UNODC
United Nations Office on Drugs and Crime

PILOT REVIEW PROGRAMME: THE PHILIPPINES

Review of the Implementation of Articles 5, 15, 16, 17, 25, 46 paragraphs 9 and 13, 52 and 53 of the United Nations Convention against Corruption

Reviewing Countries:
Fiji and Peru

A. Introduction

[Note to expert reviewers: This report attempts to include all findings from the SA checklist.]

Article 63 of the United Nations Convention against Corruption (UNCAC) establishes a Conference of the States Parties with a mandate to, *inter alia*, promote and review the implementation of the Convention. In accordance with article 63 paragraph 7, the Conference shall establish, if it deems necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.

At its first session, held in Jordan in December 2006, the Conference of the States Parties agreed that it was necessary to establish an appropriate and effective mechanism to assist in the review of the implementation of the Convention (resolution 1/1). The Conference established an open-ended intergovernmental expert group to make recommendations to the Conference on the appropriate mechanism, which should allow the Conference to discharge fully and efficiently its mandates, in particular with respect to taking stock of States' efforts to implement the Convention. The Conference also requested the Secretariat to assist parties in their efforts to collect and provide information on their self-assessment and their analysis of implementation efforts and to report on those efforts to the Conference. In addition, several countries already during the session of the Conference expressed their readiness to support on an interim basis a review mechanism which would combine the self-assessment component with a review process supported by the Secretariat.

The "Pilot Review Programme", of which this report forms part of, was established to offer adequate opportunity to test possible means for implementation review of the Convention, with the overall objective to evaluate efficiency and effectiveness of the tested mechanism(s) and to provide to the Conference of the States Parties information on lessons learnt and experience acquired, thus enabling the Conference to make informed decisions on the establishment of the appropriate mechanism for reviewing the implementation of the Convention. The Pilot Programme is an interim measure to help fine-tune the course of action. It is strictly voluntary and limited in scope and time.

The methodology used under the Pilot Review Programme was to conduct a limited review of the implementation of UNCAC in the participating countries using a combined self-assessment / group / expert review method as possible mechanism(s) for reviewing the implementation of the Convention. Throughout the review process, members of the Group engage with the individual country in an active dialogue, discussing preliminary findings and requesting additional information. Where requested, country visits are conducted to assist in undertaking the self-assessments and/or preparing the recommendations. The teams conducting the country visits will be composed of experts from two prior agreed upon countries from the Group and a member of the Secretariat.

The scope of review is Articles: 5 (preventive anti-corruption policies and practices); 15 (bribery of national public officials); 16 (bribery of foreign public officials and officials of public international organizations); 17 (embezzlement, misappropriation or other diversion of property by a public official); 25 (obstruction of justice); 46 (mutual legal assistance), particularly paragraphs 13 and 9; 52 (prevention and detection of transfers of proceeds of crime) and 53 (measures for direct recovery of property).

B. Process

The following review of the Philippines' implementation of the UNCAC is based on the self assessment report received from the Philippines on 5 December 2007 and updated on 7 July 2009, and the outcome of the active dialogue between the experts from Fiji and Peru.

C. Executive summary

The Philippines has adopted measures with the view to attaining continued compliance with UNCAC Article 5 (preventive anti-corruption policies and practices). The Philippines has also adopted most of the measures required in accordance with UNCAC Articles 15 (bribery of national public officials), 17 (embezzlement, misappropriation or other diversion of property by a public official), 25 (obstruction of justice), 46 (mutual legal assistance), particularly paragraph 9, and 52 (prevention and detection of transfers of proceeds of crime). The Philippines has adopted the measures required in accordance with the provisions of UNCAC Article 46 (mutual legal assistance), particularly paragraph 13.

The Philippines has adopted some of the measures required in accordance with UNCAC Article 53 (measures for direct recovery of property), and the Philippines has not adopted the measures required in accordance with UNCAC Article 16 (bribery of foreign public officials and officials of public international organizations).

D. Implementation of the United Nations Convention against Corruption

1. Ratification of the Convention

The Convention was signed by the Philippines on 9 December 2003 (UN Doc. No. C.N.1403.2003. TREATIES-18). It was subsequently ratified on 8 November 2006 (UN Doc. No. C.N.1022.2006. TREATIES-42).

2. The Philippine legal system

The legal system of the Philippines is a combination of civil law and common law. The first Philippines Constitution was adopted in 1935, and the present Constitution dates from 1987. Article II, section 27 of the 1987 Constitution of the Republic of the Philippines provides that: "The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption". Additionally, section 28 foresees: "Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest".

Article VI of the 1987 Constitution refers to the legislative branch, and in particular, section 1 states that "The legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives, except to the extent reserved to the people by the provision on initiative and referendum". Article VII refers to the executive department, and of particular interest is section 1 which provides that "The executive power shall be vested in the President of the Philippines". Additionally, section 21 claims that "No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate". Under Article VIII on the judicial department, section 1 provides that "The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law". The Philippine judicial system is composed of the Supreme Court, the Court of Appeals, the regional trial courts, the Court of Tax Appeals, and the metropolitan and municipal trial courts.

Under the 1987 Constitution, there are three (3) independent bodies or commissions charged with enforcing the accountability of public officials and employees. They are the Office of the Ombudsman, Civil Service Commission and Commission on Audit.

Sec. 5, Art. X1, of the 1987 Constitution provides for the creation of an independent Office of the Ombudsman, composed of the Ombudsman, one overall Deputy and at least one Deputy for each of the main groups of islands – Luzon, Visayas and Mindanao. "A separate Deputy for the military establishment may likewise be appointed." Sec. 9 of the same article states that "the Ombudsman and his deputies shall be appointed by the President from a list of at least six nominees prepared by the Judicial and Bar Council and from a list of three nominees for every vacancy thereafter." Sec. 10 provides for a seven-year term without reappointment for the Ombudsman and his Deputies. Likewise, "they shall not be qualified to run for any office in the

election immediately succeeding their cessation from office." Sec. 12 mandates the Office of the Ombudsman, as protectors of the people, to act promptly on complaints filed in any form or manner against public officials and employees. Also, Sec. 13 enumerates its powers covering investigation and prosecution, administrative discipline, expediting performance of acts or duties required by law and determining "causes of inefficiency, red tape, mismanagement, fraud and corruption in Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency." Republic Act No. 6770, or the Ombudsman Act of 1989, further defines its powers and outlines the structure of the Office of the Ombudsman.

Sec. 1, Art. IX-A, 1987 Constitution provides for the creation of independent Constitutional Commissions, amongst which are the Civil Service Commission (CSC) and the Commission on Audit (COA).

Sec. 2, Art. IX-B, 1987 Constitution provides that the CSC shall be headed by a Chairman and assisted by two Commissioners, all of which are "appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment." Sec. 3 thereof states "the civil service covers all branches, subdivisions, instrumentalities and agencies of the Government, including government-owned or controlled corporations with original charters." Executive Order No. 292, or the Administrative Code of 1987, defines the powers of the CSC. Sec. 12, Ch. 3, provides among others, the power to "appoint and discipline its officials and employees...*xxx*... render opinion and rulings on all personnel and other Civil Service matters which shall be binding on all heads of departments, offices and agencies...*xxx*, and hear and decide administrative cases instituted by or brought before it directly or on appeal...*xxx*...Its decisions, orders or rulings shall be final and executory."

Sec. 2, Art IX-D of the 1987 Constitution provides that COA shall have the "power, authority and duty to examine, audit and settle all accounts pertaining to the revenue and receipts of, and expenditures and uses of funds and property, owned or held in trust by, or pertaining to the Government...*xxx*...the Commission may adopt such measures, including temporary or special audit...*xxx*...The Commission shall have exclusive authority...xxx...to define the scope of audit and examination...*xxx*...and promulgate accounting and auditing rules and regulations..." Sec. 3 thereof also states that "No law shall be passed exempting any entity of the Government or its subsidiary in any guise whatever, or any investment of public funds, from the jurisdiction of the Commission on Audit."

Executive Order No. 1, issued on February 28, 1986, provided for the creation of the Presidential Commission on Good Government (PCGG), whose mandate is primarily to recover ill-gotten assets of former President Ferdinand Marcos and his family and associates "whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority influence, connections or relationship."

In addition, Sec. 15, Art. XI of the 1987 Constitution states that "the right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches, or estoppel."

Republic Act No. 9160, or "the Anti-Money Laundering Act of 2001" provides for the creation of the Anti-Money Laundering Council (AMLC), which shall be composed of the Governor of the Central Bank of the Philippines as Chairman and the Commissioner of the Insurance Commission and the Chairman of the Securities and Exchange Commission as members. Its powers, as amended by Republic Act 9194, include "to require and receive covered or suspicious transaction reports from covered institutions…*xxx*…to institute civil forfeiture proceedings and all other remedial proceedings through the Office of the Solicitor General; to cause the filing of

complaints with the Department of Justice or the Ombudsman for the prosecution of money laundering offenses…"

Sec. 4, Art. XI, 1987 Constitution provides that the Sandiganbayan, or the Anti-Graft Court, "shall continue to function and exercise its jurisdiction a snow or hereafter may be provided by law." The Sandiganbayan was originally created under the 1973 Constitution. It shall have jurisdiction over crimes committed by public officials and employees with a salary grade of 27 or higher.

The Executive Order No. 12 of 16 April 2001 created "the Presidential Anti-Graft Commission and Providing For Its Powers, Duties and Functions and For Other Purposes". Executive Order No. 12 was later amended or added onto by Executive Order No. 327 of 9 July 2004, Executive Order No. 531-A of 23 August 2006, Executive Order No. 531-B of 13 December 2006, Executive Order No. 531 of 31 May 2006, later amended by Executive Order No. 670 of 22 October 2007, and Executive Order No. 699 of 18 January 2008.

3. Review of implementation of selected articles

3.1. Article 5

> ***Preventive anti-corruption policies and practices***
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> "1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.
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> "2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.
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> "3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.
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> "4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption."

a. Summary of the main requirements

In accordance with article 5, States Parties are required: (a) To develop and implement or maintain effective anti-corruption policies that encourage the participation of society, reflect the rule of law and promote sound and transparent administration of public affairs (para. 1); and (b) To collaborate with each other and relevant international and regional bodies for the pursuit of the above goals (para. 4). Article 5 does not introduce specific legislative requirements, but rather mandates the commitment of States Parties to develop and maintain a wide range of measures and policies for the prevention of corruption, in accordance with the fundamental principles of their legal system. Under article 5, paragraph 1, the requirement is to develop, implement and maintain effective, coordinated measures that: (a) promote the participation of the wider society in anti-corruption activities; and (b) reflect the principles of: (i) the rule of law; (ii) proper management of public affairs and public property; (iii) integrity; (iv) transparency; and (v) accountability. These general aims are to be pursued through a range of mandatory and optional measures outlined in subsequent articles of the Convention. Article 5, paragraph 4, requires that, in the pursuit of these aims, as well as of general prevention and evaluation of implemented anti-corruption measures, States Parties collaborate with each other as well as with relevant international and regional organizations, as appropriate and in accordance with their fundamental principles of law.

b. Findings and observations of the review team concerning article 5

The 1987 Constitution provides for the State: to encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation;[1] to maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption;[2] and to adopt and implement, subject to reasonable conditions prescribed by law, a policy of full public disclosure of all its transactions involving public interest.[3]

Participation of Society

In order to promote the participation of society, the 1987 Constitution upholds the freedom of speech, of expression, and of the press, and the rights of people to peacefully assemble and petition the government for the redress of their grievances.[4] For this reason, a system is deemed to exist that allows for people to directly propose and enact laws, or approve or reject any act or law or part thereof that is passed by the Congress or local legislative body.[5] The 1987 Constitution also adopted the party-list system wherein representatives from different sectors of society may be selected or elected to the House of Representatives.[6] Executive Order 292, otherwise known as the 'Administrative Code of 1987', [Note: the Secretariat has not received this text] reaffirms the right of the people and their organizations to effective and reasonable participation at all levels of the social, political, and economic decision-making process through adequate consultation mechanisms.[7]

Oath/ Affirmation, and Zero Tolerance for Corruption Program

Pursuant to Article IX B, section 32 of the 1987 Constitution, "All public officers and employees shall take an oath or affirmation to uphold and defend this Constitution"[8]. The Administrative Code further provides that "all public officers and employees of the government including every member of the armed forces shall, before entering upon the discharge of his duties, take an oath or affirmation to uphold and defend the Constitution; that he will bear true faith and allegiance to it; obey the laws, legal orders and decrees promulgated by the duly constituted authorities; will well and faithfully discharge to the best of his ability the duties of the office or position upon which he is about to enter; and that he voluntarily assumes the obligation imposed by his oath of office, without mental reservation or purpose of evasion"[9]. Copies of every oath or affirmation shall then be deposited with the Civil Service Commission (CSC) and in the national archives.

