



UN CONVENTION  
AGAINST CORRUPTION  
CIVIL SOCIETY REVIEW:  
PHILIPPINES 2012

## Context and purpose

The UN Convention against Corruption (UNCAC) was adopted in 2003 and entered into force in December 2005. It is the first legally-binding anti-corruption agreement applicable on a global basis. To date, 160 states have become parties to the convention. States have committed to implement a wide and detailed range of anti-corruption measures that affect their laws, institutions and practices. These measures promote prevention, criminalisation and law enforcement, international cooperation, asset recovery, technical assistance and information exchange.

Concurrent with UNCAC's entry into force in 2005, a Conference of the States Parties to the Convention (CoSP) was established to review and facilitate required activities. In November 2009 the CoSP agreed on a review mechanism that was to be "transparent, efficient, non-intrusive, inclusive and impartial". It also agreed to two five-year review cycles, with the first on chapters III (Criminalisation and Law Enforcement) and IV (International Cooperation), and the second cycle on chapters II (Preventive Measures) and V (Asset Recovery). The mechanism included an Implementation Review Group, which met for the first time in June-July 2010 in Vienna and selected the order of countries to be reviewed in the first five-year cycle, including the 26 countries (originally 30) in the first year of review.

UNCAC Article 13 requires States Parties to take appropriate measures including "to promote the active participation of individuals and groups outside the public sector in the prevention of and the fight against corruption" and to strengthen that participation by measures such as "enhancing the transparency of and promoting the contribution of the public in decision-making processes and ensuring that the public has effective access to information; [and] respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption". Further articles call on each State Party to develop anti-corruption policies that promote the participation of society (Article 5); and to enhance transparency in their public administration (Article 10); Article 63 (4) (c) requires the CoSP to agree on procedures and methods of work, including cooperation with relevant non-governmental organisations.

In accordance with Resolution 3/1 on the review mechanism and the annex on terms of reference for the mechanism, all States Parties provide information to the CoSP secretariat on their compliance with the UNCAC, based upon a "comprehensive self-assessment checklist". In addition, States Parties participate in a review conducted by two other States Parties on their compliance with the convention. The reviewing States Parties then prepare a country review report, in close cooperation and coordination with the State Party under review, and finalise it upon agreement. The result is a full review report and an executive summary, the latter of which is required to be published. The secretariat, using the country review report, is then required to "compile the most common and relevant information on successes, good practices, challenges, observations and technical assistance needs contained in the technical review reports and include them, organised by theme, in a thematic implementation report and regional supplementary agenda for submission to the Implementation Review Group". The terms of reference call for governments to conduct broad consultation with stakeholders during preparation of the self-assessment and to facilitate engagement with stakeholders if a country visit is undertaken by the review team.

The inclusion of civil society in the UNCAC review process is of crucial importance for accountability and transparency, as well as for the credibility and effectiveness of the review process. Thus, civil society organisations around the world are actively seeking to contribute to this process in different ways. As part of a project on enhancing civil society's role in monitoring corruption, funded by the UN Democracy Fund (UNDEF), Transparency International (TI) has offered small grants for civil society organisations (CSOs) engaged in monitoring and advocating around the UNCAC review process. This aims to support the preparation of UNCAC implementation review reports by CSOs, for input into the review process.

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# Introduction

The Philippines signed the UN Convention against Corruption (UNCAC) on 9 December 2003 and ratified it three years later, on 8 November 2006.

At the forefront of the campaign for the ratification of the UNCAC were the Transparency and Accountability Network (TAN) and the Office of the Ombudsman (OMB) which worked in close partnership. The campaign achieved its goal just eight months after its launch in March 2006, thanks to strong support from civil society organisations (CSOs), high-profile champions at the Senate, and the backing of Dimitri Vlassis of the United Nations Office on Drugs and Crime (UNODC) who emphasised the crucial role of the UNCAC in the Philippines's fight against corruption.

This report reviews the Philippines's implementation and enforcement of selected articles in chapters III (Criminalisation and Law Enforcement) and IV (International Cooperation) of the UNCAC. It is intended as a contribution to the UNCAC peer review process covering those two chapters. The Philippines was selected by the UNCAC Implementation Review Group in July 2010 by a drawing of lots for review in the second year of the process. An earlier draft of this report was provided to the government of the Philippines.

**Scope.** The UNCAC articles that received particular attention in this report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), illicit enrichment (Article 20), money laundering (Article 23), liability of legal persons (Article 26), statute of limitations (Article 29), freezing, seizure and confiscation (Article 31), witness protection (Article 32), protection of reporting persons (Article 33), compensation for damages (Article 35), bank secrecy (Article 40), jurisdiction (Article 42) and mutual legal assistance (Article 46).

