

# COUNTERING CORRUPTION IN THE PHILIPPINES: PROTOTYPES AND REINFORCING MEASURES

*Melchor Arthur H. Carandang\* and Jennifer A. Balboa-Cahig†*

## I. CORRUPTION AND ITS HIGH-LEVEL PERPETRATORS<sup>1</sup>

In the Philippines, the issue of corruption in the public sphere has been a constant concern even though earlier and more recent leaderships have won their seats under the battle cry of putting an end to corruption.<sup>2</sup> The country has gained international attention for the case of former President Ferdinand Marcos, who ruled the Philippines for more than two decades from 1965 to 1986, inclusive of the martial law period starting in 1972,<sup>3</sup> during which period the Marcos family and cronies were accused to have looted around US\$5-10 billion<sup>4</sup> in an atmosphere of authoritarian rule, crony capitalism, economic spoliation, and human rights violations.<sup>5</sup>

Aside from former President Marcos, another former president who served from 1998 to 2001 suffered the same downfall, with the *jueteng* (a local numbers game) payoff scandal and the corporate stock price manipulation incidents, which eventually led to his impeachment – the first Philippine President to have been impeached by the House of Representatives. He was charged before the Philippine anti-graft court known as *Sandiganbayan* for (i) receiving gifts and kickbacks from illegal gambling; (ii) converting and misusing a portion of tobacco excise tax share allocated for one province; (iii) compelling the country's public and private pension fund institutions<sup>6</sup> to purchase more than 680 million shares of stock in one corporation and deriving sales commission therefrom; and (iv) accumulating unexplained wealth under a fictitious account name<sup>7</sup> in one major bank, with an involved aggregate sum of almost PhP<sup>8</sup> 4.1 billion or around \$95 million.

His successor who served from 2001 to 2010, was also indicted before the *Sandiganbayan*. The Office of the Ombudsman conducted the preliminary investigation and prosecution of the latter cases, which included one for plunder for allegedly amassing millions of pesos by diverting

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\* Overall Deputy Ombudsman, Office of the Ombudsman, Philippines.

† Baybay City Deputy Prosecutor, National Prosecution Service, Department of Justice, Philippines.

<sup>1</sup> Succeeding entries are portions of the Office of the Ombudsman's presentation during the 5th Anti-Corruption Compliance Asia Pacific Summit 2017 held in Hong Kong.

<sup>2</sup> Ramon Magsasay, Diosdado Macapagal, Ferdinand Marcos, Gloria Macapagal Arroyo became president on the anti-corruption issue as found in the *Anatomy of Corruption*, Gerardo P. Sicat, The Philippine Star, October 30, 2013.

<sup>3</sup> Proclamation No. 1081 (Philippines 1972) Proclaiming a State of Martial Law in the Philippines.

<sup>4</sup> Ignasio Malizani Jimu, 'Asset Recovery and the Civil Society in Perspective: Nigeria, Peru, the Philippines and Kazakhstan Cases Considered' in Gretta Fenner Zinkernagel, Charles Monteith and Pedro Gomes Pereira (eds), *Emerging Trends in Asset Recovery* (Peter Lang AG 2013) 322.

<sup>5</sup> *Vide* Belinda A Aquino, *Politics of Plunder: the Philippines under Marcos* (2nd ed, University of the Philippines 1999) 29-82.

<sup>6</sup> Government Service Insurance System (GSIS) and Social Security System (SSS).

<sup>7</sup> "Jose Velarde" in the erstwhile Equitable PCI Bank.

<sup>8</sup> PhP stands for Philippine Peso.

funds sourced from a government agency's<sup>9</sup> confidential intelligence fund, and another one for graft and corruption for entering into a manifestly and grossly disadvantageous contract with a telecommunications firm for personal gain. She, however, scored victories in the ensuing proceedings when the litigation saga reached the Supreme Court.

Just recently, another former president is facing complaints arising from (i) the use and re-allocation of government savings worth billions of pesos and (ii) the botched police operations in southern Philippines that claimed the lives of a number of government forces. The Office of the Ombudsman filed the criminal cases against him for corrupt practices and for his participation in one police general's usurpation of authority.