On 30 January 2009, the President issued Administrative Order (AO) No. 255, "Directing the Heads of the Executive Department to lead Moral Renewal in their Agencies" [Note: the Secretariat has not received this text]. Moral renewal under this issuance refers to values formation and ethical behavior for government officers and employees, as well as the strengthening of people's values to achieve zero tolerance for corruption. It requires agencies to adopt and implement a Moral Renewal Program and to enlist the participation of religious, civil society and civic groups through consultations, program development, promotion and implementation of their respective Moral Renewal Programs.

Proper Management of Public Affairs and Public Property

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[1] Article II, Section 23 of the 1987 Constitution
[2] Article II, Section 27, Ibid.
[3] Article II, Section 28, Ibid.
[4] Article III, Section 4, Ibid.
[5] Article VI, Section 32, Ibid.
[6] Article VI, Section 5, Ibid.
[7] Book II, Chapter 1, Section 1 (7) of the Administrative Code
[8] Article IX B, Section 4 of the 1987 Constitution
[9] Book I, Chapter 10, Section 40 of the Administrative Code

Both the 1987 Constitution and the Administrative Code stipulate that public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with the utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives[10]. Generally, it is the Administrative Code that defines the following:

- Distribution of powers between and among the legislative, executive and judicial branches of government, including the constitutional commissions and other bodies, and the guiding principles and policies in the exercise of respective powers;[11]
- Establishment of a career service, adopt measures to promote morale, efficiency, integrity, responsiveness, and courtesy in the civil service, strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability;[12]
- Personnel policies and standards;[13]
- General provisions on discipline, disciplinary jurisdiction, procedures in administrative cases, and prohibitions;[14]
- Provisions on government auditing and accounting, which govern the analytical and systematic examination and verification of financial transactions, operations, accounts and reports of any government agency for the purpose of determining their accuracy, integrity and authenticity, and satisfying the requirements of law, rules and regulations;[15]
- Measures on the manner of receipt and disposition of funds and property;[16]
- Measures on the application of funds;[17]
- Measures on the accountability and responsibility for government funds and property;[18]
- Procedures and measures on government budgeting;[19]
- Public contracts and conveyances;[20]
- Powers and functions of the Office of the Ombudsman; [21]
- Declarations on assets, liabilities and net worth;[22] and
- Submission of an annual report containing the concise statements of accomplishments and assessment of the progress attained in terms of approved programs and projects, including pertinent financial statements on expenditures incurred in their implementation during the calendar year.[23] This is pursuant to the basic right of the people to information on matters of public concern, which affords access to official records, and to documents and papers pertaining to official acts, transactions or decisions, as well as to government research data used as a basis for policy development.[24]

R.A. No. 6713, otherwise known as the 'Code of Conduct and Ethical Standards for Public Officials and Employees', aims to promote a high standard of ethics in public service. This law specifies the following: norms of conduct of public officials and employees; duties of public officials and employees; prohibited acts and transactions; statements of assets, liabilities and net-worth, as well as disclosure of business interests; review and compliance procedure; and penalties.

All employees are required to file under oath upon assumption of office, and as often as may thereafter be required by law, their Statement of Assets, Liabilities and Net Worth and

[10] Article XI, Section 1 of the 1987 Constitution and Chapter 10, Section 32 of the Administrative Code
[11] Book II of the Administrative Code
[12] Title I, Subtitle A, Chapter 1, Section 1, Ibid.
[13] Title I, Subtitle A, Chapter 5, Section 21, Ibid.
[14] Title I, Subtitle A, Chapter 5, Section 46-53 and Chapter 7 of the Administrative Code
[15] Title I, Subtitle B, Chapter 6, Ibid.
[16] Title I, Subtitle B, Chapter 7, Ibid.
[17] Title I, Subtitle B, Chapter 8, Ibid.
[18] Title I, Subtitle B, Chapter 9, Ibid.
[19] Book VI, Ibid.
[20] Book I, Chapter 12, Ibid.
[21] Article XI, Section 13 of the 1987 Constitution and Title II, Subtitle B, Section 2 of the Administrative Code
[22] Article XI, Section 17 of the 1987 Constitution and Book I, Chapter 9, Section 34 of the Administrative Code
[23] Book I, Chapter 6, Section 37 of the Administrative Code
[24] Article III, Section 7 of the 1987 Constitution

Disclosure of Business Interest and Financial Connections (SALN), including those of their spouses and unmarried children under eighteen years of age living in their households, every first quarter of the year. An employee who fails to submit his/her SALN will be sent a notice to comply, with a warning that failure to do so will merit the filing of the corresponding administrative/criminal case. SALNs constitutional and national elective officials are submitted to the Office of the Ombudsman (OMB) while those of national executive officials, with the Office of the President. Senators and Congressmen, with the Secretaries of the Senate and House of Representatives, respectively; Justices with the Clerk of court of the Supreme Court; Judges with the Court Administrator; Officers of the armed forces from the rank of colonel or naval captain, with the office of the President, and those below said ranks, with the office of the Ombudsman. All other public officials and employees file their SALNs with the Civil Service Commission (CSC).

Under the SOLANA Covenant, the OMB and the CSC formed a SALN database Task Force to develop a revised SALN form, the use of which began this year. Also, CSC promulgated new rules regarding the use of the revised SALN which outlines the procedure for coming up with a Baseline Statement, and the filing of Annual Statement thereafter. In addition, CSC also created a preliminary SALN database of officials and employees of the Bureau of Customs, Bureau of Internal Revenue and Department of Public Works and Highways.

SALNs are also used as bases for the conduct of Lifestyle Checks by the Office of the Ombudsman, Presidential Anti-Graft Commission and the Department of Finance-Revenue Internal Protection Service.

The OMB, through its Bureau of Resident Ombudsman, whose personnel are deployed in various government agencies and government-owned and controlled corporations, monitors the submission of SALNs in the respective agencies in which they are assigned. Moreover, all personnel divisions of government offices monitor compliance of personnel with SALN submission and issue reminders to submit SALN. Non-submission of SALN despite reminders are punishable administratively and criminally.

R.A. No. 9485, otherwise known as the 'Anti-Red Tape Act of 2007' [Note: the Secretariat has not received this text], requires all government agencies to: determine which processes or transactions constitute frontline service; undertake reengineering of transaction systems and procedures, including time and motion studies, if necessary; and after compliance thereof, set up their respective service standards to be known as the Citizen's Charter.[25]

R.A. No. 6770, otherwise known as the 'Ombudsman Act of 1989' [Note: the Secretariat has not received this text], defines the powers, functions and duties of the Office of the Ombudsman, i.e. to "[d]etermine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government, and make recommendation for their elimination and the observance of high standards of ethics and efficiency"[26]. Executive Order No. 292 also vests the Civil Service Commission administrative disciplinary jurisdiction over the entire Philippine bureaucracy.

With respect to procurement, it is the Government Procurement Policy Board (GPBB) that formulated the implementing rules and regulations. Also, GPPB issues, whenever necessary, resolutions or memoranda, thereby giving orders or amending provisions of the implementing rules and regulations in order to promote the ideals of good governance. For instance, GPPB Resolution 01-2205 mandates all government agencies, including LGUs, to post all Notices of Award on the Government Electronic Procurement System Website in accordance with provisions of RA No. 9184 and its Implementing Rules in Part A.

[25] Rule III, Section 1 of RA 9485 (implementing rules and regulations)
[26] Section 15 (7) of R.A. 6770

RA No. 9184 provides for the creation of the Government Procurement and Policy Board. Sec. 64 specifically provides for the composition of GPPB, which are as follows:

1. **Chairman - Secretary of the Department of Budget and Management;**
2. **Alternate Chairman - Director-General of the National Economic and Development Authority;**
3. **Members - Secretaries of the Departments of Public Works and Highways, Finance, Trade and Industry, Health, National Defense, Education, Interior and Local Government, Science and Technology, Transportation and Communications, and Energy, or their duly authorized representatives and a representative from the private sector.**

The representative from the private sector is appointed by the President upon the recommendation of the GPPB. The GPPB may also invite a representative from the Commission on Audit to serve as a resource person.

Furthermore, the 'Government Procurement Reform Act' or Republic Act (R.A.) No. 9184 stipulates the following on government procurement:[27]

i) Transparency in the procurement process and in the implementation of procurement contracts;
ii) Competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding;
iii) Streamlined procurement process that will uniformly apply to all government procurement. The procurement process shall be simple and made adaptable to advances in modern technology in order to ensure an effective and efficient method;
iv) System of accountability where both the public officials directly or indirectly involved in the procurement process as well as in the implementation of procurement contracts and the private parties that deal with government are, when warranted by circumstances, investigated and held liable for their actions relative thereto; and
v) Public monitoring of the procurement process and the implementation of awarded contracts with the end view of guaranteeing that these contracts are awarded pursuant to the provisions of this Act and its implementing rules and regulations, and that all these contracts are performed strictly in accordance to specifications.

The 1987 Constitution contains several provisions regarding divestment and avoiding conflict of interest of certain public officials, some of which are as follows:

Article VI
Section 12. All Members of the Senate and the House of Representatives shall, upon assumption of office, make a full disclosure of their financial and business interests. They shall notify the House concerned of a potential conflict of interest that may arise from the filing of a proposed legislation of which they are authors.

Section 13. No Senator or Member of the House of Representatives may hold any other office or employment in the Government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries, during his term without forfeiting his seat. Neither shall he be appointed to any office which may have been created or the emoluments thereof increased during the term for which he was elected.

Section 14. No Senator or Member of the House of Representatives may personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies. Neither shall he, directly or indirectly, be interested financially in any

[27] Section 3, R.A. No. 9184

contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary, during his term of office. He shall not intervene in any matter before any office of the Government for his pecuniary benefit or where he may be called upon to act on account of his office.

Article VII
Section 13. The President, Vice-President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during said tenure, directly or indirectly, practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.

The spouse and relatives by consanguinity or affinity within the fourth civil degree of the President shall not during his tenure be appointed as Members of the Constitutional Commissions, or the Office of the Ombudsman, or as Secretaries, Undersecretaries, chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries.

Article IX (A)
Section 2. No member of a Constitutional Commission shall, during his tenure, hold any other office or employment. Neither shall he engage in the practice of any profession or in the active management or control of any business which in any way may be affected by the functions of his office, nor shall he be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations or their subsidiaries.

Moreover, RA 6713, the general code of conduct for all public officials and employees, requires all employees to declare their assets, including financial interests, in their Statement of Assets, Liabilities and Networth filed every year. ***(Kindly see response to Comment GL2 above on RA 6713.)***

Sec. 10 of Republic Act No. 6770 provides that the Ombudsman, his Deputies, including the Special Prosecutor, shall disclose under oath, their financial interests and avoid conflict of interest in the exercise of the functions of their office. Likewise, their spouses and relatives by consanguinity or affinity within the fourth civil degree, including law, business or professional partners or associates "within one year preceding the appointment may appear as counsel or agent on any matter pending before the Office of the Ombudsman or transact business directly or indirectly therewith."

