

# **FIGHTING CORRUPTION FROM THE BACKYARD: ENSURING THE INTEGRITY AND INDEPENDENCE OF LAW ENFORCEMENT, PROSECUTORS AND JUDGES IN THE PHILIPPINES**

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## **I. INTRODUCTION**

Every country has its own approach to control graft and corruption in government. The Philippines has its own. In fact, it would even seem that all sorts of anti-corruption strategies and measures have been done over the years, from one administration to another. Studies about this phenomenon in Philippine governance also abound – conducted not only by scholars, journalists, think-tanks, advocates, but by the government itself – all with the end in view of finding the most effective way to “cure” this so-called “social cancer”.

One area of focus in the fight against graft and corruption is the government’s machinery that enforces the country’s anti-corruption laws and ensures that violators are brought to justice and eventually punished – the criminal justice system, more specifically law enforcement, the prosecution and the judiciary. These government institutions per se (and the people that run and compose them of course) need to practice what they preach because the effectiveness of this machinery that they are part of depends largely on their individual and collective integrity and independence. Thus, at the core of every anti-corruption worker, whether a public officer or employee or an entire government office or agency, is their adherence to sound moral and ethical values and principles.

This paper seeks to examine the structures of the law enforcement, prosecution and judicial institutions in the Philippines, as well as the mechanisms, processes and measures peculiar to these institutions that impact and reflect on their integrity and independence in the context of their role in the investigation, prosecution and adjudication of graft and corruption cases, both within their respective institutions as well as in the entirety of the government. A presentation of existing anti-corruption mechanisms among these agencies of the government will also be made, along with some past efforts that may be considered as best practices in addressing the corruption menace in the Philippines.

## **II. GOVERNMENT STRUCTURE AND LEGAL FRAMEWORK**

### **A. National and Local Governments; Government Corporate Sector**

The Philippines is a democratic and republican State. The three principal powers of the government, namely the legislative, executive and judicial powers, are clearly delineated and exercised among its three co-equal branches. The legislative or law-making power is

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vested in a bicameral Congress that consists of a Senate and a House of Representatives.<sup>1</sup> The executive branch is headed by the President who has control over all the departments, bureaus, and offices, and ensures that the laws are faithfully executed.<sup>2</sup> Finally, the judicial power is vested in the Supreme Court and other lower courts established by law.<sup>3</sup> The independence of the three branches of government through a system of strict separation of powers is one of the most significant corruption prevention mechanisms in place in the Philippines.

The exercise of government powers is decentralized through a local government structure composed of (from the biggest to the smallest unit) provinces, cities, municipalities or towns, and *barangays*. Each of these local government units has its own local chief executive and a local legislative body. For purposes of administrative governance of the various departments under the executive branch, and to some extent, of the judiciary, contiguous groups of local government units are clustered into administrative regions. The seventeen administrative regions of the country, however, do not have local chief executives or local legislative bodies similar to those of the local government units.

The government corporate sector, considered as the third level of the executive branch of the government, is composed of government owned or controlled corporations (GOCC), including government instrumentalities with corporate powers or government corporate entities and government financial institutions, that are vested with functions relating to public needs, whether governmental or proprietary in nature, and owned by the Philippine government either wholly or to the extent of at least a majority of its outstanding capital stock in the case of stock corporations.<sup>4</sup> A government office, the Governance Commission for GOCCs (GCG), acts as the central advisory, monitoring, and oversight body over this sector. It also plays an important role in protecting valuable government resources in these GOCCs against graft and corruption.

## **B. Independent Constitutional Bodies**

The Philippine Constitution established independent bodies which are called “Constitutional Commissions” that exercise specific powers and functions. They are as follows: the Civil Service Commission (CSC), which administers the civil service covering all branches, subdivisions, instrumentalities and agencies of the Government, including government-owned or controlled corporations with original charters, and thus acts as the central personnel agency of the government<sup>5</sup>; the Commission on Elections, which as its name connotes, takes exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of insuring free, orderly, honest, peaceful and credible elections<sup>6</sup>; and the Commission on Audit (COA), which holds the power, authority and duty to examine, audit and settle all accounts pertaining to the revenue and receipts and expenditures or uses of the funds and properties of the Philippine government.<sup>7</sup>

Aside from the three Constitutional Commissions, there are two other Constitutional bodies whose mandates, powers and functions, as well as composition, are specifically

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<sup>1</sup> Section 1, Article VI, 1987 Constitution of the Republic of the Philippines.

<sup>2</sup> *Ibid.*, Sects. 1 and 17, Art. VII.

<sup>3</sup> *Ibid.*, Sect. 1, Art. VIII.

<sup>4</sup> Sect. 3(o), Republic Act No. 10149.

<sup>5</sup> *Ibid.*, Sects. 2.1 and 3, Art. IX-B.

<sup>6</sup> *Ibid.*, Sect. 2, Art. IX-C.