Another recent corruption investigation is the pork barrel scam involving kickbacks and bribes given to Philippine politicians and government officials. From 2004 to 2012, a private businesswoman, who engaged in securing government contracts and is considered the central figure in the said scam, is accused of paying tens of millions of dollars in bribes in exchange for over \$200 million in funding for bogus development assistance. There have been more or less 40 legislators from either the Senate or the House of Representatives, who are now facing criminal indictment before the *Sandiganbayan*.

As can be deduced, just like in the earlier and more recent times, corruption still proliferates, and it has become a trend that these are even perpetrated by the top-level bureaucrats. According to a report on corruption cases received by *Sandiganbayan*, an anti-graft court which has jurisdiction over high-ranking officials, around 10,094 cases of malversation and 7,968 cases of graft have been filed against public officials, making up for about 53.59% of the 33,772 corruption cases received from 1979 to November 2016.<sup>10</sup> Going after these high-ranking government officials who have violated the time-honored principle that "public office is a public trust"<sup>11</sup> is vigorously pursued as it is considered to send a message of deterrence for potential corrupt activities, reassuring the public that no one is beyond the reach of law, not even those in the highest places. It is ironic that those in the highest and most strategic positions to create positive changes do not beget the highest ethical standards of public service.

In a hard-hitting twist of fate, however, it has seem to also become a trend, that amidst corruption allegations among these officials, they have sought and secured a return to power with one former president becoming the incumbent local chief executive<sup>12</sup> and is currently bidding for re-election,<sup>13</sup> while another former president has secured a seat in the House of Representatives and has been newly installed as its Speaker – the leader of the House and the fourth most powerful position in the land.<sup>14</sup> Immediate family members of former President Ferdinand Marcos, meanwhile, have also returned to the political limelight, with his wife elected to the House of Representatives, son and namesake previously elected to the Senate, and daughter holding a gubernatorial position in their home province.

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<sup>9</sup> Philippine Charity Sweepstakes Office or PCSO.

<sup>10</sup> "Tracking Sandiganbayan: Who's who in PH's biggest corruption cases?," Lian Buan, Rappler, Inc. January 22, 2017, updated February 2, 2017.

<sup>11</sup> Section 1, 1987 Philippine Constitution

<sup>12</sup> "Erap wins mayoralty race," Rosalinda L. Orosa, The Philippine Star, May 14, 2013.

<sup>13</sup> "Manila Mayor Erap Estrada seeks reelection, files COC," Daphne Galvez, Inquirer, October 17, 2018.

<sup>14</sup> "Gloria Macapagal-Arroyo's rise, fall and return to power,"

Whether these reflect a forgiving nation, or a mistrust in the evidence of accusations, or a system that overplays benefit of the doubt and distance to persecution, is subject to the varying perspectives of different quarters. For now, what is essential and necessary is to ensure that laws, institutions and systems should work to continuously ferret out the truth and accord justice amidst foreseen and unforeseen twists and turns.

## II. PROTOTYPES OF CORRUPTION CASES

In the Philippines, the thriving types of corruption cases are not far from those which have been identified in the United Nations Convention against Corruption (UNCAC) such as bribery, kickbacks, abuse of function, influence peddling, and illicit enrichment. It looks, however, at corruption in both lenses of ‘corruption in action’ and ‘corruption in *inaction*,’ such that commission of an unlawful act is not the sole determinant of corruption but neglect of duty and failure to act on sworn servitude to the people is also constitutive of a corrupt action. Misbehaviour by a public official, while it may not involve a taking of government fund or public property, is also considered a violation of the code of conduct as it connotes a negligence of duty for personal gain.<sup>15</sup> Specifically, some of the more notable typologies and their accompanying corruption cases in the Philippine context are as follows:

