

THE OFFICE OF THE OMBUDSMAN: Is there institutional weakness?

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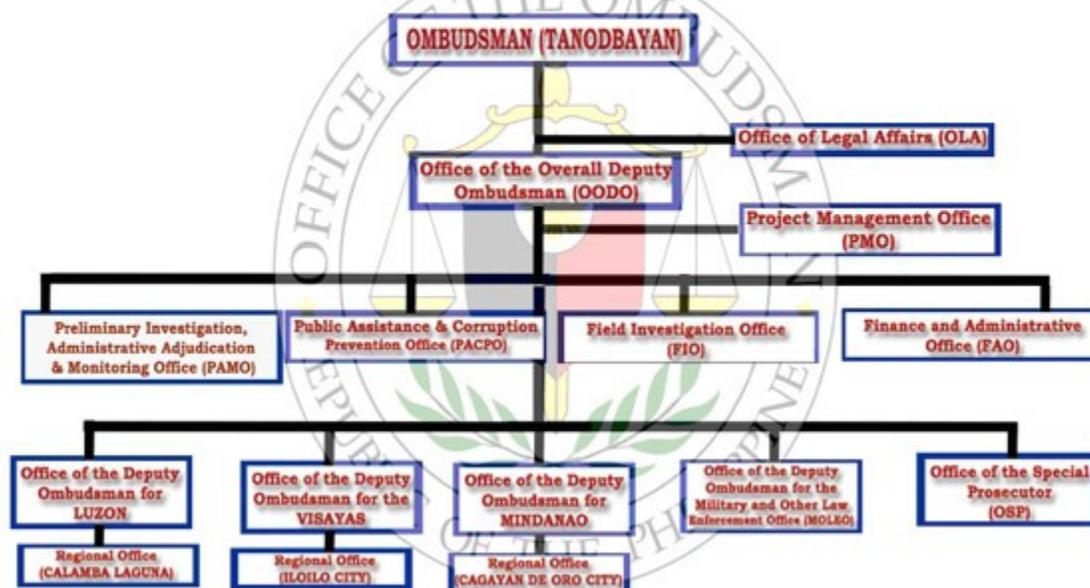
The Office of the Ombudsman: Is there institutional weakness?
Transparency and Accountability Network
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The current office of the Ombudsman finds its roots in efforts by previous administrations beginning President Elpidio Quirino's, to establish bodies that assist citizens in their complaints against government excesses, most of which had been offices under the Office of the President. During President Marcos' regime, the Tanodbayan (a forerunner of the current Ombudsman) and the Sandiganbayan were constitutionally created under the 1973 Constitution.

Under Article XI of the 1987 Philippine Constitution entitled “Accountability of Public Officers,” the Ombudsman is identified as a key government institution that enforces public accountability among public officials. To fulfill this, the Ombudsman has five major functions: 1) to investigate anomalies and inefficiency in government, 2) to prosecute graft and corruption cases, 3) to conduct administrative adjudication of cases involving government excesses, 4) to provide public assistance, and 5) to implement graft prevention programs. (www.ombudsman.gov.ph)

The powers of the Ombudsman were further expanded in the 1987 constitution with guarantees of independence—appointment of Ombudsman and deputies do not need Congressional confirmation; the Ombudsman and deputies have fixed terms during which their salaries cannot be diminished; the Ombudsman and his deputies can only be removed from office by impeachment; and fiscal autonomy. Then followed was the passage of Republic Act 6770, which provided for the functional and structural organization of the office. Under the said law, the Ombudsman is organized in the following manner:

**ORGANIZATIONAL CHART OF THE
OFFICE OF THE OMBUDSMAN**



(www.ombudsman.gov.ph)

As of December 31, 2007, the Ombudsman has 964 personnel, the distribution of which is as follows: 49% to the central office, 16% to the Office of the Special Prosecutor, 10% to the Ombudsman-Luzon, 9% to the Military and Other Law Enforcement Office (MOLEO), 8% to the Ombudsman-Mindanao and 8% to the Ombudsman-Visayas. (Ombudsman, 2008)

The Ombudsmen that have served thus far are Conrado Vasquez (1988 to 1995), Aniano Desierto (1995 to 2002) and Simeon Marcelo (2002 to November 30, 2005), who resigned for personal health reasons. Following Marcelo's resignation, Merceditas Guterrez who served as Department of Justice undersecretary and Chief Presidential Legal Counsel was appointed by President Gloria Macapagal Arroyo as Ombudsman. (www.ombudsman.gov.ph)

Is the Ombudsman doing its job?

The Ombudsman is dubbed 'protector of the people' and by its mandate, it should “act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people” (Section 13, R.A. 6770). Further, it is directed to “give priority to complaints filed against high ranking government officials and/or those occupying supervisory positions, complaints involving grave offenses as well as complaints involving large sums of money and/or properties.” (Section 15, R.A. 6770) In this, the Ombudsman's performance can be gauged by its capacity to prosecute (measured by the conviction rate) and its relations with the public.

