

PUBLIC-PRIVATE ANTI-CORRUPTION INITIATIVES IN THE PHILIPPINES: MEASURES FOR SUSTAINABILITY

*Atty. Rowena A. Del Rosario-Vidad**

I. INTRODUCTION

The Philippines used to be known as one of the most corrupt countries in Asia.¹ An opportunity to drastically transform that image came under President Benigno Aquino's anti-corruption platform that served as a snowballing call for the private sector to join the government in weeding out the roots of corruption.

The latest snapshot of public opinion from recent surveys² reflecting a steady decline in corruption of the private sector in its affairs with the government and the Philippine's upward climb by 10% points in controlling corruption³ clearly show the Philippine governments' metamorphosis from one plagued with corruption to one that is focused on trudging the straight path.

In the Global Competitiveness Report for 2013-2014 of the World Economic Forum, the Philippines is ranked 59th of 148 economies. Government is also perceived to be more efficient in spending public revenue (86th to 36th) and the diversion of public funds due to corruption is now perceived to occur less often (100th to 79th).⁴

Indeed, the Philippines is perceived to be becoming less corrupt over the past 3 years as it continues to improve its ranking in a global corruption survey. This is affirmed by the Philippines' improved ranking from 134th in 2010, up from 105th in 2012, 94th in 2013, to 85th in 2014, as published in Germany-based watchdog Transparency International's Corruption Perception Index.⁵ These statistics demonstrate an improving trend, despite the hype of the pork barrel issue involving high-ranking elected officials of the Philippine government.⁶

This goes to show that the Aquino administration's anti-corruption efforts are on the right track and are gaining momentum. Part of this victory should be attributed to the private

* Graft Investigation and Prosecution Officer II, Office of the Overall Deputy Ombudsman, Philippines.

¹ Dumlao, Doris, WB: *Corruption in RP worst in East Asia*, Philippine Daily Inquirer, available at <www.article.wn.com/view/2008/06/25/WB_Corruption_in_RP_worst_in_East_Asia> (last accessed on 07 October 2015).

² Social Weather Station survey conducted from November 2014 to May 2015, available at <<http://www.sws.org.ph/>> (last accessed on 26 September 2015).

³ 2014 World Bank's Worldwide Governance Indicators available at <<http://info.worldbank.org/governance/wgi/index.aspx#home>> (last accessed on 08 October 2015).

⁴ The Global Competitiveness Report, 2013-2014 available at <www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf> (last accessed on 07 October 2015).

⁵ Corruption Perceptions Index report published on 03 December 2014, available at <<https://www.transparency.org/whatwedo/publication/cpi2014>> (last accessed on 05 29 September 2015).

⁶ *Business Pulse: Entrepreneurs on PH Economy and Campaign Against Corruption*, available at <<http://www.integrityinitiative.com/articles/media-news>> (last accessed on 01 October 2015).

sector's active participation in the government's anti-corruption campaign over the past five years. The gains thus achieved by the Aquino government only make more urgent the imperative to continue a strategic anti-corruption policy geared towards fostering more partnerships with the private sector.

This paper focuses on Philippine public and private corruption initiatives to prevent and detect corruption, arguing that to ensure the sustainability and impact of such initiatives the government must reduce, if not totally eliminate, private sector cynicism and encourage private sector cooperation through provision of adequate incentive mechanisms or rewards systems, strong whistle-blower laws and full enforcement of anti-corruption laws.

The first part of this paper briefly looks at the different private-sector-led initiatives that institutionalize a culture of integrity in the business sector and address the promotion of transparency and good governance. The second and third parts outline the different corruption prevention initiatives being implemented by the Office of the Ombudsman, the primary anti-corruption body of the Philippine government, in partnership with the private sector.

By integrating the lessons learned from two high-profile corruption cases mirroring a successful collaboration of the public and private sectors in the detection and prosecution of corrupt acts, the final part of this report identifies key factors for the success and sustainability of public-private sector initiatives in combating corruption.

II. PRIVATE SECTOR INITIATIVES AT A GLANCE

A. Integrity Initiative: the SHINE Project

The Makati Business Club and the European Chamber of Commerce started the Integrity Initiative (initiative) in 2010 shortly after the Philippines received a grant from Siemens Germany to implement project SHINE (Strengthening High-Level Commitment for Integrity initiatives and Nurturing Collective action of Enterprises)—a four-year undertaking which aims to initiate collective action among ethical foreign and local business enterprises that wish to see the creation of fair market conditions for all market participants.⁷

Aside from enjoining all business executives to sign integrity pledges, which institutionalize integrity, honesty, and transparency in all aspects of conducting business, the initiative also imposes upon all signatories the duty to maintain a code of conduct for employees to pursue ethical business practices.⁸

As of November 21, 2014, 1,896 private companies, 202 icon organizations, 43 government agencies, and 86 members of the academe have signed the Integrity Pledge.⁹

In its early birth years, the initiative convened a series of discussions with communication experts focused on sharing best practices in promoting integrity habits, among the highlights of which are:

⁷ Integrity Compliance Handbook, <www.integrityinitiative.com>.

⁸ The Integrity Compliance Handbook, p. 2, published by the Makati Business Club (Integrity Initiatives Project Management Team).

⁹ Signatories' Registry, available at <www.integrityinitiative.com/signatories-to-pledge> (last accessed on 02 October 2015).

- MERALCO's¹⁰ launching in 2010 of "Be Right" Open Communication Policy, which allows employees to report unethical behaviour through: *e-report mo*, a whistle-blowing channel, and *e-suggest mo*, where employees can share their suggestions on increasing efficiency in the company's operations.¹¹
- Punongbayan and Araullo¹² launched the "Proactive Hotline" service, a web-based reporting facility which provides stakeholders and concerned citizens with a platform to report conflicts of interest and misappropriation of assets and other acts of fraud anonymously to company authorities for proper action. Aside from ensuring full anonymity for the whistle-blower, the hotline also features a monitoring system for the reporter to track the progress of his or her report.¹³

The initiative envisions to set up an Integrity Certification Program similar to the ISO or a Seal of Good Housekeeping. It will train a pool of accreditors who will examine and assess the level of implementation of organizational integrity practices so that those companies that have a good track record of enforcing business ethics can invite the initiative for their certification. Certified companies can avail themselves of incentives from the government and other private sector partners. Presently, details of such incentives are being worked out by the initiative.

B. AIM Hills Program on Governance¹⁴

A prototype of the integrity initiative project that was launched five years ago, the AIM Hills Project on Governance is a one-year project grant from the Center for International Private Enterprise implemented by the Asian Institute of Management (AIM) with the following objectives: strengthening awareness and understanding of the social and economic costs of corruption among Philippine businesses and generating their support for anti-corruption efforts, and strengthening the ability of Philippine small and medium enterprises (SMEs) to prevent corrupt and other unethical behaviour among their employees. This project includes a series of workshops and focus-group discussions for small and medium enterprises on strategies to combat corruption. It also intends to prepare a manual on operating a business without corruption for SMEs, and to develop a website. To support this project, the Department of Trade and Industry (DTI) created a website "Business Fighting Corruption" that serves as the clearinghouse of all information relating to business ethics and the control of corruption in the private sector in the Philippines.¹⁵

C. Judicial Reform Initiative Program¹⁶

The Judicial Reform Initiative Program is a private sector umbrella group tasked to coordinate, monitor and push for judicial reforms which was launched at the Integrity Summit in 2012. This project was initiated by the Financial Executives Institute of the

¹⁰ The Manila Electric Company, also known as *Meralco*, is the Philippines' largest distributor of electrical power.

¹¹ Supra note 7.

¹² Punongbayan and Araullo is a member firm within Grant Thornton International Ltd, one of the world's leading organizations of independently owned and managed accounting and consulting firms.

¹³ Supra note 7.

¹⁴ <<http://csis.org/programs/hills-program-governance/governance-centers-philippines>>.

¹⁵ <<http://www.businessesfightingcorruption.org/>>.

¹⁶ <<http://www.finex.org.ph/>>.

Philippines (FINEX)¹⁷ and is now under the Integrity Initiative with support from 18 major organizations in collaboration with the Supreme Court, the Department of Justice, and the Arangkada Project.

FINEX aims to promote the progressive and innovative application of financial knowledge and skills in beneficial service to business, government, and society as a whole, by observing the highest standards of competence and ethical behaviour at all times. Through this advocacy programme, the private sector, through corporate social responsibility, can also embrace activities supporting judicial reform.

D. Coalition Against Corruption (CAC)¹⁸

Launched on 21 September 2004, the Coalition against Corruption (CAC) is a multi-sectoral partnership that includes the academe, business sector, civil society organizations, and churches that fights corruption. Its mission is to implement and support counter-corruption projects in the area of procurement reforms and delivery of essential public services.

CAC's goals are to strengthen public participation in governance and to ensure proper use of public funds. The projects supported by CAC include government procurement monitoring, textbook and medicine monitoring, internal revenue allotment (of *barangays*) monitoring, Priority Development Assistance Fund (Pork Barrel) monitoring, catching the big fish, and lifestyle checks on public officials.

E. Bantay.ph¹⁹

This is an educational and volunteer platform supervised by the CAC. Founded three years ago, the majority of its activities in the fight against corruption have been rooted in civic education. Through the use of internet media, it promotes youth and citizen engagement in monitoring frontline government services and upholding good government service. A highlighted endeavour of Bantay.ph is information dissemination and monitoring of the Anti-Red Tape Act (ARTA).²⁰

The Civil Service Commission²¹ deputizes Bantay.ph student volunteers to go to different government agencies to monitor ARTA compliance, report violations, and do advocacy work in their schools and chosen communities. These volunteers come from Bantay.ph's official school partners.²²

¹⁷ FINEX is a non-stock, non-profit, non-political association founded in 1968 and is composed of more than 700 financial executives all over the Philippines.

¹⁸ <<http://www.cac.org.ph>>.

¹⁹ <<http://www.bantay.ph>>.

²⁰ Republic Act 9485 or the Anti-Red Tape Act (2007) was enacted to improve efficiency in the delivery of government service to the public by reducing bureaucratic red tape and preventing graft and corruption.

²¹ The Civil Service Commission is a constitutional body which acts as the central personnel agency of the Philippine government.

²² Speech of Integrity Initiative and Makati Business Club Chairman Ramon r. Del Rosario, Jr. published on 15 July 2013 at the development Bank of the Philippines website: <<https://www.devbnkphl.com/about.php?cat=271&0d3267bdc3d3d38c3630493837533ab>> (last accessed on 01 October 2015).