### A. Non-Compliance with the Government Procurement Reform Act

The National Bureau of Investigation (NBI) recently requested the Office of the Ombudsman to conduct a preliminary investigation on the procurement of PhP 3.5 billion or \$64 million<sup>16</sup> worth of the anti-dengue vaccine, Dengvaxia, for failure of the concerned government officials<sup>17</sup> to comply with the Government Procurement Reform Act as they proceeded with the purchase without the required Certificates of Product Registration and only receiving a certificate of exemption. The process likewise failed to follow the required protocols in the introduction of a new vaccine particularly on the aspect of the proposal for a budget for said vaccine. It was reported that at the said amount, the vaccine was administered to 830,000 children, with the Public Attorney’s Office (PAO) reporting over 200 deaths attributable to the vaccine.<sup>18</sup> The Department of Justice (DOJ) mentioned that it is likely to consolidate the complaint filed by private individuals and groups with the earlier charges filed by the NBI before the Office of the Ombudsman.<sup>19</sup>

To put into context, the Procurement Act is not only there to standardize and harmonize the policies relating to government procurement. It is established to create a system of transparency in the procurement process, ensuring that goods and services availed from or delivered by vendors satisfy both the financial and non-financial cost and benefit. The irregular procurement

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<sup>15</sup> “Anatomy of corruption,” Gerardo P. Sicat, *The Philippine Star*, October 13, 2013.

<sup>16</sup> 1 USD is equivalent to 54.25 Philippine Peso based on September 2018 exchange rate bulletin of Bangko Sentral ng Pilipinas (central bank of the Philippines)

<sup>17</sup> Refers to a former President, two former Cabinet officials, and several former and incumbent officials of the Department of Health (DOH).

<sup>18</sup> “DOJ likely to merge Dengvaxia raps vs. Aquino, others,” Christopher Lloyd Calinauan, *The Philippine News Agency*, July 17, 2018. See also “Timeline: The Dengvaxia controversy,” *CNN Philippines*, Updated February 26, 2018.

<sup>19</sup> “DOJ to consolidate PAO, experts’ Dengvaxia findings,” Lara Tan, *CNN Philippines*, February 5, 2018.

activities go beyond the physical taking of government funds but extend to introducing significant dangers in a nation's health, safety, environment, security, business, and other services and governance issues.

### **B. Technical Malversation**

Still in relation to the aforementioned case on circumventing procurement process, on 13 July 2018, the NBI also claims that the concerned officials are also liable for technical malversation considering that the government funds intended for the 2015 Miscellaneous Personnel Benefit Fund of the Executive Department (the said amount of PhP 3.5 billion) was utilized for the procurement of Dengvaxia vaccine under the Department of Health's school-based immunization programme. It has been claimed that notwithstanding the declaration by the Chief Executive of the source of fund as savings, the concerned government officials remain liable because the intended purpose failed since there were no existing programmes, activities or projects for the procurement of medicines and immunization for dengue.

### **C. Political Dynasty**

A related prototype is corruption as triggered by political dynasties. A case in point is the desire of one political clan in Maguindanao to stay in power and eliminate opposition, which led to the occurrence of the infamous Maguindanao massacre that cost the lives of 58 candidates, supporters and journalists on 23 November 2009. As of November last year, a total of 166 witnesses from the prosecution and 107 from the defence have been heard, 15 sets of formal offers of evidence in connection with the bail applications of 70 of the accused has also been resolved by the court by which the Department of Justice is eyeing several convictions by 2019.<sup>20</sup>

### **D. Ghost Project**

Another popular corruption case is the Ghost Projects. This is a trend in the infamous pork barrel scam, or the Priority Development Assistance Fund (PDAF) scam. A former Congressman was charged with two counts of graft and one count each of malversation and of malversation through falsification in the *Sandiganbayan* for allegedly misusing P4.85 million in pork barrel funds on ghost projects in 2008. The Ombudsman prosecutors accused the former Congressman of endorsing an unaccredited and unqualified non-government organization, which was selected without public bidding, for purposes of undertaking the livelihood projects funded by his PDAF allocations. Based on the documents, the funds were to be used for the purchase of hand tractors, water pumps and grafted fruit seedlings. However, investigations revealed that the mayors of the concerned municipalities never received the farm implements.