The Social Weather Stations (SWS) through its yearly enterprise surveys tracks business groups' perception on the sincerity of select government offices in fighting corruption. The Office of the Ombudsman has been rated accordingly:

Year	Net Sincerity Rating (Very/ Somewhat Sincere – Somewhat/ Very Insincere)	Ombudsman
2000	-5	Desierto
2001	+7	
2002	n.a.	Marcelo
2003	+21	
2004	+28	
2005	+22	
2006	+6	Guterrez
2007	+9	
2008	+4	

As shown, the Office of the Ombudsman (OMB) was most popular during Marcelo's leadership, exhibiting 'moderate' sincerity in fighting corruption. Under Gutierrez' leadership, however, the Ombudsman's anti-corruption efforts are found to be 'mediocre'¹. During Marcelo's leadership, one of the key programs that the OMB undertook was to strengthen its prosecutorial arm through trainings and recruitment of additional staff². Gains from this effort were seen with the immediate increase in the conviction rate³ of the Ombudsman from a mere 6% to 14% or over a hundred per cent improvement in performance. (Monsod, 2004) These gains have spilled over to Gutierrez' administration. The Ombudsman's conviction rate in 2007 is 55%. (Ombudsman, 2007)

1 The Social Weather Stations ratings of net sincerity are as follows: 'very good' for over +50 net rate, 'good' for +31 to +50, 'moderate' for +11 to +30, 'mediocre' for +10 to -10, 'poor' for -11 to -30, 'bad' for -31 to -50, 'very bad' for below -50.

The following year, however, this has gone down dramatically to 14.43% for the period January to June 2008. The worst months were March (5% conviction), May (3%), and June (0%). (Visperas, 2008) As of October 31, 2008, the Sandiganbayan disposed 349 cases with only 25 resulting in convictions, a rate of 7%. This downward trend in public perception and even in the actual performance of the Ombudsman in its primary function of prosecuting erring public officials paints a dim picture for the country's overall anticorruption efforts. The Millenium Challenge Corporation (MCC)⁴ reflects this in their assessment of the Philippines, showing declining scores in the country's control of corruption - 76% (2007), 57% (2008), and 47% (2009). (Rufo, 2008a) The Philippines remains the number one most corrupt country in Asia in the 2008 survey of the Political and Economic Risk Consultancy, Inc. (Bonabente, 2007)

The Ombudsman's dismal performance is further pronounced by its apparent defective actions or inaction on high profile cases⁵. The COMELEC-Megapacific case, for instance, has been inexplicably resolved in two conflicting resolutions (one finding liability of at least one senior Comelec official and another finding no one liable). On the other hand, the Supreme Court in a separately filed petition by private citizens decided that the contract between Comelec and Megapacific is null and void with the attendance of procurement irregularities relating to the purchase of automated counting machines for the 2004 national elections. (Cerna, 2006; G.R.) Allegedly also, the Ombudsman's handling of the Nani Perez' bribery case was deliberately defective. The filing of the case took too long (2 years) and the complaint is said to be fatally defective thus resulting in the dismissal of the case due to technical lapses. (Jumilla, 2008) As for the NBN-ZTE deal and the 'Fertilizer scam', the Ombudsman has yet to come out with its investigation findings and resolutions.

What accounts for the growing unpopularity?

In what seems to be a disappointing performance by the Ombudsman under the stewardship of Gutierrez, we ask the question why – *Is there institutional weakness? Is it a question of leadership? Is it unlucky circumstances?*

The Ombudsman's current institutional capacity is a far cry from Hong Kong's Independent Commission Against Corruption, which is provided enough resources to ably perform its mandate. It is only very recently that real actions have been taken to strengthen the Ombudsman through the lobby work of Marcelo – such as the increase of manpower and financial resources. Still, the Ombudsman's capacity cannot match the ICAC's in terms of resources.

2 When Marcelo came in, the Ombudsman just had 32 full-time prosecutors. This has increased to 113 prosecutors at present. (Conde, 2005; Rufo, 2008)

3 Conviction rate is computed as the number of cases that resulted in convictions, including guilty pleas over the number of decided cases by the Sandiganbayan as brought forward by the Ombudsman. This is not the same as Assistant Ombudsman Jalandoni's definition (number of convictions over number of dismissals x 100). (Rufo, 2008a)

4 The Millennium Challenge Corporation (MCC) is a United States Government corporation that provides aid to developing countries, following the principle that aid is most effective when it reinforces good governance, among others. In this, before a country becomes eligible to receive assistance, MCC looks at their performance on independent and transparent policy indicators. (<http://www.mcc.gov>)

5 This includes: a) \$2million bribery case involving Gutierrez' former boss, Justice Secretary Hernando Perez, b) P2billion peso contract between the COMELEC and Megapacific, c) Multi-million dollar deal on NBN-ZTE deal, and d) fertilizer scam.