F. Transparent Accountable Governance Project²³

Financed by USAID, the Asia Foundation—in partnership with the Makati Business Club, Social Weather Station (SWS), the Philippine Center for Policy Studies (PCPS), and the Philippine Center for Investigative Journalism (PCIJ)—developed the innovative Transparent Accountable Governance (TAG) Project. Its mission is to promote transparency and accountability in government and push forward a collaborative action-oriented agenda to combat corruption.

Working closely with the above organizations, TAG documents business and civilian viewpoints on corruption as related to doing business in the Philippines (via survey research); identifies and analyses key areas of corruption and quantifies their economic costs (via case studies); and focuses business and public attention on the ways particular types of corruption affect the conduct of business and economic growth in the Philippines and builds consensus on a concrete agenda for counter-corruption reform (via public debate).

TAG's integrated approach has progressed well since its launch in 2000. Its main achievements include: disseminating information on the Estrada trial and mobilizing public support (Makati Business Club); completing and disseminating three economic research studies on corruption to identify key areas of corruption and analyse their dynamics and cost on the political economy (PCPS); undertaking public and business opinion surveys (SWS); investigative reporting (PCIJ); and keeping the public up to date on the new administration's progress in the first few days of government changeover.²⁴

G. Transparency and Accountability Network²⁵

The Transparency and Accountability Network is an umbrella organization composed of anti-graft allies such as non-government, faith-based organizations, civil society groups and watchdogs as well as universities and research institutions, united together in its advocacy for corruption reduction, prosecution and good governance. It was established in November 2000 with 19 organizations as founding members amid concerns over lack of transparency and accountability in governance. Today, it has grown to a 25-member group of organizations.

Specifically, TAN aims to:

- Serve as a mechanism for coordinating transparency and accountability initiatives of civil society;
- Engage government, the private sector, and the citizenry in a comprehensive strategy to promote transparency and accountability; and
- Formulate, advocate, and where appropriate, implement strategic reform initiatives.

²³ TAG Tools, available at <<https://asiafoundation.org/resources/pdfs/TAGTOOLSFINALRRL.pdf>> (last accessed on 07 October 2015).

²⁴ <<http://www.tag.org.ph>>.

²⁵ <<http://www.tan.org.ph>>.

III. CORRUPTION PREVENTION INITIATIVES OF THE OFFICE OF THE OMBUDSMAN IN PARTNERSHIP WITH THE PRIVATE SECTOR²⁶

A. Campus Integrity Crusaders

Campus Integrity Crusaders (CIC) refers to any non-partisan school-based youth organization recognized by a secondary or tertiary educational institution and duly accredited by the Office of the Ombudsman.²⁷ The strategy of accrediting Campus Integrity Crusaders aims to empower the youth in their involvement in corruption prevention initiatives by developing their leadership skills and instilling values of integrity and social responsibility.

The Office of the Ombudsman and a CIC may jointly undertake activities that aim to:

- Cultivate the virtues of uprightness, responsibility, honesty, respect for authority, and love of country;
- Instill a sense of good citizenship and responsible leadership;
- Inculcate the basic principles of human rights and civic duties; and
- Promote the integration of corruption prevention education (CPE) teaching modules in the school curricula.

B. Corruption Prevention Unit (CPU)²⁸

Corruption Prevention Unit (CPU) refers to any formal and non-partisan organization from the private sector and civil society that is duly accredited by the Office of the Ombudsman to undertake corruption prevention initiatives. As a partnership mechanism, the network of corruption prevention units aims to assist and support the Office of the Ombudsman in the implementation of its corruption prevention programmes. In coordination with the Office of the Ombudsman, a CPU shall undertake the following functions: a) To facilitate public information, education and capacity-building on accountability, transparency and integrity in public service; b) To provide feedback on efficiency, red tape, mismanagement, fraud and corruption in the government, and report any information that could determine the causes thereof; c) To promote and advocate high standards of ethics and efficiency in public administration; or d) To mobilize support for reforms in public service delivery.

C. Integrity Caravan

Launched in 2013, the Caravan aims to communicate and engage the public and private sectors on the various programmes and projects of the Office of the Ombudsman to further build a broad-based strategic partnership of all anti-corruption stakeholders. It involves key government agencies, local government unit (LGUs), private institutions, academic institutions, the business sector, development partners, peoples' organizations (POs), civil service organizations (CSOs), non-governmental organizations (NGOs), and the general public.

The Caravan is a year-long project launched on a nationwide scale. Supported by the United Nations Development Programme (UNDP) and other development partners, the

²⁶ <<http://www.ombudsman.gov.ph/>>.

²⁷ The Office of the Ombudsman is a constitutional body responsible for investigating and prosecuting Philippine government officials accused of crimes, especially graft and corruption.

²⁸ <<http://www.ombudsman.gov.ph/docs/publication/cpu%20primer%20final.pdf>>.

Caravan composed the following initiatives:

- Public Governance—A public dialogue that will bring together multi-sectoral practitioners, champions and advocates of good governance and anti-corruption.
- The Ombudsman Integrity Lecture Series—A series of lectures on various good governance and anti-corruption topics to be delivered by distinguished personalities from the local and global community.
- University Integrity Tour—This integrity roadshow is specifically designed to build the foundations of good governance and anti-corruption in the country’s educational system. It will showcase the various programmes and projects through mini-lectures, audio-visual presentations and photo exhibits in several universities nationwide.
- Barangay Integrity—A knowledge sharing and public exchange among *barangay* officials on ethical standards, good governance and public accountability. The seminar will cover relevant and timely topics such as but not limited to the roles, functions and programmes of the Ombudsman, and an orientation on the United Nations Convention Against Corruption (UNCAC).
- Integrity Development Contest—Another activity for students at various levels aimed at introducing them to the fundamentals of good governance and anti-corruption through creative means including essay-writing, poster-making and short video production.

IV. LESSONS LEARNED FROM THE ESTRADA AND NAPOLES PLUNDER CASES: A SUCCESSFUL JOINT COLLABORATION OF THE PUBLIC AND PRIVATE SECTORS IN THE DETECTION AND PROSECUTION OF CORRUPTION

Two cases illustrative of a successful joint collaboration of the public and private sectors in the detection and prosecution of corrupt acts are the cases involving former President Joseph Ejercito Estrada (Erap) and the Pork Barrel Queen Janet Lim Napoles. The common denominators in the successful prosecution of these grand corruption scandals are: (1) the private sector’s heightened participation in alerting the authorities of corrupt acts and staunch cooperation in the prosecution of corrupt officials and their accomplices; and (2) the government’s strong support to witnesses and whistle-blowers by giving them security and immunity from suits, and (3) effective inter-agency coordination.

A. The Estrada Plunder Case²⁹

In 2001, former Philippine President Joseph Ejercito Estrada (Erap) was indicted for plunder.³⁰ The trial of Estrada took place between 2001 and 2007 at the *Sandiganbayan*.

²⁹ *People of the Philippines vs. Joseph Ejercito Estrada, et al.*, Criminal Case No. 26558, September 12, 2007 available at <http://www.lawphil.net/courts/sandigan/sb_26558_2007.html> (last accessed on 07 October 2015).

³⁰ Section 2 of RA 7080 (July 02, 1991) defines plunder as: “plunder is committed when a 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 RA 7080 in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00).”

Popularly called Erap, Estrada was ousted from office in 2001 during a popular uprising in Metro Manila following a botched attempt to impeach him by the Senate in which he was charged with plunder and perjury. Soon after his ouster, the same charges were filed against him in the *Sandiganbayan*.

Six years thereafter, or in 2007, the *Sandiganbayan*³¹ ruled Estrada not guilty of perjury but convicted him of plunder punishable by *reclusión perpetua* and consequently ordered the forfeiture of his illegally acquired assets. All of his co-accused were acquitted.

The plunder case consisted of four separate charges: 1) acceptance of 545 million pesos from proceeds of *jueteng*, an illegal gambling game; 2) misappropriation of 130 million pesos in excise taxes from tobacco; 3) receiving a 189.7-million-peso commission from the sale of the shares of Belle Corporation, a real-estate firm; and 4) owning some 3.2 billion pesos in a bank account under the name *Jose Velarde*. All of these totalled 4,097,804,173.17 Pesos.

1. *Jueteng* Collections and Tobacco Excise Tax

The principal witness of the prosecution in the first and second predicate acts of plunder is former Ilocos Sur Governor Luis Chavit Singson (Chavit). He testified extensively on the following charges:

(i) Estrada accumulated ill-gotten wealth amounting to 545 million Pesos more or less from November 1998 to August 2000, through the monthly remittance to him of money collected from operations of illegal gambling, commonly known as "*jueteng*," based in the different provinces of the Philippines in consideration of the unimpeded operation of said illegal gambling.

(ii) Estrada illegally converted for his personal gain and benefit public funds in the amount of 130 million Pesos more or less, representing a portion of the 200 million Pesos tobacco excise share allocated for the province of Ilocos Sur.

Chavit presented to the court two sets of ledgers methodically showing said payments to Estrada. His testimony was corroborated by his aides and other bank officials who testified as to the existence of checks paid by Chavit which landed in the accounts of persons associated with Estrada. The paper trail of the 200 million deposited for the Erap Muslim Youth Foundation, Inc. was also incontrovertibly established as coming from *jueteng* collections.

The slew of bank accounts, involving mind-boggling amounts of money and authenticated by competent and credible bank officers, convinced the court that the entries entered in the ledger of Chavit were not manufactured. Singson also mentioned some of Estrada's prime properties, which include the Boracay mansion and a casino named Fontainebleau, Inc.

³¹ *Sandiganbayan* is an anti-graft court which has jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offences committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law. (Section 5, Art. XIII), 1973 Philippine Constitution as amended by section 4 (Art. XI), 1987 Philippine Constitution.

2. Kickbacks from the Sale of Belle Shares

The third predicate act of plunder accuses Estrada of pressuring the heads of government financial institutions, the Social Security System³² and the Government Service Insurance System³³ to buy Belle shares worth a total of more than P1.8 billion. Three highly regarded personalities in the private sector testified in the plunder case accusing Estrada of pocketing P189.7 million in commissions from the purchase of shares of Belle Corporation. In exchange for their testimonies, Carlos Arellano, former president, chairman and CEO of the Social Security System; Federico Pascual, former president and general manager of the Government Service Insurance System; and businessman Willy Ng Ocier, vice chairman of Belle, were granted broad immunity from criminal charges.

3. Jose Velarde Account

The prosecution presented overwhelming evidence that there were numerous deposits of astoundingly large sums of money into the Jose Velarde account. Former Equitable-PCI Bank Chief Trust Officer Clarissa Ocampo testified that she saw Erap sign as “Jose Velarde” in bank documents, in particular, a debit–credit authority which facilitated the P500-million loan to a certain Gatchalian, a crony of Estrada.