Congress passed the General Appropriations Act (GAA), which represents the entire expenditure levels of the government, every year. The GAA generally contains provisions or measures on receipts and income, expenditures, personnel amelioration, release and use of funds, and other administrative procedures. These provisions are enforced and/or monitored by the Department of Budget and Management (DBM) and the Commission on Audit (COA) through the issuances of appropriate Memorandum Circulars (MCs).

For instance, the grant of honoraria is governed by Budget Circular No.2003-5, as amended by Budget Circular No. 2007-1, National Budget Circular No. 2007-510 and Budget Circular No. 2007-2. On the other hand, COA issued Circular 85-55, which prescribed the amended rules and regulations on the prevention of irregular, unnecessary, excessive or extravagant expenditures or uses of funds and

property. Moreover, COA Circulars 75-6, 99-002, and 2000-005 regulates the use of motor vehicles, aircrafts and watercrafts.

Other resolutions issued by COA are as follows: Resolution No. 06-02 on the conduct of comprehensive audits; Resolution No. 06-03 on prescribing the use of Risk-based Financial Audit; and Resolution No. 06-001 on the responsibility to issue notices of suspension, disallowance or charge arising of the settlement of accounts and audit transactions.

COA Circular No. 2002-002 prescribes the Manual on the New Government Accounting System (Manual Version) to be implemented by all national government agencies.

Integrity, Transparency and Accountability

The Civil Service Commission issued Memorandum Circular No. 3 series of 1994 for the institutionalization of *Mamamayan Muna Hindi Mamaya Na Program*[28]. It likewise rolled-out the Public Service Delivery Audit (PASADA). Additionally, it issued the implementing rules and regulations of R.A. No. 6713. Together with the Office of the Ombudsman, Presidential Anti-Graft Commission and the Development Academy of the Philippines, the CSC formulated the implementing rules and regulations for R.A. No. 9485.

The Office of the Ombudsman, as envisioned by the 1987 Constitution, is the Protector of the People against scrupulous members of the Civil Service, and was given powers and the mandate not only by the fundamental law of the land, but also by specials laws like the Ombudsman Act (RA 6770), to investigate and prosecute cases involving public employees. The Office of the Ombudsman accepts complaints against government employees, conducts preliminary investigation and when the evidence so warrants files, appropriate cases before the regular courts or the *Sandiganbayan.* The Office implemented the Integrity Development Review in 16 agencies including, *inter alia*, the Bureau of Internal Revenue, Bureau of Customs, Land Transportation Office, Department of Public Works and Highways, and the Philippine National Police. The IDR aims to assess / review the corruption resistance and corruption vulnerabilities of every concerned agency. Respective Action Plans are formulated to address the risk areas for the purpose of maintaining integrity in all aspects of the agency's operations.

Presidential Decree (PD) No. 1445, [Note: the Secretariat has not received this text] otherwise known as the 'Government Auditing Code of the Philippines', prescribes the following:[29]

i) No money shall be paid out of any public treasury of a depository except in pursuance of an appropriation law or other specific statutory authority;
ii) Government funds or property shall be spent or used solely for public purposes;
iii) Trust funds shall be available and may be spent only for the specific purpose for which the trust was created or the funds received;
iv) Fiscal responsibility shall, to the greatest extent, be shared by all those exercising authority over the financial affairs, transactions and operations of the government agency;
v) Disbursements or disposition of government funds or property shall invariably bear the approval of the proper officials;
vi) Claims against government funds shall be supported with complete documentation;
vii) All laws and regulations applicable to financial transactions shall be faithfully adhered to; and
viii) Generally accepted principles and practices of accounting as well as of sound management and fiscal administration shall be observed, provided that they do not contravene existing laws and regulations.

[28] This literally means citizen first program and is a nationwide client-satisfaction program which attempts to instil courteous and efficient behaviour among public servants. It addresses the need for behavioural reforms in the bureaucracy, particularly in the manner by which civil servants deal with the transacting public

[29] Section 4, PD 1445

The Department of Budget and Management issued Circular No. 2004-4, as amended by Circular 2008-5, which provides the guidelines on the organization and staffing of the Internal Audit Units (IAUs). The IAU has the following functions to:

i. Advise the Department Secretary or the Governing Board (through the Audit Committee in the case of GOCCs/GFIs) on all matters relating to management control and operations audits;
ii. Conduct management and operations performance audits on the Department/ Agency/ GOCC/ GFI activities and their units, and to determine the degree of compliance with their mandate, policies, government regulations, established objectives, systems and procedures/ processes, and contractual obligations;
iii. Review and appraise systems and procedures/ processes, organizational structure, assets management practices, financial and management records, reports and performance standards of the agencies/units covered; and
iv. Analyze and evaluate management deficiencies, and to assist top management by recommending courses of action.

Also, the Department of Budget & Management (DBM) issued Circular 2008-08 on October 23, 2008, also known as the 'National Guidelines on Internal Control Systems' (NGICS). The NGICS:

i) Was issued pursuant to Administrative Order No. 911 and Memorandum Order No. 277 which directs the DBM to promulgate the necessary rules, regulations or circulars for the strengthening of the internal control systems (ICS) of government agencies;

ii) Will serve as a guide to the heads of departments and agencies in designing, installing, implementing and monitoring their respective ICS, taking into consideration the requirements of their organization and operations;

iii) Will strengthen accountability, ensure ethical, economical, efficient and effective operations, improve the quality and quantity of outputs and outcomes, and enable agencies to better respond to the requirements of the public they serve; and

iv) Will also help agencies redesign their ICS if the Commission on Audit determines that the same is inadequate.

Par. 1, Sec. 2, Art. IX-D, 1987 Philippine Constitution gives the Commission on Audit (COA) "the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to the Government...xxx"

Moreover, par. 2 of the same section provides that "The Commission shall have exclusive authority...*xxx*...to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including...*xxx*...uses of government funds and properties."

Pursuant to its rule-making power, COA issued Circular No. 89-296 dated 27 January 1989, providing for the authority or responsibility for disposal or divestment of property and other assets owned by the government, including government–owned and controlled corporations and local government units. Such authority shall be lodged with their respective heads, who shall create the appropriate committee or body to undertake the same.

Similarly, Sec. 49, Presidential Decree 1445, provides for destruction or sale of unserviceable government property for any cause, or when no longer needed "upon application of the officer accountable, subject to inspection by the head of agency. It may be sold at public auction to the highest bidder under the supervision of the proper committee on award or similar body...*xxx*. In the case of failure of auction, "the same may be sold at a private sale as may be fixed by the

same committee or body concerned." Secs. 427 & 429, Local Government Code of 1991, also contains provisions similar to the above.

In addition, before unserviceable property is disposed of, documents are required to be submitted by accountable officials to the Disposal Committee through their respective heads of offices which must be supported by individual equipment survey reports, and current photographs, as required under Sec. 5, Executive Order No. 888.

Executive Order No. 309, dated March 8, 1996, provides for the reconstitution of the Disposal Committee in every department bureau. The committee shall be composed of a senior-ranking official not lower than the rank of Assistant Secretary, and the heads of the Administrative Division, and the Property Unit. They shall be charged with the disposal of unserviceable, obsolete and/or excess equipment, supplies and materials in their respective offices.

The Presidential Anti-Graft Commission, National Anti-Corruption Program of Action and Multi-Sectoral Anti-Corruption Council

Executive Order No. 12, as amended, has brought about the creation of the Presidential Anti-Graft Commission (PAGC) [Note: the Secretariat has not received this text], which has the mandate, in addition to its administrative investigative authority over presidential appointees, to:

- Formulate national anti-corruption plans and strategies pursuant to the medium-term Philippine Development Plan, and strengthen the efficient and effective implementation of such plans and strategies;
- Oversee the implementation of and compliance of all agencies, instrumentalities and offices in the Executive Branch with all anti-graft and corruption laws and issuances, and secure their compliance with integrity development or enhancement plans;
- Develop and conduct public awareness and information campaigns, and engage in partnerships or cooperative undertakings with local government units, civil society, people's organizations, academic institutions and/or the business sector, to encourage public participation in the government's anti-corruption efforts; and
- Recommend the issuance and adoption of appropriate policies that would strengthen anti-corruption efforts and hasten the arrest and prosecution of corrupt government officers and employees, including private persons conspiring with them.

In order to achieve this mandate, the Presidential Anti-Graft Commission is implementing the Integrity Development Action Plan (IDAP) which is the main output of the first Presidential Anti-Corruption Workshop held on 15-17 December 2004. Currently implemented in 156 government agencies, the IDAP is the national anti-corruption framework of the executive branch. The IDAP is composed of 22 specific anti-corruption measures, also referred to as "doables", which embody the multi-pronged strategy in fighting corruption. They are as follows:

a) Prevention

- Strengthening of internal control through the institutionalization of an internal audit service;
- Conduct of Integrity Development Review or IDR in government agencies;
- Fast tracking of the electronic New Government Accounting System and electronic bidding for the procurement of goods, services and infrastructure projects;
- Incorporating integrity check in recruitment and promotion of government personnel;
- Institutionalization of a multi-stakeholder personnel and organizational performance evaluation system;
- Protection of meager income of government employees by ensuring a level for 'take home' pay; and

- Adoption of a single ID system for government officials and employees.

b) Education

- Dissemination of compendiums on anti-corruption laws, rules and regulations;
- Preparation of agency-specific code of ethical standards;
- Conduct of ethics training, spiritual formation, and moral recovery program for agencies and stakeholders; and
- Integration of anti-corruption modules for elementary and secondary levels.

c) Investigation and Enforcement (Deterrence)

- Development of an Agency Internal Complaint Unit;
- Setting up/ strengthening of Agency Internal Affairs Units;
- Publication of blacklisted offenders and on-line database for public access;
- Talks of holding superiors accountable for corrupt activities of subordinates;
- Advocacy for the submission of Income Tax Returns as attachment to the SALN;
- Effective use of existing agency administrative disciplinary machinery and publication of results of administrative cases handled; and
- PAGC's conduct of independent survey to check on anti-graft and corruption effectiveness.

d) Strategic Partnership

- Linking of databases of complementary agencies and sharing of information;
- Enhancement of the private sector and civil society participation in various areas of governance;
- Seeking of international development agencies and private sector for support; and
- Institutionalization of the participation of stakeholders in agency .

Of relevant is also the SOLANA Covenant, signed in 2004 by the Civil Service Commission, Office of the Ombudsman and Commission on Audit, which lists concrete initiatives to be undertaken by these agencies until the end of 2009, regarding the strict implementation of rules regarding the liquidation of cash advances and establishment of an Inter-Agency Liaison Network for corruption cases. The three agencies signified their commitment to new and continuing anti-corruption efforts under SOLANA II which was signed in 2005.

Arising from the need to have a concerted and cohesive stand against corruption, the National Anti-Corruption Program of Action (NACPA) was established on 17 March 2006 during the National Anti-Corruption Convergence Summit. The NACPA was able to gain commitments from the executive department, legislature, the judiciary, constitutional bodies, local government, the business sector, civil society and academic institutions by the signing of the Convergence Covenant.

The NACPA, which is spearheaded by the Tanodbayan (OMB), endeavors to serve as a coherent and cohesive framework for the harmonization of anti-corruption initiatives by concentrating efforts on certain aspects of governance, pooling resources and serving as a venue for continuous dialogue and collaboration. The NACPA is guided by not only the UNCAC, but also the Medium-Term Philippine and the Millennium Development Goals.