**Structure.** Section I of the report is an executive summary with condensed findings, conclusions and recommendations about the review process and the availability of information, as well as the implementation and enforcement of selected UNCAC articles. Section II covers in more detail the findings about the review process in the Philippines and issues of access to information. Section III reviews implementation and enforcement of the convention, including key issues related to the legal framework and to the enforcement system, with examples of good and bad practice. Section IV covers recent developments, and Section V elaborates on recommended priority actions.

**Methodology.** The report, produced with United Nations Democracy Fund (UNDEF) funding, was prepared by TAN, a coalition of multi-sectoral organisations, which seeks to contribute to the reduction of corruption in the Philippines. The group made efforts to obtain information for the report from government offices and to engage in dialogue with government officials. As part of this dialogue, a draft of the report was supplied to government officials.

The report was prepared using a questionnaire and report template designed by Transparency International (TI) for the use of CSOs. These tools reflected a simplified checklist from UNODC and called for relatively short assessments as compared with the detailed official checklist self-assessments. The questionnaire and report template asked a set of questions about the review process and, in the section on implementation and enforcement, asked for examples of good practices and areas in need of improvement in selected areas, namely with respect to UNCAC Articles 15, 16, 17, 20, 23, 26, 32, 33 and 46 (9) (b) and (c).

The report preparation process involved a number of steps, with respondents first filling out the simplified questionnaire and then preparing the draft report.

The draft report was shared with the government for comments before it was finalised. This final report will be used to continue the dialogue and engagement with the stakeholders, including the government, beyond the first cycle of the country review process.

In preparing this report, the authors took into account the recent review of the Philippines, carried out as part of the thematic review on the criminalisation of bribery, published in 2010 by the Asian Development Bank (ADB)/OECD Anti-Corruption Initiative for Asia and the Pacific.<sup>1</sup>

## I. Executive summary

The overall findings of this report indicate that the Philippines's legal and enforcement regime is only partially in compliance with the standards and principles of the UNCAC. While a couple of laws have been adopted to implement UNCAC, many areas still remain to be regulated in more detail. Enforcement of existing legislation is also insufficient.

### Assessment of the review process

#### Conduct of process

The following table provides an overall assessment of transparency, country visits and civil society participation in the UNCAC review of the Philippines.

**Table 1: Transparency and CSO participation in the review process**

Did the government make public the contact details of the country focal point?	No <sup>2</sup>
Was civil society consulted in the preparation of the self-assessment?	Partially
Was the self-assessment published online or provided to CSOs?	No
Did the government agree to a country visit?	Yes
Was a country visit undertaken?	No
Will civil society be invited to provide input to the official reviewers?	Yes
Has the government committed to publishing the full country report?	Unknown

The government has taken steps to reach out to civil society in the UNCAC review process. For example, civil society organisations were invited to recommend experts for a 15-person government experts panel for the UNCAC review process and two civil society experts that were recommended were included in the panel. On the other hand, there is a situation of flux concerning the focal point and it is currently unclear where that responsibility lies.

It is not yet known if the Bangladeshi and Egyptian reviewers will choose to make a country visit or will instead hold a teleconference.

#### Availability of information

TAN was able to access some responses and data for this report from government officials and offices but had a varied experience in getting information, especially in the case of agencies in the middle of a management change, such as the Ombudsman's office (OMB).<sup>3</sup> TAN approached government agencies that have jurisdiction over corruption cases and received positive responses from the Department of Justice (DOJ), the Anti-Money Laundering Council (AMLC), the Department of Finance – Revenue Integrity Protection Service (DOF-RIPS) and the *Sandiganbayan* a special court created by the Constitution (1973 and 1987) with jurisdiction over criminal and civil cases involving graft and corrupt practices, and other related offences committed by public officers and employees).

<sup>1</sup> The Criminalisation of Bribery in Asia and the Pacific. Framework and Practices in 28 Asian and Pacific jurisdictions - Thematic Review and Final Report, pp.417-432, <http://www.oecd.org/dataoecd/2/27/46485272.pdf>.

<sup>2</sup> The focal point was previously known to the authors of the report but appears to have shifted and is now unclear.

<sup>3</sup> The Office of the Ombudsman was led by Merceditas Gutierrez from December 2005 to May 2011, followed by Orlando Casimiro in an acting capacity for a period of three months (until July 2011). It is currently under the leadership of Conchita Carpio-Morales, a former Supreme Court Associate Justice ([www.ombudsman.gov.ph](http://www.ombudsman.gov.ph)).

The *Sandiganbayan* shared its entire database, allowing for better analysis. The DOJ case statistics are aggregated into broad categories (e.g. money laundering, graft and corruption cases). The AMLC data is focused on money-laundering cases. And DOF-RIPS shared data on illicit enrichment.

