

Investigating Corruption in the Philippines: a former Tanodbayan's Experience*

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Introduction

Corruption in the government has been a perennial problem, as I found out as one of the four (4) advisers of the World Bank's President on good governance and anti-corruption, not only of developing countries but even of developed countries. Of course, corruption is usually more widespread and deep-rooted in developing countries. In developing countries, aside from its immediate effect on the limited resources of the government, corruption leaves a piercing adverse impact in the integrity and competency of the government in alleviating poverty.

According to the World Bank and Transparency International, corruption is the "*misuse of public offices for private use.*"¹(Sapanjeet Kaur, "*E-Governance-Impact on Corruption*", available at <http://www.researchmanuscripts.com/isociety2012/47.pdf>.) A similar definition was provided by Professor Susan Rose-Akerman:

"Corruption is a symptom that something has gone wrong in the management of the state. Institutions designed to govern the interrelationships between the citizen and the state is used instead for personal enrichment and the provision of benefits to the corrupt. The price mechanism, so often a source of economic efficiency and a contributor to growth, in the form of bribery, undermines the legitimacy and effectiveness of government." (R.D. Pathak, "*The Role of E-Governance in Tackling Corruption and Achieving Societal Harmony: Indian Experience*", available at http://www.napsipag.org/pdf/tackling_corruption.pdf).

Why Fight Corruption? Corruption discourages investments, limits economic growth, alters the composition of government spending, undercuts a nation's mission to reduce poverty and hinders improvement

* Though the Head of the Office of the Ombudsman of the Philippines is named Tanodbayan under the Philippine Constitution, he is usually referred to by the public as the Ombudsman.

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in the quality of life for the rural and poor segments of the developing countries. (J. Mistry and A. Jalai, "An Empirical Analysis of the Relationship Between E-Government and Corruption", available at http://www.uhu.es/ijdar/10.4192/1577-8517-v12_6.pdf, citing Bharga and Bolongiata. "Challenging corruption in Asia: case studies and a framework for action", *The International Bank for Reconstruction and Development/ The World Bank*. Working Paper No. 27580. Washington, D.C. <http://bit.ly/W5Urku>.)

"...corruption cripples development in many ways (Gray and Kaufmann 1988; Hutchcroft 1997). It worsens income inequality and poverty (Gupta, Davoodi, and Alonso-Terme 1998), reduces investment rates (Mauro 1997), lowers economic growth (Tanzi and Davoodi 1998), diminishes democratization, and weakens representation (Ocampo 2001). It enervates economy and society in insidious ways. It is, as World Bank president James Wolfensohn put it, a **cancer**."

-- Challenging Corruption in Asia, pp. 3-4, Bhargava and Bolongaita [2004 ed.]

I. Investigation Department

I assumed the position of Tanodbayan on 17 October 2002. The Tanodbayan is the head of the Office of the Ombudsman, an independent anti-corruption body created pursuant to the provisions of our Constitution.

The Philippine Constitution (Article XI, Section 13) and Supreme Court describe the Office of the Ombudsman as the "*protector of the People*". Thus, in the case of ***Deloso vs. Domingo***, G.R. No. 90591 (November 21, 1990), our Supreme Court identified the immense responsibilities of the Office:

As protector of the people, the office of the Ombudsman has the power, function and duty "to act promptly on complaints filed in any form or manner against public officials" (Sec. 12) and to "investigate . . . any act or omission of any public official . . . when such act or

omission appears to be illegal, unjust, improper or inefficient." (Sec.13 [1]) The Ombudsman is also empowered to "direct the officer concerned," (in this case the Special Prosecutor), "to take appropriate action against a public official . . . and to recommend his prosecution" (Sec. 13 [3]).

The clause "any [illegal] act or omission of any public official" is broad enough to embrace any crime committed by a public official. The law does not qualify the nature of the illegal act or omission of the public official or employee that the Ombudsman may investigate. It does not require that the act or omission be related to or be connected with or arise from, the performance of official duty. Since the law does not distinguish, neither should we.

The reason for the creation of the Ombudsman in the 1987 Constitution and for the grant to it of broad investigative authority, is to insulate said office from the long tentacles of officialdom that are able to penetrate judges' and fiscals' offices, and others involved in the prosecution of erring public officials, and through the exertion of official pressure and influence, quash, delay, or dismiss investigations into malfeasances and misfeasances committed by public officers. It was deemed necessary, therefore, to create a special office to investigate all criminal complaints against public officers regardless of whether or not the acts or omissions complained of are related to or arise from the performance of the duties of their office. The Ombudsman Act makes perfectly clear that the jurisdiction of the Ombudsman encompasses "all kinds of malfeasance, misfeasance, and non-feasance that have been committed by any officer or employee as mentioned in Section 13 hereof, during his tenure of office" (Sec. 16, R.A. 6770).

Based on my experience as head of the Philippines' anti-corruption body and also on my own research of the experience of several successful anti-corruption agencies, **the cornerstone of any successful crusade to fight corruption is a strong field investigation department which is staffed with an adequate number of competent and honest field investigators and provided with sufficient resources to accomplish their bounden task.** The Field Investigation Office (as we named our investigation unit) should specialize in investigating corruption cases, with its personnel well-trained in detecting and gathering sufficient vital evidence to convict in court perpetrators of graft and corruption against the government.

