions on NGO involvement could instantly stop anti-corruption progress and eventually stifle people’s enthusiasm towards fighting corruption. The Chinese versions of IPAB have been closed down by the government in a series of government clampdowns. While Ang cited the quality of citizen participation as the main reason for the failure of IPAB China, she nonetheless admitted that this is due to the country’s long history of repression of free association under a non-democratic government.¹²²

¹¹⁸ Sharma, *supra* note 106.

¹¹⁹ Yuen Yuen Ang, *supra* note 110.

¹²⁰ DOF, BOC Bare Radical Data Transparency Campaign (Press Release) (Jan. 17, 2014), available at <http://www.dof.gov.ph/customsngbayan/?cat=93>.

¹²¹ Office of the President & Office of the Ombudsman, Memorandum of Agreement § 2, ¶ b (June 14, 2013), available at <http://www.ombudsman.gov.ph/docs/references/MOA 20%UNCAC-IMP.pdf>.

¹²² Yuen Yuen Ang, *supra* note 110.

3. Internet penetration

Internet penetration is part of Sharma's infrastructure factor. Since crowdsourcing is an online activity and essentially requires high Internet penetration to be successful.

Quantitatively, the level of participation depends on the number of people drawn by crowdsourcing sites. Around 37% of the Philippine population or roughly 37 million Filipinos use the Internet. The growth rate is considered the highest in Southeast Asia. Notably, social media and online networking sites are at the forefront of online activism in the Philippines. Wave7, a survey covering 65 countries conducted by UM, shows Filipinos leading the world in social media engagement.¹²³ John Bertot et al. recognized the huge potential of social media in anti-corruption:

In terms of anti-corruption, social media has four major potential strengths: collaboration, participation, empowerment, and time. Social media is collaborative and participatory by its very nature as it is defined by social interaction. It provides the ability for users to connect with each and form communities to socialize, share information, or to achieve a common goal or interest. Social media can be empowering to its users as it gives them a platform to speak. It allows anyone with access to the Internet the ability to inexpensively publish or broadcast information, effectively democratizing media. In terms of time, social media technologies allow users to immediately publish information in near real time.¹²⁴

The potential of the Internet for political mobilization cannot be discounted. In an interview conducted by an Asia Foundation fellow, the founder of IPAB India, T.R. Raghunandan, recognized the importance of rising Internet penetration in the success of the program since online crowdsourcing sites, for obvious reason, "can only reach people who have access to the Internet."¹²⁵

¹²³ *Filipinos are no. 1 in social media engagement*, MANILA BULLETIN, July 13, 2014, available at <http://www.mb.com.ph/filipinos-are-no-1-in-social-media-engagement>.

¹²⁴ John C. Bertot, Paul T. Jaeger, Justin M. Grimes, *Using ICTs to create a culture of transparency: E-government and social media as openness and anti-corruption tools for societies*, *Government Information Quarterly* 27, 264-271, 27 April 2010, available at <http://www.sciencedirect.com/science/article/pii/S0740624X10000201>.

¹²⁵ *Q&A with Founder of 'I Paid a Bribe,' India's Anti-Corruption Online Movement*, ASIAFOUNDATION.ORG, Sep. 21, 2011, available at <http://asiafoundation.org/in-asia/2011/09/21/qa-with-founder-of-i-paid-a-bribe-indias-anti-corruption-online-movement>.

In the Post-EDSA Philippines, citizen participation has been featured with a twist: the successful partnering mass action and technology. The so-called “EDSA People Power II,” which led to the ouster of President Joseph Ejercito Estrada, highlighted the use of Short Message Service (SMS) or text messaging in mobilizing people.¹²⁶ Eighty-eight hours after the premature adjournment of the senate impeachment trial were all it took for thousands of people to organize along EDSA.¹²⁷

More recently, the country saw online platforms such as *Facebook*, *Twitter*, *Instagram* and various independent blogs were used to denounce the pork barrel scandal. It is worth mentioning that the online frenzy which preceded and later followed the scandal started with the *Instagram* posts showing extravagant lifestyle of Jeane Napoles, daughter of alleged pork barrel scam mastermind Janet Napoles.¹²⁸ People’s disgust proliferate across the Internet and social media in a deluge of posts and “shares.” These online activities which heightened people’s vigilance and public outrage eventually led to the filing of complaints against those implicated including three Philippine senators. The Million People March, a campaign calling for the total abolition of the pork barrel, was considered by some media commentators as the first massive rally organized mostly through the use of social media.¹²⁹

One of the objectives of having a dedicated crowdsourcing platform is to harness the kind of mobilization potential described above.