## Implementation and enforcement

There are a number of areas which show good practice and others showing deficiencies. Deficiencies were found in the implementation of Articles 20 (illicit enrichment) and 23 (laundering of proceeds of crime) of the UNCAC into Philippine law. Other areas of weakness include a lack of criminal liability of legal persons, lack of whistleblower protection legislation and lack of criminalisation of foreign bribery.

On the enforcement side, there have been visible weaknesses in the past three years resulting from poor leadership and limited resources. There is also a lack of coordination among the different government agencies charged with investigating and prosecuting corruption-related offences. This has also been observable between the investigation and prosecution units of the OMB, particularly under the leadership of the previous Ombudsman, Merceditas Gutierrez.

A further issue is that the AMLC, the lead government agency charged with the investigation of money-laundering crimes, has very limited powers to effectively investigate acts related to money laundering. The AMLC does not have the power to make bank inquiries *ex parte*. Further, it was stripped of the power to freeze assets when the law was amended in 2003. Such power was transferred to the Court of Appeals, which may compromise the highly confidential investigations done by the AMLC.

Other specific enforcement-related problems include (1) an insufficiently transparent and accountable appointments process for the Ombudsman; (2) a lack of training and skills among enforcement agencies; and (3) a lack of public information about how and where to report corrupt behaviours, as well as a lack of public trust in reporting systems.

Within the period 2008-2010, there were two recorded high-profile cases<sup>4</sup> that were poorly handled. One resulted in a dismissal and the other was controversially submitted for plea bargain, reducing the liability of the charged official. Both accused officials were closely linked to the government leadership. Several other high-profile cases were brought before the OMB but have not advanced to becoming official cases, allegedly because the then-Ombudsman sat on these cases.<sup>5</sup> These issues were included in the impeachment information filed against her in early 2011.<sup>6</sup>

## Recommendations for priority actions

1. Pass a law criminalising illicit enrichment
2. Adopt a whistleblower protection mechanism.
3. Criminalise foreign bribery.
4. Pass a law strengthening the investigative powers of the AMLC and of the OMB.
5. Pass the draft Freedom of Information Law.
6. Reform the process of appointing heads of anti-corruption agencies to make it more transparent and accountable.

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<sup>4</sup> High-profile cases here are taken to mean those that involved high-ranking officials or national government-level 'scandals.'

<sup>5</sup> House of Representatives Resolution impeaching ombudsman Ma. Merceditas Navarro-Gutierrez for betrayal of public trust, House Resolution No. 1089 (<http://www.gov.ph/downloads/2011/03mar/House-Resolution-1089.pdf>)

<sup>6</sup> *Ibid.*

## II. Assessment of the review process for the Philippines

### A. Conduct of process

The UNCAC pilot review conducted in the Philippines in 2007 only included pre-selected civil society groups.<sup>7</sup> TAN, despite being a lead anti-corruption network of civil society organisations in the Philippines, was not included or consulted.

However, during the review conducted for the first cycle of the UNCAC review process the government has taken steps to reach out to civil society. TAN was consulted in the formulation of the criteria used to select a 15-person government experts panel<sup>8</sup> and civil society groups were invited to recommend experts. Two members of the review team were nominees of TAN, namely: Dr. Segundo Romero and Dr. Francisco Magno. On the other hand, there is a situation of flux concerning the focal point and it is currently unclear where that responsibility lies.

Dr. Segundo Romero and Dr. Francisco Magno reported that, as of June 2012, the review process is still ongoing. The draft self-assessment was being circulated for comments and inputs to all governmental experts and other pertinent government agencies.<sup>9</sup> The Ombudsman secretariat indicated that he submitted a draft self-assessment to UNODC in March 2012.

The Philippines government has indicated its willingness to receive a country visit by the review team. It is not yet known if the Bangladeshi and Egyptian reviewers will choose to make a country visit or will instead hold a teleconference.

### B. Availability of information

The 1987 Philippine Constitution provides for the people's right to information. Sadly, 24 years later, no law has been passed to strengthen the implementation of this constitutional guarantee. In effect, there is varied interpretation by government officials of what constitutes a public record, and uneven public experience in accessing public information. Different agency regulations on access to information often result in the denial, rather than recognition of, the right.

In many cases, government varies its policy on access to information. In the previous government of Gloria Macapagal-Arroyo, with the backdrop of a dissatisfied and suspicious public, information was difficult to access. On the other hand, with the Aquino administration having a record-high public trust rating, the experience of public access to information has been better thus far.

In getting information for this report, there has been varied experience, especially in the case of agencies in the middle of a management change, such as the OMB. Former head Mercedes Gutierrez had just resigned and been replaced by a retired Supreme Court justice, Conchita Carpio Morales.