### **E. Income and Asset Misdeclaration**

The Philippine legal infrastructure provides a strong anchor for enjoining public officials to comply with the income and asset disclosure. Formally called the Statement of Assets, Liabilities and Net Worth, or SALN, in the Philippine, it has been considered a very powerful tool to detect potential misuse of public office for self-enrichment and to allow disclosure of one's business interests and financial connection. In one particular high-profile case, the SALN has been instrumental in the removal from office of the former Philippine Chief Justice in 2012, making him the first to be impeached and convicted, with his trial becoming the "first of its kind to be

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<sup>20</sup> "DOJ eyes Maguindanao massacre convictions in 2019," Edu Punay, *Inquirer*, June 22, 2018.

concluded in the Philippines.”<sup>21</sup> He was found guilty of failing to disclose and accurately declare in his SALN his bank deposits and properties.<sup>22</sup> In another case, SALN has also been the focus of the more recent ouster of a female head magistrate of the high court this year.

#### **F. Red Tape**

Red Tape, on the other hand, aside from causing great inefficiency in the delivery of public service, is a major source of graft and corruption. Two female individuals, for example, offered their services as fixers for the processing of drivers’ licenses at the Land Transportation Office Regional Office V and represented that the applicant for the driver’s license need not undergo the written examination or the actual driving test conducted by the Land Transportation Office and other requirements of the agency in exchange for the entrapment money. They have been apprehended and a case against them has been docketed.

#### **G. Influencing a Subordinate to Defy Order and Protocol**

The Philippines has also encountered cases of influencing a subordinate to defy order and protocol. A former high-ranking official allowed his trusted subordinate, who was then under preventive suspension, to give instructions, receive reports and recommendations, and approve the actions of the other men during an operation intended for the arrest of a wanted terrorist. This led to the massacre of 44 Special Action Force commandos in Mamasapano, Maguindanao in 2015.

#### **H. Bribery**

Two Bureau of Immigration personnel were accused of receiving PhP 50 million in bribe money from a certain businessman in exchange for the release of 1,316 foreign employees of the Fontana Leisure Parks and Casino in Clark, Pampanga who were overstaying aliens in the country and who committed violation of Philippine immigration laws.

#### **I. Connivance of Government Officials with Drug Lords**

In a more recent case, during the first quarter of 2017, the panel of prosecutors from the Department of Justice issued a 52-page Resolution on the consolidated criminal complaints filed by the Volunteers Against Crime and Corruption, the NBI, former NBI deputy directors and high-profile inmate and self-confessed drug trader, recommending the filing of charges against a former government official in connection with her alleged involvement in the proliferation of illegal drugs at the New Bilibid Prison.

Given all the foregoing, it can be surmised that there is a growing trend of corruption activities and allegations being perpetrated by those in the higher chamber of the bureaucracy. It may not come as much of a surprise since it indeed takes a good amount of power at your hands to be able to manipulate and orchestrate a web of convoluted corrupt activities. If it can be done in the lower ranks, and there is a good chance that this can be very well concealed and orchestrated by higher-ups, where the involved amount should not go unrecognized.

Therefore, if the allegations of corruption committed by the rank-and-files do not go unnoticed, the amount of prudence and vigilance in averting corruption at the low levels should even be multiplied when it comes to implicating high-level corruption. It is a serious task to

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<sup>21</sup> “Corona found guilty, removed from office,” Rappler, May 29, 2012, Updated July 2, 2012.

<sup>22</sup> Ibid.

handle that can be addressed by criminal justice authorities which, due to the sophistication of the documented recent cases, goes beyond the traditional justice pillars and extends to a multitude of actors like-mindedly serious about anti-corruption work.

This is true for the Philippines. More and more opportunities have paved way for better coordination among criminal justice authorities and even those in the civil society. Far from being a model, the Philippine experience may provide some gainful insights and helpful lessons in fighting impunity, with the matter of public integrity having insinuated its way into the national discourse, and found its proper place at the top of the Philippine national agenda.

