

REDRESS OF GRIEVANCES AND THE PHILIPPINE OMBUDSMAN (TANODBAYAN)*

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Time was when the prevailing view was that a government governed best which governed least.¹ Today governments intervene in practically every aspect of life — regulating activities, establishing business enterprises, maintaining social services and administering gratuities, privileges and subsidies. The sphere of individual autonomy decreases as government operations expand, and people unable to cope with a bureaucracy grown big with each new governmental enterprise, require protection from actions of government itself and of those who act in its name. Responding to this need, mechanisms like the ombudsman and similar complaint-handling agencies have been created as watchmen for peoples' concerns. Some countries have a long history of grievance handling institutions. Others have only lately established them. The Philippines for its part incorporated in the 1973 Constitution provisions intended to ensure the accountability of public officials to the people and mandated the creation not only of a special court (*Sandigan-bayan*) but also of an ombudsman (*Tanodbayan*).²

My interest in the ombudsman institution stems from studies in administrative law and the checks which keep agencies performing administrative, rule-making and adjudicative functions within the limits of their powers.

Last year when my membership in the government delegation to the UN Women's Conference in Copenhagen became certain, I presented a sabbatical leave project on women's access to complaint-handling agencies. With Dean Bacuñgan's active support, I obtained from the University of the Philippines System approval and support for the project and generous grants from the U.P.L.A.F., the Asia Foundation, the University of Michigan Law School and the East-West Center. These enabled me to visit, observe and study ombudsmen in Sweden, the country of its origin, as well as those of other European countries, and of the United States, where the institution has spread. From these visits were gathered valuable insights on how different grievance agencies work, and bases for comparing our *Tanodbayan* with them. The study and observation confirm the view that the more

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¹ Agricultural Credit and Cooperative Financing Administration v. Confederations of Unions in Government Corporations & Offices, G.R. No. L-21484, November 29, 1969; 30 SCRA 649 (1969); *Edu v. Ericta*, G.R. No. L-32096, October 24, 1970 35 SCRA 481 (1970); also see, Agabin, *Laissez Faire and the Due Process Clause: How Economic Ideology Affects Constitutional Development*, 44 PHIL. L.J. 709 (1969).

² CONST. Art. XIII, secs. 5 & 6.

pervasive government interference becomes, the wider grows the gap between ordinary citizen and government and the more urgent is the need to relieve the helplessness of people before a bureaucracy that grows like Topsy.

II. THE CONSTITUTIONAL RIGHT TO REDRESS OF GRIEVANCES

In the Constitution as in earlier organic acts the right to petition the government for redress of grievances is coupled with that of peaceful assembly. The formulation drawn from the American constitution³ is invariably related to speech and press freedom. The 1973 Constitution reads:

No law shall be passed abridging the freedom of speech, or of the press or the right of the people peaceably to assemble and petition the Government for redress of grievances.⁴

But the right of peaceful assembly may be exercised without any petition for redress, just as petitions for redress may be made without people assembling. The two guarantees while closely related and found in one constitutional provision, are not components of a single right.⁵

Nor do provisions on peaceful assembly and petition exhaust the means for obtaining redress. The whole judicial establishment exists for this purpose. When individuals exercise speech and press freedoms to criticize and denounce acts of government and public officials, they demand corrective action. The 1973 Constitution provides for the creation of two related offices, the *Sandigānbayan* and the *Tanodbayan* as additional mechanisms for dealing with the transgressions and omissions of public officials.

Ultimately, however, the sovereign people have in their hands effective ways of obtaining redress: through suffrage by disauthorizing and replacing their elective officials, — in the parliamentary system this can be more immediate; or through direct act of state when the sovereign people acting collectively as a unit replaces the government itself as the agency through which it acts.

III. THE 1971 CONSTITUTIONAL CONVENTION

In the 1971 Constitutional Convention the Committee on Constitutional Bodies⁶ considered 27 proposals before reporting in Committee Resolution No. 01 for the creation of an Ombudsman Commission. In a parallel move

³ The First Amendment of the United States Federal Constitution includes guarantees to religious freedom, to the freedom of speech and press and the right of the people peaceably to assemble and petition the Government for redress of grievances.

⁴ CONST. ART. IV, sec. 9.

⁵ The Basic Law of the Federal Republic of Germany guarantees in separate articles the right of peaceful assembly and of petition, thus: "All Germans shall have the right to assemble peaceably and unarmed without prior notification or permission. . . . With the right to open-air meetings this right may be restricted by or pursuant to laws." (Art. 8).

"Everyone shall have the right individually or jointly with others to address written requests or complaints to the appropriate agencies and to parliamentary bodies." (Art. 17).

⁶ Chaired by Delegate Rodolfo D. Robles.

another committee deliberated on proposals for the creation of a special court. It was stressed that there was a need "to revive the people's faith in government by providing them with a means to have their grievances redressed."⁷

In the Sycip Lecture of 1972 I pointed out a trend emerging from the deliberations of the convention, namely, that proposals to create independent constitutional commissions were so numerous, that even if only a few of them were established, the resulting organization of a government by commission would have been difficult if not impossible to operate. The 1973 Constitution includes only one additional commission, making a total of three independent constitutional bodies. The proposals for the ombudsman and the special court, were incorporated in a general article on Accountability of Public Officers⁸ and left for the legislature to create. With Filipino labels, the nature, purposes and functions of these two bodies are as follows:

SEC. 5. The National Assembly shall create a special court, to be known as *Sandiganbayan*, which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations; in relation to their office as may be determined by law.

SEC. 6. The National Assembly shall create an office of the Ombudsman, to be known as *Tanodbayan*, which shall receive and investigate complaints relative to public office, including those in government-owned or controlled corporations, make appropriate recommendations, and in case of failure of justice as defined by law, file and prosecute the corresponding criminal, civil or administrative case before the proper court or body.

The Constitutional Convention in formulating these provisions drew from the experience of different countries.⁹

The purpose of this exercise is to determine how the concept of the ombudsman in other jurisdictions adapted by the 1971 Convention compares with the *Tanodbayan* as created by presidential decrees.

IV. COMPLAINTS-HANDLING AGENCIES IN PERSPECTIVE

A survey of ombudsman and other complaint-handling systems undertaken by the International Bar Association Ombudsman Committee and the International Ombudsman Institute¹⁰ lists down and briefly describes 71 general and military ombudsman offices in different countries on the federal or national, state or provincial, city, regional or local levels; 9 legislative

⁷ Delegate Augusto Syjuco, Jr. on Proposed Amendment No. 261.

⁸ CONST. Art. XIII.