When I became the Tanodbayan, tucked under my belt were two (2) decades of private law practice which basically involved commercial cases. Hence, what I knew about the Office of the Ombudsman and fighting corruption was essentially restricted to being a principal prosecutor during the impeachment proceedings against a former President Joseph Estrada and later, as Solicitor General (for almost two years) handling, among other cases on behalf of the Government, the long delayed ill-gotten wealth civil cases against the Marcoses and their cronies. Thus, with very limited knowledge, I took it upon myself to promptly get acquainted with the internal structure of the Office of the Ombudsman and the way it operated.

Always an adherent of the principle of “never reinvent the wheel”, I started my own research while also asking friends to help in researching about successful anti-corruption agencies abroad and their efforts aimed at fighting graft and corruption. I began to look for working models, best practices and success stories.

A friend of mine whose assistance I sought, told me about Hong Kong’s Independent Commission Against Corruption (ICAC). Prior to this, I was totally ignorant about Hong Kong’s ICAC. My friend informed me, based on what he found out in the internet, that ICAC was established as a response to pervasive corruption in the police organization and other government agencies in Hong Kong in the 1970s; how it struggled in its early years; and how it became the formidable and effective anti-corruption institution it is today.

I then said to myself - maybe we can replicate ICAC’s experience at the Office of the Ombudsman. After all, the likelihood of similarities between the culture of corruption in Hong Kong and in our country is probably very high because of our common Asian background. By coincidence, in January 2003, an anti-corruption convention sponsored by ICAC was scheduled to be held. Thus, I sent two (2) of my officials to Hong Kong to attend this convention, with the specific mission to learn about ICAC’s structure and operations. There, they met officials of ICAC who, by a stroke of luck, introduced them to Mr. Tony Kwok, who had just retired as ICAC’s Head of Operations, the unit in charge of investigation. This encounter initiated a very fruitful collaboration between the Office of the Ombudsman and Mr. Kwok. Incidentally, Mr. Tony Kwok rendered his services to us free of charge.

For the information of our participants who do not know Mr. Kwok, he “has 33 years experience in the anti-corruption field, including 27 years of service with the Hong Kong Independent Commission Against Corruption (ICAC), which he joined shortly after its inception in 1974, and hence had witnessed and participated in the successful battle in

transforming Hong Kong from a very corrupt place to one of the cleanest city. He retired as Deputy Commissioner and Head of Operations in 2002.” (see http://www.kwok-manwai.com/html/introduction_e.html)

Unfortunately, when I assumed office in October 2002, apart from my limited knowledge on anti-corruption, I could not immediately take off with new anti-corruption plans and programs. This was due to the simple fact that the Office of the Ombudsman, as a whole, severely lacked the necessary personnel, skills, funding and equipment to wage its war against corruption. [Mutual Evaluation Report on the Republic of the Philippines - Asia Pacific Group on Money Laundering; Feliciano Commission Report; Political and Economic Risk Consultancy, Ltd. Survey (issue no. 66)] At that time, the Office, among its problems of severe lack of resources, had only thirty-two (32) full-time prosecutors handling approximately two thousand (2,000) cases at the Sandiganbayan (our anti-graft court for high-ranking government officials) and even worse, only thirty-seven (37) field investigators to cover a bureaucracy of about 1.5 million public officials and employees. To aggravate the situation, it turned out also that there were never any training program for its prosecutors and investigators and no investigation or surveillance equipment available for their use. Further, Ombudsman prosecutors and investigators were not only severely undermanned, but also grossly underpaid.

Benchmarking against Hongkong’s ICAC based on the data provided by Mr. Kwok, it was revealed that there was a gross discrepancy between the Office of the Ombudsman and ICAC in terms of personnel, budget and compensation. The most serious discrepancy was with respect to manpower resources, particularly with respect to the investigating personnel. ICAC then had eight hundred thirty-seven (837) field investigators, while we had only thirty-seven (37) investigators. This would show that in Hong Kong, for a bureaucracy of 174,175, ICAC had a ratio of one (1) investigator which had then every 208 government officials and employees as against the Office of the Ombudsman’s ratio of one (1) investigator for every 17,241 members of our bureaucracy (which includes the military and the police).

In reaction, our Office, pleaded with, and partially succeeded, after almost a year, in securing funds from the Department of Budget and Management. Though the funds granted was enough only for the creation of 56 positions for field investigators, it was very welcome since our total number of field investigators almost tripled from 37 to 93.

With the new field investigator positions, we deemed it essential to re-organize and rationalize the fact-finding and intelligence operations of the Office. Thus, with the help of Mr. Tony Kwok, we formed the **Field**

Investigation Office. This new investigation office was patterned after the Operations Department of Hong Kong's ICAC. As previously stated, ICAC's Operations Department is in charge of investigating corruption. To fill up the new positions, we recruited in April 2004 fresh college graduates as field investigators from diverse academic backgrounds. Despite the fact that the entry-level salary we were offering was not competitive with the private sector, we were happily surprised that many of our recruits came from the University of the Philippines, the top state university of our country; also, a good number of our recruits were honor graduates.