However, the prosecution failed to prove the predicate act/s or crime/s through which the said deposits could have been acquired or amassed, except for the amount of P189 million representing illegal commissions from the sales of Belle shares and money collected from illegal gambling.

Unknown assets under the Velarde account (Investment Management Account (IMA) number 101-78056-1) were unearthed only in 2008 when Banco de Oro Unibank Inc. (BDO)³⁴ submitted its report on the same to the *Sandiganbayan* in compliance with the latter’s forfeiture ruling issued on January 28, 2008, and a subsequent Notice to Deliver on July 12, 2013.

Among the assets turned over were cash in the trust fund amounting to P101.3 million; 450 million shares of stock of Waterfront Philippines Inc. registered in the name of The Wellex Group Inc.; 300 million Wellex shares of stock in the name of William T. Gatchalian; the originals of the promissory note and chattel mortgage pertaining to a P500-million loan by Wellex from the owner of the Velarde account.³⁵

4. Key to Success of the Estrada Plunder Case

Essentially, the backbone of the plunder case against former President Joseph Estrada is the evidence presented by the prosecution—thousands of documents and 76 witnesses ascribing a series of alleged wrongdoings to the ousted leader. More than 30 of the prosecution witnesses were officials and employees of at least 10 banks—Equitable PCI Bank, Citibank, Philippine Savings Bank, Bank of the Philippine Islands, Security Bank,

³²A state-run, social insurance programme for non-government employees in the Philippines founded in 1957.

³³ Its mandate is to provide and administer the following social security benefits for government employees: compulsory life insurance, optional life insurance, retirement benefits, disability benefits for work-related contingencies and death benefits.

³⁴ Now successor in interest of Equitable PCI bank.

³⁵ *Court gets assets of Jose Velarde*, available at <<http://newsinfo.inquirer.net/587002/court-gets-assets-of-jose-velarde#ixzz3nx1Zk64s>> (last accessed on 8 October 2015).

Land Bank of the Philippines, Urban Bank, Export and Industry Bank, United Asia Bank and Keppel Bank.

The bank's vice presidents, branch managers, account officers and customer service assistant tellers were constrained to appear before the Senate and, eventually, the *Sandiganbayan* because they were authorized by the bank president himself, who received the subpoena containing the list of witnesses.

The government provided legal refuge to those involved in the Erap plunder case, in particular, Ilocos Sur Governor Luis "Chavit Singson" who was granted legal immunity by testifying as a star witness against Estrada. Singson testified that the Erap Muslim Youth Foundation was the repository of *jueteng* proceeds he remitted to Erap through the foundation's account at Equitable PCI bank. Witnesses from the private sector involved in the sale of Belle shares were also afforded broad immunity from criminal charges.

B. The Pork Barrel Scam

Thirteen years after the Aquino administration, the pork barrel scam surfaced. The pork barrel scam³⁶ was the biggest high profile case to be brought by the administration of President Aquino to court since he was elected to office in 2010 on an anti-corruption platform.

The scam was first exposed in the *Philippine Daily Inquirer* on July 12, 2013, with the six-part exposé of the *Inquirer* on the scam pointing to businesswoman Janet Lim-Napoles as the scam's mastermind after Benhur K. Luy, her second cousin and former personal assistant, was rescued by agents of the National Bureau of Investigation on March 22, 2013, four months after he was detained by Napoles at her unit at the Pacific Plaza Towers in Fort Bonifacio. Initially centering on Napoles' involvement in the 2004 Fertilizer Fund scam, the government investigation on Luy's testimony has since expanded to cover Napoles' involvement in a wider scam involving the misuse of PDAF funds from 2003 to 2013.³⁷

Then came the 16 August 2013 Commission on Audit³⁸ report detailing the results of a three-year investigation into the use of legislators' PDAF and other discretionary funds during the last three years of the Arroyo administration. The report not only affirmed the *Inquirer's* findings, but also pointed to more legislators being privy to misuse of their PDAF funds.³⁹

Described as the "mother of all scams," this case involves Napoles, a private individual, who established numerous foundations and NGOs and misused these entities as conduits to illegally siphon government funds. She collaborated with lawmakers and agreed on a plan to misappropriate/embezzle funds from the Priority Development Assistance Fund (PDAF) of lawmakers under the guise of implementing projects which turned out to be fictitious. The scam's *modus operandi* was that lawmakers would submit a list of projects to the Department of Budget and Management (DBM)⁴⁰ for the issuance of the corresponding Special

³⁶ Priority Development Assistance Fund (PDAF, popularly called "pork barrel"), a lump-sum discretionary fund granted to each member of Congress for spending on priority development projects of the Philippine government, mostly on the local level.

³⁷ Carvajal, Nancy C. (July 12, 2013). "NBI probes P10-B scam". *Philippine Daily Inquirer* (Philippine Daily Inquirer, Inc.) (last accessed on 6 October 2015).

³⁸ COA SAO Report 2012-03, available at <<http://www.gov.ph/directory/commission-on-audit/9>> last accessed on 06 October 2015).

³⁹ *Id.*

⁴⁰ An executive body under the Office of the President of the Philippines. It is responsible for the sound and

Allocation and Release Order (SARO). The list of projects indicated the Implementing Agency (IA), project cost, designated non-government organizations (NGO) and/or foundations established by Napoles as recipients of the fund. Thereafter, the lawmaker would then endorse Napoles' NGO/foundation to the IA to receive the funds and implement the project. Thereafter, the IA, without competitive public bidding would award the project and enter into a Memorandum of Agreement (MOA) with the said NGO/foundation for the supposed implementation of the project. In exchange for selecting one of Napoles' NGO/foundation, the lawmaker received "kickbacks or commissions" from Napoles of about 40-60% of the cash value of the project.⁴¹ In the initial report published by *the Philippine Daily Inquirer*, 28 members of Congress (five senators and 23 representatives) were named as participants in the PDAF scam.⁴²

Finally, in April 2014, the Office of the Ombudsman filed before the *Sandiganbayan* three sets of "Information for Plunder" against Senators Enrile (docket number SB-14CRM-0238), Revilla (SB-14CRM-0240) and Estrada (SB-14CRM-0239) and their co-accused— Jessica Lucila "Gigi" Reyes (Enrile's former chief of staff), Richard Cambe (Revilla's chief of staff), and Paulene Therese Mary C. Labayen (Estrada's deputy chief of staff); Napoles, her fugitive brother, John Ronald Lim, and her driver-bodyguard John Raymund de Asis. These nine individuals constitute the first batch to be formally charged by the Ombudsman since the Department of Justice and the National Bureau of Investigation filed plunder charges against them and 29 other people in 2013.⁴³

The three senators⁴⁴ and Napoles, the alleged brains behind the pork barrel scam, and five other people allegedly stockpiled a combined total of P581 million in kickbacks through the diversion of pork barrel funds to bogus foundations from 2004 to 2012.

To expedite the trial, the Ombudsman formed three four-member teams to handle the prosecution of the nine accused. The Ombudsman based its conclusions on the paper trail arising from either the Special Allotment Release Order (SARO), or each Implementing Agency (IA)/NGO tandem, if one SARO was split and coursed through different agencies, regardless of the number of projects. The panel also cited the sworn statements of whistleblower Benhur-Luy and his co-witnesses, Marina Sula and Merlina Sunas, detailing the sequence of events, the Commission on Audit report on the PDAF disbursement, and the field verification reports with sworn statements of local government officials and purported beneficiaries of the supposed projects who turned out to be non-existent.⁴⁵

As of 1 July 2015, the Ombudsman has indicted at least 19 lawmakers and public officials privy to the pork barrel scam.⁴⁶ A number of investigations are currently ongoing to determine the extent of the PDAF scam. Senators Revilla and Estrada remain incarcerated in jail along with their co-accused in the Plunder cases. Recently, the Supreme Court allowed

efficient use of government resources for national development and also as an instrument for the meeting of national socio-economic and political development goals.

⁴¹ Supra note 36.

⁴² Carvajal, Nancy C, *28 solons linked to scam*, available at <www.inquirer.net/> (accessed on 6 October 2015).

⁴³ Gil Cabacungan and TJ Burgonio, *Napoles, 5 others charged in P10B plunder of pork*, available at <<http://newsinfo.inquirer.net/609215/enrile-estrada-revilla-indicted>> (last accessed on 6 October 2015).

⁴⁴ Senator Juan Ponce Enrile, Senator Ramon Revilla Jr. and Senator Jinggoy Estrada.

⁴⁵ Cabacungan Jr., Gil C., *Ombudsman forms special team to probe ghost pork projects*, available at <<http://newsinfo.inquirer.net/446483/ombudsman-forms-special-team-to-probe-ghost-pork-projects>> (last accessed on 6 October 2015).

⁴⁶ <<http://www.ombudsman.gov.ph/index.php?home=1&pressId=Njc4>> (last accessed on 6 October 2015).

Senator Enrile to post bail based on humanitarian reasons.⁴⁷ Napoles is serving her sentence of life imprisonment at the Correctional Institute for Women in Mandaluyong, Manila after the court found her guilty of illegally detaining whistle-blower Benhur Luy.⁴⁸ Napoles also currently faces 5 counts of plunder, 74 counts of graft and 14 counts of malversation before the *Sandiganbayan* anti-graft court.

The pork barrel saga showcases the anti-corruption campaign of the Philippine government as a system comparable to a three-legged stool. The first leg was the exposé of the massive theft and swindling of billions of pesos of pork barrel funds, through the audit reports of the Commission on Audit, the testimony of whistle-blowers, and the vigilant campaign and clamour of the media and the public for a complete halt to the appropriations and release of the congressional pork barrel. The Inquirer's initial expose of the P10-billion pork barrel scam was the first bomb. The filing of charges in court is the vital second leg. The third leg, which completes the system's solid foundations, is the trial and possible conviction of the accused in the *Sandiganbayan*, the nation's graft court.⁴⁹

The instigation of official action on the pork barrel scam following the whistle-blowers' actions is testimony to the power of public-private mobilizations and campaigns.⁵⁰

V. RECOMMENDATION

Paragraph 2(a) of Article 12 of the United Nations Convention against Corruption highlights the importance of promoting cooperation between law enforcement agencies and private entities. The purpose of the provision is to support effective identification and detection of irregularities which could be indicative of corrupt conduct.⁵¹

For the government sector to erase private-sector cynicism and encourage businesses/organizations to cooperate, it must enforce incentive mechanisms for the private sector, provide for internal reporting of corruption and effective whistle-blower laws, provide mechanisms and procedures used by law enforcement to strengthen cooperation with the private sector, including outreach, points of contact and confidential reporting lines, and fully enforce anti-corruption laws that should culminate in the prosecution of hi-profile perpetrators."⁵² Moreover, to mobilize a national movement against corruption, public-private partnerships at the grassroots level should also be explored.