### **III. COUNTERMEASURES TO CORRUPTION**

The realization of justice, within or beyond national borders, requires rule of law and respect for institutions, among others. Rule of law calls for adherence to well-defined legislations and allows for an impartial and non-arbitrary ruling that will facilitate fair and efficient accordance of justice and exaction of accountability. Countering corruption means countering an environment that promotes might as right and repeatedly oppresses societies, particularly its vulnerable groups, through effective prevention strategies and programmes developed through broad-based partnerships. In more ways than one, it is along this line that institutions combatting corruption as a precursor to justice have been created. Independent constitutional commissions and bodies have been created in order to enforce accountability of public officers.

Particularly acting on these are the Civil Service Commission, Commission on Elections, Commission on Audit, Office of the Ombudsman, and the country's anti-corruption court, the *Sandiganbayan*. Equally vital are the Office of the President, Congress, and Supreme Court, as well as the institutions charged with execution of laws such as the Department of Justice, Department of Foreign Affairs, Anti-Money Laundering Council, and Philippine National Police, among others.

Ratifying the United Nations Convention against Corruption (UNCAC) at the country level in 2006, the Philippines subscribes to its provision. In keeping with the Convention, the anti-corruption measure of the country is aligned with it, as it is also aligned with anti-corruption sections of the Philippine Development Plan.

#### **A. Preventive Measures**

The best way to counter corruption is to empower and strengthen the bodies that advance anti-corruption measures. By means of related reforms introduced and instituted by these organizations, the Philippines has a better chance of advancing integrity initiatives in the public sector.

##### **1. Inter-Agency Partnerships**

In order to better coordinate the anti-corruption efforts among the institutions, it was taken upon themselves to be bounded and set up the Inter-Agency Anti-Graft Coordinating Council (IAAGCC) to formulate and develop concerted techniques and strategies in the prevention, detection, investigation and prosecution of graft cases.<sup>23</sup> This mechanism created better

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<sup>23</sup> Administrative Order No. 79, Series of 1999.



operational-level coordination and has led to bilateral institutional partnerships later on. As a case in point, the Office of the Ombudsman has signed a Memorandum of Understanding with the Department of Justice as the former shares with the latter the criminal prosecution of cases against low-ranking public officials. In view of this concurrent jurisdiction, the agreement simplified the procedures and created a more efficient and effective investigation and prosecution of cases, including an enhanced monitoring mechanism.

Likewise, the Complaint Referral System has been established by the Office of the Ombudsman with the Civil Service Commission and the Philippine National Police. Both have promoted speedy disposition of administrative cases, thereby affirming accountability and improving public trust. There is also a partnership between the Ombudsman and the Commission on Audit on joint investigations.

## 2. Legislative Agenda

Among the efforts of the Philippine Legislature to bolster the anti-corruption initiatives are the enactment of laws which:

(1) strengthen the anti-money laundering law; (2) strengthen the functional and structural organization of the Sandiganbayan, the Philippines's anti-graft court; and (3) increase the prescriptive period for violations of the Anti-Graft and Corrupt Practices Act. Among the matters considered by our present administration as priority measures for legislation are the: (1) relaxation of the Law on Secrecy of Bank Deposits; (2) streamlining of processes and procedures in government; (3) creation of the People's Broadcasting Corporation; (4) enactment of the Whistleblower Protection Law; and (5) strengthening of the Witness Protection Programme.<sup>24</sup>

A major game-changer is the passage of the Republic Act No. 11032 or an Act Promoting Ease of Doing Business and Efficient Delivery of Government Services.

## 3. Enhanced Transparency

Presidential Proclamation No. 2, series of 2016 has been issued in order to operationalize in the executive branch the people's constitutional right to information and the State policies to full public disclosure and transparency in the public service and provided the guidelines for the implementation of the observance of the people's right to information. In terms of frontline government transactions, Citizen Charters are mandated to be posted in conspicuous places in order to provide information on obtaining a particular service, including its duration, fees and the procedure. This will prevent bribery in exchange for services, allow the public to report on malicious and inefficient transactions in accordance with the standard transaction rules which are now readily made available to the public. Because services are also timed and measured based on what is indicated in the Citizen's Charter, frontliners are also envisioned to be more encouraged to abide by the rule, being open to close client scrutiny.

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<sup>24</sup> Philippine Country Statement, 7th Session Conference of State Parties (COSP) to the United Nations Convention against Corruption (UNCAC), Vienna, Austria, November 2017.