Again, with Mr. Kwok's help, a training program for the field investigators on basic and advanced skills and techniques of field investigation and evidence-gathering was crafted and implemented for our field investigators. The training program commenced with a basic course on what are the graft and corruption offenses and their elements under Philippine jurisdiction. Veteran lawyer-investigators of the Office of the Ombudsman gave lectures on what are the offenses under our Revised Penal Code and special laws that constitute corruption offenses. The elements of each corruption offense was thoroughly discussed in order that the new investigators would learn and understand what are the factual allegations that have to be proved and what are the competent evidence they should gather to prove these allegations in court. Other experienced investigators discussed how to gather the required evidence and do a case build-up.

Veteran investigators, who were not only lawyers but also certified public accountants, gave lectures that provide basic knowledge on how to conduct an audit of government financial records, particularly those pertaining to procurement and disbursement of government funds. Incidentally, it was a great help that two of these investigators-lawyers-accountants previously worked at our Commission on Audit. Of course, we also invited several veteran auditors from our Commission on Audit to describe and explain to our investigators how they conduct fraud audit. Further, an expert from an anti-corruption NGO, Procurement Watch, gave a lecture on the process and intricacies of the procurement and bidding processes.

After the basic training course, our investigators, new and old, went through advance courses on investigation.

First, they went through two (2) seminars on forensic accounting. Forensic accounting (investigative accounting) is defined as follows:

“Forensic accounting, sometimes called investigative accounting, involves the application of accounting concepts

and techniques to legal problems. Forensic accountants investigate and document financial fraud and white - collar crimes such as embezzlement. They also provide litigation support to attorneys and law enforcement agencies investigating financial wrongdoing.

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Forensic accountants typically become involved in financial investigations after fraud auditors have discovered evidence of deceptive financial transactions. After conducting an investigation, they write and submit a report of their findings. When a case goes to trial, they are likely to testify as expert witnesses.” (<http://legal-dictionary.thefreedictionary.com/Forensic+Accounting>)

The first seminar on Financial and Forensic Accounting was conducted by an expert from the U.S. Internal Revenue Service and was sponsored by the American Bar Association. The second one was conducted by experts from the Immigration and Customs Enforcement of the U.S. Homeland Security Department.

Subsequently, two extensive and comprehensive seminar-workshops on corruption detection and investigation were conducted by Mr. Tony Kwok and one of his former colleagues at Hong Kong’s ICAC, Mr. Paul Dickenson. Mr. Dickenson is a retired senior investigator of ICAC with long years of experience in investigating corruption. The seminar-workshops, among others, involved interview techniques, document analysis, surveillance and undercover operations.

Through the assistance of Mr. Stephen Cutler, then the assigned attaché of the Federal Bureau of Investigation at the United States Embassy in the Philippines, several veteran investigators from the Bureau came over to Manila to conduct lectures on investigation, surveillance and money-laundering. In giving their lectures, they drew from their experience in investigating mobsters – how they conducted surveillance using court-authorized wiretaps, high-powered binoculars/telescopes, cameras with telephoto lens and techniques on the use of disguises to avoid detection. Further, they illustrated how, through the use of forensic accounting, they were able to trace the proceeds from criminal activities.



FIRST BATCH OF TWENTY-FIVE NEW FIELD INVESTIGATORS



SECOND BATCH OF TWENTY-FIVE NEW FIELD INVESTIGATORS



Our Office sought assistance also from our local authorities. Thus, a two-day seminar was conducted by expert agents of the Intelligence Service of the Philippine Air Force. During this seminar, a field surveillance operation was conducted by the lecturers for the observation of our investigators, starting from the initial meeting wherein the operational plan is designed up to the actual surveillance itself.

In order to design and set up entrapment operations in cases where certain government officials were accused of extorting money from citizens who need their services, several workshops were conducted for our investigators by veteran agents from the Philippine Drug Enforcement Agency who are experts at setting up buy-bust operations.

Finally, senior investigators of our Field Investigation Office were sent abroad for training. Among those they attended were:

COURSE TITLE	PLACE	CONDUCTED BY
Public Corruption Course	FBI Academy Quantico, Virginia	Federal Bureau Of Investigation
Enforcement & Implementation Aspects of Anti-Money Laundering for Criminal Justice Officials	International Monetary Fund, Singapore	Department of Foreign Affairs of Singapore
Leadership Development Program	Bangkok, Thailand	International Law Enforcement

		Academy
Working Visit on Swiss Systems on Combating Terrorist Financing and Money Laundering	Berne, Switzerland	Swiss Federal Department of Foreign Affairs
Supervisory Criminal Investigator Course	Bangkok, Thailand	International Law Enforcement Academy
Specialized Course in Corruption Investigation and Integrity Assurance	Bangkok, Thailand	International Law Enforcement Academy
Executive Course in Advance Security Studies	Hawaii, U.S.A.	Asia-Pacific Center For Security Studies

Another specialization, which an investigation unit of an anti-corruption agency should have, is forensic engineering. It has been defined as follows:

“Forensics engineering is essentially a failure analysis program for litigation support. The goal of such a program is to positively identify the sequence of events leading to ultimate failure.