<sup>7</sup> *Ibid.*, Sect. 2.1, Art. IX-D.

provided for in the Constitution itself: the Office of the Ombudsman (OMB) as the principal agency of the government responsible for ensuring propriety and accountability of public officers, and is thus primarily responsible for investigating and prosecuting graft and corruption cases; and the Commission on Human Rights, which is mandated to promote and protect human rights. The three Constitutional Commissions, the OMB and the Commission on Human Rights do not fall under any branch of the government and enjoy fiscal autonomy. Their approved annual appropriations are automatically and regularly released. Furthermore, the tenure of the members of the Constitutional Commissions, the Ombudsman and Deputy Ombudsmen is fixed by the Constitution. The establishment and presence of these Constitutional bodies, more particularly those involved in monitoring the accountability of public officers and employees – the CSC, COA and OMB – are significant corruption prevention mechanisms that are manifest in the structure of the Philippine government.

### III. CLEANING THEIR OWN BACKYARDS

Like most democratic countries, the Philippines adheres to the age-old principle that “public office is a public trust”. Thus, no less than the Constitution exhorts that “public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.”<sup>8</sup> Moreover, there is an abundance of legislation that seeks to advance the policy of the State to promote a high standard of ethics in public service. As a matter of fact, there are at least seventy-seven corruption-specific laws and executive issuances<sup>9</sup> that have been enacted to date in order to combat corruption, starting with the Revised Penal Code of the Philippines that was enacted in 1932, which criminalized certain acts and omissions of public officers. Excluded from this number are other special penal laws which provide for sanctions on public officers who participate one way or the other in the commission of crimes. Among the most significant of these laws are Republic Act (RA) No. 6713 or the “Code of Conduct and Ethical Standards for Public Officials and Employees”, and RA 3019 or the “Anti-Graft and Corrupt Practices Act”.

On top of these laws that apply to all public officers and employees across all branches and levels of the government, each law enforcement, prosecution and judicial institution involved in the investigation, prosecution and adjudication of graft and corruption in the government has its own internal mechanism and processes, as well as programmes and campaigns, that seek to ensure and promote the integrity of the institution per se and of its own anti-corruption-related work. Cleaning their own backyards, so to speak, is a norm among these institutions.

#### A. Law Enforcement

The Philippines has two major law enforcement agencies, both of which are under the executive branch of the government. These are the Philippine National Police, which is under the Department of the Interior and Local Government, and the National Bureau of Investigation, which is an agency under the Department of Justice.

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<sup>8</sup> Ibid., Sect. 1, Art. XI.

<sup>9</sup> Sixty-one were identified and listed by Prof. Danilo R. Reyes in “*Chronicling Corruption in the Philippines: A Brief Historical Background Up to 2004*”.

## 1. Philippine National Police and National Police Commission

The Philippine National Police (PNP) was first established in 1990 through Republic Act (RA) No. 6975, the law which organized the Department of the Interior and Local Government (DILG) and its component offices, including the National Police Commission (NAPOLCOM), a constitutionally mandated body tasked to administer and control a national police force. The PNP was initially composed of members of the old police organization and of the military who sought absorption into the newly organized civilian police force.

The PNP's principal power and function is to "investigate and prevent crimes, effect the arrest of criminal offenders, bring offenders to justice and assist in their prosecution".<sup>10</sup> It has a national presence through its police stations in every city and municipality/town of the country, as well as provincial and regional offices in all provinces and regions of the country. Bigger cities even have additional satellite stations or police community precincts in *barangays*. While its jurisdiction in the investigation of crimes is more general compared to that of the National Bureau of Investigation, the PNP's role in the investigation of graft and corruption incidents nonetheless becomes more relevant in places where no other law enforcement agency of the government is present.

The NAPOLCOM is a six-member collegial body composed of the Secretary of the DILG as the ex officio chairperson, four civilian (non-military or law enforcement agency-connected) commissioners, and the PNP Chief as an ex officio member. It is attached to the DILG only for policy and programme coordination purposes. Its power to have administrative control and operational supervision over the PNP include the development and promulgation of policies and standards involving police procedures, performance, facilities and activities including recruitment, selection, promotion, and training. It also exercises disciplinary authority over PNP officers and personnel through its appellate jurisdiction over personnel disciplinary actions.

### *(a) PNP Ethical Doctrine (PNP Code of Professional Conduct and Ethical Standards)*

The "PNP Code of Professional Conduct and Ethical Standards" serves as the national police force's basic moral and ethical guidance to its members. In 2014, the PNP "rebranded" this Code into what is now called "The PNP Ethical Doctrine" in order to remind the police force of its provisions and to continue its propagation to, and internalization by, all its members. The PNP Ethical Doctrine is anchored on the divine and moral precepts, the Constitution of the Republic of the Philippines and relevant provisions of the Revised Penal Code, RA 6713, RA 3019, RA 6975 and other related special laws.

All new entrants to the PNP are provided with copies of the PNP Ethical Doctrine and the doctrines and principles embodied in the code are part of academic courses given to PNP personnel. All PNP members are enjoined to fully adhere to its provisions in the performance of their duties and to commit to uphold its intent and spirit at all times. Violations of such provisions are made punishable under the applicable penal laws and administrative regulations issued by NAPOLCOM, the PNP, Civil Service Commission or the DILG.

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<sup>10</sup> Sect. 24(c), RA 6975.