#### 4. Integrity Programmes

On the matter of national corruption prevention initiatives, the Office of the President and the Office of the Ombudsman have been working together to implement the Integrity Management Programme, or the IMP, which is the Philippine Government's flagship corruption prevention programme implemented with the Office of the President and assesses the systems and processes of key government agencies in terms of their risks and vulnerabilities to corruption, and subsequently recommends corrective and preventive measures to the heads of agencies. The Integrity, Transparency and Accountability in Public Service (ITAPS) Programme also answers the need for customized training modules for government officials and employees, thereby reinforcing a culture of good governance. The Judiciary has likewise instituted case decongestion reforms and programmes. This includes the Justice on Wheels, which is a mobile court that goes to areas that are in need of adequate and inexpensive access to justice.<sup>25</sup>

#### 5. Sectoral Approach

To look into red tape in local government transactions, the Office of the Ombudsman has adopted a Blue Certification Programme and Red Tape Assessment designed to revalidate the anti-red tape standards prescribed for the Business Permits and Licensing Offices, which are presumed to be most exposed to corrupt temptations. The Office of the Ombudsman has also looked into corruption in the area of Environment and Investment. It has organized its Environmental Ombudsman which is primarily tasked to ensure the proper implementation and enforcement of environmental laws. It has since handled complaints against, investigated and suspended public officers and employees for violations of environmental laws. The Investment Ombudsman, on the other hand, acts on investor-related grievances and speedy resolution of investors' complaints.

#### 6. Digitization of Systems

In the midst of high incidence of non-filing and inappropriate asset declarations, a prototype Electronic Statement of Asset, Liabilities and Net Worth or the eSALN has been launched in May 2016 – a collaboration among the Civil Service Commission, Office of the Ombudsman and the Office of the President. It is a system which transitions the manual-based asset declaration to an electronic platform. It is envisioned to address perennial issues such as late, incomplete, improper, non-filing, non-declaration/misdeclaration of assets and liabilities, or non-disclosure of financial interests.

Along the thread of digitization of system for efficiency in government service, the Department of Information and Communications Technology (DICT) in the Philippines has launched a cloud-based eBPLS software for Local Government Units (LGUs), which enables them to process application for new and renewal of business permits electronically. The National Competitiveness Council's Project Repeal: Philippine Red Tape Challenge was launched in March 2016 and is a government-wide regulatory reform initiative to repeal outdated rules and reduce the cost of doing business.

#### 7. Merit Based Incentive Programme

In 2012, the Philippine government started implementing a merit-based incentive programme through the grant of performance-based bonus to government employees who have

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<sup>25</sup> Philippine Country Statement, 7th Session Conference of State Parties (COSP) to the United Nations Convention against Corruption (UNCAC), Vienna, Austria, November 2017.



rendered exemplary performance. The programme has been continuously implemented with the aim to improve the delivery of goods and services to all Filipinos and to institute a culture of fairness and excellence in the bureaucracy.

#### 8. Anti-Corruption Hotline

2016 marked the beginning of operation of the 8888 Citizen's Complaint Hotline which the public may use to report poor public service and other improper conduct of government officials and employees. The Office of the President Public Assistance Center may also receive complaints against erring government officials and employees. The Office of the Ombudsman likewise maintains two hotlines that the requesters or complainants may contact, namely, the Public Assistance Bureau, hotline which is open during office hours and the Field Investigation Office's 24-hour hotline.

### **B. Criminalization and Law Enforcement**

In the first cycle review of the UNCAC, it has been identified that one of the challenges is the coordination among authorities to pursue bribery and embezzlement cases. This is addressed by the previously cited Inter-Agency Anti-Graft Coordinating Council which adopted major plans such as the roll-out of a Revised Guidelines on Cooperation; publication of an Integrated Anti-Graft Investigation and Prosecution Manual; and development of an Integrated Case Management System for Graft and Corruption Cases.<sup>26</sup>