After an accident, forensics engineers examine broken parts and bring together a list of probable failure mechanisms to be investigated. Interviews are conducted to determine a sequence of events. Drawings, specifications, and operational procedures are reviewed. As-built dimensions and operating parameters are compared to design requirements.

The final step in forensics engineering is to use analytical and testing tools to confirm the findings of fact.

The forensics engineer becomes an experts witness in support of the findings. He is also responsible for reviewing the technical aspects of the opposition’s case” (http://www.structuralrechnology.com/forensics_engineering.hitm)

Based on our experience, this specialization is quite necessary when investigating reported anomalies in the construction of roads, bridges, buildings and other public infrastructure.

When we were inviting applicants for our then new Field Investigation Office, we tried to recruit graduates of engineering courses. Unfortunately, we were not lucky to attract even one. To fill up the gap, our Field Investigation Office sought the help of anti-corruption NGOs who had engineers among their volunteer-members. To a limited extent, the NGOs were able to help us. This only emphasizes more the need for a core of field investigators who are experts in forensic engineering.

Finally, the senior officials, including Mr. Kwok and myself, of the Office of Ombudsman were quite convinced that the training of our field investigations should be more formal and rigorous, just like the way the future officers of our Armed Forces are trained at the Philippine Military Academy -- our version of West Point. Thus, a technical working group was created to study the feasibility of establishing a Training Institute for Field Investigators. The training program was expected to cover 6 semesters or 3 years. Only the new investigators who have graduated from the Institute would be qualified for promotion to the next level. Unfortunately, I had to resign effective 30 November 2005 due to serious health problems and my successor never saw the need or importance of establishing the Institute. (Incidentally, my successor resigned in 2011 after the impeachment complaint against her was approved by our House of Representatives and her impeachment trial was about to commence at our Senate.)

II. The Lifestyle Probe: An Illustrative Project

The Lifestyle Probe is a priority project of the Inter-Agency Anti-Graft Coordinating Council (IAGCC). The members of the IAGCC are the Office of the Ombudsman, Commission on Audit, Civil Service Commission, Department of Justice, National Bureau of Investigation and Presidential Commission Against Graft and Corruption. In this project, the private sector, which includes private citizens, church and community-based NGOs, and people's organizations, assisted in the gathering of data about the illicit wealth acquired by government officials. The assumption was that they could readily identify possible corrupt public servants and their ill-gotten wealth and assets since the latter were among their neighbors and acquaintances.

To formalize the partnership, the Office of the Ombudsman and the IAGCC, noting that the involvement of the private sector was indeed indispensable and vital to the implementation of the lifestyle probe program, signed a Memorandum of Agreement on 20 March 2003 with an expanded group composed of civil society organizations and other law enforcement agencies.

In the implementation of the lifestyle probe, the Office of the Ombudsman, as the lead agency, has decided to engage in strategic agency targeting, i.e., the probe focused its limited resources on the three most corrupt (or perceived to be most corrupt) agencies, to wit: the Bureau of Internal Revenue, the Bureau of Customs, and the Department of Public Works and Highways. Subsequently, the probe included the military.

As a result, high-ranking officials of the Department of Public Works and Highways, Bureau of Internal Revenue, Bureau of Customs, and the Armed Forces of the Philippines were suspended and dismissed from the service. Also, counterpart criminal and forfeiture of assets cases were likewise filed against said public officials. Among these officials were an active Major General, a former Lieutenant General, a former Chief of Staff, an Undersecretary of the Department of Public Works and Highways, two (2) Bureau of Customs Deputy Commissioners and a Bureau of Internal Revenue Assistant Commissioner.

The Office of the Ombudsman's implementing unit with respect to the Lifestyle Probe Project is the **Field Investigation Office**. It has uncovered and recommended, by end of 2006, the forfeiture of suspected ill-gotten assets with a total estimated value of One Billion Two Hundred Million Pesos (Php1,200,000,000.00).

III. Mutual Legal Assistance Treaties

In conducting corruption investigation, particularly the Lifestyle Probe, the importance of Mutual Legal Assistance Treaties surfaced. In case of Major General Carlos Garcia, the first active general to be indicted in court for corruption in the Philippines, his ill-gotten wealth included an expensive condominium unit at Trump Tower in New York City and several dollar deposits in the United States. In order to cause the freezing of these assets and to acquire evidence that would be admissible in our anti-graft court, we resorted to the use of the provisions of our Mutual Legal Assistance Treaty with the United States. Unfortunately, neither our Field Investigation Office nor our Legal Office (and even the assigned officials of the Department of Justice) were familiar and adept on the use of the Mutual Legal Assistance Treaty.