To prepare this report, TAN sent out official letters of request to the OMB, the Office of the Special Prosecutor (OSP), the DFA, the DOJ, the *Sandiganbayan*, the DOF-RIPS, and other non-government key respondents.

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<sup>7</sup> Groups consulted by the government for the self-assessment were: Evelio B. Javier Foundation, Inc., Council for Restoration of Filipino Values, Philippine Association of Professional Regulatory Boards, Philippine Long Distance Telecommunications, University of the Philippines – National College of Public Administration and Governance (source: Gutierrez, M. (2009) "Philippine Experience on UNCAC" presented during the ADB-OECD 14th Steering Group Meeting and Regional Seminar on Political Economy Corruption).

<sup>8</sup> [www.ombudsman.gov.ph/docs/references/uncac.pdf](http://www.ombudsman.gov.ph/docs/references/uncac.pdf)

<sup>9</sup> Phone interview of Segundo Romero and Francisco Magno by MFM Cerna. Phone interview. Quezon City, Philippines. 6 June 2012.

All information requests were made without the benefit of access to information legislation that would clearly prescribe uniform procedures by which information is to be released to the public. There is, however, an existing constitutional guarantee of the public's right to information. Although the government has not historically been very open to giving public access to information in its custody, the new leadership (President Benigno S. Aquino III) has inspired a new environment of government openness, which has largely resulted in TAN having relatively good access to the information required for this report.

The *Sandiganbayan* shared its entire database, allowing for better analysis. The DOJ case statistics are aggregated into broad categories (e.g. money laundering, graft and corruption cases). The AMLC data is focused on money-laundering cases. And DOF-RIPS shared data on illicit enrichment.

Other insights included in this report come from media articles, key respondents and TAN reports.

### III. Implementation and enforcement of the UNCAC

#### A. Key issues related to the legal framework

This section covers the Philippines's compliance with the provisions of UNCAC chapter III on Criminalisation and Enforcement, and chapter IV on International Cooperation.

##### 1. Areas showing good practice

**UNCAC Articles 15: Bribery of national public officials.** Direct and indirect bribery are punishable under Articles 210 and 211 of the Revised Penal Code as well as Section 3b and 3c of Republic Act 3019.

**UNCAC Article 17: Embezzlement, misappropriation or other diversion of property by a public official.** Malversation is punishable under Article 117 of the Revised Penal Code.

**UNCAC Article 32: Protection of witnesses, experts and victims.** Republic Act 6981 established the witness protection programme, which operates under the authority of the DOJ.

##### 2. Areas with deficiencies

**UNCAC Article 16: Bribery of foreign public officials.** Bribery of foreign public officials is not implemented.

**UNCAC Article 20: Illicit enrichment.** Republic Act 1379 (Forfeiture of Unlawfully Acquired Wealth, promulgated on 18 June 1955) provides for the forfeiture of ill-gotten wealth. However, illicit enrichment is not a criminal offence. The liability of the erring public official is merely civil and administrative. This is the same treatment under Republic Act 3019 (Anti-Graft and Corrupt Practices Act, promulgated on 17 August 1960). Unexplained wealth is merely punished by permanent removal from public office.

**UNCAC Article 23: Laundering of proceeds of a crime.** This is implemented in the Philippines through the Anti-Money Laundering Act under Republic Act 9160 (promulgated in 2001) and Republic Act 9194 (amendment of the law in 2003). The deficiencies of the law are as follows:

- The law includes a narrow list of corruption-related predicate offences.
- The definition of money laundering is limited to the transaction of criminal proceeds. It does not include possession, use, transfer, acquisition, concealment, conversion and disguise of the proceeds.
- When the law was amended in 2003, the power to freeze assets was removed from the AMLC. Under the amended law, the Court of Appeals has the power to order to freeze



assets. The steps leading to a court issuance of the order to freeze will allow many people to see the request, which may compromise the highly confidential nature of the investigation.

**UNCAC Article 26: Liability of legal persons.** Although legal persons incur civil and administrative liabilities, they have no criminal liability. A law imposing criminal liability upon legal persons should be passed.

**UNCAC Article 33: Protection of reporting persons.** The Philippines does not have a whistleblower protection law.

**UNCAC Article 46 (9) (b) and (c): Mutual legal assistance.** Dual criminality is a requirement under the law. A law should be enacted on mutual legal assistance that dispenses with this requirement.

## B. Key issues related to enforcement

This section attempts to evaluate the enforcement of UNCAC-related offences in the Philippines. It provides an overview of the enforcement mechanisms in place, and analyses the statistical data provided by governmental institutions.

### 1. Statistics

There is no single database of corruption cases. Corruption is tried in both regular courts and in the *Sandiganbayan*. Statistics on the cases can be found from the originator of the case (the different government agencies that investigate and prosecute the cases) and the courts (regular courts and *Sandiganbayan*).