*(b) People's Law Enforcement Board*

The People's Law Enforcement Board (PLEB) is an innovation under RA 6975; a check and balance mechanism where ordinary citizens can have redress of their grievances against law enforcers who abuse their authority and lodge their complaints against them. It is also a strategy to empower the community in general to instil discipline in the PNP ranks.

The PLEB is a five-member collegial body that is created in every city and municipality through their local legislative bodies. It is composed of the following: a member of the local legislative body, a *barangay* captain of the city or municipality, and three respected members of the community known for their probity and integrity chosen by the local peace and order council, one of whom must be a woman and another a member of the Bar, or, in the absence of the latter, a college graduate, or the school principal of the central elementary school in the locality.

As the central receiving entity for complaints from the public against PNP members, it takes cognizance of complaints involving offences punishable by withholding of privileges, restriction to specified limits, suspension or forfeiture of salary, or any combination thereof, for a period exceeding thirty days, or by dismissal,<sup>11</sup> and refers the rest to the appropriate disciplinary or adjudicatory authority depending on the imposable penalty for the offence complained of.

*(c) Internal Affairs Service (IAS)*

Pursuant to its objective to reform the PNP, RA 8551 introduced the Internal Affairs Service (IAS) and gave it the following mandates:

- (i) pro-actively conduct inspections and audits on PNP personnel and units;
- (ii) investigate complaints and gather evidence in support of open investigations;
- (iii) conduct summary hearings on administrative charges against PNP members;
- (iv) submit periodic reports on the assessment, analysis, and evaluation of the character and behaviour of PNP personnel and units to the PNP chief and the NAPOLCOM;
- (v) file appropriate criminal cases against PNP members before the courts and assist in the prosecution of the case;
- (vi) provide assistance to the OMB in cases involving PNP personnel;
- (vii) conduct, *motu proprio*, automatic investigation of the following cases:
  - incidents where a PNP personnel discharges a firearm;
  - incidents where death, serious physical injury, or any violation of human rights occurred in the conduct of police operations;
  - incidents where evidence was compromised, tampered with, obliterated, or lost while in the custody of PNP personnel;
  - incidents where a suspect in the custody of the police was seriously injured; and
  - incidents where the established rules of engagement have been violated; and
- (viii) provide documents or recommendations concerning promotions or designations of PNP members to any key position.

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<sup>11</sup> Sect. 41(a)(3), RA 6975.

The IAS is present in every regional and provincial PNP office throughout the country, as well as in the head office or PNP headquarters. It is headed by an Inspector General who is a civilian appointed by the President.

*(d) Administrative Disciplinary Machinery*

Aside from the PLEB, local police chiefs, the local chief executives of provinces, cities and municipalities/towns also exercise administrative disciplinary authority over PNP officers and members.

Minor offences of police officers are dealt with through an internal mechanism where local police chiefs may summarily impose administrative punishment depending on the infraction involved. Offences considered as minor are acts or omissions that affect the internal discipline of the organization and do not involve moral turpitude, like simple misconduct or negligence, insubordination, frequent absences or tardiness, habitual drunkenness, and engaging in unlawful gambling. Depending on the disciplinary authority, summary penalties that may be imposed range from admonition or reprimand, withholding of privileges, forfeiture of salary or suspension, or a combination of any of these penalties, up to demotion or even dismissal from the service. The PNP Chief and regional police chiefs both have summary dismissal powers when the charge is serious and the evidence of guilt is strong, or when the erring police officer is a recidivist, or has been repeatedly charged and there are reasonable grounds to believe that the officer is guilty of the charges, or is guilty of a serious offence involving conduct unbecoming of a police officer.

*(e) Integrity Monitoring and Enforcement Group*

In 2019, the PNP created the Integrity Monitoring and Enforcement Group (IMEG) as a strategy to strengthen its campaign against corrupt policemen, especially those involved in illegal drugs. IMEG “upgraded” the Counter-Intelligence Task Force, a comparatively smaller office that was originally formed as part of the internal cleansing mechanism in the organization. As a bigger office than its predecessor, IMEG has been given more resources, including personnel, and a wider latitude of authority and more functions. Among others, it assists the public in filing criminal complaints before the prosecution offices against erring police officers, more particularly those that arise from drug operations of the PNP. To further reinforce its internal cleansing programme and to curb graft and corruption in the organization, the PNP leadership recently gave IMEG an additional task – to conduct lifestyle checks among its personnel.<sup>12</sup>

## 2. National Bureau of Investigation

The National Bureau of Investigation (NBI) is the second major law enforcement agency of the government. It is the Philippine’s version of the Federal Bureau of Investigation of the United States of America. From its original creation in 1936 as a mere “Division of Investigation” under the DOJ, the NBI has undergone a number of reorganizations and expansions over the years.

Among its original principal mandates was to undertake investigation of crimes and other offences upon its own initiative and as public interest may require, and to render assistance, whenever properly requested in the investigation or detection of crimes and other offences.<sup>13</sup> It was reorganized in 1960 in order to promote maximum efficiency in the

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<sup>12</sup> <<https://newsinfo.inquirer.net/1354327/pnp-to-undertake-lifestyle-checks-to-fight-corruption>>.