Hereunder are some of their accomplishments:

For SOLANA I

1. Established a database taskforce responsible for coming up with a revised Statement of Assets, Liabilities & Network form which started to be used by officials and employees beginning this year

2. Creation of a preliminary SALN database covering officials and employees of the Bureau of Customs, Bureau of Internal Revenue and Department of Public Works and Highways
3. Formation of joint task force for investigating and prosecuting high-profile corruption cases
4. Piloted the Integrity Development Review (IDR) program in the Office of the Ombudsman and the Department of Education
5. Signed Memorandum of Agreement delineating jurisdiction of OMB and CSC on administrative cases
6. Set up clearinghouse mechanism on administrative cases and forum-shopping
7. Filed bills on whistleblowing and waiver of bank secrecy, through Senator Mar Roxas

For SOLANA II
1. Monitoring of unliquidated cash advances and submission of reports to CSC, OMB, Presidential Anti-Graft Commission and Department of Justice
2. Repositioned mandate of the Bureau of Resident Ombudsman, from corruption detection to corruption prevention
3. Conducted IDR in eleven (11) agencies and bureaus and set up Integrity Development Committees to monitor implementation of recommendations

For NACPA & MSACC
1. Celebration of the International Anti-Corruption Day. On 9 December 2008, the Office of the Ombudsman led the MSACC and more than 6,000 members of the media, youth, business, civil society and participating government agencies in an Integrity March to celebrate International Anti-Corruption Day. The highlight of the celebration was a report to the citizens ("Ulat-Bayan") detailing the results of the MSACC's initial assessment of the country's compliance with the UNCAC.

2. A five-part series of Focused Group Discussions (FGDs) were held which were participated in by representatives from civil society, academe, professional groups, business sector, youth, media, religious sector and government agencies. These FGDs aim to make an initial assessment of the Philippines' compliance with the thematic areas of the UN Convention Against Corruption (UNCAC): prevention, criminalization and law enforcement, asset recovery, international cooperation and technical assistance.

3. Series of Anti-Corruption Roadshows were held in Cebu City on 13-14 March 2008 involving more than 10,000 participants, and, in Urdaneta City on 18 July 2008 with 12,000 participants. Participants to the roadshows were representatives from government, business, academe, youth media and civil society organizations.

4. Rolled out trainings in four (4) key cities. Trainings on Anti-Fixing, Anti-Red Tape and Whistleblowing were conducted in the cities of San Fernando, Legaspi, Cagayan de Oro and Iloilo. Around 230 participants took part in these trainings.

5. Medium-Term Strategic Planning. In March 2009, MSACC held its Medium-Term Strategic Planning to map out key activities to be undertaken for the years 2009 to 2011, especially in monitoring the Philippines' compliance with the UNCAC.

To provide direction to the NACPA, a collegial body composed of representatives from the private and public sectors and civil society signed a Memorandum of Agreement on 1 March 2007 to form the Multi-Sectoral Anti-Corruption Council (MSACC). The MSACC's vision of fostering good governance is founded on integrity, transparency and accountability. Its mission is deemed to converge all anti-corruption efforts and reorient the Philippines into a corruption-intolerant society that values and practices a culture of integrity. The Office of the Ombudsman is principal convenor of MSACC which is composed of 16 sectors – the executive branch, legislative (composed of the House of Representatives and the Senate), the judiciary, the constitutional bodies, local government,

government financial institutions, the business sector, professional organizations, academic institutions, inter-faith organizations, the youth, media and development partners.

The MSACC has adopted as one of its priority programs the implementation of the UNCAC. It spearheaded the self-assessment of compliance to the UNCAC by organizing a series of focus group discussions and inter-agency meetings, and hosted the Philippine Summit on the UNCAC on 27 May 2009.

With reference to UNCAC Article 5, paragraph 3, both the Congress, the Senate and the House of Representatives, have their respective committees which are tasked to study, deliberate on and act upon all measures referred to. This includes bills, resolutions and petitions are then to be recommended for approval or adoption by the House. Committees are to establish appropriate systems and procedures to ensure that constituencies, sectors and groups whose interests are affected by any pending measure are given sufficient opportunities to be heard. Moreover, Committees are to pursue dialogues and consultations with affected sectors and constituencies, conduct researches and engage the services, and the assistance of experts and professionals from the public or private sectors as may be needed in the performance of their functions. By way of example, the Senate has the following committees: on civil service and government reorganization; and on accountability of public officers and investigations.

In reference to UNCAC Article 5, paragraph 4, it was noted that the Philippines is a member of various international and regional organizations in their fight against corruption, *inter alia*, the following:

i. Southeast Asia Parliamentarians Against Corruption (SEAPAC)

The Philippines is a member of the SEAPAC, the Asian Chapter of the Global Organization of Parliamentarians Against Corruption (GOPAC). The SEAPAC was established in Manila in 2005 with the primary goal of bringing together parliamentarians, leaders and other members of civil Society to combat corruption and promote transparency and accountability in government. A Regional Action Plan was adopted in Manila on 1 April 2005 and consists of four main components, namely: institutionalization; capacity and knowledge building; reform dialogues; and the ratification of the UNCAC by States. Further, the Office of the Ombudsman hosted the 5th South East Asia Parties Against Corruption (SEA-PAC) Secretariat Meeting on 29-30 April 2009;

ii. International Association of Anti-Corruption Authorities (IAACA)

The Philippines is a member of the IAACA. The conception of the IAACA was initiated at the High-Level Political Conference for the Purpose of Signing the United Nations Convention against Corruption (UNCAC) in Merida, Mexico in December 2003; and

iii. Asian Ombudsman Association (AOA)

The Asian Ombudsman Association (AOA) was established on 16 April 1996 as a non-governmental, non-political, independent and professional forum for Ombudsmen in Asia. Its main objective is to serve as a regional body for promoting the principles and practice of Ombudsmanship. The AOA currently has 23 members, from 15 countries, including the Philippines, and is governed by a nine-member Board of Directors.

As member, the Philippines was able to participate in dialogues with other member-countries on governance and corruption-related issues. The insights gathered from the sharing of best practices proved most crucial in the assessment of corruption initiatives and in benchmarking the country's performance vis-à-vis other countries'. Recently, the Office of the Ombudsman hosted the 4th SEAPAC Secretariat Meeting on April 28-31, 2009. It also participated in the 4th

Asian Development Bank-Organization of Economic Cooperation and Development Meeting and Regional Seminar on Political Economy of Corruption held on 9-10 September 2009.

Concerted efforts to fight corruption on various fronts are being undertaken not only in compliance with the UNCAC, but also pursuant to the Millennium Development Goals as embodied in the Medium-Term Philippine Development Plan (2005-2010). Admittedly, there may be some overlaps in the implementation of corruption initiatives given that both public and private sectors have different priorities. However, there is complementation of efforts in several areas such as procurement management, reduction of redtape through improvement of frontline services and investigation and prosecution such as the Lifestyle Check.

[Questions from Peru:
Does the Philippines have a specific law on access to information? If that is the case, does it establish criteria, for example, on gratuity, modalities of access, deadlines for provision of information, regulated exceptions, etc?

Philippine Constitution Article III Section 7
Section 7. The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law. The Philippine Supreme Court made a declaration on the issue in the cases cited below:

Legaspi vs CSC, G.R. No. L-72119 May 29, 1987

> **For every right of the people recognized as fundamental, there lies a corresponding duty on the part of those who govern, to respect and protect that right. That is the very essence of the Bill of Rights in a constitutional regime. Only governments operating under fundamental rules defining the limits of their power so as to shield individual rights against its arbitrary exercise can properly claim to be constitutional (Cooley, supra, at p. 5). Without a government's acceptance of the limitations imposed upon it by the Constitution in order to uphold individual liberties, without an acknowledgment on its part of those duties exacted by the rights pertaining to the citizens, the Bill of Rights becomes a sophistry, and liberty, the ultimate illusion.**
>
> **In recognizing the people's right to be informed, both the 1973 Constitution and the New Charter expressly mandate the duty of the State and its agents to afford access to official records, documents, papers and in addition, government research data used as basis for policy development, subject to such limitations as may be provided by law. The guarantee has been further enhanced in the New Constitution with the adoption of a policy of full public disclosure, this time "subject to reasonable conditions prescribed by law," in Article 11, Section 28 thereof, to wit:**
>
> > **Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest. (Art. 11, Sec. 28).**
>
> **In the Tanada case, supra, the constitutional guarantee was bolstered by what this Court declared as an imperative duty of the government officials concerned to publish all important legislative acts and resolutions of a public nature as well as all executive orders and proclamations of general applicability. We granted mandamus in said case, and in the process, We found occasion to expound briefly on the nature of said duty:**

> *** * * That duty must be enforced if the Constitutional right of the people to be informed on matters of public concern is to be given substance and reality. The law itself makes a list of what should be published in the Official Gazette. Such listing, to our mind, leaves respondents with no discretion whatsoever as to what must be in included or excluded from such publication. (Tanada v. Tuvera, supra, at 39). (Emphasis supplied).**

The absence of discretion on the part of government agencies in allowing the examination of public records, specifically, the records in the Office of the Register of Deeds, is emphasized in Subido vs. Ozaeta, supra:

> **Except, perhaps when it is clear that the purpose of the examination is unlawful, or sheer, idle curiosity, we do not believe it is the duty under the law of registration officers to concern themselves with the motives, reasons, and objects of the person seeking access to the records. It is not their prerogative to see that the information which the records contain is not flaunted before public gaze, or that scandal is not made of it. If it be wrong to publish the contents of the records, it is the legislature and not the officials having custody thereof which is called upon to devise a remedy. *** (Subido v. Ozaeta, supra at 388). (Emphasis supplied).**

It is clear from the foregoing pronouncements of this Court that government agencies are without discretion in refusing disclosure of, or access to, information of public concern. This is not to lose sight of the reasonable regulations which may be imposed by said agencies in custody of public records on the manner in which the right to information may be exercised by the public. In the Subido case, We recognized the authority of the Register of Deeds to regulate the manner in which persons desiring to do so, may inspect, examine or copy records relating to registered lands. However, the regulations which the Register of Deeds may promulgate are confined to:

> *** * * prescribing the manner and hours of examination to the end that damage to or loss of, the records may be avoided, that undue interference with the duties of the custodian of the books and documents and other employees may be prevented, that the right of other persons entitled to make inspection may be insured * * * (Subido vs. Ozaeta, 80 Phil. 383, 387)**

Applying the Subido ruling by analogy, We recognized a similar authority in a municipal judge, to regulate the manner of inspection by the public of criminal docket records in the case of Baldoza vs. Dimaano (Adm. Matter No. 1120-MJ, May 5, 1976, 71 SCRA 14). Said administrative case was filed against the respondent judge for his alleged refusal to allow examination of the criminal docket records in his sala. Upon a finding by the Investigating Judge that the respondent had allowed the complainant to open and view the subject records, We absolved the respondent. In effect, We have also held that the rules and conditions imposed by him upon the manner of examining the public records were reasonable.

In both the Subido and the Baldoza cases, We were emphatic in Our statement that the authority to regulate the manner of examining public records does not carry with it the power to prohibit. A distinction has to be made between the discretion to refuse outright the disclosure of or access to a particular information and the authority to regulate the manner in which the access is to be afforded. The first is a limitation upon the availability of access to the information sought, which only the Legislature may impose (Art. III, Sec. 6, 1987 Constitution). The second pertains to the government agency charged with the custody of public records. Its authority to regulate access is to be

exercised solely to the end that damage to, or loss of, public records may be avoided, undue interference with the duties of said agencies may be prevented, and more importantly, that the exercise of the same constitutional right by other persons shall be assured (Subido vs. Ozaetal supra).

Thus, while the manner of examining public records may be subject to reasonable regulation by the government agency in custody thereof, the duty to disclose the information of public concern, and to afford access to public records cannot be discretionary on the part of said agencies. Certainly, its performance cannot be made contingent upon the discretion of such agencies. Otherwise, the enjoyment of the constitutional right may be rendered nugatory by any whimsical exercise of agency discretion. The constitutional duty, not being discretionary, its performance may be compelled by a writ of mandamus in a proper case. chanrobles virtual law library

But what is a proper case for Mandamus to issue? In the case before Us, the public right to be enforced and the concomitant duty of the State are unequivocably set forth in the Constitution. The decisive question on the propriety of the issuance of the writ of mandamus in this case is, whether the information sought by the petitioner is within the ambit of the constitutional guarantee.