For this report, information was requested from the *Sandiganbayan*, AMLC, DOJ, OMB, and DOF-RIPS. Data gathered from these agencies are shown below:

**Table 2: Criminal cases statistics (2008-2010)<sup>10</sup>**

	Prosecutions	Convictions	Settlements	Acquittals	Dismissal	Pending cases
Bribery of foreign public officials (Article 16)	N/A <sup>11</sup>	N/A	N/A	N/A	N/A	N/A
Bribery of national public officials (Article 15)	20	0	0	1	4	15
Embezzlement, misappropriation or other diversion of property by a public official (Article 17)	175	4	3	0	9	157
Illicit enrichment (Article 20)	N/A <sup>12</sup>	N/A	N/A	N/A	N/A	N/A
Money laundering linked to corruption (Article 23)	2	0	0	0	0	2

<sup>10</sup> Data from *Sandiganbayan* and the OMB.

<sup>11</sup> Foreign bribery is not criminalised in the Philippines

<sup>12</sup> Illicit enrichment is not criminalised in the Philippines

Tables 3, 4 and 5 below show that of the 12 cases decided by the *Sandiganbayan*, only two (i.e. 17%) have resulted in convictions. The rest were either acquittals (1 case) or dismissals (9 cases). A mere 13% (12 out of 95) of the total cases brought before the *Sandiganbayan* in the last three years had been concluded.

**Table 3: Bribery of national public officials (2008-2010)**

Body	Prosecution	Conviction	Settlement	Acquittal	Dismissal	Pending
<i>Sandiganbayan</i>	7	0	0	1	2	4
OMB <sup>13</sup>	13 <sup>14</sup>	0	0	0	2	11
Total	20	0	0	1	4	15

**Table 4: Embezzlement, misappropriation or other diversion by a public official, or malversation (2008-2010)**

Body	Prosecution	Conviction	Settlement	Acquittal	Dismissal	Withdrawn	Pending
<i>Sandiganbayan</i>	87	2	0	0	7		78
OMB	88	2	3	0	3	1	79
Total	175	4	3	0	9		157

**Tables 5 and 6: Money laundering (2008-2010)**

Body	Prosecution	Conviction	Settlement	Acquittal	Dismissal	Pending
<i>Sandiganbayan</i>	1	0	0	0	0	1 <sup>15</sup>
OMB	1	0	0	0	0	1
Total	2	0	0	0	0	2

Body	Total # of investigations	Resolved <sup>16</sup>	Pending
DOJ	36	13	23

**Table 7: Plunder (2008-2010)**

Body	Prosecution	Conviction	Settlement	Acquittal	Dismissal	Pending
OMB	1	0	0	0	0	1

**Tables 8 and 9: Illicit enrichment (2008-2010)<sup>17</sup>**

Body	Civil Prosecution	Conviction	Settlement	Acquittal	Dismissal	Withdrawn	Pending
OMB	4	0	0	0	1	1	2

Body	# of charged <sup>18</sup> personnel	# of dismissed <sup>19</sup> personnel	# of personnel with pending cases
DOF-RIPS	34	28	24

<sup>13</sup> The statistics cover the period 2008-2010 – those filed from 2008 and subsequently acted or not acted on within the defined period. The Ombudsman notes (27 March 2012) that the average life span of a case in the Philippines is seven years.

<sup>14</sup> Most are passive bribery cases.

<sup>15</sup> The money laundering case against Major General Carlos Garcia was submitted for plea bargain (The Philippines Star, "Sandigan approves Garcia plea bargain", 9 May 2009, [www.philstar.com/Article.aspx?publicationSubCategoryId=63&articleId=684413](http://www.philstar.com/Article.aspx?publicationSubCategoryId=63&articleId=684413), accessed on 20 February 2012).

<sup>16</sup> Investigations closed (the DOJ reached a decision to prosecute or not prosecute)

<sup>17</sup> Tables 9 and 10 refer to administrative and civil cases

<sup>18</sup> These are cases filed with the Office of the Ombudsman.

<sup>19</sup> These include suspension orders as a penalty and preventive suspension as ordered by the OMB or the courts.

**Tables 11 and 12: Other corruption-related offences (2008-2010)<sup>20</sup>**

Government agency	Prosecution	Conviction	Settlement	Acquittal	Dismissal	Withdrawn	Pending
OMB	287	0	1	1	14	18	253

Body	Cases handled	Resolved	Pending
DOJ	324	194	130

## 2. High-profile cases

For the past three years, a few high-profile cases<sup>21</sup> were recorded.