Thus, the head of our Field Investigation Office created a special team of lawyers-investigators with the primary duty of specializing in the use of Mutual Legal Assistance Treaties. Again, we sought the assistance of Mr. Stephen Cutler, the FBI attaché at the U.S. Embassy. He was able to provide us a resource person who gave a crash course to our assigned team on what were the requirements prescribed by the U.S. Department of Justice for processing and approval of requests for assistance under the Mutual Legal Assistance Treaties. Also, he provided our team of investigators with redacted copies of several requests from foreign countries that were previously approved by the Attorney General. [Of course, the names of the requesting countries and other data that might point to the identities of the requesting countries and the companies/persons involved were deleted.]

Another occasion when we had to seek legal assistance from foreign countries relates to an investigation for extortion against a former Secretary of Justice initiated in early 2003. The crucial pieces of evidence needed to pin him down were bank documents from a Hong Kong bank and a Swiss bank. However, at that time, our country did not have any Mutual Legal Assistance Treaty with both Hong Kong and Switzerland. Although our Department of Justice has an informal working cooperation arrangement with its Hong Kong counterpart, the latter provided us only with photocopies of the documents from the Hong Kong bank. However, these photocopies were inadmissible in court. On 02 February 2004, our Senate ratified our Mutual Legal Assistance Treaty with Hong Kong. After the due request to and processing by Hong Kong's Department of Justice, duly certified copies of the requested bank documents were officially transmitted to our Office in the third quarter of 2005.

As to the Swiss bank documents, I was lucky to have befriended in the past the Swiss Ambassador, having met her in many events I have attended which were sponsored by the Swiss Embassy and other members of the diplomatic corps. With her help, we were able to get photocopies of the Swiss bank documents. Two years later, when her tour of duty was about to end and the Mutual Legal Assistance Treaty between the Philippines and Switzerland was not yet ratified, she was able to furnish us certified true copies of the bank documents which she officially obtained from Swiss authorities and thus, admissible in court.

Incidentally, based on the just-related experience, I suggest that although this may not be their cup of tea, heads and senior officials of anti-corruption agencies should accept invitations to events which are sponsored by the diplomatic corps. Attending the diplomatic corps' numerous cocktails will enable them to know and befriend ambassadors and other senior officials of foreign countries which have embassies in

their respective countries. Just like in my case, the relationship which I was able to create with them proved to be beneficial later on.

The above discussion shows the importance of executing Mutual Legal Assistance Treaties with foreign countries, especially with those where the corrupt acts by a local government official happened abroad and/or when the corrupt government officials hid their ill-gotten wealth in foreign countries. To complement the execution of these treaties, a special team of lawyer-investigators should be trained to specialize utilizing their provisions.

At present, the Philippines has Mutual Legal Assistance Treaties with Australia, China, Hong Kong, Korea, Spain, Switzerland, United Kingdom, United States and the ASEAN countries.

Finally, on this matter, the Philippine Senate ratified the United Nations Convention against Corruption (UNCAC) on 08 November 2006. In the book “Denying Safe Haven To The Corrupt and the Proceeds of Corruption”, published by the Organization for Economic Co-Operation and Development and Asian Development Bank, the UNCAC has been described as follows:

“MLA under the UNCAC: A Mini-Treaty

In the past, some multilateral conventions that deal with a particular type of crime have included some provisions on MLA in relation to offenses that fall within those conventions. Examples of such conventions are the UN Drug Convention and the UNTOC.

The UNCAC is similar to these conventions but contains some additional features. The UNCAC broadly requires States Parties to afford one another the widest measure of MLA in investigations, prosecutions, and judicial proceeding in relation to the offenses covered by the convention (art. 46[1]). The convention does not affect the obligation of States Parties under any existing or future bilateral or multilateral MLA treaties (art. 46[6]). States Parties are asked to conclude agreements to give effect to the MLA provisions in the convention (art. 46[30]). The UN Model Treaty on Mutual Assistance in Criminal Matters could be used as a precedent for such agreements. The UNCAC, however, also includes a mini-MLA treaty that can be used by States Parties agree art. 46[7]). This mini-treaty details the conditions and procedure for requesting and rendering

assistance. These provisions are similar to those found in many bilateral MLA treaties.” (at pages 8-9)

IV. TRENDS

Modern technology is starting to be harnessed to detect and investigate corruption. “On June 5-6, the World Bank Group hosted the 2nd meeting of the International Corruption Hunters Alliance (ICHA) to engage members on new technological tools and resources that can support the collective fight against global corruption. ‘Technology can help us move faster and with greater accuracy to detect and catch fraud and corruption,’ said Robert B. Zoellick, World Bank Group President, in his opening address to more than 300 senior anti-corruption officials and heads of enforcement organizations who participated in the meeting at the World Bank headquarters.” (<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,print:Y~isCURL:Y~contentMDK:23213382~pagePK:64257043~piPK:437376~theSitePK:4607,00.html>)

Further, it was written by a Managing Director of the World Bank Group that:

“New technology is helping fight fraud and corruption in other ways. Satellite photography enabled INT investigators to ascertain that building for a World Bank-financed project in a conflict zone had not been completed, despite the government's claims to the contrary. In its Detailed Implementation Reviews, INT uses data-matching to identify thousands of suspicious procurement transactions, for example, firms that were supposedly competing with one another that have identical phone numbers or addresses listed. In a recent investigation, cyberforensics allowed INT to determine that twice on the last day before a firm had to declare its financial results, it modified over 300 cash payment entries to remove indications of corrupt payments.