⁴⁷ Rosette Adel, *Supreme Court's decision to grant Enrile's bail*, available at <<http://www.philstar.com/headlines/2015/08/20/1490224/full-text-supreme-courts-decision-grant-enriles-bail>> (last accessed on 6 October 2015).

⁴⁸ Ira Pedrasa, *Napoles sentenced to life in prison*, available at <<http://www.abs-cbnnews.com/nation/04/14/15/napoles-sentenced-life-prison>> (last accessed on 06 October 2015).

⁴⁹ Yen Makabenta, *Major breakthrough in anti-corruption campaign*, April 2, 2014, available at <<http://www.manilatimes.net/major-breakthrough-in-anti-corruption-campaign/87167/>> (last accessed on 6 October 2015).

⁵⁰ Garry Rodan, *The Politics of Accountability in Southeast Asia: The Dominance of Moral Ideologies* (2014).

⁵¹ The Philippines is a signatory to UNCAC, which was ratified in 2006 by the Philippine Senate.

⁵² Underscored by Guest Lecturer Adam Lurie, Senior Counsel to the Assistant Attorney General at the Criminal Division of the United States Department of Justice during the 4th Installment of the Ombudsman Integrity Lecture Asian Development Bank, 27 February 2014 as cited in www.rappler.com (1 March 2014).

A. Adoption of Strong Whistle-Blower Laws that Align with Current International Conventions and Bilateral Commitments

The risk of corruption is significantly heightened in environments where the reporting of wrongdoing is not supported or protected. Public and private sector employees have access to up-to-date information concerning their workplaces' practices, and are usually the first to recognize wrongdoing.⁵³

However, those who report wrongdoing may be subject to retaliation, such as intimidation, harassment, dismissal or violence by their fellow colleagues or superiors. In many countries, whistle-blowing is even associated with treachery or spying.

Whistle-blower protection is therefore essential to encourage the reporting of misconduct, fraud and corruption. Giving whistle-blowers an effective protection and security mechanism supports an open organizational culture where employees are not only aware of how to report but also have confidence in the reporting procedures. It also helps businesses prevent and detect bribery in commercial transactions. "The protection of both public and private sector whistleblowers from retaliation for reporting in good faith suspected acts of corruption is therefore integral to efforts to combat corruption, safeguard integrity, enhance accountability, and support a clean business environment."⁵⁴

There is currently no express obligation conferred by any statute requiring the public to whistle-blow when they encounter corrupt practices in the Philippines.

Presidential Decree No. 749⁵⁵ provides immunity for "givers of bribes [and] their accomplices in bribery and other graft cases against public officers". While the title seems to be limited to bribe givers, the decree covers "any person who voluntarily gives information" about the commission of bribery under the RPC and violations of "other laws, rules and regulations punishing acts of graft, corruption and other forms of official abuse" (section 1). Particular conditions must be established under the decree before immunity will be granted.

Moreover, the Ombudsman has the power to grant "immunity from criminal prosecution to any person whose testimony or whose possession [of] evidence may be necessary to determine the truth in any hearing, inquiry or proceeding, in the furtherance of [the Ombudsman's] constitutional functions and statutory objectives."⁵⁶ General immunity laws are also available such as the discharge of an accused to be a state witness under the Rules of Court⁵⁷ and the Witness Protection Program (Republic Act No. 6981).⁵⁸

It is noteworthy to mention that a pending legislative measure seeking to strengthen RA 6981 (Senate Bill 2860 of March 2012) has been favourably recommended by the Senate Committees on Justice and Human Rights, and Finance.⁵⁹ A counterpart bill in the lower house, House Bill No. 2922, is also pending for congressional deliberation. The said bills, however, have not been passed into law.

⁵³ United Nations Office on Drugs and Crime, UN Anti-Corruption Toolkit, 3rd Edition, Vienna, 2004, p. 67.

⁵⁴ Whistleblower protection: encouraging reporting, available at <<http://www.oecd.org/cleangovbiz/toolkit/50042935.pdf>> last accessed on 5 October 2015.

⁵⁵ PD No. 749 (1975).

⁵⁶ The Ombudsman Act of 1989, Section 17.

⁵⁷ Philippine Revised Rules of Court, Rule 119, Section 17.

⁵⁸ An Act Providing for a Witness Protection, Security and Benefit Program and for Other purposes, Section 3.

⁵⁹ <http://www.senate.gov.ph/lis/bill_res.aspx?congress=15&q=SBN-2860>.

The proposed bills titled as “Whistleblower Protection, Security and Benefit Act” provide financial rewards for whistle-blowers. Upon admission into the programme, if the case is susceptible of pecuniary estimation, such as plunder, forfeiture of ill-gotten wealth, bribery, malversation, and damage or injury to the government, the reward is P200,000. Upon the filing of the case with the Office of the Ombudsman, the cash reward amounts to P100,000 and another P100,000 upon the completion of the testimony of the whistle-blower. For such cases, the whistle-blower shall be entitled to an additional reward of 10 percent of the actual amount recovered by final judgement.

If the case is not susceptible of pecuniary estimation, the reward upon admission into the programme is P100,000; P50,000 upon the filing of the case with the Office of the Ombudsman; and P50,000 upon completion of the testimony of the whistle-blower.

Under the substitute whistle-blowers’ bill, apart from having secure housing facilities and relocation, the state witnesses shall be allowed to change their personal identity, which may include physiological appearance or change of name.

Before a person is provided protection as a whistle-blower or informant for the state, he shall first execute a Memorandum of Agreement (MOA) which shall set forth his/her responsibilities. Substantial breach of the MOA shall be a ground for the termination of the protection provided under the Act.

If ultimately enacted and adequately implemented, this legislation protecting whistle-blowers can become one of the most effective tools to support Philippine public and private anti-corruption initiatives.⁶⁰

B. Full Enforcement of Anti-Corruption Laws that Should Culminate in the Successful Prosecution of the Offenders

Corruption becomes more widespread when government lacks sincerity to act on reported corruption. This is true in the public as well as in the private sector.⁶¹ The present legislative framework for fighting corruption is complicated and is not effectively enforced by the weak and non-cooperative law enforcement agencies.⁶² According to Marcelo,⁶³ “the judicial structure is incomplete because of its inability to secure swift punishment for the guilty.”

A recent study by the Office of the Ombudsman cites that cases take 10.2 years on the average in the *Sandiganbayan*, from the filing of information to the rendition of a decision. Data from the PCIJ’s MoneyPolitics Online website shows that from 2010 to 2012, a total 1,132 cases were filed against public officials before the *Sandiganbayan*, 836 of which still have a “pending” status.⁶⁴

⁶⁰ David Banisar, “Whistleblowing: International Standards and Developments” in Sandoval, I. (editor), *Corruption and Transparency: Debating the Frontiers between State, Market and Society*, World Bank-Institute for Social Research, UNAM, Washington, D.C. 2011.

⁶¹ Whistleblowing in the Philippines: Awareness, Attitudes and Structures, Asian Institute of Management (2006).

⁶² *Ex-Ombudsman Marcelo: Corruption cases stagnating*. February 5, 2014 · Posted in: *Access to Information, Civil Society, Freedom of Information, General, Governance, Human Rights*, available at <<http://pcij.org/blog/2014/02/05/ex-ombudsman-marcelo-corruption-cases-stagnating>>.

⁶³ Former Ombudsman.

⁶⁴ <<http://moneypoliticstransparency.org/>>.

Part of the response to this situation is the creation of independent and specialized agencies to deal with corruption. The Philippines employs this system, with the Office of the Ombudsman as an example.

A new system of handling cases may be also adapted, new investigators should be recruited, the Freedom of Information bill⁶⁵ should be passed, and the president should strengthen the oversight commissions and the judiciary in order to remove the hold of the elites on them.

Overall, the Philippine government should demonstrate political will to fight corruption by fast-tracking high-profile cases and ensuring that grants of immunity do not create a situation of impunity.⁶⁶ The goal is to change the current perception of corruption in the Philippines—from a “low-risk, high-reward” activity to a “high-risk, low-reward activity.”⁶⁷

C. Provision of Adequate Incentive Mechanisms for the Private Sector

In particular, the Integrity Initiative, a major flagship project of the private sector, is envisioned to lead to fundamental, long term and institutionalized reforms, and transform the way business is conducted and corruption is fought in the Philippines.⁶⁸ The need to elevate the initiative to a new level is imperative. The Aquino government should consider signing an executive order that will require all private contractors to sign integrity pledges prior to transacting with the government. “It is important that the government get on board to provide recognition to those compliant companies so that the latter would not feel that they are at a competitive disadvantage if they’re competing against other companies who are not so constrained in the way they do business.”⁶⁹

D. Develop More Public–Private Partnerships at the Local Level

The challenge in the coming years is to ensure that it is not only a handful of private sector organizations that actively participate in combating corruption. To reduce corruption, a widespread commitment by the private sector, regardless of size, industry, and location is essential. Hence, public–private anti-corruption initiatives at the local level should likewise be explored and strengthened. If we are to engage people from all over the country and mobilize a national movement against corruption, joint initiatives should likewise start from the grassroots level.⁷⁰

⁶⁵ The proposed Freedom of Information (FOI) Act aims to mandate the disclosure of public documents. The proposed bill also outlines the exceptions for public disclosure and the procedures for accessing public documents. On March 10, 2014, the Senate passed the FOI bill on third and final reading, with 22 affirmative votes. On March 4, 2015, the bill was passed by the House Committee on Appropriations; as of this date, it is awaiting 2nd reading.

⁶⁶ Robert Klitgaard, Ronald MacLean-Abaroa, and H. Lindsey Parris, Jr., *Corrupt Cities* (Oakland: ICS Press, 2000).

⁶⁷ Vinay Bhargava, Country Director, Philippines, The World Bank, *Combating Corruption in the Philippines*, available at <<http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019123.pdf>> 9 (last accessed on 5 October 2015).

⁶⁸ *A Call for Integrity*, Editorial, Philippine Daily Inquirer, available at <<http://www.opinion.inquirer.net/37432/a-call-for-integrity>> (last accessed on 7 October 2015).

⁶⁹ Id.

⁷⁰ <http://www.cipe.org/blog/2014/09/04/local-level-governance-in-the-philippines-and-nigeria/#.VhJH__nvOM8>.