The incorporation in the Constitution of a guarantee of access to information of public concern is a recognition of the essentiality of the free flow of ideas and information in a democracy (Baldoza v. Dimaano, Adm. Matter No. 1120-MJ, May 5, 1976, 17 SCRA 14). In the same way that free discussion enables members of society to cope with the exigencies of their time (Thornhill vs. Alabama, 310 U.S. 88,102 [1939]), access to information of general interest aids the people in democratic decision-making (87 Harvard Law Review 1505 [1974]) by giving them a better perspective of the vital issues confronting the nation.

But the constitutional guarantee to information on matters of public concern is not absolute. It does not open every door to any and all information. Under the Constitution, access to official records, papers, etc., are "subject to limitations as may be provided by law" (Art. III, Sec. 7, second sentence). The law may therefore exempt certain types of information from public scrutiny, such as those affecting national security (Journal No. 90, September 23, 1986, p. 10; and Journal No. 91, September 24, 1986, p. 32, 1986 Constitutional Commission). It follows that, in every case, the availability of access to a particular public record must be circumscribed by the nature of the information sought, i.e., (a) being of public concern or one that involves public interest, and, (b) not being exempted by law from the operation of the constitutional guarantee. The threshold question is, therefore, whether or not the information sought is of public interest or public concern.

This question is first addressed to the government agency having custody of the desired information. However, as already discussed, this does not give the agency concerned any discretion to grant or deny access. In case of denial of access, the government agency has the burden of showing that the information requested is not of public concern, or, if it is of public concern, that the same has been exempted by law from the operation of the guarantee. To hold otherwise will serve to dilute the constitutional right. As aptly observed, ". . . the government is in an advantageous position to marshall and interpret arguments against release . . ." (87 Harvard Law Review 1511 [1974]). To safeguard the constitutional right, every denial of access by the government agency concerned is subject to review by the courts, and in the proper case, access may be compelled by a writ of Mandamus.

In determining whether or not a particular information is of public concern there is no rigid test which can be applied. "Public concern" like "public interest" is a term that eludes exact definition. Both terms embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen. In the final analysis, it is for the courts to determine in a case by case basis whether the matter at issue is of interest or importance, as it relates to or affects the public.

The public concern invoked in the case of Tanada v. Tuvera, supra, was the need for adequate notice to the public of the various laws which are to regulate the actions and conduct of citizens. In Subido vs. Ozaeta, supra, the public concern deemed covered by the statutory right was the knowledge of those real estate transactions which some believed to have been registered in violation of the Constitution.

The information sought by the petitioner in this case is the truth of the claim of certain government employees that they are civil service eligibles for the positions to which they were appointed. The Constitution expressly declares as a State policy that:

> **Appointments in the civil service shall be made only according to merit and fitness to be determined, as far as practicable, and except as to positions which are policy determining, primarily confidential or highly technical, by competitive examination. (Art. IX, B, Sec. 2.[2]).**

Public office being a public trust, [Const. Art. XI, Sec. 1] it is the legitimate concern of citizens to ensure that government positions requiring civil service eligibility are occupied only by persons who are eligibles. Public officers are at all times accountable to the people even as to their eligibilities for their respective positions.

But then, it is not enough that the information sought is of public interest. For mandamus to lie in a given case, the information must not be among the species exempted by law from the operation of the constitutional guarantee.

In the instant, case while refusing to confirm or deny the claims of eligibility, the respondent has failed to cite any provision in the Civil Service Law which would limit the petitioner's right to know who are, and who are not, civil service eligibles. We take judicial notice of the fact that the names of those who pass the civil service examinations, as in bar examinations and licensure examinations for various professions, are released to the public. Hence, there is nothing secret about one's civil service eligibility, if actually possessed. Petitioner's request is, therefore, neither unusual nor unreasonable. And when, as in this case, the government employees concerned claim to be civil service eligibles, the public, through any citizen, has a right to verify their professed eligibilities from the Civil Service Commission.

The civil service eligibility of a sanitarian being of public concern, and in the absence of express limitations under the law upon access to the register of civil service eligibles for said position, the duty of the respondent Commission to confirm or deny the civil service eligibility of any person occupying the position becomes imperative. Mandamus, therefore lies.chanroblesvirtuallawlibrary chanrobles virtual law library

Gov. Garcia vs BOI GR 88637 September 7, 1989

The petitioner's request for xerox copies of certain documents flied by BPC together with its original application, and its amended application for registration with BOI, may not be denied, as it is the constitutional right of a citizen to have access to information on

matters of public concern under Article III, Section 7 of the 1987 Constitution. The confidentiality of the records on BPC's applications is not absolute for Article 81 of the Omnibus Investments Code provides that they may be disclosed "upon the consent of the applicant, or on orders of a court of competent jurisdiction.' As a matter of fact, a xerox copy of BPC's position paper dated April 10, 1989, in support of its request for the transfer of its petrochemical plant to Batangas, has been submitted to this Court as Annex A of its memorandum. However, just as the confidentiality of an applicant's records in the BOI is not absolute, neither is the petitioner's right of access to them unlimited. The Constitution does not open every door to any and all information. "Under the Constitution, access to official records, papers, etc. is subject to limitations as may be provided by law (Art. III, Sec. 7, second sentence). The law may exempt certain types of information from public scrutiny (Legaspi vs. Civil Service Commission, 150 SCRA 530). The trade secrets and confidential, commercial and financial information of the applicant BPC, and matters affecting national security are excluded from the privilege.

- Does the Code of Conduct and ethical standards for public officials approved by RA N° 6713 is general for all public officials or does it deal with specific administrative corps?

RA 6713 is the general code of conduct for all public officials and employees, covering the executive, legislative and judicial departments, constitutional commissions, state colleges and universities, including government-owned and controlled corporations. Each office/agency/department, however, is not precluded from having its own customized code of conduct. In fact a number of agencies have their own customized code of conduct.

- Does the NACPA, National Anticorruption Program of Action, and its Council, possess an institutional form? In other words, is there a permanent organ to support it? If that is the case, would it be possible to provide more information on its work? Also, what level of political and financial autonomy does it have? Finally, does the council involve organizations from civil society and the private sector?

The Multi-Sectoral Anti-Corruption Council (MSACC) serves as the advisory and consultative body of the NACPA. The latter was formed through the signing of a Convergence Covenant while the former was forged through a Memorandum of Agreement between representatives of member-sectors consisting of government, business, academe, media, civil society and interfaith groups. The MSACC is composed of the Council, which consists of heads of agencies or their representative which is a senior-ranking official, and a Technical Working Committee composed of senior technical staff from each member-office or sector who are designated by the principals (those sitting in the Council).

Representing the business sector is the Employers Confederation of the Philippines and Federation of Filipino-Chinese Chambers of Commerce while representatives of civil society organizations come from the Evelio B. Javier Foundation, Moral Recovery Officers Foundation and Concerned Citizens of Abra for Good Government.

The NACPA-MSACC Secretariat, the main support unit providing technical and secretariat support, is composed of organic personnel from the Office of the Ombudsman, The Secretariat was institutionalized in said office by virtue of Office Order dated 23 June 2006. Meetings are held on a regular basis with the members serving as host on rotation-basis.

The MOA forming the MSACC provides for sharing of resources of its members in the conduct of projects and activities. The MSACC also secures technical assistance from partners through submission of project proposals.

(Kindly see also response to Comment GL6 above on the NACPA-MSACC.)

The Philippines has adopted measures with the view to attain continued compliance with UNCAC Article 5

3.2 Article 15

> ***Bribery of national public officials***
>
> "Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
>
> "(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
>
> "(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties."

a. Summary of the main requirements

In accordance with article 15, States Parties must establish two offences: active and passive bribery of national public officials:

States Parties must establish as a criminal offence, when committed intentionally, the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties (art. 15, subparagraph (a))[30]. The required elements of this offence are those of promising, offering or actually giving something to a public official. The offence must cover instances where no gift or other tangible item is offered. Thus, an undue advantage may be something tangible or intangible, whether pecuniary or non-pecuniary. The undue advantage does not have to be given immediately or directly to a public official of the State. It may be promised, offered or given directly or indirectly. A gift, concession or other advantage may be given to some other person, such as a relative or political organization. Some national legislation might cover the promise and offer under provisions regarding the attempt to commit bribery. When this is not the case, it will be necessary to specifically cover promising (which implies an agreement between the bribe giver and the bribe taker) and offering (which does not imply the agreement of the prospective bribe taker). The undue advantage or bribe must be linked to the official's duties.

States Parties must establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties (art.15, subpara. *(b)*). This offence is the passive version of the first offence. The required elements are soliciting or accepting the bribe. The link with the influence on official conduct must also be established. As with the previous offence, the undue advantage may be for the official or some other person or entity. The solicitation or acceptance must be by the public official or through an intermediary, that is, directly or indirectly. The mental or subjective element is only that of

[30] It is reiterated that for the purposes of the Convention, with the exception of some measures under chapter II, "public official" is defined in article 2, subparagraph *(a)*. An interpretative note indicates that, for the purpose of defining "public official", each State party shall determine who is a member of the categories mentioned in subparagraph (a) (i) of article 2 and how each of those categories is applied (A/58/422/Add.1, para. 4).

intending to solicit or accept the undue advantage for the purpose of altering one's conduct in the course of official duties[31].

b. Findings and observations of the review team concerning article 15

Active Bribery

Article 210 of the Revised Penal Code criminalizes active bribery of a national public official as a felony. Article 212 also imposes a penalty upon any person who makes an offer and promise, or gives the gift or present to a public official under the circumstances of bribery.

'ARTICLE 210. Direct Bribery. — Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of this official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of prison mayor in its medium and maximum periods and a fine not less than three times the value of the gift, in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed. If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of prison correctional in its medium period and a fine of not less than twice the value of such gift. If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of prison correctional in its maximum period to prison mayor in its minimum period and a fine not less than three times the value of such gift. In addition to the penalties provided in the preceding paragraphs, the culprit shall suffer the penalty of special temporary disqualification. The provisions contained in the preceding paragraphs shall be made applicable to assessors, arbitrators, appraisal and claim commissioners, experts or any other persons performing public duties.'

Presidential Decree No. 46 (Giving Gifts on Special Occasions Including Christmas) penalizes not only the public official who accepts the gift, but also the person who gives the gift.

Passive Bribery

Article 211 of the Revised Penal Code (as amended by Batas Pambansa Blg. 871, 29 May 1985) criminalizes passive bribery, otherwise referred to as indirect bribery, as a felony.

'ARTICLE 211. Indirect Bribery. — The penalties of prison correccional in its medium and maximum periods, suspension and public censure shall be imposed upon any public officer who shall accept gifts offered to him by reason of his office.'

Passive bribery is also addressed in the Anti-Graft and Corrupt Practices Act, Republic Act No. 3019 of 1960. Republic Act No. 9485 (Anti-Red Tape Act) also punishes a public official (an insider "fixer") who solicits or accepts "grease money" to facilitate an official transaction. Moreover, Section 46(b) (9), Book V of Executive Order No. 292 ("Administrative Code of 1987") provides as one of the grounds for administrative disciplinary action the act of "receiving for personal use of a fee, gift or other valuable thing in the course of official duties or in connection therewith when such fee, gift or other valuable thing is given by any person in the hope or expectation of receiving favor or better treatment than that accorded other persons, or committing acts punishable under the anti-graft laws".

[31] See art. 28, which provides that "Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances"

The Code of Conduct and Ethical Standards for Public Officials and Employees and implementing rules and regulations of Republic Act No. 6713, section 7 refers to prohibited acts and transactions of: a) financial and material interests; b) outside employment and other activities related thereto; c) disclosure and/or misuse of confidential information; and d) solicitation and acceptance of gifts. As to gifts or grants from foreign governments, the Congress consents to: (a) the acceptance and retention by a public official or employee of a gift of nominal value tendered and received as a souvenir or mark of courtesy; (b) the acceptance of a gift in a nature of a scholarship or fellowship grant or medical treatment; and (c) Travel Grants or Expenses for travel taking place entirely outside the Philippines (such as allowances, transportation, food and lodging) of more than the nominal value if such acceptance is appropriate or consistent with the interests of the Philippines, and permitted by the head of office, branch, or agency to which he or she belongs.