The World Bank is currently developing a next-generation software to detect red flags indicating fraud, corruption and collusion in public procurement. Outside the World Bank, new technologies will allow consumers to determine whether a drug is counterfeit before they buy. The purchaser sends a code marked on the drug's package to central databases by text message and gets a reply in seconds saying whether the drug is a fake or is real.

Inspired by the boom in apps, the World Bank is creating its own Integrity App, aimed at giving citizens instant access to information about World Bank-financed projects, as well as a means of instantly reporting concerns of fraud and corruption. The app allows users to send a photo of the half-built school; an audio recording of a request for a bribe or any other file or document that might be relevant, directly to the Bank. Future versions of the app will advise users of the exact location of Bank-financed projects and use QR tags to provide specific information on how much money has been spent and how close a project is to completion. In areas where smart phones are less prevalent, a separate mechanism will allow anyone with a basic cell phone to contact INT free of charge.” (http://www.huffingtonpost.com/caroline-nstey/technology-anti-corruption_b_1139022.html)

In his article titled “*Investigation of Corruption Cases*”, Mr. Tony Kwok stated that:

“Rapidly advancing telecommunications techniques have created a threat to corruption investigation. Corrupt negotiation can be carried out without personal contact. It can be done through email, mobile phone, fax, all without trace. Corrupt transactions via e-banking can, with a switch of button, transfer money to overseas accounts. Paper documentation is often replaced by computer records protected by unbreakable passwords. In extreme cases, professional hackers are employed to break into the computer system of the anti-corruption agencies to find out the progress of investigations. Counter-surveillance and counter-interception techniques are often engaged to neutralize the law enforcement effort.

However, modern information and telecommunications technology can be a great asset in corruption investigation, such as:

- Telecommunications and other technical equipment used in surveillance;
- Capability to intercept all types of telecommunication including mobile phones, Internet, fax, etc.;
- Speaker identification techniques for production of intercepted evidence;

- Mobile/Internet/CCTV records;
- Computer forensics;
- Computer intelligence analysis techniques;
- Major enquiry/operations computer systems.” (at page 4)

Finally, an article titled “*An Overview of Forensic Accounting and the Role of Forensic Accountants in Investigations*” stressed that:

“Emergence of computer forensics

The proliferation of e-commerce has led to an increasing e-fraud in recent times, which in turn has meant an increasing demand for forensic IT services aimed at identifying unauthorised or unethical IT activities. It is undeniable that this is the fastest growing forensic discipline that will assume greater importance; hence no paper on forensic accounting would be complete without a passing mention of this specialised field. Computer forensics is simply the application of computer science to the investigative process. As investigative accounting is an important aspect of forensic accounting, computer forensics and its sub-disciplines are important tools for the forensic accountant in his task of retrieving and analysing evidence for the purposes of uncovering a fraud or challenging any financial information critical to the outcome of any dispute. As a full treatment of this area would warrant a separate article, it would suffice to add that the sub-disciplines of computer forensics, like computer media analyses, imagery enhancement, video and audio enhancements and database visualisation, are tools, techniques and skills which are becoming more critical in the field of forensic accounting in general and investigative accounting in particular. Fraud detection services and the techniques of data matching and data mining would be impossible without the application of computer forensics.” (Winston Chew, <http://www.lawgazette.com.sg/2001-11/Nov01-feature3.htm>)

Also, in our country, there is an increasing trend in getting the private sector, particularly anti-corruption NGOs, civil society organizations, business groups, religious groups, including the media, involved in investigating corruption:

“Working with nongovernmental actors is a crucial component to broadening an anticorruption coalition. In countries with poor-to-fair-quality governance where there

is an **increasingly strong civil society and a developing free press**, an anticorruption agenda cannot do without the support of nongovernmental organizations (NGO) and the mass media (see Staphenurst 2000). **Civil society groups, such as NGOs, academic institutions, and research organizations, have proven themselves in various cases to be powerful partners in counter-corruption coalitions.** The work and findings on anticorruption by researchers, analysts, and other scholars may become the bases for investigation by government agencies, hearings by the legislative assembly, social mobilization by NGOs, and may draw the spotlight of media coverage.²

Media similarly plays an important role:

“Tackling corruption is not a job for governments alone. Civil society must play its part – by monitoring and reporting on standards of government and also by refusing to pay bribes or collude with corrupt officials. Individuals, civil society organizations and the media all need to stay alert, demanding the highest ethical standards and resolving to reject corruption wherever it appears.

One of the principal watch groups monitoring and exposing corruption is the media – press, radio, TV and increasingly the internet. They can serve many important functions, beyond just exposing corruption.