<sup>13</sup> RA 157.

discharge of its duties and to secure full implementation of its functions, especially those pertaining to investigation of graft and corruption cases.<sup>14</sup>

The NBI was recently reorganized and modernized under a recent law<sup>15</sup> wherein the positions and compensation of its officers and personnel were upgraded, while the scope of its investigatory authority was limited to specialized crimes like human trafficking, cybercrimes, extrajudicial or extralegal killings and transnational crimes. As regards graft and corruption cases, the NBI shall only take cognizance of those that are referred to it by the Inter-Agency Anti-Graft Coordinating Council.<sup>16</sup> Similar to the PNP, the NBI also has nationwide presence through its regional as well as district offices. Unlike the PNP though, the NBI has no local offices in cities and municipalities or towns.

*(a) Internal Affairs Division*

The NBI also has an Internal Affairs Division under the Office of the Director. Unlike the PNP, however, its regional offices do not have an administrative disciplinary mechanism or machinery. Hence, complaints against its officers and personnel are filed with, and investigated and adjudicated by, the Office of Director at the head office.

## **B. Prosecution**

There are also two government offices that conduct preliminary investigation<sup>17</sup> and prosecution of graft and corruption cases – the National Prosecution Service under the Department of Justice and the OMB.

### 1. National Prosecution Service

The National Prosecution Service (NPS) is the office primarily responsible for the conduct of preliminary investigation and prosecution of all cases involving violations of penal laws in the Philippines. Established by virtue of RA 10071, the NPS is composed of a Prosecution Staff in the Office of the Secretary of Justice headed by a Prosecutor General, regional prosecution offices, as well as field prosecution offices in every province and city of the country. It is under the supervision and control of the Secretary of Justice.

The investigative authority of the NPS over complaints involving alleged commission of crimes is akin to the PNP's "general jurisdiction" to investigate crimes. This is so because the OMB holds the primary jurisdiction over graft and corruption cases, especially those falling under the jurisdiction of the Sandiganbayan.<sup>18</sup> The NPS exercises concurrent jurisdiction over complaints falling outside Sandiganbayan's jurisdiction which it can resolve without the need for OMB's approval. Pursuant to a Memorandum of Agreement between the DOJ and the OMB,<sup>19</sup> the latter may likewise refer cases to the NPS for preliminary investigation and prosecution before the first and second level courts.

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<sup>14</sup> RA 2678.

<sup>15</sup> RA 10867.

<sup>16</sup> Discussed further under IV.B.1.

<sup>17</sup> Defined under the Revised Rules of Criminal Procedure as "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial."

<sup>18</sup> Also discussed in part III.C.2 of this paper.

<sup>19</sup> Signed 29 March 2012.

*(a) Selection and Promotion Board*

RA 10071 expressly requires that prosecutors of the NPS shall be selected from among the qualified and professionally trained members of the legal profession who are of proven integrity and competence.<sup>20</sup> To this end, the NPS Selection and Promotion Board, composed of the highest-ranking officials of the NPS and chaired by no less than the Prosecutor General, require applicants for position in the NPS to submit clearances from the NBI, OMB, Sandiganbayan, and Civil Service Commission in order to apprise them whether candidate prosecutors have been charged or are facing any criminal or administrative cases, and the nature and details of those cases if any. Results of neuropsychiatric examination are likewise required from applicants. As an added measure to ensure compliance with the statutory qualification standards for prosecutors, the Board invites as resource persons during the deliberation of applications, the chiefs of prosecution offices of the place where an applicant is seeking appointment. A shortlist of applicants is submitted to the Secretary of Justice, who in turn endorses it to the President, who appoints prosecutors of the NPS.

*(b) Code of Conduct of Prosecutors*

The Code of Conduct of Prosecutors of the NPS sets down the core values as well as the mandatory standards for professional and individual conduct that prosecutors should observe in the performance of their duties as public servants and pillars of the criminal justice system. More specifically, the Code emphasizes the following:

- (i) Commitment to the Rule of Law and Public Interest;
- (ii) Prompt, Effective and Efficient Service;
- (iii) Dedication, Diligence and Competence;
- (iv) Impartiality, Independence, and Fidelity to Duty; and
- (v) Honesty, Integrity and Professionalism.

*(c) Internal Affairs Unit*

The Secretary of Justice exercises disciplinary authority over prosecutors of the NPS through an Internal Affairs Unit (IAU), which assists the Secretary in acting on administrative complaints, or *motu proprio*, initiating proceedings, against prosecutors and personnel of the NPS. The offences that may be subject of administrative charges include violations of the provisions of the following:

- (i) Revised Penal Code as amended, on crimes committed by public officers;
- (ii) RA 3019 as amended;
- (iii) RA 6713;
- (iv) Administrative Code of 1987;
- (v) Civil Service Law and its Omnibus Rules and Regulations;
- (vi) Code of Conduct for Prosecutors; and
- (vii) Pertinent DOJ policies, other special laws, rules and regulations.<sup>21</sup>

2. Office of the Ombudsman

As previously mentioned, the OMB is a constitutional body designed to be the principal agency of the government responsible for ensuring propriety and accountability of public officers and has the primary responsibility to investigate and prosecute graft and corruption

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<sup>20</sup> Section 16, RA 10071.