VI. CONCLUSION

Corruption requires a multi-faceted approach, as well as short-term and long-term approaches.⁷¹ It also appears very clearly that an effective anti-corruption strategy must be integrated and holistic.⁷² Global experience suggests that efforts to combat systemic corruption have to go beyond ad hoc, stand-alone reforms of the government since they are unlikely to achieve much progress, at least in the short term. No matter how committed our government will be, still, the most effective anti-corruption programmes involve a coalition of public and private stakeholders fostering institutional reforms that promote ethical business practice and good governance.⁷³

A national anti-corruption strategy needs to tackle many battle-fronts, and acknowledge that a comprehensive programme to combat corruption will take many years to implement. The government's commitment to fighting corruption and its emerging partnership should be anchored on a collaborative approach involving government, business, media, and NGOs.⁷⁴

⁷¹ BEN W. HEINEMAN, JR. & FRITZ HEIMANN, *The Long War Against Corruption*, 85 FOREIGN AFFAIRS, 77 (2006).

⁷² Peter, Langseth, *Prevention: An Effective Tool to Reduce Corruption* (Paper presented at the ISPAC conference on Responding to the Challenge of Corruption, 19 November 1999, Milan) available at <<https://www.unodc.org/pdf/crime/gpacpublications/cicp2.pdf>> (last accessed on 5 October 2015).

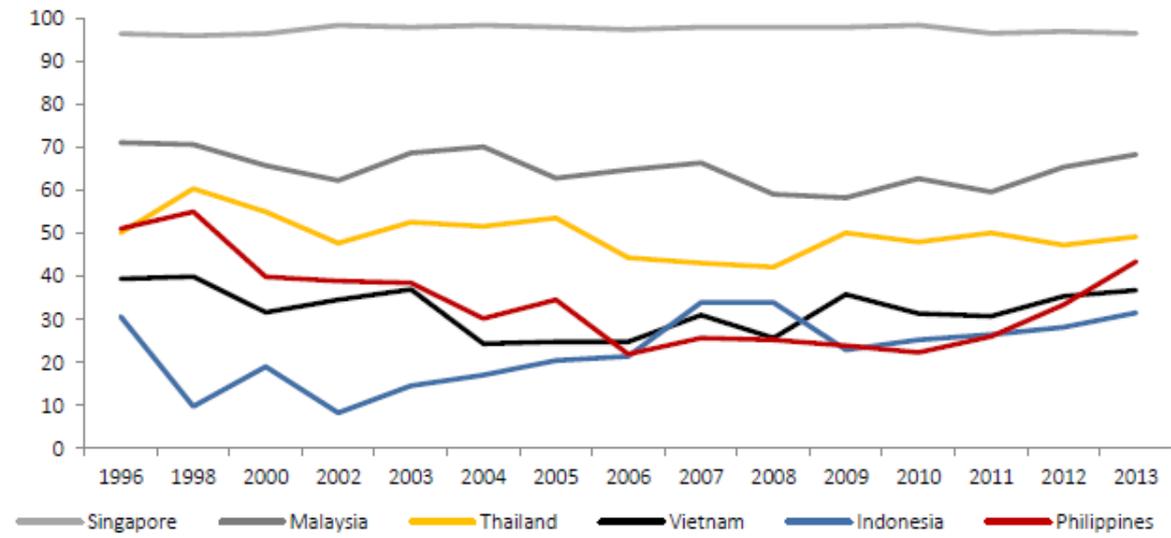
⁷³ Kim Eric Bettcher and Boris Melnikov, *Combating Corruption: A Private Sector Approach*, January 2011, available at www.cipe.org (last accessed on 6 October 2015).

⁷⁴ "World Bank, *Combating Corruption in the Philippines: An Update*," available at <<https://openknowledge.worldbank.org/handle/10986/15435>> (last accessed on 6 October 2015).

APPENDIX A

I. PHILIPPINES, 1996-2013 AGGREGATE INDICATOR: CONTROL OF CORRUPTION

Control of corruption, % rank

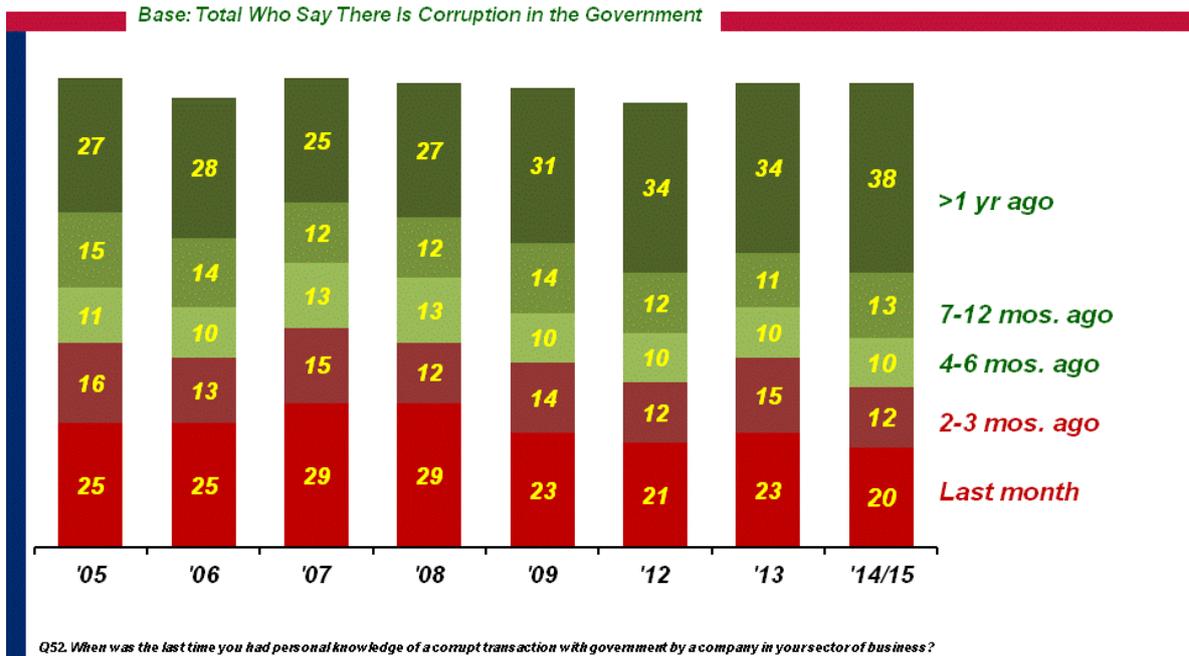


Source: World Bank's Worldwide Governance Indicators, 2014 Update

**II. THE 2014/15 SWS SURVEY OF ENTERPRISES ON CORRUPTION:
RECORD-LOW 32% OF EXECUTIVES HAVE PERSONAL KNOWLEDGE OF
CORRUPT TRANSACTION WITH GOVERNMENT IN THE LAST 3 MONTHS**

A. Chart I

**NEW LOW 32% WITH PERSONAL KNOWLEDGE OF PUBLIC SECTOR
CORRUPTION IN THE LAST 3 MONTHS IN THEIR LINE OF BUSINESS,
2005 – 2014/15**



NATIONAL COMPETITIVENESS COUNCIL PHILIPPINES



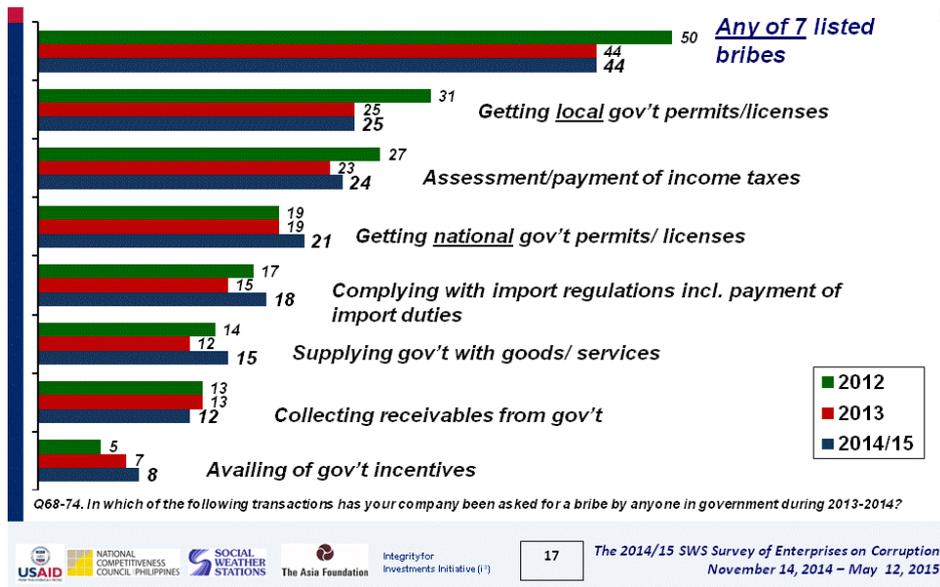
Integrity for Investments Initiative (i²)

1

The 2014/15 SWS Survey of Enterprises on Corruption
November 14, 2014 – May 12, 2015

B. Chart 2

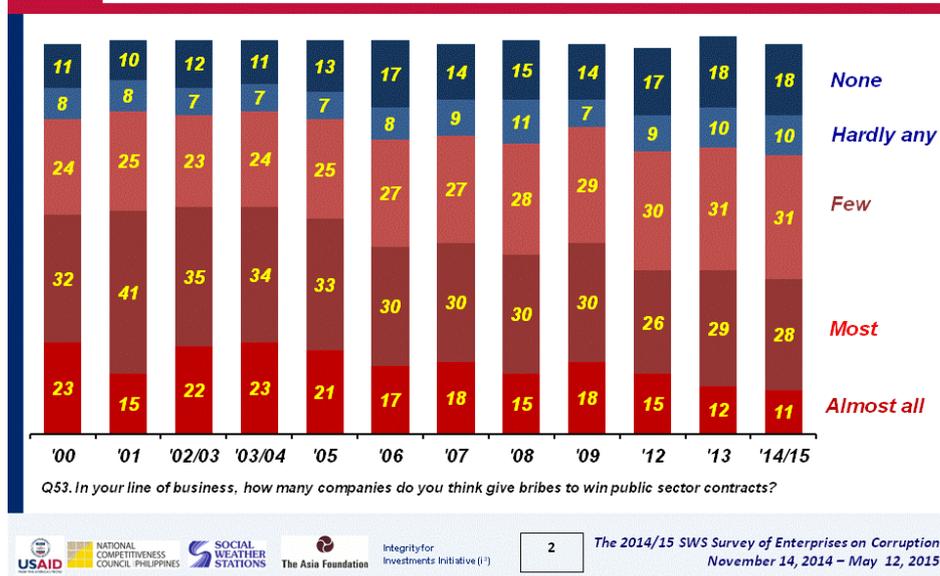
BEING SOLICITED FOR A BRIBE FELL FROM 50% IN 2012 TO 44% IN 2013 AND IN 2014/15.