The media can sustain an open and transparent flow of information, fostering a climate of opinion that is increasingly intolerant of corruption. The most dramatic cases of media intervention occur when investigative journalists expose cases of grand corruption – leading to prosecution, or at least the resignation of high-profile offenders. This has been seen in many Asia-Pacific countries. In the Philippines, for example, investigative reporting provided evidence that led to the impeachment of political leaders. The investigations brought out instances of tax kickbacks and bribes.” [Asia-Pacific Human Development Report, *“Tackling Corruption, Transforming Lives”*, Published for the United Nations Development Program (2008)]

² *Bhargava and Bolongaita*, Challenging Corruption in Asia: Case Studies and Framework for Action, The World Bank (2004), at pages 41-42.

During my stint as Tanodbayan, the clergy, particularly the Catholic Church, were also starting to become vigilant in watching the conduct of government officials. The Philippine Province of the Society of Jesus, for example, published the book, entitled "*Ehem!*": *A Manual for Deepening Involvement in Combating Corruption*". In this connection, the Office of the Ombudsman partnered with the Philippine Province of the Society of Jesus on 13 October 2003 for the propagation and implementation of the *Ehem!* Manual. The Manual consists of modules, workshops, designs and exercises that aim to establish a graft intolerant culture through the process of cultural sensitivity and discernment through reforms in individual and institutional orientation, attitude and behavior.

On 10 July 2004, as the Tanodbayan, I spoke before the Catholic Bishops' Conference of the Philippines (CBCP) and presented to its members a proposal for the organization of members of PPCRV (a layman-based group organized by the Catholic Church in each parish) and other church-based bodies into anti-corruption groups. Also, NAMFREL, an election watchdog whose representatives were present during the presentation, readily expressed its willingness to get involved in the battle against corruption. (Perhaps, such willingness was inspired by the Concerned Citizens of Abra for Good Government, a successful anti-corruption group in one of our provinces, which was founded by Ms. Pura Sumangil, a former nun and other NAMFREL volunteers after our 1986 snap elections.)

Subsequently, the Coalition Against Corruption was organized, with the Makati Business Club, Code NGO, NAMFREL, CBCP-National Secretariat for Social Action, Bishops-Businessmen's Conference for Human Development, Transparency and Accountability Network and the TAG Project as members. To date, the Coalition Against Corruption continues to be actively involved in the crusade against corruption.

All in all, the contributions of the private sector can best be exemplified in the success of the **Lifestyle Probe** of the Office of the Ombudsman initiated in 2003. The network of resources and warm bodies of these private organizations has a very strategic reach. To reiterate, target public officials, as previously stated, were readily visible neighbors, parishioners, or even acquaintances, making the members of civil society organizations very fertile and reliable sources of information.

Further, membership in international anti-corruption organizations is now recognized as an indispensable tool in the struggle against corruption. The Office of the Ombudsman, under its present head, Supreme Court Justice Consuelo C. Morales (Ret.), is now a member of the above-mentioned International Corruption Hunters

Alliance (ICHA). According to the 2011 report of the World Bank's Independent Advisory Board:

“The concept of a global alliance of anti-corruption agencies/personnel has been tried in the past with mixed results. However, the launching of the International Corruption Hunters Alliance (ICHA) by the World Bank, through its Department of Institutional Integrity (INT), as a universal mechanism, ‘has the potential to make a big difference’ (R. Zoellick, ‘*Founding the International Corruption Hunters Alliance*’, 7 December 2010) and ‘open new frontiers for cooperation in the fight against corruption at regional and international levels’ (L. McCarthy, ‘*What the Alliance Means*’, 7 December 2010). The reason for hope is that with its tremendous influence, extensive network and vast resources, the World Bank, if it pursues this initiative with sustained vigor, can succeed where other efforts have failed.” (at pages 9-10)

Fritz Heimann, one of the founders of Transparency International and former vice-chair of the Anti-Corruption Commission of the International Chamber of Commerce, proposed the development of high-level reporting mechanisms:

“Raising reporting channels to high government levels provides a way to overcome the reluctance of companies to report extortion demands to the agencies where solicitation occurs. The concept of ‘high-level reporting mechanisms’, sometimes called HLRMs, was developed under the auspices of the OECD by Nicola Bonucci, the OECD’s Director of Legal Affairs, Mark Pieth, Professor of Criminal Law and Criminology at the University of Basel and Chair of the OECD’s Working Group on Bribery, and the author, Fritz Heimann, of TI.

Reporting mechanisms at high levels of government serve several important purposes. First, they help insure cooperation from the agencies where solicitation occurs. For example, if the reporting mechanism is established in the president’s office, officials in the oil ministry will be responsive to requests for information and to proposals for corrective action. Second, they address companies’ concerns about retribution because the reporting channel is independent of the agencies whose employees are soliciting bribes. Third, an independent channel makes it more likely that allegations will be objectively considered. Finally, raising

complaints to a high level provides increased assurance that effective action will be taken. These factors provide strong incentives for companies to use high-level reporting mechanism.