Example: The case of Mr. Charlie "Atong" Ang

Mr. Charlie "Atong" Ang**,** a close associate and co-accused of former Philippines President Joseph Estrada in the 'crime of plunder' had pleaded guilty to charges of bribing public officials (Article 212, RPC) and was sentenced to a jail term of no less than two years and four months, but not exceeding six years. Mr. Ang was also forced to paid P25 million to the government representing the amount he was accused of pocketing from the P130 million tobacco excise tax intended for Ilocos Sur in 1998.

The Philippines has adopted most of the measures required in accordance with UNCAC Article 15

3.3 Article 16

> ***Bribery of foreign public officials and officials of public international organizations***
>
> "1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.
>
> "2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties."

a. Summary of the main requirements

Under article 16, paragraph 1, States must establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business. Article 16 does not require that bribery of foreign public officials constitute an offence under the domestic law of the concerned foreign country.[32]

[32] As noted in chapter I of the Convention against Corruption, "foreign public official" is defined as "any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise" (art. 2, subpara. *(b)*). The "foreign country" can be any other country, that is, it does not have to be a State party. State parties' domestic legislation

Article 16, paragraph 2, requires that States Parties consider establishing as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties. This is the mirror provision of article 15, subparagraph *(b)*, which mandates the criminalization of passive bribery of national public officials.

b. Findings and observations of the review team concerning article 16

The Philippines has not adopted measures implementing article 16 and has indicated that legislative drafting assistance would be required to do so.

The Philippines has not adopted the measures required in accordance with UNCAC Article 16

(Kindly see also response to COMMENT GL7)

COSP2 Resolution 2/4 on "Strengthening coordination and enhancing technical assistance for the implementation of the United Nations Convention against Corruption" emphasizes that the coordination of technical assistance is an ongoing concern and an absolute priority, with the end view of optimizing the use of resources. Accordingly, the Philippines desires to further refine its self-assessment, particularly with regard to gaps analysis, prior to formulating requests for technical assistance addressed to regional cooperation groups and the international donor community.

3.4 Article 17

> ***Embezzlement, misappropriation or other diversion of property by a public official***
>
> "Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position."

a. Summary of the main requirements

States Parties must establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position. The required elements of the offence are the embezzlement, misappropriation or other diversion33 by public officials of items of value entrusted to them by virtue of their position. The offence must cover instances where these acts are for the benefit of the public officials or another person or entity. The items of value include any property, public or private funds or securities or any other thing of value. This article does not "require the prosecution of de minimis offences" (A/58/422/Add.1, para. 29).

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must cover the definition of "foreign public official" given in article 2, subparagraph *(b)* of the Convention, as it would not be adequate to consider that foreign public officials are public officials as defined under the legislation of the foreign country concerned. An official of a public international organization is defined as "an international civil servant or any person who is authorized by such an organization to act on behalf of that organization" (art. 2, subpara. *(c)*).

33 The term "diversion" is understood in some States to be distinct from "embezzlement" and "misappropriation", while in others "diversion" is intended to be covered by or is synonymous with those terms (A/58/422/Add.1, para. 30).

b. Findings and observations of the review team concerning article 17

Article 217 of the Revised Penal Code stipulates: "Malversation of Public Funds or Property – Presumption of Malversation – Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriated or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation and malversation of such funds or property, shall suffer:

1. Penalty of *prision correccional* in its medium and maximum periods, if the amount involved in the misappropriation and malversation does not exceed two hundred pesos.

2. The penalty of *prision mayor* in its minimum and medium periods if the amount involved is more than two hundred pesos but does not exceed six thousand pesos.

3. The penalty of *prision mayor* in its maximum period to reclusion temporal in its minimum period, if the amount involved is more than six thousand pesos but is less than twelve thousand pesos.

4. The penalty of reclusion temporal in its medium and maximum periods, if the amount involved is more than twelve thousand pesos but is less than twenty thousand pesos. If the amount exceeds the latter, the penalty is reclusion temporal in its maximum period to *reclusion perpetua.*"

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled. The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he or she has put such missing funds or property to personal uses (As amended by RA No. 1060, June 12, 1954).

Article 220 of the Revised Penal Code states: "Illegal use of Public Funds or Property – Any public officer who shall apply any public fund or property under his administration to any public use other than that for which such fund or property were appropriated by law or ordinance shall suffer the penalty of *prision correccional* in its minimum period or a fine ranging from one half to the total of the sum misapplied, if by reason of such misapplication , any damage or embarrassment shall have resulted to the public service. In either case, the offender shall also suffer the penalty of temporary special disqualification. If no damage or embarrassment to the public service has resulted, the penalty shall be a fine from 5 to 50 percent of such misapplied".

Republic Act No. 7080, as amended by Republic Act No. 7659 (Anti-Plunder Act), section 2 foresees that "any public officer, who by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1 (d) of the said law, in the aggregate amount or total value of at least Fifty Million Pesos (P50,000,000.00), shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death"[34]. Any person who participates with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for the offense.

Initiatives

[34] RP has already lifted the death penalty and has downgraded the maximum penalty to life imprisonment

The Philippines, along with certain other Asia-Pacific countries, require financial intermediaries to exercise vigilance. Certain countries have been actively cooperating with the Basel Committee on Banking Supervision, an international body that promotes sound banking supervisory systems.

To ensure that criminalization of illicit enrichment is enforced, governmental and civil society actors in the Philippines have engaged in systematic monitoring of public officials' lifestyles to detect cases of unexplained wealth and subsequently trigger prosecution.

On 12 September 2007, the *Sandiganbayan* convicted former President Joseph Estrada for the 'crime of plunder' for conspiring with then Governor Luis "Chavit" Singson (who was granted immunity from suit by the Office of the Ombudsman), and with the participation of other persons, in amassing, accumulating and acquiring ill-gotten wealth as follows: (i) by a series of acts of receiving bi-monthly collections from "jueteng", a form of illegal gambling, during the period beginning November 1998 to August 2000 in the aggregate amount of Five Hundred Forty Five Million, Two Hundred Ninety One Thousand Pesos (P545,291,000.00), Two Hundred Million Pesos (P200,000,000.00) of which was deposited into a fake foundation; and (ii) by two (2) acts of ordering the GSIS and the SSS to purchase shares of Belle Corporation, an investment holding company, and then collected or received a commission from the sales of Belle Shares in the amount of One Hundred Eighty Nine Million Seven Hundred Thousand Pesos (P189,700,000.00) which was deposited into a fake account.

The Philippines has adopted most of the measures required in accordance with UNCAC Article 17

3.5 Article 25

> ***Obstruction of justice***
>
> "Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
>
> "(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;
>
> "(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official."

a. Summary of the main requirements

Under article 25, States must criminalize the use of inducement, threats or force in order to interfere with witnesses and officials whose role would be to produce accurate evidence and testimony. The first offence relates to efforts to influence potential witnesses and others in a position to provide the authorities with relevant evidence. States Parties are required to criminalize the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in proceedings in relation to the commission of offences established in accordance with the Convention (art. 25(a)). The obligation is to criminalize the use both of corrupt means, such as bribery, and of coercive means, such as the use or threat of violence.

b. Findings and observations of the review team concerning article 25(a) and (b)

Use of inducement, threats or force to interfere with witnesses or officials

Presidential Decree No. 1829, a decree penalizing obstruction of apprehension and prosecution of criminal offenders, punishes the act of: (a) preventing witnesses from testifying in any criminal proceeding or from reporting the commission of any offense by means of bribery, misrepresentation, deceit, intimidation, force or threats; and (b) threatening another with the infliction of any wrong in order to prevent a person from appearing in the investigation, among other acts.

False testimony is punished under Articles 180-184 of the Revised Penal Code. A person who induces another to make a false testimony is liable under any of these Articles in relation to Article 17 of the Revised Penal Code as a principal by inducement.

Interference with actions of judicial or law enforcement officials

Several articles of the Revised Penal Code criminalize interference with the actions of judicial or law enforcement officials. Felonies include: direct assault (Article 148[35]); indirect assault (Article 149); resistance and disobedience to a person in authority or the agent of such person (Article 151); open disobedience (Article 231); and disobedience to the order of a superior officer (Article 232).

Article 211-A of the Revised Penal Code stipulates that "If any public officer is entrusted with law enforcement and he refrains from arresting or prosecuting an offender who has committed a crime punishable by *reclusion perpetua* and/or death in consideration of a promise, gift or present, he shall suffer the penalty for the offense which was not prosecuted".

Article 233 of the Revised Penal Code is to be noted, as it provides for: "Refusal of assistance. – The penalties of *arresto mayor* in its medium period to *prision correccional* in its minimum period, perpetual special disqualification and a fine not exceeding 1,000 pesos, shall be imposed upon a public officer who, upon demand from competent authority, shall fail to lend his cooperation towards the administration of justice or other public service, if such failure shall result in serious damage to the public interest, or to a third party; otherwise, *arresto mayor* in its medium and maximum periods and a fine not exceeding 500 pesos shall be imposed".

"If it is the public officer who asks or demands such gift or present, he shall suffer the penalty of death" (Incorporated by Sec. 4, RA No. 7659, Dec. 13, 1993).

The Philippines has adopted most of the measures required in accordance with UNCAC Article 25

3.6 Article 46

Mutual legal assistance

"1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

"…"

"9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

"(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

[35] Article 148 of the Revised Penal Code punishes a person who shall attack, employ force, or seriously intimidate or resist a person in authority or an agent of a person in authority while engaged in the performance of official duties or on occasion of such performance.

"(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

"…".

"13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central Authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

"…"

a. Summary of the main requirements

The Convention against Corruption requires States Parties: (a) To ensure the widest measure of mutual legal assistance for the purposes listed in article 46, paragraph 3, in investigations, prosecutions, judicial proceedings and asset confiscation and recovery in relation to corruption offences (art. 46, para. 1); (b) To provide for mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to offences for which a legal entity may be held liable under article 26 (art. 46, para. 2); (c) To ensure that mutual legal assistance is not refused by it on the grounds of bank secrecy (art. 46, para. 8); (d) To apply paragraphs 9 to 29 of article 46 to govern the modalities of mutual legal assistance in the absence of a mutual legal assistance treaty with another State party (art. 46, para. 7)

Article 46, paragraph 9, allows for the extension of mutual legal assistance in the absence of dual criminality, in pursuit of the goals of the Convention, including asset recovery. An important novelty is that States Parties are required to render assistance if non-coercive measures are involved, even when dual criminality is absent, where consistent with the basic concepts of their legal system (art. 46, para. 9 *(b)*). An example of such a measure even in the absence of dual criminality is the exchange of information regarding the offence of bribery of foreign officials or officials of international organizations, when such cooperation is essential to bring corrupt officials to justice (see the interpretative note contained in document A/58/422/Add.1, para. 26, relating to art. 16, para. 2, of the Convention). Further, the Convention invites States Parties to consider adopting measures as necessary to enable them to provide a wider scope of assistance pursuant to article 46 even in the absence of dual criminality (art. 46, para. 9 *(c*)). States Parties need to review carefully existing laws, requirements and practice regarding dual criminality in mutual assistance. In some instances, new legislation may be required.

The UNCAC requires the designation of a central authority with the power to receive and execute or transmit mutual legal assistance requests to the competent authorities to handle it in each State party. The competent authorities may be different at different stages of the proceedings for which mutual legal assistance is requested. Article 46, paras. 13 and 14 requires States Parties to notify the Secretary-General of the United Nations of their central authority designated for the purpose of article 46, as well as of the language(s) acceptable to them in this regard.

b. Findings and observations of the review team concerning article 46

UNCAC Article 46(9)

The Philippines has no explicit domestic legislation on mutual legal assistance (MLA). However, it is stated in the self-assessment that this does not prevent the Philippines from providing legal assistance in connection with the prevention, investigation and prosecution of criminal offenses and proceedings related to criminal matters.