C. Chart 3

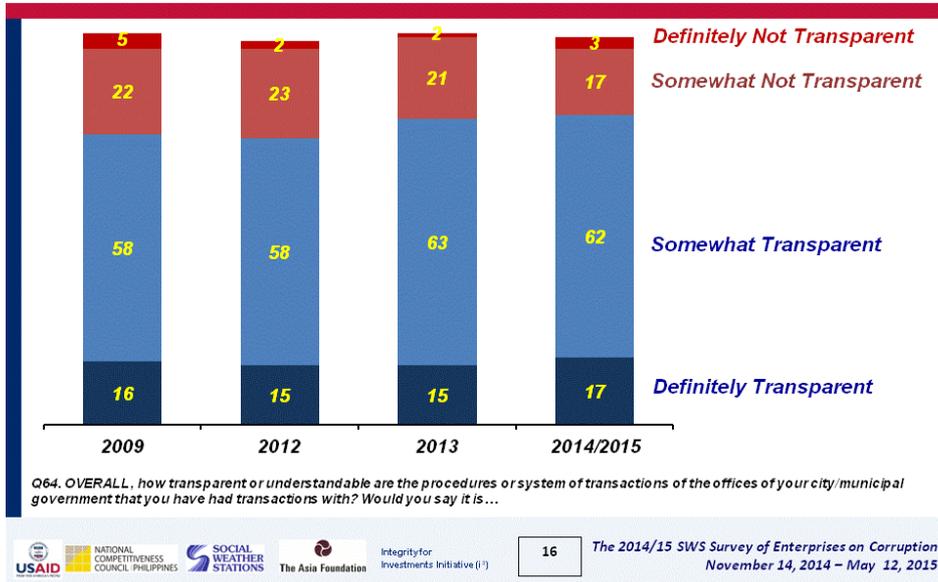
NEW LOW 39% SAYING MOST COMPANIES IN THEIR LINE OF BUSINESS GIVE BRIBES TO WIN PUBLIC SECTOR CONTRACTS, 2000 TO 2014/15

Base: Total Who Say Companies in Their Sector Allot a Percentage for Bribes to Win Public Sector Contracts



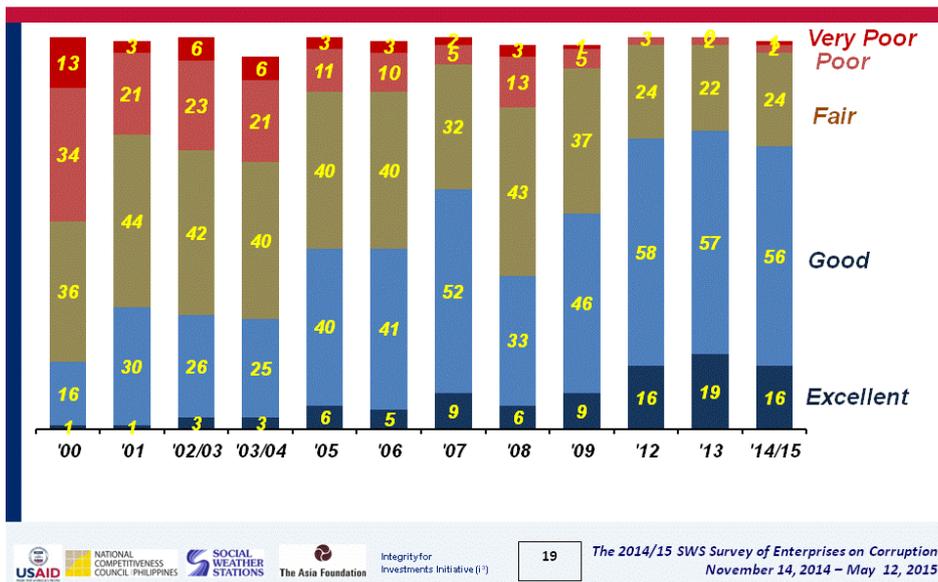
D. Chart 4

79% SAY TRANSACTION PROCEDURES OF CITY/MUNICIPAL GOV'T OFFICES ARE SOMEWHAT/DEFINITELY TRANSPARENT



E. Chart 5

72% HAVE GOOD/EXCELLENT EXPECTATIONS FOR BUSINESS IN THE NEXT 2 YEARS



APPENDIX B

I. 2013-2014 GLOBAL COMPETITIVENESS REPORT

Global Competitiveness Index

	Rank (out of 148)	Score (1–7)
GCI 2013–2014	59	4.3
GCI 2012–2013 (out of 144).....	65	4.2
GCI 2011–2012 (out of 142).....	75	4.1
Basic requirements (47.7%)	78	4.5
Institutions	79	3.8
Infrastructure	96	3.4
Macroeconomic environment	40	5.3
Health and primary education.....	96	5.3
Efficiency enhancers (44.2%)	58	4.2
Higher education and training.....	67	4.3
Goods market efficiency	82	4.2
Labor market efficiency	100	4.1
Financial market development	48	4.4
Technological readiness.....	77	3.6
Market size.....	33	4.7
Innovation and sophistication factors (8.1%)	58	3.8
Business sophistication	49	4.3
Innovation.....	69	3.2

APPENDIX C

I. CORRUPTION PERCEPTIONS INDEX RESULTS: TABLE AND RANKINGS

The Corruption Perceptions Index ranks countries and territories based on how corrupt their public sector is perceived to be. A country or territory's score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean). A country or territory's rank indicates its position relative to the other countries and territories in the index. This year's index includes 175 countries and territories. Click on the column headings to sort the results, or use the drop-down menu to view results by region. Note that N/A means a country was not included in the index during a particular year.

Rank	Country	2014	2013	2012
1	Denmark	92	91	90
2	New Zealand	91	91	90
3	Finland	89	89	90
4	Sweden	87	89	88
5	Norway	86	86	85
5	Switzerland	86	85	86
7	Singapore	84	86	87
8	Netherlands	83	83	84
9	Luxembourg	82	80	80
10	Canada	81	81	84
11	Australia	80	81	85
12	Germany	79	78	79
12	Iceland	79	78	82
14	United Kingdom	78	76	74
15	Belgium	76	75	75
15	Japan	76	74	74
17	Barbados	74	75	76
17	Hong Kong	74	75	77
17	Ireland	74	72	69
17	United States	74	73	73
21	Chile	73	71	72
21	Uruguay	73	73	72
23	Austria	72	69	69
24	Bahamas	71	71	71
25	United Arab Emirates	70	69	68
26	Estonia	69	68	64
26	France	69	71	71
26	Qatar	69	68	68
29	Saint Vincent and the Grenadines	67	62	62
30	Bhutan	65	63	63
31	Botswana	63	64	65
31	Cyprus	63	63	66
31	Portugal	63	62	63
31	Puerto Rico	63	62	63
35	Poland	61	60	58

Rank	Country	2014	2013	2012
35	Taiwan	61	61	61
37	Israel	60	61	60
37	Spain	60	59	65
39	Dominica	58	58	58
39	Lithuania	58	57	54
39	Slovenia	58	57	61
42	Cape Verde	57	58	60
43	Korea (South)	55	55	56
43	Latvia	55	53	49
43	Malta	55	56	57
43	Seychelles	55	54	52
47	Costa Rica	54	53	54
47	Hungary	54	54	55
47	Mauritius	54	52	57
50	Georgia	52	49	52
50	Malaysia	52	50	49
50	Samoa	52	#N/A	#N/A
53	Czech Republic	51	48	49
54	Slovakia	50	47	46
55	Bahrain	49	48	51
55	Jordan	49	45	48
55	Lesotho	49	49	45
55	Namibia	49	48	48
55	Rwanda	49	53	53
55	Saudi Arabia	49	46	44
61	Croatia	48	48	46
61	Ghana	48	46	45
63	Cuba	46	46	48
64	Oman	45	47	47
64	The FYR of Macedonia	45	44	43
64	Turkey	45	50	49
67	Kuwait	44	43	44
67	South Africa	44	42	43
69	Brazil	43	42	43
69	Bulgaria	43	41	41
69	Greece	43	40	36
69	Italy	43	43	42
69	Romania	43	43	44
69	Senegal	43	41	36
69	Swaziland	43	39	37
76	Montenegro	42	44	41
76	Sao Tome and Principe	42	42	42
78	Serbia	41	42	39
79	Tunisia	40	41	41
80	Benin	39	36	36
80	Bosnia and Herzegovina	39	42	42
80	El Salvador	39	38	38
80	Mongolia	39	38	36
80	Morocco	39	37	37
85	Burkina Faso	38	38	38

Rank	Country	2014	2013	2012
85	India	38	36	36
85	Jamaica	38	38	38
85	Peru	38	38	38
85	Philippines	38	36	34
85	Sri Lanka	38	37	40
85	Thailand	38	35	37
85	Trinidad and Tobago	38	38	39
85	Zambia	38	38	37
94	Armenia	37	36	34
94	Colombia	37	36	36
94	Egypt	37	32	32
94	Gabon	37	34	35
94	Liberia	37	38	41
94	Panama	37	35	38
100	Algeria	36	36	34
100	China	36	40	39
100	Suriname	36	36	37
103	Bolivia	35	34	34
103	Mexico	35	34	34
103	Moldova	35	35	36
103	Niger	35	34	33
107	Argentina	34	34	35
107	Djibouti	34	36	36
107	Indonesia	34	32	32
110	Albania	33	31	33
110	Ecuador	33	35	32
110	Ethiopia	33	33	33
110	Kosovo	33	33	34
110	Malawi	33	37	37
115	Côte d'Ivoire	32	27	29
115	Dominican Republic	32	29	32
115	Guatemala	32	29	33
115	Mali	32	28	34
119	Belarus	31	29	31
119	Mozambique	31	30	31
119	Sierra Leone	31	30	31
119	Tanzania	31	33	35
119	Vietnam	31	31	31
124	Guyana	30	27	28
124	Mauritania	30	30	31
126	Azerbaijan	29	28	27
126	Gambia	29	28	34
126	Honduras	29	26	28
126	Kazakhstan	29	26	28
126	Nepal	29	31	27
126	Pakistan	29	28	27
126	Togo	29	29	30
133	Madagascar	28	28	32
133	Nicaragua	28	28	29
133	Timor-Leste	28	30	33