⁹ Delegate Syjuco, a vice-president of the Constitutional Convention published a monograph entitled *Sandiganbayan* originally conceived as an ombudsman institution; but the term has been adopted in the 1973 Constitution to refer to the special court. The term *Tanodbayan*, meaning, watchman of the nation, refers to the Ombudsman; Delegate Robles in *The Ombudsman*, culled from foreign and local materials dealing with the concept, origin, development, etc. of the institution. (Manila, 1972).

¹⁰ Bernard Frank and Peter L. Freeman, co-editors, *Ombudsman and Other Complaint-Handling Systems Survey*, July 1, 1978-June 30, 1979.

petitions committees, as in the Federal Republic of Germany, New Zealand, Turkey, etc.; 155 other general and other systems, including the Philippines' *Tanodbayan*, the People's Republic of China's Procurator System, Indonesian *Pengabdian Hukum*, and Japan's Civil Liberties Bureau. In the U.S. there are different offices on the Federal, state and local levels, hot line services, and similar types of schemes, both public and private in such areas as anti-trust, consumer, business, education, health, legal, media and privacy data control.

The office may be established by constitutional provision, by statute, by executive order or by ordinance. The title officially given also varies but more often than not the institution is popularly referred to as the ombudsman. The world-wide interest¹¹ has been so remarkable that Sir Guy Powles, Chief Ombudsman of New Zealand in 1976 referred to it as "ombudsmania".¹²

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), *Médiateur* (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, Finland), 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 representative of the executive, an independent officer, or a representative of the legislature?¹³

Instruments creating it usually define the jurisdiction of the office. The constitution may give it in broad terms leaving the details for statutory implementation. The classic ombudsman acts as representative of the legislature although offices bearing the same name have been established by executive action.

According to Rowat three essential features characterize the *original* ombudsman system, thus:

- (1) The ombudsman is an independent and non-partisan officer of the legislature, usually provided for in the constitution, who supervises the administration;

¹¹ ROWAT, *THE OMBUDSMAN PLAN ESSAYS ON THE WORLDWIDE SPREAD OF AN IDEA V* (1973).

¹² *The Jurisdiction of the Ombudsman*, proceedings of the Edmonton Conference.

¹³ As in the Republic of the Philippines and the United Republic of Tanzania.

- (2) He deals with specific complaints from the public against administrative injustice and maladministration; and
- (3) He has the power to investigate, criticize and publicize, but not to reverse administrative action.¹⁴

The relation of the ombudsman to the other branches of government also varies. Thus, in Sweden and Finland his jurisdiction extends to the judiciary. In these two countries a parallel system of supervision over the acts of the administration exists in the office of the Chancellor of Justice. Sweden in addition has a system of administrative courts. The Danish Ombudsman's jurisdiction excludes judges but includes Ministers as heads of departments, though not as members of the Cabinet. The Swedish Ombudsman can not investigate actions taken by cabinet members or elected members of the Parliament or of local councils. The British Parliamentary Commission on the other hand may investigate acts of Ministers.

The ombudsman may be a single official, or as in Sweden the Office may be composed of several members; the same official may occupy separate ombudsman offices (in the U.K. the Parliamentary Commissioner also acts as the Commissioner of Health and is member of the Commission for Local Administration in England).

Among federal systems the Federal Republic of Germany has by constitutional provision and on the federal level adopted the institution of ombudsman.¹⁵ Australia has by statute created a Commonwealth Ombudsman and ombudsmen on the state level; Canada has a Federal Commissioner of Official Language who functions as ombudsman and the various provinces have created the office on the provincial level.¹⁶

In the United States variations of the ombudsman institution are found in different levels of government. Hawaii was first to enact a statute for its creation on the state level, followed by Nebraska and Alaska. Where legislative action could not be obtained some state governors by executive order created the office or the lieutenant governor (N.Y.) assumed the functions. Counties and cities also organized grievance offices, and before long the idea of a grievance forum spread to newspapers, hospitals and schools.

V. COMPLAINTS-HANDLING AGENCIES: PHILIPPINE ANTECEDENTS

Complaint-handling agencies have been created by Philippine Presidents in attempts to purge government of graft and corrupt practices. Thus, in 1950 President Quirino by Executive Order No. 318 created the Integrity Board to receive complaints against public officials, for acts of corruption,

¹⁴ ROWAT, ed., *THE OMBUDSMAN, CITIZEN'S PROTECTOR*, xxix (1968).

¹⁵ Article 45(c) of the F.R.G. constitution provides for a Petitions Committee to handle requests and complaints submitted to the Bundestag. The citizens in military service have recourse to a Parliamentary Commissioner for the Armed Forces who watches over their rights.

¹⁶ *Supra* note 10.

dereliction of duty and irregularity in office, investigate them and submit recommendations to the President.¹⁷ On the day he assumed office, President Ramon Magsaysay created the Presidential Complaints and Action Commission (PCAC)¹⁸ not only for the purpose of expediting actions on all complaints against public officials and employees in the executive department of government but "to encourage public participation in making government service more responsive to the needs of the people." The PCAC, clothed with fact-finding and recommendatory functions, was directly under and solely responsible to the President. Subsequently, the Commission was superseded by the Complaints and Action Committee¹⁹ in the Office of the President with essentially the same powers spelled out in more detail (receive, process and evaluate).

The Presidential Committee on Administration Performance Efficiency²⁰ created by President Carlos P. Garcia was empowered to process and evaluate complaints relating to the performance of duties imposed by law or various executive departments, bureaus, and offices of government.

In 1955 Congress approved an act providing for the forfeiture to the state of property unlawfully acquired by public officials.²¹ To implement and enforce this act President Garcia created the PAGCOM²² but abolished it about a year later.²³

President Macapagal had his investigating agency, the Presidential Anti-Graft Committee,²⁴ as did President Marcos who created the Presidential Agency on Reforms and Government Operations²⁵ making its head a member of the Cabinet. Within a year the office was abolished, and replaced by the Presidential Complaints and Action Office (PCAO) which in turn was replaced upon the revival of the PARGO on October 2, 1967.

These different complaints-handling agencies shared common characteristics. They were established by Presidential Act, were directly under and responsible to the President, exercised no more than fact-finding and recommendatory functions and existed at the pleasure of the President. They were established in aid of the Presidential power of control over all executive departments, bureaus, and offices, of supervision over local governments and the duty to take care that laws are faithfully executed. They were also agencies through which a popularly elected president kept the channels of communication with his national constituency open and maintained their support.

¹⁷ May 25, 1959.

¹⁸ Exec. Order No. 1, December 30, 1953.

¹⁹ Also known as PCAC, Exec. Order No. 19, March 23, 1954.

²⁰ PCAPE, Exec. Order No. 306, July 15, 1958.

²¹ Rep. Act No. 1379 popularly known as the Anti-Graft Law, June 18, 1955.