**Bribery case vs. Hernando Perez (DOJ Secretary).** Former Manila congressman Mark Jimenez reportedly alleged that former justice secretary Hernando Perez demanded from him US\$2 million in 2001 in exchange for protective custody under the Witness Protection Program (WPP) and his testifying against former President Joseph Estrada in a plunder case. Reportedly, the case was filed by Ombudsman Merceditas Gutierrez with the *Sandiganbayan* on 18 April 2008 and was on 13 November 2008. It should be noted that Perez was Gutierrez's former superior at the DOJ.<sup>22</sup> According to a news report, the *Sandiganbayan* dismissed the bribery case because of a technical lapse attributable to the OMB.<sup>23</sup>

**Money-laundering case vs. Carlos Garcia (Armed Forces of the Philippines Major General).** According to news reports, a money-laundering case against Philippines Armed Forces Major General Carlos Garcia was filed on 11 December 2009.<sup>24</sup> The case was later amended to include charges of plunder, but the charges were reduced through a plea bargain agreement in late 2010. Oddly, the OMB was the agency which initiated the plea negotiation with Garcia despite reported strong evidence. The agreement, if executed, will allow Garcia to return about half of the alleged ill-gotten assets and a reduced time in jail. On 19 May 2011 the *Sandiganbayan* reportedly upheld the plea bargain agreement, whereby Garcia had agreed to return PHP 135 million (US \$ 2,48 million) of the PHP 303 million (US \$ 5,58 million) he allegedly plundered.<sup>25</sup> In December 2011, Ombudsman Conchita Carpio Morales submitted a position paper to the *Sandiganbayan* for a recall of the controversial plea bargain agreement.<sup>26</sup> The *Sandiganbayan* has not responded on the issue as of date of writing.<sup>27</sup>

The other high-profile cases that did not reach the courts during the leadership of Ombudsman Gutierrez are as follows (short titles used):

<sup>20</sup> This includes administrative cases such as dishonesty, which are offenses under the Anti-Graft and Corrupt Practices Act (R.A. 3019) and Code of Conduct and Ethical Standards for Public Officials and Employees (R.A. 6713)

<sup>21</sup> Cases are considered high-profile by the authors of this report if they received media attention, or if they involved significant amounts of money or high-ranking public officers.

<sup>22</sup> TAN, "Corruption and Anti-corruption in the Philippines", March 2011 ([www.scribd.com/doc/51272375/TAN-Paper-on-Corruption-and-Anticorruption-in-the-Philippines-March-2011](http://www.scribd.com/doc/51272375/TAN-Paper-on-Corruption-and-Anticorruption-in-the-Philippines-March-2011)); The Philippines Star, "Sandiganbayan affirms Nani Aquital", 24 June 2009 ([www.philstar.com/Article.aspx?articleId=480480&publicationSubCategoryId=63](http://www.philstar.com/Article.aspx?articleId=480480&publicationSubCategoryId=63), accessed on 31 August 312011); TAN, "The Office of the Ombudsman: Is there Institutional Weakness?", January 2009 ([http://hdn.org.ph/wp-content/uploads/2009/05/tin02\\_tan.pdf](http://hdn.org.ph/wp-content/uploads/2009/05/tin02_tan.pdf)).

<sup>23</sup> Inquirer Global Nation, "Sandiganbayan justices face raps over plea bargain deal ruling", 18 May 2011 (<http://globalnation.inquirer.net/columns/columns/view/20110518-337196/Sandiganbayan-justices-face-raps-over-plea-bargain-deal-ruling>); GMA News, "Philippine: New Ombudsman personally reviews Garcia plea bargain", 16 August 2011 ([http://www.antimoneylaundering.us/news\\_det.php?id=2308&area=News&gratis=Sj](http://www.antimoneylaundering.us/news_det.php?id=2308&area=News&gratis=Sj), accessed on 31 August 2011).

<sup>24</sup> ABS-CBNnews.com, "Carlos Garcia expelled from PMA Alumni Association", 8 February 2012 ([www.abs-cbnnews.com/nation/02/08/12/carlos-garcia-expelled-pma-alumni-association](http://www.abs-cbnnews.com/nation/02/08/12/carlos-garcia-expelled-pma-alumni-association) accessed on 24 April 2012); Inquirer News, "Ex-military comptroller in plunder now lay minister in prison", 30 December 2011 (<http://newsinfo.inquirer.net/119581/ex-military-comptroller-in-plunder-rap-now-a-lay-minister-in-prison>, accessed on 24 April 2012).

<sup>25</sup> ABS-CBNnews.com, "Carlos Garcia expelled from PMA Alumni Association", 8 February 2012, *op. cit.*

<sup>26</sup> Inquirer News, "Ex-military comptroller in plunder now lay minister in prison", 30 December 2011, *op. cit.*

<sup>27</sup> Last updated on 24 April 2012.