4. *Dedicated and organized non-profit organization as focal point*

Successful crowdsourcing programs require a professional and legitimate NGO at its forefront. The importance of having a dedicated focal point cannot be overemphasized. This factor will cover three factors in Sharma’s model: linkages, human capital and infrastructure.

Putting these three factors in an anti-corruption crowdsourcing context would highlight the importance of an NGO as a focal point of the program. This group will act not only as the face of crowdsourcing efforts but can also provide the necessary resources for the continued operation of the program. The organization can house a group of professionals to manage the

¹²⁶ Court, *supra* note 3.

¹²⁷ *Id.*

¹²⁸ Gutierrez, *supra* note 4.

¹²⁹ See *Social Media Fuels Massive PH Anti-Graft Rally*, ABS-CBNNEWS.COM, Aug. 27, 2013, available at <http://www.abs-cbnnews.com/focus/08/26/13/social-media-fuels-massive-ph-anti-graft-rally>.

crowdsourcing site. Management requires for the most part filtering sets of information submitted by concerned citizens and anonymous contributors, publishing suspicious transactions, and organizing them to be presented later on to the public prosecutor. Also, it would be much easier for an organization to solicit funds necessary for its operations.

One other advantage of having an organized group to consolidate incriminating information is its ability to sustain a protracted investigation and prosecution. This is especially critical in high-profile corruption cases, the targets of which are public officials powerful enough to pressure, manipulate and delay investigations against them. Ordinary citizens are usually simple folks who cannot afford this kind of protracted legal battle.

It must be emphasized however that the NGO must have a clear and well-defined vision of what it wants to achieve. It must not be seen as a partisan organization lest the trust it may have gained from the people might erode and eventually lead to tampering of its legitimacy.

IPAB India was established by the Janaagraha Centre, an NGO composed of highly educated and committed professionals.¹³⁰ The organization also acts as an agent that filters and validates information and that keeps the project's goal intact, i.e. attacking corruption systematically.¹³¹ *Rospil* may have been started alone by Alexey Navalny, but it now has a team of legal experts supported by site followers who are engineers and professionals that help his team in analyzing data.¹³² *Lapor* is being managed by the President's Delivery Unit of Development Monitoring and Oversight (UKP4) in partnership with Open Government Indonesia.¹³³ In the Philippines, CMS is primarily controlled and supported by the Affiliated Network for Social Accountability in East Asia and the Pacific (ANSA-EAP).¹³⁴

While there is nothing wrong with a government-controlled site, it would be prudent to organize a group independent from the government especially since subjects of these investigations are often government officials. The government can certainly police itself and correct its officers' wrongs; it would be unfair to assume that the government cannot be objective in its

¹³⁰ See JANAAGRAHA WEBSITE at <http://www.janaagraha.org>.

¹³¹ Yuen Yuen Ang, *supra* note 110.

¹³² ROSPIL WEBSITE, *supra* note 99; also Greg Brown, *Crowdsourcing to Fight Corruption: Aleksei Navalny and the RosPil Experiment*, SUNLIGHT FOUNDATION WEBSITE, August 6, 2013, available at <http://www.sunlightfoundation.com/blog/2013/08/06/crowdsourcing-to-fight-corruption-aleksei-navalny-and-the-rospil-experiment>.

¹³³ LAPOR WEBSITE, *supra* note 98; Jong, *supra* note 113.

¹³⁴ CHECK MY SCHOOL WEBSITE, *supra* note 102; Shkabatur, *supra* note 103.

approach. However, considering the greater interest of the public, the goal is to prevent such objectivity from being subject to any perceived risks, hence, the need for an independent NGO.

5. Motive alignment

While it was mentioned that a successful anti-corruption measure should lead to the eventual prosecution of the corrupt officials, this is only one of the results of the “cleansing” that anti-corruption crowdsourcing desires to achieve. This is not the goal. The goal is to bring down systemic corruption in the government, one perpetuated by state capture and Filipino’s own cultural values. When citizens are able to associate themselves with this primary objective, experience suggests that this will ensure their continued participation and ultimately the program’s eventual success.

Going back to the comparison between IPAB India and IPAB China, the downfall of the latter was the result of misaligned motives vis-à-vis goals. Ang argued that the lack of experience in civic engagement among the netizens results in instances of “venting, personal vengeance, and profiteering through IPAB in China.”¹³⁵ Also, the focus of IPAB China deviates from that of IPAB India; China’s version was fixated on exposing and arresting corrupt government officials.¹³⁶ This kind of actions will eventually lead to decreasing numbers of participants because of the lack of immediate result. Contrast that with IPAB India where the people easily caught up with the principal aim of the crowdsourcing platform of systematically bringing down systemic corruption. As of the date of this writing, IPAB India remains strong and continues to grow.