²² President's Anti-Graft Committee, Exec. Order No. 378, February 18, 1960.

²³ Exec. Order No. 457, December 29, 1961.

²⁴ Exec. Order No. 4, January 18, 1962.

²⁵ PARGO, Exec. Order No. 4, January 7, 1966.

Another ombudsman-type agency was established²⁶ in 1971 composed of three members headed by the Undersecretary of Justice. It was known as the Presidential Administrative Assistance Committee (PAAC) charged with the duty to investigate and act on abuses in the implementation of the suspension of the privilege of the writ of *habeas corpus*.

In an attempt to create a statutory grievance agency, permanent in character, with defined authority and some measure of independence, Congress of the Philippines adopted the Citizen's Counselor Act²⁷ in 1969, enumerating the following purposes:

1. To protect and safeguard the constitutional rights of the people to petition the government for redress of grievances;
2. To promote higher standards of efficiency in the conduct of government business and the administration of justice for better service to the citizens.²⁸

These purposes reflect the classic ombudsman model, except that the Citizen's Counselor was not an officer of the legislature. The two-fold purposes are repeated in substantially the same terms in the preamble of the Presidential Decrees creating the *Tanodbayan*.

The Act gave the Office of Citizen's Counselor jurisdiction to investigate on complaint by any person or *motu proprio* any administrative act of a government agency when he has reason to believe that such act may be:

1. unreasonable, unjust, oppressively or improperly discriminatory, even though in accordance with law;
2. under a mistake of law or fact, partly or wholly;
3. without adequate statement of reasons;
4. based on grounds that are improper or irrelevant;
5. done inefficiently;
6. in conflict with law;
7. otherwise erroneous.²⁹

Excluded from the Citizen's Counselor's jurisdiction were (a) the President, (b) Members of the Senate and the House of Representatives, and (c) judges of any court of the Philippines.³⁰

This Act never became operational since it did not make an outright appropriation of funds for the office.³¹ In the reorganization of the executive departments of government, instead of activating the Office of Citizen's Counselor, the PARGO was continued.

²⁶ By Executive Order No. 33, August 26, 1971.

²⁷ Rep. Act No. 6028, August 4, 1969.

²⁸ Sec. 2.

²⁹ Sec. 12.

³⁰ Sec. 11.

³¹ Section 30 provided that Five hundred thousand pesos (P500,000.00) was thereby "authorized to be appropriated out of available funds of the National Treasury".

The PARGO was subsequently transformed to the Complaints and Investigation Office (CIO) to receive and act on complaints filed directly with the Office of the President.³²

The 1935 Constitution explicitly provided for and actually distributed governmental powers among three independent co-equal and coordinate branches of government. It vested executive powers in the President alone thus making him the executive branch of government and gave him control over all departments, bureaus and offices in that branch. If the Office of Citizen's Counselor had been organized it would have been under his control, notwithstanding the high qualification and prestige attached to it by statute.

With this experience of complaint-handling agencies in mind, the convention seriously considered the creation of a constitutional office following the ombudsman model. Had it been adopted, the Office by whatever name called would have enjoyed the independent status of such constitutional bodies as the COA, the COMELEC or the Commission on Civil Service. But as a statutory body, the *Tanodbayan* enjoys none of the constitutional guarantees to independent action which these commissions have. (The *Sandiganbayan* has the status of a special court.)

VI. STATUTORY ESTABLISHMENT OF THE TANODBAYAN

On the eve of the first session of the interim Batasang Pambansa and five years after the 1973 Constitution went into effect, President Marcos invoking powers vested in him by the Constitution and pursuant to Proclamation No. 1081 promulgated a decree creating the Office of the Ombudsman.³³ The preamble in clear terms lays down the dual objectives of the office: namely, (1) to give effect to the constitutional right of the people to petition the Government for redress of grievances and (2) to promote higher standards of integrity and efficiency in the government service. The decree stated that the *Tanodbayan* shall be an independent office,³⁴ provided for its organization, specified the qualifications, disqualifications, and term of office for the *Tanodbayan* and deputy *Tanodbayans*, and defined its functions. Its principal task—to "investigate, on complaint, any administrative act of any administrative agency including any government-owned or controlled corporations."³⁵

The act defined administrative agency as "any department or other governmental unit including government-owned or controlled corporations, any official or any employee acting or purporting to act by reason of connection with the Government but it does not include (1) any court or judge or appurtenant judicial staff, (2) any members, committees or staffs of the

³² Pres. Decree No. 115, June 11, 1978.

³³ Pres. Decree No. 1487, June 11, 1978, otherwise known as the *Tanodbayan* Decree of 1977.

³⁴ Sec. 2.

³⁵ Sec. 10.

National Assembly (Interim Batasang Pambansa), or (3) the President or his personal staff, or (4) the members of the Constitutional Commissions and their personal staff."

"Administrative act" refers to any action including decisions, omissions, recommendations, practices, or procedures of any administrative agency.

The classic ombudsman office relies principally on the power of persuasion to remedy administrative ills. Because of the high prestige of the office, its recommendations are given serious attention, communication to the agency involved and the publicity of the ombudsman's recommendations, often being sufficient to obtain official remedy for the aggrieved. Thus, the Swedish ombudsmen have a prosecution function which is seldom employed.

The first presidential decree implementing the ombudsman provision of the Constitution, emphasized the grievance handling function. But on the day Presidential Decree No. 1487 took effect (June 11, 1978) another decree (No. 1501) was issued retaining the Complaints and Investigation Office in the Office of the President. The first *Tanodbayan* appointed on December 1, 1978 was retired Supreme Court Justice Salvador Esguerra. Before he assumed office, the *Tanodbayan* act was amended.³⁶ The amendment transformed the office from a primarily grievance-handling to a primarily prosecution office. The original decree had only one provision on the prosecution of public personnel³⁷ authorizing the *Tanodbayan*, "If he has reason to believe that any public official, employee, or other person has acted in a manner resulting in a failure of justice, he shall file and prosecute the corresponding criminal, civil or administrative case before the *Sandiganbayan* or the proper court or body." An Office of Chief Special Prosecutor consisting of a Chief Special Prosecutor, (an assistant Chief Special Prosecutor and nine special prosecutors) had indeed been created, but this was in the *Sandiganbayan* Decree promulgated on the same day.³⁸ This prosecution office had exclusive direction and control over the prosecution of cases falling within the jurisdiction of the *Sandiganbayan* and was under the control of the Secretary of Justice.³⁹ The amendment of the *Tanodbayan* Act six months to the day after it was created and nine days after the first *Tanodbayan* was appointed transferred provisions for the Office of Chief Special Prosecutor from the *Sandiganbayan* Act to the *Tanodbayan* Act.⁴⁰ The *Tanodbayan*, like the Ministry of Justice in the earlier act, was given authority to designate any fiscal, state prosecutor, or lawyer in government service to act as Special Prosecutor and to appoint special investigators. The Office of Special Prosecutor and those designated to assist it had exclusive authority to conduct preliminary investigation, file information and to direct and control the prosecution of all cases cognizable by the

³⁶ Pres. Decree No. 1607, issued December 10, 1978.