**Fertiliser Fund Issue.** Top officials at the Department of Agriculture in collaboration with many other local officials allegedly misappropriated some US \$17 million (P728 million) farm input funds, according to an audit report. Gutierrez did not file charges against any of the top officials, despite findings and recommendations from the Commission on Audit.<sup>28</sup>

**Euro-Generals Case.** Top police officer Eliseo dela Paz was reportedly found carrying undeclared currency amounting to US \$136,000 at the Moscow International Airport. The Bureau of Customs, Philippines National Police and the Senate reportedly recommended the filing of graft, malversation of public funds and money-laundering charges against dela Paz.<sup>29</sup> Up until Gutierrez's resignation, there were no charges brought before the *Sandiganbayan* against dela Paz. In January 2012, under the leadership of Ombudsman Carpio Morales, the anti-graft agency reportedly ordered filing of charges against dela Paz and his wife.<sup>30</sup>

**COMELEC-Megapacific Case.** Top officials of the Commission on Elections (COMELEC) allegedly wrongly awarded an automated election project to a disqualified consortium.<sup>31</sup> An initial resolution of the case issued by Ombudsman Gutierrez recommended the filing of charges against top COMELEC officials and private respondents. Three months later, after calling for additional hearings, she reportedly reversed her decision and exonerated all respondents. Prior to the Ombudsman resolutions on the case, the Supreme Court on the other hand found the contract null and void and ordered the Ombudsman to determine the liability of respondents.<sup>32</sup> Gutierrez stuck by the finding of "no probable cause" and found no-one liable for the crime.

### 3. Areas with deficiencies

A number of areas with deficiencies were identified during the preparation of the report.

**Lack of priority given to corruption cases in law enforcement.** In the past three years, no high-profile cases were successfully prosecuted. The records show a low conviction rate (only 2 out of 12 cases, or 17%, were acted on). Again, the political context is worth mentioning.

There were a number of corruption-related controversies during the previous government of Gloria Macapagal-Arroyo. Ombudsman Merceditas Gutierrez, allegedly close to the First Family<sup>33</sup>, has reportedly sat on cases directly or indirectly involving the president and close allies<sup>34</sup>. The House of Representatives voted to impeach her and sent the committee report as the Articles of Impeachment to the Senate.<sup>35</sup> Gutierrez resigned before she could face trial in front of the Senate sitting as an impeachment court.<sup>36</sup>

**Lack of independence of investigators, prosecution or judiciary.** All anti-corruption enforcement agencies, except for the OMB, are part of the executive branch and therefore under presidential control. The OMB is constitutionally independent, but the Ombudsman is appointed by the President and has a fixed term of seven years.<sup>37</sup> Learning from the experience of the previous Ombudsman there is a need to closely watch the appointments process to ensure that the process is transparent and accountable and that the president appoints someone who is (and is perceived to be) independent.<sup>38</sup> The impeachment articles brought against former Ombudsman Merceditas

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<sup>28</sup> TAN (2011), *op. cit.*; House of Representative Resolution impeaching ombudsman Ma. Merceditas Navarro-Gutierrez for betrayal of public trust, *op. cit.*

<sup>29</sup> T. Cerna, "The Nagging Issue of the Comelec MegaPacific Case" in TAN Annual Report 2006, (Quezon City, Kayumanggi Press, 2007); Labog-Javellana, J. (2008) "Senate report: Euro generals 'guilty' Graft, money laundering cited".

<sup>30</sup> The Philippines Star, "Euro generals probe to include Dela Paz's millionaire friend", 7 January 2012 ([www.philstar.com/Article.aspx?articleId=765531](http://www.philstar.com/Article.aspx?articleId=765531), accessed on 20 February 2012).

<sup>31</sup> *Ibid.*

<sup>32</sup> T. Cerna (2007), *op. cit.*

<sup>33</sup> House of Representative Resolution impeaching ombudsman Ma. Merceditas Navarro-Gutierrez for betrayal of public trust, *op. cit.*

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> TAN (2011), *op. cit.*

<sup>37</sup> 1987 Philippine Constitution (Article 7).

<sup>38</sup> *Ibid.*; Rose-Ackerman, et al (2011) "Hyper-Presidentialism: Separation of Powers without Checks and Balances in Argentina and the Philippines," Berkeley Journal of International Law Volume 29, 1 pp. 246-333.

Gutierrez included allegations of “gross incompetence” as well as close relations to the Presidential family.<sup>39</sup>

**Lack of coordination between investigation and prosecution.** The authors of the report observed that there is a lack of coordination among government agencies charged with investigating and prosecuting corruption-related offences.