<sup>21</sup> Department Circular No. 010 dated 25 March 2015.

cases. It is composed of the Ombudsman, an Overall Deputy Ombudsman, four deputies [one deputy each for Luzon, Visayas and Mindanao (the Philippines' major island groups), a deputy for the military and other law enforcement offices (MOLEO)], and several assistant ombudsmen. Also under the OMB is an Office of the Special Prosecutor which serves as its prosecution arm. The Ombudsman, his deputies and the Special Prosecutor are all presidential appointees and serve specific fixed terms.<sup>22</sup>

As “protectors of the people”,<sup>23</sup> the OMB has the following powers, functions and duties:

- (i) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.
- (ii) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.
- (iii) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.
- (iv) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.
- (v) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.
- (vi) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.
- (vii) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.
- (viii) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.<sup>24</sup>

*(a) Internal Affairs Board*

The Internal Affairs Board (IAB) of the OMB does not only act on all complaints against its incumbent officials and employees. It also plays a big role in recommending to the Ombudsman policies, programmes and procedures that ensure compliance by OMB officials and employees with RA 6713 and all laws, rules and regulations concerning civil service and public accountability. The IAB also has the authority to offer recommendations regarding the promulgation of a code of conduct and ethical standards for all officials and employees of the OMB, as well as of a manual of operations for its various offices to ensure faithful performance of its mandated functions in accordance

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<sup>22</sup> Please see related discussion about the Judicial and Bar Council in part III.C.3.

<sup>23</sup> *Ibid.*, Sect. 12, Art. XI.

<sup>24</sup> *Ibid.*, Sect. 11, Art. XI.

with the norms of conduct of public officials and employees under RA 6713. Finally, the IAB may request any intelligence or investigating agency to direct any official, employee or unit of the OMB to conduct an intelligence operation or fact-finding investigation on any of its officials or employees.

The IAB is mandated to act on all complaints cognizable by it, whether filed by the public or by any official or employee of the OMB, and in whatever form it may be filed – orally or in writing, signed or unsigned, or verified or not. Depending on the merits, or lack thereof, complaints go through a series of processes – evaluation, preliminary investigation and/or administrative adjudication, fact-finding investigation, even intelligence operation – are finally decided by the Ombudsman.<sup>25</sup>

## **C. Courts**

### **1. Regular Courts**

The hierarchy of the judicial branch of the Philippine government starts with first level courts stationed in cities and municipalities/towns, namely the Municipal Trial Court, Municipal Circuit Trial Courts, Municipal Trial Court in Cities, and Metropolitan Trial Courts. In criminal cases, these courts take cognizance of minor infractions of the law. Second level courts, on the other hand, are composed of Regional Trial Courts that are scattered throughout the country's administrative regions, provinces and cities. They have jurisdiction to try offences that carry more severe penalties. All proceedings in both first and second level courts are presided by only one judge.

Decisions of first and second level courts as well as of other quasi-judicial bodies can be elevated to the Court of Appeals, a collegiate court which exercises appellate jurisdiction on all cases not falling within the original and exclusive jurisdiction of the Supreme Court. Considered as the second highest tribunal of the land, it sits by divisions of three justice-members. Currently, it is composed of twenty-three divisions.

At the top of the judicial hierarchy is the Supreme Court, the final arbiter of legal issues and controversies of the land. It is composed of a Chief Justice and fifteen Associate Justices. Besides adjudicating cases that fall within its jurisdiction, the Supreme Court likewise exercises administrative supervision over all courts and their personnel.

### **2. Sandiganbayan**

The Sandiganbayan is a special court under the judicial branch which has original and appellate jurisdiction over criminal and civil cases involving graft and corrupt practices and other offences committed by public officers and employees (including those in government-owned or controlled corporations) in relation to their office. It was originally created under Presidential Decree (PD) No. 1486 issued in 1978 with the same rank as a second level court but was shortly later elevated to the same level as the Court of Appeals via PD 1606.

Over the years, the Sandiganbayan underwent several reorganizations and expansions. From an original eight-member court, it now has twenty-one justices who sit in seven divisions of three members. Its jurisdiction has likewise undergone revisions.

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<sup>25</sup> Administrative Order No. 23, Series of 2016, of the OMB.

The jurisdiction to try corruption cases is shared among the first and second level courts and the Sandiganbayan depending on the offence committed or the salary grade of the public officer at the time of commission of the offence. Generally, public officers occupying positions classified as Salary Grade (SG) 27 and above pursuant to the government's system of compensation and position classification, are tried before the Sandiganbayan, while those below SG 27 are tried before the first and second level courts, unless they are charged together with officers whose positions are classified as SG 27 and above. Cases decided by first and second level courts are appealable to the Sandiganbayan. Its decisions may be elevated on appeal before the Supreme Court.