³⁷ Sec. 17.

³⁸ Pres. Decree No. 1486, June 11, 1978.

³⁹ Pres. Decree No. 1486, sec. 12.

⁴⁰ Pres. Decree No. 1607, Sec. 17.

Sandiganbayan. Over them the *Tanodbayan* exercised control and supervision. The expansion of the prosecution function of the *Tanodbayan* was thus apparent. From power given the *Tanodbayan* himself under the original decree to prosecute public personnel⁴¹ a special prosecution establishment was created and placed under his direction and control.

Further dimension was added to this prosecution function by amendments introduced under Presidential Decree No. 1630, of July 18, 1979. The Constitution imposes as a condition for the *Tanodbayan's* exercise of the prosecution function that there must be a case of *failure of justice as defined by law*.

The first implementing decrees defined *failure of justice*, as "the defeat of a particular right, or the failure of reparation for a particular wrong, from the lack or inadequacy of a legal remedy for the enforcement of the one or the redress of the other."⁴² The grievance element is thus implicit. For there to be a failure of justice there must be an aggrieved party.

The decrees also provided that in selecting matters for his attention, the *Tanodbayan* should address himself particularly to administrative acts examples of which as enumerated constitute a breakdown, inadequacy, mistake or failure on the part of an administrative agency.⁴³

That the main thrust of the first decree implementing the *Tanodbayan* was to make real the constitutional right of the people to petition the Government for redress of grievances can be gleaned not only from the intention expressed in the preambular paragraph of the decree and its subsequent amendments but in its substantive provisions defining terms, specifying powers, indicating matters appropriate for investigation and prosecution.

The first amendment of the implementing act had shifted emphasis to the prosecution function; the revision under Presidential Decree No. 1630 completed the transformation of the office into a special prosecution arm.

According to Justice Ericta, when he took over as *Tanodbayan* the prosecution or filing of civil or administrative cases against public officials without first establishing that there was a *failure of justice* as defined by law bothered him. He could not see how failure of justice entered the picture in many cases against public officials. True, no respondent had raised that point as a prejudicial issue but one of the first things he did was to secure an amendment of the enabling act by the addition of a second sentence.

Failure of justice defined in the original implementing acts envisioned cases where the aggrieved having had previous recourse to the appropriate administrative agency, feels aggrieved because he believes he has not been given his due and so invokes the intervention of the *Tanodbayan*. The

⁴¹ Sec. 17.

⁴² Pres. Decree Nos. 1487 & 1607, sec. 9(c).

⁴³ Sec. 11 of both Pres. Decree Nos. 1487 & 1607.

change introduced by Presidential Decree No. 1630 consists of a second sentence added to the definition, to wit: "There is also a failure of justice when a public official or employee commits an administrative act or omission warranting criminal prosecution or the filing of an appropriate criminal, civil or administrative case."⁴⁴

Under the amendment regardless of whether the official act or omission causes a grievance for which a person or persons seek redress, a case of *failure of justice* may be established. It is enough if the act can be a basis for a criminal prosecution or the filing of civil or administrative case. In this the aggrieved can be said to be the general public. In fact the function of the *Tanodbayan* is closely linked with the *Sandiganbayan* which as special court has jurisdiction over crimes committed by public officers including those punished under the Anti-Graft and Corrupt Practices Act, the Revised Penal Code or the law declaring the forfeiture of unlawfully acquired property.⁴⁵ The Office of the *Tanodbayan* has exclusive authority to conduct preliminary investigation of these cases, to file information, and to direct and control their prosecution.⁴⁶ Both agencies are instrumentalities for ensuring the accountability of public officers.

When the Office of the *Tanodbayan* was reorganized under Presidential Decree No. 1630, the Office of the Chief Special Prosecutor became the Investigation and Prosecution Office with a complement of twelve Special Prosecutors and twelve investigators under a Director. A separate Legal Office with twelve Legal Officers aside from the Director was also created. They constitute support arms of the *Tanodbayan*.

Complaints-Handling Function

A careful look at the Letters of Instructions relating to the Office of the *Tanodbayan*, the Revised Rules of Procedure and Guidelines to Systematize the procedure in the handling of *Tanodbayan* cases reveals how the office is geared towards receiving complaints, investigating them, 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*.⁴⁷ 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*.⁴⁸ Both issuances referred to the power of the *Tanodbayan* to receive com-

⁴⁴ Pres. Decree No. 1630, Sec. 9(c), July 18, 1979.

⁴⁵ Pres. Decree No. 1606, sec. 4.

⁴⁶ Pres. Decree No. 1630, Sec. 17.

⁴⁷ L.O.I. No. 784, December 20, 1978.

⁴⁸ L.O.I. No. 820 issued February 28, 1979 but took effect on December 1, 1978.

plaints from any person against any administrative agency, public official or employee *for the purpose of determining his culpability*.

The rules of procedure promulgated by the *Tanodbayan*⁴⁹ after dealing with the filing of complaints and fact finding provide detailed rules on preliminary investigation, decision to prosecute, the filing of information or complaint and the conduct of cases.

The *Tanodbayan* is given power to inquire into administrative acts and to redress grievances on complaint filed by any person or at his own initiative.

Three options, not mutually exclusive are open to him: *First*, he may exercise the critical function, calling the attention of the agency concerned where a failure of justice may have been caused and suggest a way of correcting it.

Second, the *Tanodbayan* may perform an advisory function and recommend to the Batasang Pambansa the adoption of remedial measures, if he is convinced that an administrative action has been dictated by laws whose results are unfair or otherwise objectionable.⁵⁰

The *third* alternative, the most frequently resorted to at present is the prosecutory function. The *Tanodbayan* with the *Sandiganbayan* are popularly identified as the Nemesis of erring public officials. If the *Tanodbayan* has reason to believe that any public official, employee or other person has acted in a manner warranting criminal or disciplinary action or proceeding, he shall conduct the necessary investigation and file and prosecute the corresponding criminal or administrative case before the *Sandiganbayan* or the proper court or before the proper administrative agency.⁵¹

The Critical Function of the Tanodbayan

The *Tanodbayan's* jurisdiction is over administrative agencies and their acts. But these terms as used in the act embrace not only institutions but individuals, including government-owned or controlled corporations and their personnel.

Within the *Tanodbayan's* power of inquiry are acts done by agencies as entities distinct from the individual officials and those done by officials in their individual capacity, particularly as they fall within the Anti-Graft and Corrupt Practices Act and other statutes coming within the jurisdiction of the *Sandiganbayan*.