During Marcelo’s time, recognising the need for closer coordination between the OMB, the Commission on Audit and the Civil Service Commission, a so-called “Solana Covenant” was set up. The three oversight bodies regularly met and coordinated processes towards the improvement of anti-corruption efforts.<sup>40</sup> When Gutierrez became Ombudsman, however, the covenant was reportedly shelved and the three oversight bodies rarely met.<sup>41</sup>

**Lack of skills and training to investigate corruption cases; inadequate resources.** There were a series of trainings for OMB personnel during Marcelo’s time. This was not sufficient, however, to improve the OMB’s investigation and prosecutorial capacity given its limited resources, powers and most importantly, the apparent lack of political will on the part of leadership during the time of Gutierrez. The long-running problem of resource constraints has also impacted on the government’s ability to recruit in accordance with its human resources plans, and also results in poor quality of public service<sup>42</sup>.

While lack of training and experience due to low resources may play a part in poor enforcement of anti-corruption laws, this is probably not as significant as the lack of an effective investigation strategy to expose corruption activities. Currently, the strategy relies heavily on complainants and direct witnesses who often have weak documentary evidence to support the case.<sup>43</sup>

**Lack of public-awareness of reporting channels.** Public information on how and where to report corrupt behaviours is seriously lacking. There is also a perceived lack of trust in the system. These factors hinder the cooperation of the public in anti-corruption efforts, which is why the public usually addresses the media, and not the government offices, to report abuses.

Another problem is that anti-corruption agencies are not physically accessible to the public. Most are centrally located and do not have local counterparts.

In addition, the burden is often put on the complaining party. The citizen is treated as and becomes “the complainant”, who then has to actively pursue the case. Ideally, the complaining party should be a source of initial information that should then trigger a comprehensive government investigation.<sup>44</sup>

## IV. Recent developments

The change in government and the appointment of a new Ombudsman has created new opportunities for progress in the fight against corruption in the Philippines, specifically with regard to the implementation of the UNCAC.

During his short tenure as Acting Ombudsman, Orlando Casimiro reversed the policy of former Ombudsman Gutierrez to centralise powers and decisions, which had resulted in a slow-down of processes at the OMB.<sup>45</sup> The appointment of the new Ombudsman, Conchita Carpio Morales, who arrives in her new office with a reputation of independence, brings in renewed trust in the OMB from various groups. Civil society groups, including TAN, are re-establishing ties with the Ombudsman

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<sup>39</sup> House of Representative Resolution impeaching ombudsman Ma. Merceditas Navarro-Gutierrez for betrayal of public trust, *op. cit.*

<sup>40</sup> TAN (2009), *op. cit.*

<sup>41</sup> *Ibid.*

<sup>42</sup> Manuel, Marlon. Interview by MFM Cerna. Unadministered questionnaire. Quezon City, Philippines. 7 September 2011.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> TAN (2009), *op. cit.*

under the new leadership. Carpio Morales is now reviewing past actions of former Ombudsman Gutierrez, for example the controversial plea bargain agreement with Major General Carlos Garcia.

Thus far, the legislative framework upon which the UNCAC is implemented in the country has not significantly changed since the ratification of the convention by the Philippines in 2006. There are currently many bills pending at the legislature that could lend support to the effective implementation of UNCAC, including on freedom of information, whistleblower protection, and criminalisation of illicit enrichment.

## **V. Recommendations for priority actions**

### **A. Recommendations regarding legislation**

1. Criminalise foreign bribery. Pass legislation similar to that in the US and Canada, and relating closely to the OECD Convention on Combating Bribery of Foreign Public Officials.
2. Pass a law criminalising illicit enrichment to fully implement UNCAC Article 20.
3. Expand corruption-related predicate offences. Expand the definition of money laundering to include not only the transaction of criminal proceeds but also the possession, use, transfer, acquisition, concealment, conversion and disguise of the proceeds.
4. Pass a Freedom of Information bill.
5. Adopt a whistleblower protection mechanism.

### **B. Recommendations regarding enforcement**

1. Improve inter-agency coordination and ensure it is not limited to anti-corruption agencies, but involves the entire bureaucracy primarily for information-sharing purposes to bolster investigation and prosecution of corruption.
2. Develop an investigation strategy by anti-corruption enforcement agencies that will effectively expose corruption and connivance schemes of erring government officials and private individuals or groups. There should be a paradigm shift in the government's handling of complaints. Move the burden to pursue the case from the citizen-complainant back to government.
3. Increase funding for witness protection programmes. Set up a witness protection programme for the OMB.
4. Strengthen civil society and public engagement with government.
5. Reform the process of appointing heads of anti-corruption agencies to make it more transparent and accountable.
6. Strengthen the AMLC by returning its power to freeze assets, increasing its budget, and giving it the power to conduct bank inquiry ex parte

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