C. Addressing State Capture and Other Fundamental Problems

The concept of state capture assumes the susceptibility of government agencies to being captured in the sense that the agency and its officials become beholden to the appointing power or to some powerful economic group. In a captured state situation, therefore, it would be very difficult for the principal to get what he wants since the agent, supposed to be acting on the principal’s behalf, fails or refuses to address his concerns. A government prosecutor may not act on a citizen’s complaint because the same is directed to the former’s appointer or his allies. Because of the high level of discretion in filing criminal complaints, a public prosecutor can hide behind a purported lack of sufficient evidence to constitute probable cause in order to

¹³⁵ Yuen Yuen Ang, *supra* note 110.

¹³⁶ *Id.*

avoid filing cases. Even the Supreme Court recognized the high level of discretion exercised by public prosecutors, which can only be overcome through a finding of grave abuse of discretion on the part of the latter.¹³⁷

To address this concern, a citizen-centered program such as crowdsourcing would soften the high level of discretion that public prosecutors had. In an ideal anti-corruption crowdsourcing program, massive amounts of incriminating information and evidence will be collected, compiled and organized into a formidable complaint such that any public prosecutor presented with such data would have no other recourse but to file the proper criminal information. The platform's committed team of professionals and investigators can gather data and information, such that though the published information is not itself admissible in court, the organization can develop sufficient leads that can then be passed on to the Department of Justice or to the Office of the Ombudsman. The latter may then follow up on such leads and gather other evidence which can be admitted in court regarding such allegations of corruption. The hopeful passage of the FOI Law will greatly supplement these efforts. Because of the public nature of crowdsourcing, the targeted corrupt practices, otherwise hidden, would be unveiled for everyone to see. A prosecutor's failure to act on a crowdsourced-based complaint backed by solid evidence would open him to a barrage of public criticisms and possible administrative and criminal actions for nonfeasance. In effect, citizen participation in crowdsourcing becomes part of the prosecutorial process. The citizen participation not only complements criminal investigation; it also acts as a check against grave abuse of discretion.

Apart from utilizing the strength of the people's collective anger against corruption, one key advantage of the use of a crowdsourcing platform in reinforcing the country's anti-corruption efforts is that it allows the anonymity of informants. A concerned citizen can easily contribute to a growing compilation of corrupt activities and transactions without physically appearing before a government authority. While anonymity is always handled with great caution since it may very well come from dubious sources, it is not entirely prohibited. In fact, the Office of the Ombudsman, as well as the Commission on Civil Service, accepts leads from anonymous sources. In *Anonymous v. Geverola*,¹³⁸ the Court said that an anonymous complaint "does not always justify its outright dismissal for being baseless or unfounded for such complaint may be easy of verification and may, without much difficulty, be substantiated and established by other competent evidence[...]"¹³⁹

¹³⁷ *Unilever Philippines, Inc. v. Tan*, G.R. No. 179367, 715 SCRA 36, Jan. 29, 2014.

¹³⁸ A.M. No. P-97-1254, 279 SCRA 279, Sept. 18, 1997.

¹³⁹ *Id.* at 286.

Anonymous reporting is one of the strengths of an anti-corruption crowdsourcing site. Once a consolidated complaint is compiled through crowdsourcing, the same may be presented to the Ombudsman which is mandated by law to “act promptly on complaints filed in any form or manner against public officials or employees of the government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate case, notify the complainants of the action taken and the result thereof.”¹⁴⁰

The advantage of anonymous reporting finds relevance in thwarting instances of retaliatory defamation suits, especially considering the weakness of the current whistleblower protection framework. The platform can provide a mechanism for confidentiality between the informant and the host NGO that maintains the anonymity of the informant, while at the same time publishing the information in order to heighten the collective vigilance of the public. In fact, in most crowdsourcing sites, there is no need for the site handlers to know the identity of their informants. This way, the whistleblower/informant is given some degree of protection even as we await the passage of stronger whistleblower protection laws. Further, because of the anonymity of the informant, liability for defamation suits is absorbed by the organization.

On the other hand, if the organization is sought to be made liable under a defamation suit, it can utilize its organizational competence whereupon by effectively screening the information it gathers, it should find sufficient basis to establish the veracity of the claims it published.

D. Challenges

1. *Slacktivism*

Slacktivism is defined as “[a]ctions performed via the Internet in support of a political or social cause but regarded as requiring little time or involvement.”¹⁴¹ This term is a degree lower than free riding if not its functional equivalent. A good example is “liking” a Facebook post without doing something more meaningful than clicking one’s mouse. As the success of this proposal depends on the willingness of the person or organization to shoulder the operational cost of managing a crowdsourcing site, it is safe to assume that some people would rely on others to do the same because of lack of personal incentives on their part. It would be understandable that the idea

¹⁴⁰ CONST. art. 11, § 12.