Where institutional administrative acts are the subject of inquiry, the *Tanodbayan* may act *motu proprio* or upon complaint filed with it to deter-

⁴⁹ Administrative Order No. 1, III. December 1, 1979 and Memorandum Circular No. 1, May 13, 1980.

⁵⁰ Art. 14.

⁵¹ Sec. 18, Pres. Decree No. 1630.

mine whether a failure of justice has occurred because the administrative act is: (1) contrary to law or regulation; (2) unreasonable, unfair, oppressive, or inconsistent with the general course of an administrative agency's functions, (3) mistaken in law or arbitrary in ascertainment of facts, (4) improper in motivation or irrelevant considerations, (5) unclear or inadequately explained when reasons should have been revealed, (6) inefficiently performed, (7) or otherwise objectionable.

It is precisely this aspect of the ombudsman institution that has attracted world-wide interest and acceptance. Except in a few countries, the ombudsman has no prosecution function, and even where it exists, it is rarely used. This is true in Sweden where the ombudsmen use persuasion and rely on public support for compliance with their recommendations. It is thus of utmost importance that persons of independent mind, integrity and prestige are chosen for the position. A parliamentary ombudsman may owe his position to the party in power, hold office at its pleasure and be replaced whenever a new government is formed. Despite these, it is possible for an ombudsman to hold office through changes in government. For example, Ludwik Nielsen, the Danish Ombudsman, in an interview said that in the nine years he has been in office, he has been elected six times.

One of the purpose for establishing the *Tanodbayan* is "to promote higher standards of integrity and efficiency in the government service..."⁵² To accomplish this the *Tanodbayan* is clothed with adequate powers not only to investigate and prosecute but also to criticize administrative acts which cause a failure of justice and to suggest ways to remedy inadequacies and improve the service. Occasion for the latter may arise when the *Tanodbayan* picks up a matter at his own initiative or upon complaint and after inquiry finds basis for criticism. But before announcing a criticism, he has to consult with and give that agency or person concerned opportunity for corrective action. He may recommend that the agency (1) consider the matter further, (2) modify or cancel the administrative act, (3) alter a rule or regulation or take any other step. He may request the agency within a specified time to inform him of the action taken on the recommendations or the reasons for not complying with them.⁵³ This is an aspect of the *Tanodbayan* function that has yet to come into its own.

In the Scandinavian and other countries where the ombudsman has been firmly established, the critical function looms large in the administrative firmament. The Swedish JO, for example, go on periodic inspections, initiate inquiries based on their observations, on news reports as well as on complaints by mail, by telephone or from walk-in grievants. The prestige of the office, the qualification, experience and competence of the ombudsmen and the support of the press combine to invest the office with such powers

⁵² Preamble, *Tanodbayan* Act of 1977, as amended.

⁵³ Pres. Decree No. 1630, sec. 15(a).

of persuasion that even without using the prosecution function, it effectively brings about the correction of errors and improvement of the service.

The *Tanodbayan* has yet to make use of its critical function and become a positive force in raising the standards of public service. According to comparative statistics supplied by the *Tanodbayan* the following were the number of complaints filed during the first two and a half years of its existence and the referrals it made to administrative agencies:

	CY 1979	CY 1980	CY 1981 (Jan.-June)
No. of complaints	3,816	3,632	1,964
No. of complaints referred to administrative agencies	705	724	201

What action the administrative agencies took and feedback the *Tanodbayan* received from them are not indicated. In an interview Justice Erieta decried the fact that the case load of prosecution is more than his staff can handle, and that as *Tanodbayan* he has to forego the critical and advisory functions of his office.

Ombudsman's Advisory Function

As parliamentary representative the ombudsman or the United Kingdom Parliamentary Commissioner for Administration, the French *Mediateur*, or the West German Petition's Committee can call the attention of parliament to changes needed in the law. The *Tanodbayan* is similarly empowered. If he believes that an administrative action has been dictated by laws whose results are unfair or otherwise objectionable, he may so inform the President and the Batasang Pambansa and make appropriate recommendation.⁵⁴ But so far the changes obtained refer to the structure and functions of the Office itself. No changes in substantive law have been brought about.

The Tanodbayan as Grievance Agency

The grievance handling function of the *Tanodbayan* may be activated by complaints filed with the office by persons who feel aggrieved by some administrative act or initiated *motu proprio* by the *Tanodbayan* himself.

Under the revised *Tanodbayan* rules,⁵⁵ a complaint may come from any source and may be made in any form. It may be signed or unsigned. An anonymous complaint can be entertained if it (1) contains the correct names and addresses of witnesses; and/or (2) if it states or mentions documents in support of the complaint and the office or place where the documents may be found or the person who is in custody of the documents; or if it gives sufficient leads for proper investigation.⁵⁶ Under the Act if a

⁵⁴ Sec. 15(b).

⁵⁵ Administrative Order No. III, December 19, 1979.

⁵⁶ Par. 5(b).

letter is addressed to the *Tanodbayan* from a person in a place of detention or in a hospital or other institutions under the control of an administrative agency, it shall be forwarded unopened.⁵⁷ In other countries a substantial number of letters to the ombudsman come from schools, prisons, and hospitals. For example, a high proportion of complaints received by the Swedish JO came from prisoners.⁵⁸ According to the report for the period July 1, 1979 to June 30, 1980 complaints against the prison administration accounted for 249 of 2,990 disposed of.⁵⁹

In aid of the grievance handling function the *Tanodbayan* may conduct investigation into administrative acts at no expense to the complainant. The enabling Act confers on the *Tanodbayan* broad powers regarding the handling of grievances including authority to call upon administrative agencies for assistance, to examine administrative agency records and documents, to enter and inspect premises within the agency's control subject to the President's order to desist, issue of subpoenas (*testificandum* and *duces tecum*). He may, with the approval of the President deputize other government officials or employees.⁶⁰ After he has considered a complaint regardless of whether or not it has been investigated, he shall inform the complainant of his thinking on the matter.

An interview with the Chief Ombudsman of Sweden, Per Erik Nilsson, brought out a point well worth thinking about. He said that the Swedish Parliamentary Ombudsman (JO) was not originally for receiving complaints from citizens but as a watchdog for Parliament. The ombudsmen supervise the observance of laws and include under their jurisdiction all state and municipal agencies and their personnel, the courts, the armed forces and state owned companies. The JO has access to every document and every file, but *supervision is not exercised to ferret out what has been done wrong, but to suggest and find ways of improving working routines to the agencies supervised*. According to Nilsson the more complaints there are, the worse the standards of administration, the less the complaints, the better the standards.⁶¹

The United Kingdom adaptation of the ombudsman consists in three categories of institutions: namely, the Parliamentary Commissioner for Administration, the Health Service Commissioner and the Local Commission for Public Administration. The first two offices are held by the same person (at the time of my visit in August 1980). Under the British scheme the citizen's complaints are not lodged directly with the Commissioner's but has to be coursed through a member of Parliament. Unless referred by the MP the Parliamentary Commissioner acquires no jurisdiction over the complaint. The Commissioner has also full access to all department papers

⁵⁷ Pres. Decree No. 1630, sec. 13(c).