### 3. Judicial and Bar Council

The Judicial and Bar Council (JBC) is another independent Constitutional office whose primary task is to recommend appointees to the judiciary and the OMB to the President. It is composed of representatives of the three branches of government as *ex officio* members (the Chief Justice, the Secretary of Justice, and a member from the legislature), a representative of the Integrated Bar of the Philippines,<sup>26</sup> a professor of law, a retired member of the Supreme Court, and a representative from the private sector.<sup>27</sup>

The JBC is a mechanism that ensures the independence of the judicial branch of government, for while the President ultimately appoints the members of the judiciary and the OMB, appointments could not be done arbitrarily since the choice is limited to the list of nominees submitted by the JBC. It, therefore, ensures as well that the selection process for the judiciary and the OMB is not politicized. Furthermore, the highly stringent application, screening, selection and nomination process of the JBC ensures that only persons of proven competence, integrity, probity and independence as required by no less than the Constitution, are appointed to the judiciary.

In screening applications for the judiciary and the OMB, the JBC ensures the existence of the minimum qualifications pertaining to length of practice of law, age and experience as required by the Constitution. In addition, competency requirements are determined by looking at the individual applicant's educational preparation as reflected in scholastic records, performance on the bar examination and prejudicature programme, academic awards, scholarships. Work performance ratings as well as the results of psychological and psychiatric evaluations are likewise scrutinized. Finally, exemplary accomplishments of applicants are likewise considered, such as awards for judicial excellence, authorship of books, treatises, articles and other legal writings, as well as leadership in professional or civic organizations.

As a measure to ensure that members of the judiciary and the OMB are of proven honesty, integrity, probity, incorruptibility, irreproachable conduct and fidelity to sound moral and ethical standards, the JBC requires the submission of testimonials from reputable government officials and non-governmental organizations, as well as certifications or clearances from relevant government offices – courts, law enforcement agencies, the IBP, Office of the Bar Confidant, including the OMB. Moreover, the JBC may likewise order the conduct of discreet background checks on the integrity, reputation and character of applicants and validate the results of such efforts. Feedback from the public in the form of

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<sup>26</sup> The national organization of lawyers in the Philippines.

<sup>27</sup> *Ibid.*, Sect. 8, Art. VIII.

complaint or opposition is encouraged through the publication of the list of applicants for positions in the judiciary and the OMB in two newspapers of general circulation.

In determining the independence of applicants for positions in the judiciary and the OMB, the JBC scrutinizes their decisions (for incumbent judges) if they are reflective of the wisdom and soundness of their judgment, courage, rectitude, impartiality, cold neutrality, fortitude and strength of character. Validated testimonials from reputable officials and impartial organizations or outstanding citizens are likewise considered.

Finally, to determine potential conflicts of interest that may impede these applicants' impartiality or ability to remain independent once appointed, the JBC looks into their personal, social and professional relationships, business interests and financial connections.<sup>28</sup>

#### 4. New Code of Judicial Conduct for the Philippine Judiciary

As a reaction to the adoption in 2002 of the Code of Judicial Conduct ("Bangalore Draft") by the Judicial Group on Strengthening Judicial Integrity,<sup>29</sup> the Philippine Supreme Court updated the then existing Code of Judicial Conduct and Canons of Judicial Ethics, and eventually adopted, in 2004, a New Code of Judicial Conduct for the Philippine Judiciary. The New Code's first two canons emphasize independence and integrity, thus:

### **Canon 1 Independence**

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

#### Section 1

Judges shall exercise the judicial function independently on the basis of their assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason.

#### Section 2

In performing judicial duties, judges shall be independent from judicial colleagues in respect of decisions which the judge is obliged to make independently.

#### Section 3

Judges shall refrain from influencing in any manner the outcome of litigation or dispute pending before another court or administrative agency.

#### Section 4

Judges shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to

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<sup>28</sup> The 2020 Revised Rules of the Judicial and Bar Council (JBC No. 2020-01).

<sup>29</sup> A group of Chief Justices and Superior Court Judges from around the world.

advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

#### Section 5

Judges shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to be free therefrom to a reasonable observer.

#### Section 6

Judges shall be independent in relation to society in general and in relation to the particular parties to a dispute which he or she has to adjudicate.

#### Section 7

Judges shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

#### Section 8

Judges shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

### **Canon 2 Integrity**

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

#### Section 1

Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

#### Section 2

The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice musty not merely be done but must also be seen to be done.

#### Section 3

Judges should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may have become aware.

### **5. Judicial Integrity Board and Corruption Prevention Investigation Office**

To prevent corruption in the judiciary and further strengthen its integrity, the Supreme Court created in 2018 the Judicial Integrity Board (JIB) and the Corruption Prevention Investigation Office (CPIO).<sup>30</sup> The JIB is composed of retired justices of the Supreme Court, Court of Appeals, Sandiganbayan or Court of Tax Appeals. It has the mandate to act on complaints (whether verified or anonymous) for disciplinary action against justices of

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<sup>30</sup> A.M. No. 18-01-05-SC.

the Court of Appeals, the Sandiganbayan, Court of Tax Appeals, judges and personnel of first and second level courts, including the Shari'a courts, and officials and employees of the Offices of the Jurisconsult and the Court Administrator. The Supreme Court may also *motu proprio* initiate proceedings before the JIB against the justices, judges, officers and personnel of the foregoing courts and offices. The JIB is also tasked to *motu proprio* initiate disciplinary actions in the Supreme Court against the foregoing officials and personnel of the judiciary on account of either a conviction or even a mere charge for any crime. As for complaints that involve graft and corruption and violations of ethical standards against members of the Supreme Court, they are referred to its Committee on Ethics and Ethical Standards which is tasked to conduct a preliminary investigation before the submission of its findings and recommendations to the Supreme Court *en banc*.