Rank	Country	2014	2013	2012
136	Cameroon	27	25	26
136	Iran	27	25	28
136	Kyrgyzstan	27	24	24
136	Lebanon	27	28	30
136	Nigeria	27	25	27
136	Russia	27	28	28
142	Comoros	26	28	28
142	Uganda	26	26	29
142	Ukraine	26	25	26
145	Bangladesh	25	27	26
145	Guinea	25	24	24
145	Kenya	25	27	27
145	Laos	25	26	21
145	Papua New Guinea	25	25	25
150	Central African Republic	24	25	26
150	Paraguay	24	24	25
152	Congo, Republic of	23	22	26
152	Tajikistan	23	22	22
154	Chad	22	19	19
154	Congo, Democratic Republic of	22	22	21
156	Cambodia	21	20	22
156	Myanmar	21	21	15
156	Zimbabwe	21	21	20
159	Burundi	20	21	19
159	Syria	20	17	26
161	Angola	19	23	22
161	Guinea-Bissau	19	19	25
161	Haiti	19	19	19
161	Venezuela	19	20	19
161	Yemen	19	18	23
166	Eritrea	18	20	25
166	Libya	18	15	21
166	Uzbekistan	18	17	17
169	Turkmenistan	17	17	17
170	Iraq	16	16	18
171	South Sudan	15	14	#N/A
172	Afghanistan	12	8	8
173	Sudan	11	11	13
174	Korea (North)	8	8	8
174	Somalia	8	8	8

APPENDIX D

I. STAR REPORT ON ERAP PLUNDER CASE



Joseph Ejercito Estrada

Case Control Number:

66

Description:

In September 2007, Joseph Estrada was convicted by the Philippine Sandiganbayan (anti-graft court) of the crime of Plunder. According to an unofficial copy of the court decision obtained through the website of the Chan and Robles law firm, Mr. Estrada was accused in an Amended Information filed on April 19, 2001 of having amassed, while serving as President from 1998 to 2001, \$87.3 million in unexplained wealth and that the funds were derived from bribes, kick-backs, and protection money collected from illegal gambling operators. The chief government witness against him in the Plunder trial was Governor Luis "Chavit" Singson, his co-conspirator in the collection of protection money from illegal gambling operators. The court stated that some of the illegal proceeds had been deposited in Mr. Estrada's Erap Muslim Youth Foundation and a bank account that Mr. Estrada opened in the false name of "Jose Velarde." He was also convicted of having coerced two government agencies to purchase shares in a gaming company owned by an associate and collecting commissions from the sale of the shares. In addition to a sentence of life imprisonment, Mr. Estrada was ordered to forfeit his mansion and more than \$15 million in assets, including the illicit proceeds from the illegal gambling operators that had been transferred to the account of the Erap Muslim Youth Foundation and the "Jose Velarde" account. One month after his conviction, President Arroyo granted him a conditional pardon, but the Sandiganbayan's ruling on property and asset forfeiture remain in effect.

Type of Illicit activity involving Public Official :

Abuse of Power, Bribes (kick-backs), Money Laundering

Impediments to investigation:

Fake Name ("Jose Velarde" bank account); Multiple Bank Accounts.

Most recent legal action against Public Official?:

Other legal action/ other prosecutions:

Region:

EAP

Country of Public Official:

Philippines

Jurisdiction(s) of legal action:

Philippines

Sources:

People of the Philippines v. Joseph Ejercito Estrada, et al. (Sandiganbayan, Criminal Case No. 26558, Sept. 12, 2007) accessed at

<http://www.chanrobles.com/cralawsandiganbayandecisionconvictionofestradaforplunder2007.html> Malacanan Palace (Manila), By the President of the Philippines, Pardon of Joseph Ejercito Estrada, Oct. 25, 2007, available at

the website of the Philippine Office of the Press Secretary (obtained via the US Library of Congress, Directorate of Legal Research)

Position of Public Official during scheme:

President

Is there a pending case or appeals?:

No

UNCAC Articles(s) Implicated:

Art. 15

Art. 19

Art. 23

Money laundering Implicated?:

Yes

Year scheme began:

1998

APPENDIX E

I. 15 WHISTLE-BLOWERS WITH LINKS TO JANET LIM NAPOLES GAVE SWORN STATEMENTS TO THE NATIONAL BUREAU OF INVESTIGATION, THE OMBUDSMAN AND THE SENATE BLUE RIBBON COMMITTEE.



APPENDIX F

I. PRESIDENTIAL DECREE NO. 749 GRANTING IMMUNITY FROM PROSECUTION TO GIVERS OF BRIBES AND OTHER GIFTS AND TO THEIR ACCOMPLICES IN BRIBERY AND OTHER GRAFT CASES AGAINST PUBLIC OFFICERS

WHEREAS, public office is a public trust: public officers are but servants of the people, whom they must serve with utmost fidelity and integrity;

WHEREAS, it has heretofore been virtually impossible to secure the conviction and removal of dishonest public servants owing to the lack of witnesses: the bribe or giftgivers being always reluctant to testify against the corrupt public officials and employees concerned for fear of being indicted and convicted themselves of bribery and corruption;

WHEREAS, it is better by far and more socially desirable, as well as just, that the bribe or gift giver be granted immunity from prosecution so that he may freely testify as to the official corruption, than that the official who receives the bribe or gift should be allowed to go free, insolently remaining in public office, and continuing with his nefarious and corrupt practices, to the great detriment of the public service and the public interest.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the Constitution, do hereby decree and order that:

Section 1. Any person who voluntarily gives information about any violation of Articles 210, 211 and 212 of the Revised Penal Code, Republic Act Numbered Three Thousand Nineteen, as amended: Section 345 of the Internal Revenue Code and Section 3604 of the Tariff and Customs Code and other provisions of the said Codes penalizing abuse or dishonesty on the part of the public officials concerned; and other laws, rules and regulations punishing acts of graft, corruption and other forms of official abuse; and who willingly testifies against any public official or employee for such violation shall be exempt from prosecution or punishment for the offense with reference to which his information and testimony were given, and may plead or prove the giving of such information and testimony in bar of such prosecution: Provided, that this immunity may be enjoyed even in cases where the information and testimony are given against a person who is not a public official but who is a principal, or accomplice, or accessory in the commission of any of the above-mentioned violations: Provided further, that this immunity may be enjoyed by such informant or witness notwithstanding that he offered or gave the bribe or gift to the public official or is an accomplice for such gift or bribegiving; and Provided, finally, that the following conditions concur:

1. The information must refer to consummated violations of any of the abovementioned provisions of law, rules and regulations;
2. The information and testimony are necessary for the conviction of the accused public officer; 3. Such information and testimony are not yet in the possession of the State;
4. Such information and testimony can be corroborated on its material points; and

5. The informant or witness has not been previously convicted of a crime involving moral turpitude.

Section 2. The immunity granted hereunder shall not attach should it turn out subsequently that the information and/or testimony is false and malicious or made only for the purpose of harassing, molesting or in any way prejudicing the public officer denounced. In such a case, the public officer so denounced shall be entitled to any action, civil administrative or criminal, against said informant or witness: Provided, however, That such action may be commenced only after the dismissal of the case against the denounced public officer after preliminary investigation or after the latter's acquittal by a competent court. The prescriptive periods for the various actions under the provisions of this section shall start to run from the time such actions may be commenced as herein provided. (As amended by BP Blg. 242, approved Nov. 11, 1982.)

Section 3. All preliminary investigations conducted by a prosecuting fiscal, judge or committee, and all proceedings undertaken in connection therewith, shall be strictly confidential or private in order to protect the reputation of the official under investigation in the event that the report proves to be unfounded or no prima facie case is established.

Section 4. All acts, decrees and rules and regulations inconsistent with the provisions of this Decree are hereby repealed or modified accordingly. Section 5. This Decree shall take effect immediately. DONE in the City of Manila, this 18th day of July, in the year of Our Lord, nineteen hundred and seventy-five.

APPENDIX G

I. REPUBLIC ACT NO. 6770

AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:·

Section 1. Title. — This Act shall be known as "*The Ombudsman Act of 1989*".

Section 2. Declaration of Policy. — The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.

Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, efficiency, act with patriotism and justice and lead modest lives.

Section 3. Office of the Ombudsman. — The Office of the Ombudsman shall include the Office of the Overall Deputy, the Office of the Deputy for Luzon, the Office of the Deputy for the Visayas, the Office of the Deputy for Mindanao, the Office of the Deputy for the Armed Forces, and the Office of the Special Prosecutor. The President may appoint other Deputies as the necessity for it may arise, as recommended by the Ombudsman.

Section 4. Appointment. — The Ombudsman and his Deputies, including the Special Prosecutor, shall be appointed by the President from a list of at least twenty-one (21) nominees prepared by the Judicial and Bar Council, and from a list of three (3) nominees for each vacancy thereafter, which shall be filled within three (3) months after it occurs, each of which list shall be published in a newspaper of general circulation.

In the organization of the Office of the Ombudsman for filling up of positions therein, regional, cultural or ethnic considerations shall be taken into account to the end that the Office shall be as much as possible representative of the regional, ethnic and cultural make-up of the Filipino nation.

Section 5. Qualifications. — The Ombudsman and his Deputies, including the Special Prosecutor, shall be natural-born citizens of the Philippines, at least forty (40) years old, of recognized probity and independence, members of the Philippine Bar, and must not have been candidates for any elective national or local office in the immediately preceding election whether regular or special. The Ombudsman must have, for ten (10) years or more, been a judge or engaged in the practice of law in the Philippines.

Section 6. Rank and Salary. — The Ombudsman and his Deputies shall have the same ranks, salaries and privileges as the Chairman and members, respectively, of a Constitutional Commission. Their salaries shall not be decreased during their term of office.

The members of the prosecution, investigation and legal staff of the Office of the Ombudsman shall receive salaries which shall not be less than those given to comparable positions in any office in the Government.

Section 7. Term of Office. — The Ombudsman and his Deputies, including the Special Prosecutor, shall serve for a term of seven (7) years without reappointment.

Section 8. *Removal; Filling of Vacancy.* —

(1) In accordance with the provisions of Article XI of the Constitution, the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.

(2) A Deputy or the Special Prosecutor, may be removed from office by the President for any of the grounds provided for the removal of the Ombudsman, and after due process.

(3) In case of vacancy in the Office of the Ombudsman due to death, resignation, removal or permanent disability of the incumbent Ombudsman, the Overall Deputy shall serve as Acting Ombudsman in a concurrent capacity until a new Ombudsman shall have been appointed for a full term. In case the Overall Deputy cannot assume the role of Acting Ombudsman, the President may designate any of the Deputies, or the Special Prosecutor, as Acting Ombudsman.