⁵⁸ Stacey, *Ombudsman Compared*, 16.

⁵⁹ The Swedish Parliamentary Ombudsman Report, Stockholm, 1980.

⁶⁰ Sec. 10.

⁶¹ Interview in Stockholm, October 1980.

except those of the cabinet and its committees and may require any Minister, officer or member of any department or any other person to furnish relevant information. The Parliamentary Commissioner is not primarily a grievance officer. He cannot act *motu proprio* nor order the prosecution of a public officer. The end product of his investigation is a report to the MP who referred the complaint, to the principal officer of the department or authority concerned or in certain cases a special report may be laid before each House of Parliament. The Parliamentary Commissioner draws attention to dereliction of duty but does not name particular officials. Disciplinary action pertains to the Minister concerned. On the whole the British Parliamentary Commissioner does not lay blame on individual officials but directs attention to the administrative system. If a general deficiency in the procedure is revealed, public authority may be invited to review the procedure. If legislation produces unintended unfairness adversely affecting the rights of citizens, the report will also point this out.

The British ombudsman is less well-known compared to its Scandinavian counterparts, and for that matter compared to the *Tanodbayan*. One of the reasons for this is that it does not entertain complaints directly and it gets relatively little publicity.

The French *Mediateur* partakes of certain features of the Scandinavian Ombudsman and of the British Parliamentary Commissioners. Its work complements that of the *Conseil d'Etat*. Like the British Parliamentary Commissioner for Administration the *Mediateur* receives complaints not directly but through a member of the Senate or the Assembly and according to the *délegué* of the *Mediateur*, M. Ripoché, once a complaint is received, it is studied, computerized and the official of the ministry concerned is invited to comment. The *Mediateur* has also prosecution powers but one of the more important functions exercised is that of proposing changes in regulation in the behavior of civil servants, and in the simplification of forms. The information given was that about seventy per cent of the *Mediateur's* proposals have been adopted.⁶²

The French *Mediateur's* frame of reference in relation to investigations covers complaints that a public authority has acted not in accordance with his mission of public service. According to Stacey this is taken to mean "that he can consider not only when public authority has acted without due equity or humanity."⁶³

In the Federal Republic of Germany there is an ombudsman for military affairs provided in the Basic Law for safeguarding the constitutional rights of citizens in Military service,⁶⁴ and a Petitions Committee composed of twenty-seven members drawn from the political parties in the Bundestag. Each of the committee members regard themselves as the citizen's lawyers

⁶² M. Ripoché interview, September 18, 1980, Paris.

⁶³ *Op. cit.*, 96.

⁶⁴ Art. 45(b).

and according to a long time committee chairman (Madam Liesolet Berger), they try to overcome bureaucratic obstacles and resistance on the citizen's behalf. The Committee has access to federal records and files and those of federal corporate bodies, institutions and foundations subject to the federal government.⁶⁵ Representatives of the committee said that the matters brought before the committee involved usually labor, social legislation and pensions. When petitions are received they are referred to the offices concerned for comment. The committee on the basis of these, and when indicated after a hearing or occasionally a spot check makes recommendation, not instruction to the administration. The recommendation may refer the petition to the Federal Government for consideration or information. Not infrequently they bring about remedial action or even amendment of the law. But after examination the Committee may also find no legal cause or declare that the petition is outside the Bundestag's jurisdiction.

This extended reference to grievance-handling agencies along the ombudsman model has been made to get an idea of how the institution operates in the place of its origin and as adapted in some countries in Europe. But the institution had spread across the Atlantic and to many other countries around the world before the 1971 constitutional convention considered its creation in the Philippines. Since our experience in government had theretofore been principally based on the American type of organization, the reception of the concept of ombudsman in the United States is of more than passing significance.

ACROSS THE ATLANTIC

United States and Canadian scholars have evinced a great deal of interest in the institution of the ombudsman. Books and articles have been written, conferences held, draft legislation made. This has resulted in the establishment of the office of state ombudsman by act of the legislature, the first being in Hawaii followed by Nebraska and Alaska among others; or by executive initiative as in New York. On the city level the office has also been introduced, carrying the title of ombudsman or some other names, with functions following closely the ombudsman model or with variations introduced so as to cover complaints against private parties instead of being limited to those against official action.

While proposals to establish the ombudsman on the federal level have been made, the office has not been created. However, offices like the Equal Employment Opportunity Commission (EEOC) with authority to entertain complaints from individuals, to investigate and try to bring about their resolution performs ombudsman functions in the special area of discrimination. It will be noted that in Sweden there is an anti-trust ombudsman, an ombudsman for consumer protection as well as an equality ombudsman.

⁶⁵ Law on the Powers of the Committee on Petitions of the German Bundestag, July 19, 1975, 1 FEDERAL LAW GAZETTE, 1921.

Norway has established an Ombuds for women. It is not essential therefore, to have one ombudsman whose powers cover the whole government administration, what is needed are complaint handling mechanisms to which the aggrieved can have recourse.

On the U.S. federal level complaint handling mechanisms are diffused. A study made by Rosenblum for the Administrative Conference of the United States (ACUS) based on the responses of 64 federal agencies to a questionnaire on their procedure for handling citizen-initiated complaints revealed that only 16 of the respondent agencies allocated specific portions of their budgets to complaint handling or correspondence services; 51 agencies listed no office or unit responsible for handling complaints. Complaints channeled through the White House or a congressman's office usually received priority over those directly made by the citizens. According to him "in most of the agencies the majority of complaints are about practices or activities by firms or persons subject to the jurisdiction rather than about the practices of the agencies themselves. Notable exceptions are those organizations such as the U.S. Postal Service, Social Security Administration, and Veterans Administration, performing services for or administering benefits directly to substantial numbers of the populations. The Food and Drug Administration developed explicit guidelines for handling written and telephone complaints. The Department of Commerce in 1971 established an Office of Ombudsman for Business as "focal point for receiving and handling communications involving information, complaints, citizenisms and suggestions about government activities relating to business."

Complaints received by regulatory agencies were generally not about activities or personnel of those agencies.