The CPIO on the other hand, has the authority to conduct intelligence, surveillance or entrapment (undercover) operations, as well as lifestyle checks and discreet investigations on the foregoing justices, judges, officers and personnel of the judiciary, for purposes of detection or identification of those who commit, appear to be involved in, or are liable for violations of the New Code of Judicial Conduct for the Philippine Judiciary or of any of the charges enumerated under Rule 140 of the Rules of Court.<sup>31</sup> The disciplinary powers of the judiciary among its ranks, however, does not deprive the law enforcement agencies of the government to take cognizance of complaints for alleged commission of crimes (including graft and corruption) filed against justices, judges and court personnel. Otherwise said, investigation on criminal complaints against them may be conducted independent of, and may proceed separately from, any disciplinary or administrative proceedings before the Supreme Court or the JIB.

#### 6. Compensation Package and Other Benefits

Positions in the judiciary are among those highly paid in the government. In the 33-level salary grade (SG) hierarchy, salaries of the members of the Supreme Court are at SG 31-32 (SG 33 is assigned solely to the President), while salaries of justices of the other collegiate courts are at SG 30-31, and those of judges of first and second level courts, at SG 28-29. On top of their basic salary, members of the judiciary regularly receive various allowances as well as hazard pay.

## IV. BEST PRACTICES IN ANTI-CORRUPTION EFFORTS

### A. Utilizing the Cabinet System, the “Cory Way”

The administration of former President Corazon “Cory” Aquino (1986-1992) succeeded what has been known to be the most corrupt regime in Philippine history – the more than two decades of the Marcos regime. Among the efforts done by the Aquino administration to get the country back on its feet was to recover ill-gotten wealth of the Marcoses and their cronies, to restore democratic institutions and to “cleanse” the government of graft and corruption.

President Aquino’s anti-corruption strategy consisted of integrating the initiatives into the regular structure of the executive branch, or the cabinet. Each department head/cabinet member was directed to study their organization and to formulate and implement an anti-

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<sup>31</sup> “Discipline of Judges of Regular and Special Courts, Justices of the Court of Appeals, the Sandiganbayan, Court of Tax Appeals, Court Administrator, Deputy Court Administrator, and Assistant Court Administrator”.

corruption plan based on such study. Cabinet members reported to the President on the status of their department's anti-corruption campaign or programme during cabinet meetings. As each department dealt with its own problems, various offices within the cabinet likewise came up with joint or multilateral solutions for interrelated or interconnected concerns.

According to an assessment of President Aquino's anti-corruption strategy, the approach which allowed cabinet members to tackle their own office's problem of graft and corruption proved successful. The strategy which they called "The Cory Way" amplified the government's cleansing process as each and every office in the executive department simultaneously undertook varied strategies that were appropriate and unique to their office's situation at the time. The accomplishments of the campaign also differed from one department to another – from improvement of existing policies and procedures to formulation of new ones, creation of new programmes, monitoring of personnel, to discharge or dismissal of officials. Other departments implemented organizational changes and improvements in efficiency which limited opportunities for corruption. On the whole, it is believed that it is possible to make substantial progress against corruption within the existing framework of government institutions without creating a new anti-corruption agency.<sup>32</sup>

## **B. Inter-Agency Cooperation Mechanisms**

While the "Cory Way" of dealing with corruption in the government (at least in the executive) was an effective strategy, the need for inter-agency cooperation was also recognized. Hence, inter-office resources were pooled together to address problems that necessitated multi-agency response.

### **1. The Inter-Agency Anti-Graft and Corruption Council**

The Inter-Agency Anti-Graft and Corruption Council (IAAGCC) is a voluntary alliance of government agencies aimed at preventing or eliminating graft and corruption in government services through strategic cooperation in the prevention, detection, investigation and prosecution of these cases. It was originally established in 1997 through a memorandum of agreement among the heads of the agencies that have been mandated to uphold integrity and accountability in the public service, namely the OMB, COA, CSC, NBI and the then Presidential Commission Against Graft and Corruption (PCAGC). The alliance mutually agreed to share information and closely coordinate with one another, to undertake inter-agency-skills-training programmes and to promote inter-agency conferences.

In 1998, the DOJ joined the IAAGCC, and in 1999, the President of the Republic officially recognized its establishment through Administrative Order No. 79. The Order likewise enjoined all government agencies to extend full support and assistance to IAAGCC in the implementation of its programmes and projects for which the President made available the amount of Five Million Pesos from the Social Fund of the Office of the President.