Establishing high-level reporting mechanisms requires action by national governments. There is no standard model. Mechanisms must be adapted to each country's political structure and administrative procedures. The use of reporting mechanisms will be at the discretion of interested whistle-blowers, including companies, civil society organizations, and individuals." [*Collective Action: Innovative Strategies to Prevent Corruption*, Mark Pieth (ed.), at pages 210-211)

Perhaps, anti-corruption agencies should also set up their own reporting mechanisms. Though still a developing nation, "Smartphone usage in the Philippines is now at 53 percent compared to overall mobile phone usage of 89%" (Philstar.com, July 2, 2013) Thus, the Office of the Ombudsman can set up a reporting mechanism manned by a group of assigned field investigators that can receive, via SMS and emails, complaints about corruption and information about corrupt government officials and their ill-gotten wealth. Just a caveat. The Office of the Ombudsman, or any anti-corruption agency for that matter, should set up such a reporting mechanism only if it has already a sufficient number of competent field investigators who can act productively on the complaints and information received. Otherwise, the public will just become frustrated, with the anti-corruption agency losing its credibility, due to the latter's inability to act positively on said complaints and reported data on corruption activities.

Finally, when investigating corruption and tracing ill-gotten wealth assets, there is now a growing focus on the "Gatekeepers":

"One of the greatest challenges when seeking to trace and recover assets lies in the lengths to which criminals are prepared to go in order to conceal the source of their wealth or their link with ill-gotten gains. To quote Stephen Baker, an English barrister and Jersey advocate, a partner of BakerPlatt, a law firm based in Jersey:

"The Financial world does not operate in one dimension. The traditional view that individuals hold direct, simple relationships with financial service providers is increasingly less relevant. This is especially so in a world of ever

increasing complexity, driven by technology change and shifting political and social sands.’

Criminals have developed ever-increasingly sophisticated means of concealing their illicit gains but have not done so without assistance. So they invest time, money and effort into the manner in which their property is laundered and then used – they seek to achieve a ‘disconnect’ between (a) the criminal and the proceeds of his crime, (b) the proceeds of his crime and the form in which he ultimately derives his benefit and finally (c) the criminal and his access to the benefit. These disconnects facilitate the safe enjoyment by the criminal of the fruits of his crime.

It is imperative that investigators and prosecutors of corruption and money laundering cases as well as those who focus their efforts on the recovery of assets should develop an understanding of the way in which so-called gatekeepers are used. Gatekeepers, as the name would imply, are the people who facilitate ‘access’ to the world of financial services, enabling criminals to disguise their profits. These individuals and institutions are frequently bankers, corporate service providers, trust companies, lawyers, accountants or other organizations which have access to the financial system. Depending on the precise nature of their role, gatekeepers commonly utilise the following:

- Commission of predicate offence – for example, the provision of a company owned by an overlying trusts as a party to a fictitious contract or a contract that exists for an illegal purpose;
- Disguising of a person’s involvement in a commercial transaction – for example, disguising a principal’s interest in a target company about which he has privileged information;
- Layering of a criminal property – for example, passing property through the ownership of a company in an effort to place as much distance between property and the original criminal source, or
- Disguising of the ownership of property by the ultimate beneficial owners of that property.

Trusts and other offshore financial services are attractive to criminals because they make it more difficult to determine the true identity of the person who owns and effectively controls assets. A chief executive or chief financial officer

may be diverting company profits to himself; an insider dealer may be tired of watching clients make money and may look to make a 'killing' of his own; a corrupt politician may loot his treasury for millions of dollars and seek to invest the proceeds through a trust. Even drug traffickers and ordinary fraudsters may seek financial services 'offshore'.

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In many countries, criminal investigations are primarily directed towards the investigation of the underlying criminality. However, tracing money and property with a view to confiscation and targeting the criminal where it hurts most is an invaluable tool in the hands of any investigator and prosecutor in the fight against crime such as corruption." (*Effective Investigation of Assets, Practical Application of Mutual Legal Assistance and Asset Recovery*", Phyllis Atkinson, pages 104-105)

Final Statement

The crusade for good governance and anti-corruption is the foundation of the current Administration in the Philippines. After three years in office, "Daang Matuwid" (or in English, "*The Straight Path*"), as the crusade to crush corruption is called by our President, Benigno Simeon C. Aquino III, has already produced positive results, validating the theory that corruption is the biggest obstacle to economic development and poverty alleviation. As announced by the IMF mission to the Philippines:

"Rachel Van Elkan, head of the IMF mission to the Philippines, said in a press conference yesterday that the Philippines' performance last year was remarkable. She said the country was able to shrug off the problems now upsetting the global economy.

Van Elkan also believes that the Philippines will continue to be resilient, fending off global shocks.

'This growth resilience and more favorable outlook is both a testament to the Philippines' improved macroeconomic fundamentals [and] policy reforms,' she said.

The IMF took note of the reforms in governance, saying that these complemented efforts to keep the economy healthy.

‘The focus on good governance has buoyed confidence and is supportive of more inclusive growth,’ Elkan said.” (*IMF sees 6% PH growth*, Philippine Daily Inquirer, January 24, 2013, p. A2: emphasis supplied)

THANK YOU!!!