A bill is also pending in Congress that seeks to constitute the Commission on Audit (COA), Office of the Ombudsman, and Committee on Oversight of Congress into a tripartite body to be known as the Legislative Audit Council to perform identified tasks enabling government to effectively run after corrupt officials and private individuals and make them to account for embezzlement of public funds.<sup>27</sup> In terms of the challenges identified in the law enforcement cooperation, in particular to ensure that public officials and authorities cooperate sufficiently in criminal investigations and prosecutions, a bill is pending which "seeks to support the efforts of the Government to rid itself of corruption by setting up a system of rewards and protection for informants and their families."<sup>28</sup>

### **C. International Cooperation and Asset Recovery**

As for international cooperation and asset recovery, the primary mechanism that has been used for some of the documented successful recovery of assets hidden offshore is the Mutual Legal Assistance Treaty or the MLAT. The Philippines does not have a domestic law on mutual legal assistance but this does not prohibit it to request or grant legal assistance to a foreign country. Provisions of existing bilateral and regional MLATs provide for this.

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<sup>26</sup> Follow-up to the Conclusions and Observations Emerging from the UNCAC Review Process

<sup>27</sup> House Bill No. 426, An Act Constituting the Commission on Audit (COA), Office of the Ombudsman, and Committee on Oversight of Congress into a Tripartite Body to be known as the Legislative Audit Council to Perform Identified Tasks Enabling Government to Effectively Run after Corrupt Officials and Private Individuals and Made Them to Account for Embezzlement of Public Funds

<sup>28</sup> House Bill No. 145, An Act Providing Protection and Benefits to Persons who Disclose Conduct Constituting Graft and Corruption and to Witnesses for the Prosecution, thereof, providing penalties for Violations Hereof, and for Other Purposes

As a reference, the Philippines has existing MLATs with Australia, China, Hong Kong, South Korea, Spain, Switzerland, the United Kingdom and the United States. And as we know, thanks to the initiative of Malaysia, that as early as 2002, it had pushed for the creation of a multi-lateral mutual legal assistance deal on criminal matters for the ASEAN Region which has been adopted by 8 of the members in 2004, including the Philippines, with the rest joining in 2006.<sup>29</sup>

In the discussion on the Philippines' experience in successful asset recovery, especially when the focus is on the materiality of international cooperation, the Marcos case<sup>30</sup> finds its rightful place despite not being a fairly recent case. It is a classic example of recovering assets offshore and has been cited in several case studies done by local and foreign experts and institutions. It is an 18-year saga that successfully ended in 2004, repatriating to the Philippine Government a significant amount of money previously held in Swiss bank accounts.<sup>31</sup>

As for a more recent experience on asset recovery efforts, the United States and the Philippines have collaborated on these cases. Again, the MLAT proved to be a powerful instrument of international cooperation employed in the successes made. Specifically, the case of a former Major General who was a former comptroller of the Armed Forces of the Philippines. In 2003, his sons were arrested by US Customs authorities upon their entry in California for failure to declare USD 100,000 which was concealed in their jackets, shoes and bags.<sup>32</sup> This triggered the investigations into the transactions entered into by the general.

After case build up, the Office of the Ombudsman filed criminal cases of perjury, money laundering and plunder against him. He was eventually convicted of perjury by the Sandiganbayan, an anti-graft court. He and his family were also accused of amassing P303.27 million in ill-gotten wealth while the Major General was in active service. He, however, bargained to plead guilty to the lesser offences of Indirect Bribery and Facilitating Money Laundering for the other two criminal cases.<sup>33</sup> The plea bargaining is still the subject of review by the Supreme Court.<sup>34</sup>

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<sup>29</sup> Only 8 ASEAN Countries, including the Philippines signed the Treaty in 2004 after series of meetings in Sabah and Kuala Lumpur; Thailand and Myanmar to join two years later, in 2006. Found in "The many times Mutual Legal Assistance Treaty aided PHL", an article by Mark Merueñas of GMA News Online available at <http://www.gmanetwork.com/news/news/specialreports/479246/the-many-times-the-mutual-legal-assistance-treaty-aided-phl/story/>