A more comprehensive and systematic review of agency complaint handling was commissioned by the Office of Consumer Affairs in the HEW. The Technical Assistance Research Programs, Feasibility Study to Improve Handling of Consumer Complaints: Evaluation Report,⁶⁶ is on a study of federal agencies including executive departments and independent regulatory agencies. The study shows that there is no overall policy to guide the operation of consumer complaint-handling mechanisms on the federal level. The complaint system varied according to the circumstances of the agency and its financial resources.

The creation of a federal ombudsman has been suggested for more effective complaint-handling. The principles of accessibility, visibility, independence, respect and complementary nature of the central mechanism can best be achieved if it is urged through an independent office created by statute capable of receiving complaints directly from the citizens.

⁶⁶ Referred to as TARP in Mills, *The Ombudsman*, colloquium papers, edited by Juergensmeyer and Burzynski, entitled *Parliamentary and Extra Administrative Forms of Protection of Citizens Rights*, p. 179.

The magnitude of the territory covered by government operations on the Federal level is a major obstacle in the adoption of a single federal ombudsman institution. The practice which has become part of the American system of representative government is that members of Congress act in a grievance or complaint handling capacity for their constituents and legislators may not look with sympathy at this function being taken over by a single federal agency. The same reservation led to the adoption of a modified ombudsman system in England and France where complaints have to be coured through a member of parliament.

Whether on the federal, the state or the city and county levels, citizens find need for an agency to which they can turn when they feel aggrieved by government action. The extent of government interference with individual life has become more pervasive and the individual oftentimes beset by frustration and helplessness needs a forum where complaints can be aired and a remedy sought.

Sometimes all that is needed may be information. Who in city hall will give that? In other cases government departments fail to perform their functions or arbitrarily act on matters in their charge. What remedy is available then?

The local ombudsmen interviewed were agreed that every large city should have an ombudsman or similar office. They were not too certain about a federal ombudsman because of the wide geographic separation that would be involved, although the possibility of having representatives was considered. It was stressed that the personal integrity, sense of dedication and compassion on the part of the person holding the office are of vital importance.

Three city complaints handling offices visited offer an interesting subject for comparison. These were the offices in Detroit, Michigan, Wichita, Kansas and Berkeley, California. The Wichita and Berkeley offices share a common feature. One person performs the functions of the office with one assistant (part-time in the case of Wichita). The Detroit Ombudsman has a bigger staff. The contrast in the incumbents' perception of their office is quite striking. The Wichita Grievance Officer accepts the control vested in the Grievance Advisory Board as ensuring independence of the office. Although the idea of control does not harmonize with advisory functions, the enabling charter leaves the Wichita grievance officer no choice in the matter of the scope of the Board's authority.

The Ombudsman, Hawaii

In 1980 the Hawaiian Ombudsman completed its eleventh year. The first such office established by any state of the union, it has tacked up an impressive record of performance under Herman Doi. Appointed Ombudsman in 1969 he is close to the end of his second term in office. The law

sets a maximum limit of three six year terms. A brief interview with Mr. Doi revealed the depth of knowledge he has of the institution and the professionalism developed in complaints handling.

A two page primer puts in a nutshell what the office represents: four basic questions are answered: What is an ombudsman; what can the Hawaii ombudsman do? What can the Hawaii ombudsman investigate? What should you do if you have a complaint? Since the office is a citizen's complaint-handling machinery, informing the public in the simplest possible terms of what it is and how its services can be availed of is essential. The primer accurately defines the office presenting its essential legal characteristics, thus:

An ombudsman is a non-partisan officer of the legislature who receives and investigates specific complaints from aggrieved members of the public about injustice or maladministration by executive agencies of the State and County governments. An Ombudsman has the power to obtain necessary information for an investigation to recommend corrective action to an agency and to criticize and publicize an action of an agency; but an Ombudsman may not reverse administrative decisions.

An Ombudsman determines whether a complaint is justified or unjustified by comparing the actions of an agency against what the law requires. He resolves justified complaints by reasoned persuasion after conducting intensive fact finding and legal research.

The annual reports made to the state legislature by the Ombudsman stress the underlying principles pursuant to which the office operates, give statistics on the work done during the year and present thoughtful studies on public administration and policy issues which emerge from the cases brought before the office. The ombudsman makes recommendations for legislation or policy changes such as the matter of enforcement of compulsory no-fault insurance in the 1976-1977 report and a study on the correctional program of the state.⁶⁷ The eleventh report of the Ombudsman presents cumulative tables graphically showing the achievements of the office from 1969 to 1980. A table depicting the number of inquiries, no jurisdiction, complaints and information handled shows a caseload which since 1975 number more than 3,000 annually. It shows how the complaints and no jurisdiction complaints tend to decrease over the years while the requests for information have increased. By far the largest number of contacts are made by telephone which in the last report accounted for 90.2% as against 5.3% walk-in and 4.5% by letter.

The Ombudsman Office is centralized in Honolulu but the other counties are visited once every six weeks by the Ombudsman or his representative. Complaints in the other islands may be called in collect station to station. Advance notice of the visits are published. Only in Hawaii was hard data on the percentage of women complainants available. When the question was raised, the Ombudsman called upon a member of his staff to retrieve

⁶⁷ The Ombudsman has jurisdiction over complaints made by persons in custody.

the data and in a matter of minutes the tabulated information from 1969-1980 was given: 43% of the inquiries/complaints come from women, 56.4% from men and .1% anonymous. The answer obtained from similar offices in Europe and in other parts of the United States were approximations. No breakdown of data on the basis of gender had been made.

The Hawaiian Ombudsman exemplifies the important role the office can play in relation to government administration and the citizens. The office is a venue for people's grievances; it is also an overseer of administration — with a view not to find fault but ways to correct deficiencies in the system and to make it work better. The office has no prosecutorial function and unlawful or irregular conduct may only be referred to the appropriate authorities for action.

The Sandiganbayan and the Tanodbayan

The 1973 Constitution openly and directly addresses the problem of graft and corruption and provides hopefully for its remedy. It devotes one full article to the Accountability of Public Officers⁶⁸ and introduces two innovative mechanisms, the *Sandiganbayan* as a special court and the ombudsman (*Tanodbayan*), and tasked them with the specific function of dealing with cases of graft, corrupt practices and other offenses committed in relation to public office. In the transitory provisions the constitution directs the interim National Assembly to give priority to *inter alia* the eradication of graft and corruption.

Legislation adopted to carry out these provisions closely link the *Tanodbayan* with the *Sandiganbayan*. The presidential decrees originally creating them were promulgated on the same day and so were the subsequent amendments.⁶⁹

But the *Sandiganbayan* is a special court, the Presiding Justice and Associate Justices having the same rank, privileges, tenure, and compensation as those of the Court of Appeals.

The main function the *Tanodbayan* performs, is as special prosecution agency for cases with the jurisdiction of the *Sandiganbayan*.