Assistance can also be provided under existing bilateral MLA treaties (MLATs), regional MLAT (Treaty on Mutual Legal Assistance in Criminal Matters or the "ASEAN MLAT") and multilateral conventions, such as the UNCAC, UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention), the UN Convention Against Transnational Organised Crime and its Supplementary Protocols, and the various conventions against terrorism through those conventions' mini-MLAT provisions.

To date, the Philippines has existing bilateral MLATs with Australia, Hong Kong Special Administrative Region (HKSAR), Republic of Korea, Spain, the Swiss Confederation and the United States. It has also signed an MLAT with the People's Republic of China, but the agreement has yet to obtain the concurrence of the Philippine Senate.

Even in the absence of an MLAT or an applicable convention, the Philippines notes that legal assistance may still be provided for on the basis of reciprocity. In such a case, the request for assistance should not involve coercive action. Moreover, the request must contain an assurance from the requesting State that a similar request for assistance by the Philippines will likewise be granted.

As a rule, the Philippines does not decline a request for assistance, be it treaty or non-treaty based, on the ground of absence of dual criminality. With the exception of the RP-Hong Kong MLAT where dual criminality is a mandatory requirement, the existing bilateral MLATs do not require the existence of dual criminality before a request for legal assistance can be granted. However, under the RP-Australia, RP-Korea and RP-China MLATs, the absence of dual criminality is a discretionary ground for the refusal of a request for assistance. While dual criminality is required under the "ASEAN MLAT", assistance may still be provided for if it is permitted under the domestic laws of the requested State.

The scope of assistance as embodied under the treaty between the Government of the United States of America and the Government of the Republic of the Philippines on "Mutual Legal Assistance on Criminal Matters" does not consider, as a requirement, the existence of dual criminality. Article 1(1) of this treaty specifically affirms that "Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution, or proceeding in the Requesting State would constitute an offense under the laws of the Requested State".

Additionally, the Philippine Center on Transnational Crime (PCTC), an agency under the Office of the President, positioned under the general supervision and control of the National Security Adviser (NSA), is mandated to establish, through the use of modern information and telecommunications technology, a shared central database among government agencies for information on criminals, methodologies, arrests and convictions on the following transnational crimes: illicit trafficking of narcotic drugs and psychotropic substances; money laundering; terrorism; arms smuggling; trafficking in persons; piracy; and other crimes that have an impact on the stability and security of the country.

Executive Order No. 100, dated 7 May 1999, sought to strengthen the operational, administrative and information support system and capacity of the PCTC by placing the following agencies/ offices/ instrumentalities under the general supervision and control of the Center: Loop Center of the

NACAHT; INTERPOL NCB-Manila; Police Attaches of the PNP; and Political Attaches/ Counselors for Security Matters of the DILG.

In this manner and through effective coordination with other agencies, the PCTC extends its assistance to locating or identifying persons or items, and any other form of assistance not prohibited by the government.

With respect to assistance of on taking the testimony or statements of persons, the Rules of Court prescribes that "in a foreign state or country, depositions may be taken: (a) on notice before a secretary of embassy or legation, consul general, consul, vice-consul, or consular agent of the Republic of the Philippines; (b) before such person or officer as may be appointed by commission or under letters rogatory; or (c) the person referred to in section 14 hereof"[36]. As a rule, "a commission or letters rogatory shall be issued only when necessary or convenient, on application and notice, and on such terms and with such direction as are just and appropriate. Officers may be designated in notices or commissions either by name or descriptive title and letters rogatory may be addressed to the appropriate judicial authority in the foreign country"[37]. However, a competent court executes the request subject to limitations, such as P.D. 1718, which provides restrictions on the use of documents and information vital to the national interest of the Philippines in certain proceedings and processes.

[The expert reviewers may wish to ask for examples of legal assistance rendered.]

The Philippines has adopted most of the measures required in accordance with UNCAC Article 46(9)

UNCAC Article 46(13)

The Philippines notified the Secretary General of its central authority designated to receive requests for MLA, and this notification was effected on 14 December 2006 (UN Doc. No. C.N.1277.2006. TREATIES-51).

"In accordance with Article 46, paragraphs 13 and 14, the Republic of the Philippines declares that if the request involves a State Party which has a bilateral treaty on mutual legal assistance with the Philippines, the Central Authority which shall have the power to receive requests for mutual legal assistance and either to execute them or transmit them to the competent authorities for execution is:

The Department of Justice
Padre Faura Street, Manila, Philippines
In the absence of a bilateral treaty, the Central Authority shall be:
Office of the Ombudsman
Agham Road, Diliman, Quezon City, Philippines
The acceptable language for requests for mutual assistance is English."

The Philippines has adopted the measures required in accordance with UNCAC Article 46(13)

3.7 Article 52

Prevention and detection of transfers of proceeds of crime

"1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such

[36] Rule 23, Section 11 of the Rules of Court
[37] Rule 23, Section 12, Ibid.

enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

"2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

"(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

"(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

"3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

"4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

"5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

"6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance."

a. Summary of the main requirements

Without prejudice to article 14, States Parties are required to take necessary measures, in accordance with their domestic law, to oblige financial institutions within their jurisdiction: (a) To verify the identity of customers; (b) To take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts; and (c) To conduct enhanced scrutiny of accounts sought or

maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. These provisions must be seen in the context of the more general regulatory and supervisory regime they must establish against money-laundering, in which customer identification, record-keeping and reporting requirements feature prominently

In order to facilitate implementation of these measures, States Parties, in accordance with their domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, are required: (a) To issue advisories regarding the types of natural or legal person to whose accounts financial institutions within their jurisdiction will be expected to apply enhanced scrutiny; the types of accounts and transactions to which particular attention should be paid; and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; (b) Where appropriate, to notify financial institutions within their jurisdiction, at the request of another State party or on their own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify; *(c)* Ensure that financial institutions maintain adequate records of accounts and transactions involving the persons mentioned in paragraph 1 of article 52, including information on the identity of the customer and the beneficial owner; and *(d)* Prevent the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group.

States Parties are also required to consider: *(a)* Establishing financial disclosure systems for appropriate public officials and appropriate sanctions for non-compliance; *(b)* Permitting their competent authorities to share that information with authorities in other States parties when necessary to investigate, claim and recover proceeds of corruption offences; *(c)* Requiring appropriate public officials with an interest in or control over a financial account in a foreign country: (i) To report that relationship to appropriate authorities; (ii) To maintain appropriate records related to such accounts; (iii) To provide for sanctions for non-compliance.

States Parties may also wish to consider requiring financial institutions to: *(a)* To refuse to enter into or continue a correspondent banking relationship with banks that have no physical presence and that are not affiliated with a regulated financial group; and *(b)* To guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

b. Findings and observations of the review team concerning article 52

Article 52(1) and (2)(a) and (b)

Sections 9(a) of the Anti-Money Laundering Act of 2001 (AMLA), Republic Act No. 9160, amended by Republic Act No. 9194, considers Prevention of Money Laundering: Customer Identification Requirements and provides that the "covered institution shall establish and record the true identity of its clients based on official documents. They shall maintain system of verifying the true identity of their clients, and in case of corporate clients, requires a system of verifying their legal existence and organizational structure, as well as the authority and identification of all persons purporting to act on their behalf. The provisions of the existing laws to the contrary, anonymous accounts, accounts under fictitious names, and all other similar accounts, shall be absolutely prohibited. Peso and foreign currency non-checking numbered accounts shall be allowed. The Philippine Central Bank (BSP) may conduct annual testing solely limited to the determination of the existence and true identity of the owners of such accounts".

In the application of the these requirements on customer identification, covered institutions under the AMLA are mandated to submit Suspicious Transaction Reports as required by Section 3(b-1) of the AMLA whenever there is suspicion of money laundering or terrorist financing.

Section 3(b-1) states:

"(b-1) 'Suspicious transaction' are transactions with covered institutions, regardless of the amounts involved, where any of the following circumstances exist:

1. there is no underlying legal or trade obligation, purpose or economic justification;

2. the client is not properly identified;

3. the amount involved is not commensurate with the business or financial capacity of the client;

4. taking into account all known circumstances, it may be perceived that the client's transaction is structured in order to avoid being the subject of reporting requirements under the Act;

5. any circumstances relating to the transaction which is observed to deviate from the profile of the client and/ or the client's past transactions with the covered institution;

6. the transactions is in a way related to an unlawful activity or offense under this Act that is about to be, is being or has been committed; or

7. any transactions that is similar or analogous to any of the foregoing."

In a Memorandum to All Banks and Non-Bank Financial Intermediaries Performing Quasi- Banking Functions, dated 1 October 2002, the BSP recommended that BSP-covered institutions use the Basel Paper on Customer Due Diligence (CDD) for Banks, issued by the Basel Committee on Banking Supervision, in the design of their respective Know Your Customer (KYC) programs. The Basel Paper on CDD outlines the essential elements of KYC standards which should start from risk management and control procedures and include: (1) customer acceptance policy; (2) customer identification; (3) ongoing monitoring of high risk accounts; and (4) risk management. An additional Memorandum, dated 4 October 2002, prescribes that clients whose risk profile is considered "high", depending upon the internal client risk assessment and the internal policies of the financial institution, shall require enhanced CDD and ongoing monitoring.

BSP Circular No. 436, dated 18 June 2004, provides the guidelines under Annex B of the Circular to be observed by financial institutions in conducting enhanced due diligence measures specifically for political exposed persons. Moreover, BSP Circular No. 333, dated 30 May 2002, states that if there is a reasonable ground to believe that the funds are proceeds from an unlawful activity as defined under the AMLA, as amended, and/ or its implementing Rules and Regulations, the transaction involving such funds or attempts to transact the same, should be reported to the Anti-Money Laundering Council (AMLC).

The Securities and Exchange Commission (SEC) Memorandum Circular No. 11, Series of 2004 covered institutions as defined in the AMLA (RA 9160) and within the jurisdiction of the SEC, to submit directly to the AMLC reports of any covered and suspicious transaction involving the subject of the US Government letters, dated 7, 8 & 15 June 2004. It further provides for guidelines against anomalous deposit accounts by strictly observing due diligence in the following "Know your Client" measures in line with Circular No. 302, dated 11 October 2001, implementing Section 9 of AMLA.

BSP Circular Letter CL-2007-019, dated April 25, 2007 (Addressed to All Banks), provides that the non-observance of the said measures constitute a violation of section 9 of R.A. No. 9160, as amended, and would subject the erring bank to appropriate penalties thereunder. Also, BSP Supervision Guidelines No. 2002-13, issued on June 11, 2002, requires banks to submit to the BSP their "Customer Identification and Know Your Customer" policies.

Enhanced Customer Due Diligence is generally undertaken for higher risk categories of customer/ business relationships or transactions such as the following: (1) Politically Exposed Persons; (2) Private Banking Clients/ High Net worth Individuals; (3) significant amount of funds/ wire transfers, particularly originating from high-risk countries, such as those listed in the Non Cooperative Countries and Territories (NCCT) list of the Financial Action Task Force (FATF), or other similar country rating scales; (4) occasional/ single transactions that are unusually large in nature without a visible purpose or economic justification; (5) significant clients who are not regular clients or those without existing business relationships; (6) transactions of non-residents (foreigners) particularly large amounts; (7) customers known previously involved in illegal activities based on public records or other reliable information/ data; (8) transactions represented by third parties or agents, or electronic banking transactions where there is no face-to-face contact with the client/ beneficial owner of the account; (9) transactions of clients related to or subjects of previous Suspicious Transaction Reports to the AMLC.