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<sup>32</sup> Prof. Leonor Magtolis Briones, "*Framework for a National Anti-Corruption Program*".

*(a) Guidelines of Cooperation*

Since several of the mandates and functions of IAAGCC member agencies overlap with one another, and may therefore result to potential areas of conflict and confusion, IAAGCC operations are governed by a Guidelines of Cooperation.

The IAAGCC's governance body is well-structured, *viz.* the IAAGCC itself, composed of the head of the member agencies; the Consultative Committee (CONSULCOM) which is composed of representatives of the member agencies and acts as an advisory body to the Council; the Secretariat which provides administrative support to both the IAAGCC and the CONSULCOM; an auditor from COA; a coordinator; an Operations Group, which is composed of a research team, task forces and the investigation and prosecution teams; and an Administrative Group. The "hosting" of IAAGCC rotates among the member agencies every two years, during which time period the host agency serves as chairman of both the IAAGCC and the CONSULCOM.

The Guidelines of Cooperation establishes a mechanism of cooperation through the establishment of an Inter-Agency Coordinating Center (IACC), coordinating and monitoring centres in each member agency (at the head office and in regional or local offices nationwide), and inter-agency task forces. Besides creating a clear organizational structure and prescribing a cooperation mechanism, the Guidelines categorically prescribe the scope of authority of each member agency in criminal cases, civil as well as administrative cases.

The IACC has the following functions:

- (i) serve as the central repository of all records/information of concerning inter-agency activities;
- (ii) coordinate with monitoring units of member-agencies;
- (iii) maintain files on the *modus operandi* in the commission of fraud related cases;
- (iv) maintain a computer database of case profiles and statistics;
- (v) disseminate information/instructions among member agencies;
- (vi) monitor the activities of the inter-agency task forces;
- (vii) maintain and compile all reference materials for use of member agencies;
- (viii) serve as a hotline centre;
- (ix) promote public awareness and involvement in inter-agency programmes against the incidence of graft and corruption by:
  - establishing hotlines in member agencies;
  - immediately responding to complaints;
  - assuring confidentiality of information;
  - disseminating information on causes and effects of graft and *modus operandi* in the commission of graft;
  - emphasizing the primary responsibility of agency head in the prevention and detection of graft and corruption; and
  - coordinating with the Philippine Information Agency and other public offices in disseminating information on the evils of graft and corruption.

The IACC, being equipped with the latest communication facilities in order to expedite actions on complaints and requests for information/statistics on graft cases, also facilitates the information exchange among the member agencies by keeping track of requests for

information and inquiries from one another, and monitoring response/reaction time of member agencies and reminding them to promptly address requests/inquiries.

This network between the IACC on one hand, and the coordinating and monitoring centres within each IAAGCC member agency on the other, facilitates the communication and information exchange among the member agencies and ensures that graft and corruption-related matters are acted upon efficiently.

IAAGCC, however, does not take on all graft and corruption cases. The CONSULCOM only certifies and refers to the task forces for investigation cases that meet the following criteria:

- (i) complex fraud-related government transactions with national impact;
- (ii) involving the amount of P50 million pesos or higher; and
- (iii) involving high-ranking public officials with the position of bureau director or higher.

*(b) IAAGCC's Gains*

Since its establishment in 1997, investigators, prosecutors, and other personnel from member-agencies have been jointly trained on fraud investigation, prevention, detection and prosecution of graft and corruption cases, and asset forfeiture. Furthermore, when the Philippine government was shaken by the Priority Development Assistance Fund<sup>33</sup> (PDAF) scam in 2013, the IAAGCC's cooperation mechanism was quickly activated with the creation of an inter-agency task force composed of investigators, technical experts and prosecutors from the OMB, DOJ and COA that was tasked to conduct a joint investigation into the misuse of the PDAF. The task force's collaborative work resulted in the filing of cases against several senators and members of the House of Representatives before the Sandiganbayan.

## V. CONCLUSION

The Philippine institutions involved in the investigation, prosecution and adjudication of graft and corruption cases may be lauded for their separate and individual drives not only to promote and strengthen integrity and independence within their ranks, but also to cleanse their organizations of misfits. For instance, it was seen above that most of these agencies have their respective codes of ethical standards. Most of them, too, have their own internal affairs unit/division/board and mechanism that serve as the first avenue for taking action against errant members of their organization. It will be noted as well that most of these disciplinary or internal affairs structures are collegial, which is an added measure to ensure the integrity of their decisions. Moreover, these institutions periodically intensify their anti-corruption programmes which trumpet earnest desires for a corrupt-free office.

With these measures in place, however, along with other corruption-prevention standards not mentioned but which are certainly present in these institutions, like the increased level of remuneration and additional benefits for government workers (law enforcement officials, investigators and prosecutors included), reward and promotion

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<sup>33</sup> These are discretionary funds available to members of Congress which aim to support small local infrastructure and other priority community projects which are not included in the national infrastructure programme involving massive and costly projects.

procedures, and continuing education and training, it cannot be denied that graft and corruption still disturb the country's criminal justice system. Perhaps a more focused, intense, sincere and sustained cleaning of the backyard is needed.