Hong Kong (ICAC)	Philippines (Ombudsman)
Budget: US\$10 to \$90 million annually 2003: US\$90 million or P5 billion Size of bureaucracy: 150,000 Staff: 1,060 Ratio: 1:142 civil servants	2007: P825.5 million (from P481.4 million in 2003) Size of bureaucracy (2003): 1.4 million Staff (2007): 964 Ratio: 1:1,400 civil servants
Prosecution done by another office About 3,000 cases handled annually	Prosecutors: 113 ⁶ (from 52 prior to 2003) About 10,000 cases handled annually Ratio: 1: 88 cases Workload as of 2008: 20,000 ⁷ cases (from 7,695 in 2003)

(www.mbc.com.ph; Ombudsman, 2008)

As earlier noted, institutional changes initiated during Marcelo's time had resulted in improved performance for the Office of the Ombudsman— e.g. higher conviction rate and improved credibility (higher net sincerity ratings). Aside from the additional resources given to the Ombudsman, Marcelo 're-engineered' the internal procedures at the Ombudsman, drawing from lessons learned in the practices of Ombudsmen Vasquez and Desierto. Marcelo decentralized some powers to the deputy Ombudsmen, retaining a few key powers to ensure check and balance. This delegation of powers has resulted in efficient handling of cases, without necessarily compromising the integrity of the institution through sufficient checks and balance in place. Marcelo also recognized the importance of the Office of the Special Prosecutor and the Field Investigation Office, and thus implemented programs to strengthen the two offices – recruitment of additional prosecutors (from 52 to 104 in 2003 and 113 in 2007) and investigators (from 37 to 96 in 2003 and 158⁸ in 2007) and trainings. Further, as integrity is a key characteristic looked for in the Ombudsman personnel, screening of applicants was very stringent – background investigations were thoroughly conducted. (Anonymous, 2009)

With Gutierrez as new Ombudsman, most of these institutional practices/policies have been undone. Gutierrez centralized almost all decisions – e.g. travel orders, information dissemination, approval/disapproval on complaints filed by the Field Investigation Office before the Preliminary Investigation Administrative Adjudication and Monitoring Office (PAMO) – and entrusted approval powers to Assistant Ombudsman Mark Jalandoni and Overall Deputy Ombudsman Orlando Casimiro. (Rufo, 2008b; Office Order 20 series of 2006) The Deputy Ombudsmen for Luzon, Visayas and Mindanao, have been ordered to transfer all pending cases involving governors and vice-governors to the Office of the Overall Deputy Ombudsman. Even the Ombudsman's official spokesman, Jose de Jesus, has to seek clearance from the Ombudsman and her 'delegates' before he can do his job as spokesperson and liaise with media. As a result of this centralized decision-making, conviction rates have dropped and the staff are demoralized. Gutierrez also strained relations with the Office of the Special Prosecutor (OSP) headed by Dennis Villa-Ignacio. Allegedly, because of strained relations with the OSP, a no hire policy was adopted and to which the OSP stands to lose with 36% of prosecutorial positions vacant. (Rufo, 2008a) Also, through Office Order 22 issued in January 2008, key subordinates of Villa-Ignacio are directed to report to Gutierrez at least once a week, a rather odd arrangement, showing clear distrust for the Special Prosecutor. All these moves by Gutierrez toward the OSP contribute not only to the low conviction rate but also to a public perception of the Ombudsman as a discordant office and therefore ineffective.

⁶ Rufo, 2008a.

⁷ Visperas, 2008.

⁸ Anonymous, 2009.

Another institutional strength that Marcelo built on during his leadership was the Ombudsman's good relations with other partner organizations in the fight against corruption (Commission on Audit, Civil Service Commission, Presidential Anti-Graft Commission, and civil society organizations such as the Transparency and Accountability Network). The Solana Covenant – a covenant between the OMB, COA, and CSC – was a celebrated agreement among 'like-minded institutions' towards a more coordinated approach to fighting corruption. It outlined programs of the three agencies that should not duplicate but rather complement and strengthen each other's anticorruption efforts.

When Gutierrez assumed the post as new Ombudsman, the Inter-Agency Anti-Graft Coordinating Council, composed of the OMB, COA and CSC, was deactivated - as chair of the IAAGCC, she simply did not convene the council. Because of this, the Ombudsman 'wasted' resources to implementing a program that was similarly implemented by the CSC - Oplan Red Plate. The result of uncoordinated efforts is but of course duplication of programs such as the Oplan Red Plate, which should have been a CSC program under the Solana agreement. (Newsbreak, 2007) Gutierrez' relations with civil society organizations have also been strained contrary to claims that strategic alliances with CSOs and other stakeholders have been formed. (Ombudsman, 2008) For instance, the Ombudsman cut ties with openly critical CSOs such as TAN, unlike during the time of Marcelo, when criticisms from CSOs are appreciated as constructive dialogues. Thus far, TAN has remained outside the Ombudsman's friendly relations circle.

From the looks of it, the apparent weakness of the Ombudsman as an institution as mentioned above is the doing of poor leadership. The low conviction rate is explained by a highly centralized system, a weakened Office of the Special Prosecutor, and a demoralized staff. This and bad relations with other anticorruption organizations contribute to the bad image of the Ombudsman and thus its growing unpopularity.

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