The President and the Tanodbayan

The *Tanodbayan* is established as an independent office according to the Act creating it, but under its provisions the President has much to do with the office and its operations. For example, (1) the term of office is fixed for seven years without reappointment, but the President may sooner remove the *Tanodbayan* or his Deputies upon a determination of their

⁶⁸ Art. XII.

⁶⁹ Pres. Decree No. 1486 on the *Sandiganbayan* and 1487 on the *Tanodbayan*, June 11, 1978; they were also amended on the same days by Pres. Decrees No. 1606 and 1607, respectively on December 10, 1978 and again by Pres. Decrees Nos. 1606 and 1607 on July 18, 1979.

having become incapacitated or are guilty of neglect of duty or misconduct;⁷⁰ the *Tanodbayan* may examine records and documents, enter and inspect premises within any administrative agency's control, but the President may cause him to desist by certifying in writing that such examination or information might prejudice the national interest or violate existing laws;⁷¹ (3) information obtained by the *Tanodbayan* as supplied by any administrative agency or through examination of its records or inspection of premises shall be confidential unless the President, in the interest of the public service, decides otherwise;⁷² (4) to deputize or call upon any official of the government, the *Tanodbayan* needs the President's approval,⁷³ where a *prima facie* case of the commission of a crime or failure or neglect in the performance of a duty is found, the law requires the *Tanodbayan* to transmit his conclusions, recommendations and suggestions to the President so that he may take such immediate action as may be necessary.⁷⁴

In this respect, the *Tanodbayan* bears no similarity with the classic ombudsman, which though a parliamentary agency, operates without interference from parliament.

The *Tanodbayan* is conferred certain immunities in the performance of its function. (1) The courts may not review any proceeding, opinion, or expression of the *Tanodbayan* or any member of his staff. (2) The *Tanodbayan* and his staff are immune from civil actions for anything done, said or omitted in discharging their responsibilities under the decree nor (3) may they be required to testify or procure evidence in any judicial, legislative or administrative proceeding concerning matters within the official cognizance of the *Tanodbayan* except in a proceeding to enforce the *Tanodbayan* Act.

By December this year, the *Tanodbayan* will have been in existence for three years. What, so far is the record of its accomplishments? Statistics obtained from the *Tanodbayan* show that as of June 30, 1981 a total of 9,412 complaints were received, of these 2,459 have been dismissed or closed; 172 are for study and evaluation, 5,106 have been referred to other agencies. The referrals are mostly to investigating agencies for fact-finding (2,496) and to CIO and deputized prosecutors (1,555). Eventually, 2,796 cases were filed and prosecuted, 1,276 of these were terminated leaving 1,520 pending. There were 753 informations filed, 699 with the *Sandiganbayan* and 144 with the regular courts. A total of 731 referrals were made to administrative agencies. The data confirm that the thrust of the *Tanodbayan* operations is as a prosecution office.

The jurisdiction of the *Tanodbayan* is national. Complaints may be filed with the office of the *Tanodbayan* directly or with the CIS, the NBI, the NISA, the CIO or other offices designated by the *Tanodbayan*.

⁷⁰ Pres. Decree No. 1630, Sec. 6(a).

⁷¹ Pres. Decree No. 1630, Sec. 10(c).

⁷² Pres. Decree No. 1630, Sec. 10(c).

⁷³ Pres. Decree No. 1630, Sec. 10(g), par. 2; secs. 17 & 21.

⁷⁴ Pres. Decree No. 1630, Sec. 16.

Thus far, the most number of cases come from Metro Manila (24.16% as of the 1979 report) and as to the type of complaints, the most common are on violations of the Anti-Graft and Corruption Practices Act (25.73%), administrative complaints coming in second (21.70%).

The focus of this inquiry, however, is the *Tanodbayan* as a mechanism for the redress of grievances, as complaint-handling agency for people bewildered in the bureaucratic maze. To paraphrase what a grateful constituent said to the Detroit Ombudsman, Mr. Forrest Greene: It is good to know someone who can speak to City Hall.

In annual reports of the Swedish JO, of the state ombudsman of Hawaii, among others, are brief references to some of the complaints handled and resolved. They reveal concern for the ordinary person's grievance. For example, a bereaved parent's complaint that the police denied him in access to the investigation of an accident, at which he lost a child; against police conduct in conjunction with evacuation of "occupied" houses awaiting demolition; of medical treatment of prisoners; tax assessment in the computer age; a health inspection in which a journalist was taken alone in the inspection of a catbreeder's premises.⁷⁶

The Hawaii Ombudsman dealt with a student's grievance against the University of Hawaii which refused to accept the payment in cash of summer registration fees; the matter of parking conditions in the Manoa campus; the working conditions in the Sculpture Laboratory, among other matters.⁷⁷

The 1971 Constitutional Convention realized the need for a grievance agency to whom the people can go for redress; the proposal to establish an independent constitutional commission was not approved, but provision for creation of an office of the ombudsman, to be known as *Tanodbayans* was adopted. Its powers are explicit to: (1) receive and investigate complaints relative to public office; (2) make appropriate recommendations; and (3) in case of failure of justice as defined by law, file and prosecute the corresponding criminal, civil, or administrative case before the proper court or body.

During the first years of the *Tanodbayan* it has so far focused on the first and second, stressing its prosecution function. It is thus another prosecution arm of government, duplicating the work of fiscals and prosecuting officers in the Ministry of Justice. The *raison d' être* for its creation as an ombudsman type of organization has been pushed to the background.

But, it has often enough been brought out that laws and legal institutions from foreign sources cannot be transplanted as they are in other lands.

⁷⁵ 1979 Annual Report of the *Tanodbayan*, pp. 17-18. The 1980 report is in the press.

⁷⁶ The Swedish Parliamentary Ombudsman, *supra*, 530-543.

⁷⁷ Office of the Ombudsman, State of Hawaii, Report No. 8, 1976-1977, at pp. 93-98. A summary of the cases handled, systematically classified are found on pp. 52-106.

This is indeed true of the ombudsman. As it has spread worldwide, the original concept has been transformed and adapted to suit the environment to which it has been introduced.

The 1971 Constitutional Convention in adopting the idea of a grievance office patterned after the ombudsman early on indicated that it would incorporate in the office features which would answer local needs. Graft and corrupt practices in government were among the gravest problems the Convention sought to remedy. The delegates were aware that unless the office was provided with effective power, it would become ineffectual, hence, the grant of prosecution function. On the other hand the essential character of the ombudsman as a mechanism for making real the people's right to petition for redress of grievances and its role as a positive force in promoting integrity and efficiency in government were as highly desired. These elements were woven into the provision mandating its establishment.

As it operates today the *Tanodbayan* 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.