¹⁴¹ *Slacktivism*, OXFORD DICTIONARIES, at http://www.oxforddictionaries.com/us/definition/american_english/slacktivism (last visited Oct. 24, 2015).

of a clean and honest government would strike an ordinary person as no more than ideal, impossible to achieve. The prosecution of public officials might not be enough to pique their interest to contribute to crowdsourcing efforts, especially so when they are not personally injured by the acts of said officials. Slacktivism, however, must be viewed not as a problem but as a good sign that a crowdsourcing site is garnering attention. In order to convert slacktivists into meaningful contributors, motive alignment must be strengthened as discussed above.

2. Internal corruption

No one is incorruptible. This should be kept in mind in building a focal organization to handle crowdsourcing. It is not farfetched to assume that the very same persons handling anti-corruption efforts may also be susceptible to corruption, in the same way that government anti-corruption agencies are. In this regard, it is imperative to create a checking mechanism on how to ensure the integrity and professionalism of those involved in the efforts.

3. Nuisance suits

By sheer numbers of crowdsourcing reports, the probability of receiving dubious and misleading leads cannot be discounted. In fact, it is to be expected. The problem might result in unnecessarily tainting the image of the public official concerned without probable and sufficient proof. The official may be publicly prosecuted without having been given the chance to refute the accusations. And even if he could refute the accusations, his image will have been tainted by the accusations hurled against him. This will not only prevent him from efficiently performing his duties as public officials because he will be busy answering these accusations, but it will also create distrust towards the government in general.

This can be avoided by the internal controls of the focal organization. The organization should ensure anonymity not only of the informant but also of the official upon whom the accusations are directed. The need to collate incriminating information does not require publishing the names of those involved prematurely; the investigation can proceed discreetly until solid sets of evidence are gathered against those involved.

4. Data privacy and security

Since crowdsourcing requires technological structures storing information on corruption, the need to secure information is in order. An

unsecure Information Technology infrastructure will be an easy target of hackers and other persons with something to gain from the information. The result would be a deprivation of the privacy of not only the informants but also of those persons subject of the investigation. With this in mind, the crowdsourcing site should be handled by an organization with the capability of securing collected information. The IT infrastructure upon which the crowdsourcing site will be built on should be secured enough to deter potential cyber-attacks.

CONCLUSION & RECOMMENDATIONS

In order to succeed in our long and drawn out battle against corruption it is essential that we, the sovereign Filipino people, realize our proper place in the democratic stratum: as the constitutionally sanctioned sovereign and the source of all government authority, we can be nothing less than the principal in the fiduciary relationship between the people and their government. Thus, we must be mindful of the remedies available to us whenever our agent violates the public trust by engaging in corrupt acts.

In our effort to understand the problem we seek to address, the interrelatedness of the problem of state capture, the agency problem, and local manifestations of corruption cannot be understated. State capture as a manifestation of the agency problem, is a problem which, left unresolved, will impede all pathways to growth, invading all facets of governance. The problem of state capture, which allows officials to bend to their favor the rule of law, must not bar any attempt to vindicate the fiduciary duty imposed by no less than the Philippine constitution.

Since corruption is a chronic and systemic problem, the people themselves must collectively contribute and directly participate in lending their voices against acts that have long been accepted by corrupt actors as commonplace. This paper has presented a framework for the development of a populist online anti-corruption crowdsourcing site as a tool to implement the remedies available to us against officials who violate their fiduciary duties.

This site can serve as a venue where people from all walks of life can directly participate by contributing their knowledge, time and expertise in ensuring that the government is acting pursuant to its mandate. It can promote transparency by facilitating the vigorous exercise of the right to information to shed light on all sorts of corrupt practices, acute or benign. The site may then act as a repository of information on identified corrupt transactions which may then be turned over to the proper authorities for use

in the prosecution of corrupt actors, with the goal of revoking the trust reposed upon them. And finally, it will act as a deterrent against the further conduct of fraudulent or negligent acts.

This proposal seeks to utilize the Filipino people's rich history of social mobilization and the emergent culture of the online involvement to combat the deeply rooted cultural problems of corruption in the country. It acts as a complement to the current prosecutorial process with the hope that direct public involvement can better protect the public trust.

Looking forward, we maintain that there is no silver scalpel solution to a problem as grave as corruption. To ultimately succeed, we will need to continuously enhance the remedies available to the people to keep the officers of the government in check. Our proposal is just one step in the process of equipping ourselves with the best tools to surgically extract all traces of corruption from our system.

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