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**Statement submitted by the Transparency and Accountability  
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\* CAC/COSP/IRG/2012/1.



# Philippines – Civil Society Report

## By Transparency and Accountability Network

### An input to the UNCAC Implementation Review Mechanism: Second year of review of UNCAC chapters III and IV

#### *-Executive Summary-*

This is the executive summary of a Transparency and Accountability Network (TAN) report<sup>1</sup> that reviews the Philippines' implementation and enforcement of selected articles in the UN Convention against Corruption (UNCAC) Chapters III (Criminalization and Law Enforcement) and IV (International Cooperation). The report is intended as a contribution to the UNCAC peer review process of the Philippines covering those two chapters.

The UNCAC articles that receive particular attention in the report are those covering bribery (Article 15), foreign bribery (Article 16), embezzlement (Article 17), money laundering (Article 23), liability of legal persons (Article 26), witness protection (Article 32), whistleblower protection (Article 33), and mutual legal assistance (Article 46).

In preparing this report, the authors took into account the 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>2</sup>

## I. Executive summary

The overall findings of this report indicate that the Philippines's 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*
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 focal point was previously known to the authors of the report but appears to have shifted and is now unclear.

<sup>1</sup> The full report is available at <http://www.uncaccoalition.org/en/uncac-review/cso-review-reports.html>. Its authors are Toix Cerna and Vincent Lazatin. The final report will be used for continuing the dialogue and engagement with the stakeholders including the government beyond the first round country review process.

<sup>2</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>.

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).

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 in 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. These issues were included in the impeachment information filed against her in early 2011.

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<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)).

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

## Recommendations for priority actions

### 1. Recommendations regarding legislation

1. Pass a law criminalising illicit enrichment to fully implement UNCAC Article 20.
2. Adopt a whistleblower protection mechanism.
3. 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.
4. 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.
5. Pass a law strengthening the investigative powers of the AMLC and of the OMB.
6. In terms of an expanded and strengthened civil society/public engagement with government and governance, 1) adopt an open partnership policy that does not limit government partnership to selected civil society groups; and 2) pass the draft Freedom of Information Law.

### 2. 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