With particular regard to Article 52(2)(b), section 9(c) of the AMLA, as amended, reads as follows:

> "(c) Reporting of Covered and Suspicious Transactions – Covered institutions shall report to the AMLC all covered transactions and suspicious transactions within five(5) working days from occurrences thereof, unless the Supervising Authority prescribes a longer period not exceeding ten (10) working days.
>
> Should a transaction be determined to be both a covered transaction and a suspicious transaction, the covered institution shall be required to report the same as a suspicious transaction.
>
> When reporting covered or suspicious transactions to the AMLC, covered institutions and their officers and employees shall not be deemed to have violated Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791 and other similar laws, but are prohibited from communicating, directly or indirectly, in any manner or by an means, to any person, the fact that a covered or suspicious transaction report was made, the contents thereof, or any other information in relation thereto. In case of violation thereof, the concerned officer and employee of the covered institution shall be criminally liable. However, no administrative, criminal or civil proceedings, shall lie against any person for having made a covered or suspicious transaction report in the regular performance of his duties in good faith, whether or not such reporting results in any criminal prosecution under this Act of any other law.
>
> When reporting covered or suspicious transactions to the AMLC, covered instituting and their officers and employees are prohibited from communicating directly or indirectly, in any manner or by any means, to any person or entity, the media, the fact that a covered or suspicious transaction report was made, the contents thereof, or any other information in relation thereto. Neither may such reporting be published or aired in any manner or form by the mass media, electronic mail, or other similar devices. In case of violation thereof, the concerned officer and employee of the covered institution and media shall be held criminally liable."

The Covered Transaction Report includes names, addresses, citizenship and other particulars of the customer involved in the transaction. According to the Philippines, this measure is strictly implemented. Additionally, Insurance Commission (IC) Circular No. 14 – 2005 extends the period from 5 days to 10 days for insurance companies and intermediaries to report covered and suspicious transactions.

Article 52(3)

Section 9(b) of the Republic Act No. 9160, the AMLA, as amended by Republic Act No. 9194, addresses the prevention of money laundering in reference to record keeping, and states that "all records of all transactions of covered institutions shall be maintained and safely stored for five (5) years from the dates of transactions. With respect to closed accounts, the records on customer identification, account files and business correspondence, shall be preserved and safely stored for at least five (5) years from the dates when they were closed".

Rule 9.2a of the Revised Implementing Rules and Regulation of the AMLA, as amended, requires covered institutions "to prepare and maintain documentation on their customer accounts, relationships and transactions such that any account, relationship or transaction can be so reconstructed as to enable the AMLA, and/ or the courts to establish and audit trail for money laundering. Said records and files shall contain full and true identity of the owner or holder of the accounts involved in the covered transactions and all other customer identification documents. They shall be retained as originals in such forms as are admissible in court pursuant to existing laws and applicable rules promulgated by the Supreme Court".

Article 52(4)

Republic Act No. 8791, known as the General Banking Law of the Philippines, provides for regulations concerning the organization and operations of the banks, and other banking laws and regulations, and does not allow for the creation and operation of a bank which does not have physical presence or an affiliation to a registered financial group (shell banks).

BSP Circular No. 436, dated 11 June 2004, expressly provides that financial institutions should refuse to enter into or continue a correspondent banking relationship with shell banks. The same regulation also advises financial institutions to guard against establishing relations with respondent foreign financial institutions that permit their accounts to be used by shell banks.

Additionally, Rules 9.1 requires covered institutions to establish and record the true identity of its clients including for trustee, nominee and agent accounts, and prohibits anonymous accounts, accounts under fictitious names and similar accounts. Face-to-face contact with clients is required. Under Rule 9.2, covered institutions are required to maintain and safely store all records of their transactions for 5 years from the date of those transactions, with the full and true identity of the owners or holders of the relevant accounts. The BSP occasionally issues advisories to banks and other financial institutions under its supervision relative to the resolutions of the Anti-Money Laundering Council (established by the Anti-Money Laundering law, hereinafter AMLC) involving accounts of individuals and organizations, upon the initiative of the AMLC or request from a foreign State.

BSP Circular No. 436, of 11 June 2004 issued by the BSP, prohibits financial institutions from entering into or continuing a correspondent banking relationship with shell banks, and from establishing relations with respondent foreign financial institutions that permit their accounts to be used by shell banks.

Article 52(5) and (6)

Republic Act No. 6713 states that: "An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, to Uphold the Time-honored Principle of Public Office Being a Public Trust, Granting Incentives and Rewards for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations thereof and for other Purposes" in relation to section 7 of Republic Act No. 3019 (Anti Graft and Corrupt Practices Act). This Act does not distinguish between domestic or foreign interests of the public officials and employees, as both must be contained in their financial disclosure statements.

Particular sections of interest include the following –

"Section 8. *Statements and Disclosure.* - Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.
(A) Statements of Assets and Liabilities and Financial Disclosure. - All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households."

"Section 11. *Penalties.* - (a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punished with a fine not exceeding the equivalent of six (6) months' salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (P5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office.
(b) Any violation hereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him.
(c) Private individuals who participate in conspiracy as co-principals, accomplices or accessories, with public officials or employees, in violation of this Act, shall be subject to the same penal liabilities as the public officials or employees and shall be tried jointly with them.
(d) The official or employee concerned may bring an action against any person who obtains or uses a report for any purpose prohibited by Section 8 (D) of this Act. The Court in which such action is brought may assess against such person a penalty in any amount not to exceed twenty-five thousand pesos (P25,000). If another sanction hereunder or under any other law is heavier, the latter shall apply."

The R.A. No.6713 establishes a financial disclosure system for public officials and employees called the Statement of Assets and Liabilities and Networth (SALN). It does not make any distinction on the disclosure to be made by public officials and employees. Both domestic and international financial interests are covered.

Example

The Supreme Court found a retiring under-secretary of the Department of Public Works and Highways guilty of negligence for failing to pay attention to the details and proper form of his SALN, resulting in the imprecision of the property descriptions and inaccuracy of certain information involving 28 parcels of real property. The sum in question amounted to the equivalent of six months pay, which was forfeited from his retirement benefits.

The Philippines has adopted most of the measures required in accordance with UNCAC Article 52

3.8 Article 53

"Measures for direct recovery of property

"Each State Party shall, in accordance with its domestic law:

"(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

"(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

"(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention."

a. Summary of the main requirements

Article 53 requires States Parties: *(a)* To permit another State party to initiate civil action in its courts to establish title to or ownership of property acquired through corruption offences (subpara. *(a)*); *(b)* To permit their courts to order corruption offenders to pay compensation or damages to another State party that has been harmed by such offences (subpara. *(b)*); *(c)* To permit their courts or competent authorities, when having to decide on confiscation, to recognize another State party's claim as a legitimate owner of property acquired through the commission of a corruption offence (subpara. *(c)*). The implementation of these provisions may require legislation or amendments to civil procedures, or jurisdictional and administrative rules to ensure that there are no obstacles to these measures. Article 53 focuses on States Parties having a legal regime allowing another State party to initiate civil litigation for asset recovery or to intervene or appear in domestic proceedings to enforce their claim for compensation.

b. Findings and observations of the review team concerning article 53

Republic Act No. 9160, the AMLA, as amended by Republic Act No. 9194, allows the AMLC to give effect to orders of confiscation, issued by courts of another State Party, as follows:

Section 13(b). *Mutual Assistance among States.*

'b) Powers of the AMLC to Act on a Request for Assistance from a Foreign State – "The AMLC may execute a request for assistance from a foreign State by: […] and (3) applying for an order of forfeiture of any monetary instrument or property in the court: Provided, That the court shall not issue such an order unless the application is accompanied by an authenticated copy of the order of a court in the requesting State ordering the forfeiture of said monetary instrument or property of a person who has been convicted of a money laundering offense in the requesting State, and a certification or an affidavit of a competent officer of the requesting State stating that the conviction and the order of forfeiture are final and that no further appeal lies in respect of either.'

In relation to the foregoing provision, the following provisions on civil forfeiture are also applicable:

Section 12. *Forfeiture Provisions.* –

"(a) Civil Forfeiture - When there is a covered transaction report made, and the court has, in a petition filed for the purpose ordered seizure of any monetary instrument or property, in whole or in part, directly or indirectly, related to said report, the Revised Rules of Court on civil forfeiture shall apply.

(b) Claim on Forfeited Assets - Where the court has issued an order of forfeiture of the monetary instrument or property in a criminal prosecution for any money laundering offense defined under Section 4 of this Act, the offender or any other person claiming an interest therein may apply, by verified petition, for a declaration that the same legitimately belongs to him and for segregation or exclusion of the monetary instrument or property corresponding thereto. The verified petition shall be filed with the court which rendered the judgment of conviction and order of forfeiture, within fifteen (15) days from the date of the order of forfeiture, in default of which the said order shall become final and executory. This provision shall apply in both civil and criminal forfeiture".

The Philippines has concluded MLATs with the following jurisdictions:Australia, People's Republic of China (pending ratification), Hong Kong Special Administrative Region, the Swiss Confederation, USA, the Republic of Korea and Spain.

Moreover, the Philippines is a signatory to the Treaty on Mutual Legal Assistance in Criminal Matters in Asia, together with the following countries: Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Singapore, Thailand, and Vietnam.

The types of legal assistance that may be provided under existing MLATs depend on the provisions of the applicable MLAT. However, as a general rule, assistance under the MLATs includes assistance in proceedings relating to the forfeiture of assets, restitution and collection of fines.

As of 31 December 2007, the AMLC has repatriated funds abroad amounting to US$837,334.82 in 2 cases involving 24 bank accounts.

The Philippines has adopted some of the measures required in accordance with UNCAC Article 53

4. Summary findings of the review team concerning the implementation of the relevant Convention articles by the Philippines.

The Philippines has fully adopted the measures required in accordance with the provisions of UNCAC Article 46 (mutual legal assistance), particularly paragraph 13. The Philippines has adopted measures with the view to attaining continued compliance with UNCAC Article 5 (preventive anti-corruption policies and practices).

The Philippines has also adopted most of the measures required in accordance with UNCAC Articles 15 (bribery of national public officials), 17 (embezzlement, misappropriation or other diversion of property by a public official), 25 (obstruction of justice), 46 (mutual legal assistance), particularly paragraph 9, and 52 (prevention and detection of transfers of proceeds of crime).

The Philippines has adopted only some of the measures required in accordance with UNCAC Article 53 (measures for direct recovery of property), and the Philippines has not adopted the measures required in accordance with UNCAC Article 16 (bribery of foreign public officials and officials of public international organizations).

5. Possible recommendations on the basis of the findings of the review process in the Philippines.

The following recommendations are made:

a. *Recommendations Related to Enhanced Implementation of UNCAC Provisions under the UNCAC Pilot Review Programme*

Legislative and Regulatory Enhancements

[NB: This will depend on the above analysis]

1. Consistent with UNCAC Article 16, the Philippines might consider amending its Revised Penal Code to criminalize the active bribery of international and foreign public officials;
2. Consistent with UNCAC Article 16, the Philippines might also consider amending its Revised Penal Code to include the optional UNCAC requirement of considering the criminalization of passive bribery by international and foreign public officials;

3. Consistent with UNCAC Article 17, the Philippines might consider expressly covering public officials in their embezzlement laws **[Analysis/ amendments to be inserted by experts]**;
4. Consistent with UNCAC Article 25, the Philippines might consider expressly covering threats to justice and law enforcement officials in their obstruction of justice laws **[Analysis/ amendments to be inserted by experts]**;
5. Consistent with UNCAC Article 46(9), the Philippines might consider amending its mutual legal assistance laws to *expressly* authorize the provision of mutual legal assistance in the absence of dual criminality, even though as a practical matter this is not viewed as a requirement in the Philippines;
6. Consistent with UNCAC Article 52, the Philippines might consider amending its relevant legislation and regulations to provide for enhanced scrutiny for domestic public officials **[Analysis/ amendments to be inserted by experts]**; and
7. Consistent with UNCAC Article 53, the Philippines might consider amending its Revised Criminal Code **[Analysis/ amendments to be inserted by experts]**.

b. Suggestions to Generally Improve Anti-Corruption Efforts in the Philippines

Legislative and Regulatory Enhancements

[Analysis/ amendments to be inserted by experts]

Institutional Capacity Building and Training

[Analysis/ amendments to be inserted by experts]

6. Possible Action Plan formulated in cooperation with the Philippines on the basis of the recommendations

[It is recommended by the Secretariat that this section should be developed by the expert reviewers only after the Philippines approves any recommendations contained in section 5, and that it be developed in close coordination with the Philippines.]