<sup>30</sup> Succeeding discussions are significantly informed by: Office of the Ombudsman's report on International Cooperation on Asset Recovery during the Asia Pacific Economic Cooperation (APEC) Network on Anti-Corruption Authorities and Law Enforcement Agencies (ACT-NET) Meeting in 2017; "Digest of Asset Recovery Cases," the United Nations Office on Drugs and Crime (UNODC), New York, 2015; "Perspective on Civil Forfeiture" written by Jeffrey Simser, Legal Director, Civil Remedies for Illicit Activities Office, Ministry of the Attorney General (MAG), Toronto, Ontario, Canada (during the writing) available at [http://siteresources.worldbank.org/INTTHAILAND/Resources/333200-1089943634036/475256-1201245199159/2008Mar-asset\\_recovery-civil-forfeiture.pdf](http://siteresources.worldbank.org/INTTHAILAND/Resources/333200-1089943634036/475256-1201245199159/2008Mar-asset_recovery-civil-forfeiture.pdf)

<sup>31</sup> "Fact Sheet on Stolen Asset Recovery" developed by the Stolen Asset Recovery Initiative (StAR) by the World Bank and UNODC.

<sup>32</sup> US v. \$201,166.08 in US Currency and [ ] \$44,354.86 in US currency [ ] in name of ICJ Access Worldwide, Case No. 1:12-cv-9388 (SDNY), Verified Claim filed December 26, 2012

<sup>33</sup> "US turns over \$1.38M proceeds of Garcia's forfeited assets," Office of the Ombudsman, 3 June 2015.

<sup>34</sup> Ibid.

As the former general's corruption cases were ongoing in the Philippines, the US filed criminal and civil actions against him and his family and their US-based assets. Philippine and US investigators worked closely in order to determine the laundering of this substantial portion of his criminal proceeds through the United States.<sup>35</sup> Investigators from the US Department of Homeland Security traced the criminal proceeds to two Citibank accounts and a Trump Tower condominium, both in New York. It was US Attorney's Office for the Southern District of New York which initiated the civil forfeiture proceedings and after a judgment of default, the proceeds totaling to USD 1,384,940.28 were eventually turned over to the Philippines in June 3, 2015.<sup>36</sup> It serves as the second tranche of the proceeds of the forfeited assets of the former Major General as the first tranche was made in 2012 in the amount of USD 100,000 representing the cash seized from his sons at the San Francisco International Airport in December 2003, as earlier mentioned.<sup>37</sup>

With all the other ongoing efforts on asset recovery, the bigger agenda is to retrieve the stolen assets and proceeds of the crime and to commit to an understanding that justice does not end in prosecuting or incarcerating national thieves, especially big-time offenders. Concealing corruption proceeds should not be tolerated by taking money laundering activities sitting down. It has to be recovered, it has to be brought back to the rightful coffers.

#### IV. SUMMING UP

Overall, there is an understanding that addressing corruption is a gargantuan task for it has the ability to permeate different sectors, to manifest in different form, to grow sophisticated, and to get complicated in the web of conniving individuals be they from the high- or the low-ranks, or be they from the public or the private sectors.

The lessons from the Philippines may not be of a great model because corruption is far from being weeded out of its soil. Over the years, however, the country is able to display its consistent effort to fight corruption using the legislative measures and prevention programmes that go hand-in-hand with aggressive investigation and prosecution of public offenders, and the continuous promotion of integrity work. It has secured venues to seek redress. The country has also welcomed technical assistance from international communities and dove into making anti-corruption drive a multi-sectoral discourse. It has numerous laws that prevent corruption and buttress public service ethos. It might not have fully complied with all the provision in the UNCAC checklist, but the country has addressed the key points to begin a good anti-corruption drive.

While the Philippines has long been scourge of corruption and found to still be short of ridding it, its saving grace from the quagmire of corruption is its firm stance against the greatest corruption bottleneck, which is *not* its complexity, but the sheer display of tolerance for such activities.

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<sup>35</sup> Press release entitled "U.S. Helps Philippines Recover 'Ill-Gotten Gains'," United States Embassy in the Philippines available at <https://ph.usembassy.gov/u-s-helps-philippines-recover-ill-gotten-gains/>.

<sup>36</sup> Ibid.

<sup>37</sup> See footnote 34.