(4) In case of temporary absence or disability of the Ombudsman, the Overall Deputy shall perform the duties of the Ombudsman until the Ombudsman returns or is able to perform his duties.

Section 9. *Prohibitions and Disqualifications.* — The Ombudsman, his Deputies and the Special Prosecutor shall not, during their tenure, hold any other office or employment. 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. They shall not be qualified to run for any office in the election immediately following their cessation from office. They shall not be allowed to appear or practice before the Ombudsman for two (2) years following their cessation from office.

No spouse or relative by consanguinity or affinity within the fourth civil degree and no law, business or professional partner or associate of the Ombudsman, his Deputies or Special Prosecutor within one (1) 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.

This disqualification shall apply during the tenure of the official concerned. This disqualification likewise extends to the law, business or professional firm for the same period.

Section 10. *Disclosure of Relationship.* — It shall be the duty of the Ombudsman, his Deputies, including the Special Prosecutor to make under oath, to the best of their knowledge and/or information, a public disclosure of the identities of, and their relationship with the persons referred to in the preceding section.

The disclosure shall be filed with the Office of the President and the Office of the Ombudsman before the appointee assumes office and every year thereafter. The disclosures made pursuant to this section shall form part of the public records and shall be available to any person or entity upon request.

Section 11. *Structural Organization.* — The authority and responsibility for the exercise of the mandate of the Office of the Ombudsman and for the discharge of its powers and functions shall be vested in the Ombudsman, who shall have supervision and control of the said office.

(1) The Office of the Ombudsman may organize such directorates for administration and allied services as may be necessary for the effective discharge of its functions. Those appointed as directors or heads shall have the rank and salary of line bureau directors.

(2) The Office of the Overall Deputy shall oversee and administer the operations of the different offices under the Office of Ombudsman. It shall likewise perform such other functions and duties assigned to it by the Ombudsman.

(3) The Office of the Special Prosecutor shall be composed of the Special Prosecutor and his prosecution staff. The Office of the Special Prosecutor shall be an organic component of the Office of the Ombudsman and shall be under the supervision and control of the Ombudsman.

(4) The Office of the Special Prosecutor shall, under the supervision and control and upon the authority of the Ombudsman, have the following powers:

(a) To conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan;

(b) To enter into plea bargaining agreements; and

(c) To perform such other duties assigned to it by the Ombudsman.

The Special Prosecutor shall have the rank and salary of a Deputy Ombudsman.

(5) The position structure and staffing pattern of the Office of the Ombudsman, including the Office of the Special Prosecutor, shall be approved and prescribed by the Ombudsman. The Ombudsman shall appoint all officers and employees of the Office of the Ombudsman, including those of the Office of the Special Prosecutor, in accordance with the Civil Service Law, rules and regulations.

Section 12. Official Stations. — The Ombudsman, the Overall Deputy, the Deputy for Luzon, and the Deputy for the Armed Forces shall hold office in Metropolitan Manila; the Deputy for the Visayas, in Cebu City; and the Deputy for Mindanao, in Davao City. The Ombudsman may transfer their stations within their respective geographical regions, as public interest may require.

Section 13. Mandate. — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

Section 14. Restrictions. — No writ of injunction shall be issued by any court to delay an investigation being conducted by the Ombudsman under this Act, unless there is a prima facie evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman.

No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law.

Section 15. Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and duties:

- (1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;
- (2) Direct, upon complaint or at its own instance, any officer or employee of the Government, or of any subdivision, agency or instrumentality thereof, as well as any government-owned or controlled corporations with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties;
- (3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglect to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: provided, that the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer;
- (4) Direct the officer concerned, in any appropriate case, and subject to such limitations as it may provide in its rules of procedure, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action;
- (5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;
- (6) Publicize matters covered by its investigation of the matters mentioned in paragraphs (1), (2), (3) and (4) hereof, when circumstances so warrant and with due prudence: provided, that the Ombudsman under its rules and regulations may determine what cases may not be made public: provided, further, that any publicity issued by the Ombudsman shall be balanced, fair and true;
- (7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government, and make recommendations for their elimination and the observance of high standards of ethics and efficiency;
- (8) Administer oaths, issue subpoena and subpoena duces tecum, and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records;
- (9) Punish for contempt in accordance with the Rules of Court and under the same procedure and with the same penalties provided therein;
- (10) Delegate to the Deputies, or its investigators or representatives such authority or duty as shall ensure the effective exercise or performance of the powers, functions, and duties herein or hereinafter provided;

(11) Investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth amassed after February 25, 1986 and the prosecution of the parties involved therein.

The Ombudsman shall give priority to complaints filed against high ranking government officials and/or those occupying supervisory positions, complaints involving grave offenses as well as complaints involving large sums of money and/or properties.

Section 16. *Applicability.*— The provisions of this Act shall apply to all kinds of malfeasance, misfeasance, and non-feasance that have been committed by any officer or employee as mentioned in Section 13 hereof, during his tenure of office.

Section 17. *Immunities.*— In all hearings, inquiries, and proceedings of the Ombudsman, including preliminary investigations of offenses, nor person subpoenaed to testify as a witness shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and/or other records on the ground that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to prosecution: provided, that no person shall be prosecuted criminally for or on account of any matter concerning which he is compelled, after having claimed the privilege against self-incrimination, to testify and produce evidence, documentary or otherwise.

Under such terms and conditions as it may determine, taking into account the pertinent provisions of the Rules of Court, the Ombudsman may grant immunity from criminal prosecution to any person whose testimony or whose possession and production of documents or other evidence may be necessary to determine the truth in any hearing, inquiry or proceeding being conducted by the Ombudsman or under its authority, in the performance or in the furtherance of its constitutional functions and statutory objectives. The immunity granted under this and the immediately preceding paragraph shall not exempt the witness from criminal prosecution for perjury or false testimony nor shall he be exempt from demotion or removal from office.

Any refusal to appear or testify pursuant to the foregoing provisions shall be subject to punishment for contempt and removal of the immunity from criminal prosecution.

Section 18. *Rules of Procedure.*—

- (1) The Office of the Ombudsman shall promulgate its rules of procedure for the effective exercise or performance of its powers, functions, and duties.
- (2) The rules of procedure shall include a provision whereby the Rules of Court are made suppletory.
- (3) The rules shall take effect after fifteen (15) days following the completion of their publication in the Official Gazette or in three (3) newspapers of general circulation in the Philippines, one of which is printed in the national language.

Section 19. *Administrative Complaints.*— The Ombudsman shall act on all complaints relating, but not limited to acts or omissions which:

- (1) Are contrary to law or regulation;
- (2) Are unreasonable, unfair, oppressive or discriminatory;

- (3) Are inconsistent with the general course of an agency's functions, though in accordance with law;
- (4) Proceed from a mistake of law or an arbitrary ascertainment of facts;
- (5) Are in the exercise of discretionary powers but for an improper purpose; or
- (6) Are otherwise irregular, immoral or devoid of justification.

Section 20. *Exceptions.* — The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

- (1) The complainant has an adequate remedy in another judicial or quasi-judicial body;
- (2) The complaint pertains to a matter outside the jurisdiction of the Office of the Ombudsman;
- (3) The complaint is trivial, frivolous, vexatious or made in bad faith;
- (4) The complainant has no sufficient personal interest in the subject matter of the grievance; or
- (5) The complaint was filed after one (1) year from the occurrence of the act or omission complained of.

Section 21. *Official Subject to Disciplinary Authority; Exceptions.* — The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.

Section 22. *Investigatory Power.* — The Office of the Ombudsman shall have the power to investigate any serious misconduct in office allegedly committed by officials removable by impeachment, for the purpose of filing a verified complaint for impeachment, if warranted.

In all cases of conspiracy between an officer or employee of the government and a private person, the Ombudsman and his Deputies shall have jurisdiction to include such private person in the investigation and proceed against such private person as the evidence may warrant. The officer or employee and the private person shall be tried jointly and shall be subject to the same penalties and liabilities.

Section 23. *Formal Investigation.* —

- (1) Administrative investigations conducted by the Office of the Ombudsman shall be in accordance with its rules of procedure and consistent with due process.
- (2) At its option, the Office of the Ombudsman may refer certain complaints to the proper disciplinary authority for the institution of appropriate administrative proceedings against erring public officers or employees, which shall be determined within the period prescribed in the civil service law. Any delay without just cause in acting on any referral made by the Office of the Ombudsman shall be a ground for administrative action against the officers or employees to

whom such referrals are addressed and shall constitute a graft offense punishable by a fine of not exceeding Five thousand pesos (P5,000.00).

(3) In any investigation under this Act the Ombudsman may: (a) enter and inspect the premises of any office, agency, commission or tribunal; (b) examine and have access to any book, record, file, document or paper; and (c) hold private hearings with both the complaining individual and the official concerned.

Section 24. Preventives Suspension. — The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six (6) months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.

Section 25. Penalties. —

(1) In administrative proceedings under Presidential Decree No. 807, the penalties and rules provided therein shall be applied.

(2) In other administrative proceedings, the penalty ranging from suspension without pay for one (1) year to dismissal with forfeiture of benefits or a fine ranging from Five thousand pesos (P5,000.00) to twice the amount malversed, illegally taken or lost, or both at the discretion of the Ombudsman, taking into consideration circumstances that mitigate or aggravate the liability of the officer or employee found guilty of the complaint or charges.

Section 26. Inquiries. —

(1) The Office of the Ombudsman shall inquire into acts or omissions of a public officer, employee, office or agency which, from the reports or complaints it has received, the Ombudsman or his Deputies consider to be:

(a) contrary to law or regulation;

(b) unreasonable, unfair, oppressive, irregular or inconsistent with the general course of the operations and functions of a public officer, employee, office or agency;

(c) an error in the application or interpretation of law, rules or regulations, or a gross or palpable error in the appreciation of facts;

(d) based on improper motives or corrupt considerations;

(e) unclear or inadequately explained when reasons should have been revealed; or

(f) inefficient performed or otherwise objectionable.

(2) The Officer of the Ombudsman shall receive complaints from any source in whatever form concerning an official act or omission. It shall act on the complaint immediately and if it finds the same entirely baseless, it shall dismiss the same and inform the complainant of such dismissal citing the reasons therefor. If it finds a reasonable ground to investigate further, it shall first furnish the respondent public officer or employee with a summary of the complaint and require him to submit a written answer within seventy-two (72) hours from receipt thereof. If the answer is found satisfactory, it shall dismiss the case.

(3) When the complaint consists in delay or refusal to perform a duty required by law, or when urgent action is necessary to protect or preserve the rights of the complainant, the Office of the Ombudsman shall take steps or measures and issue such orders directing the officer, employee, office or agency concerned to:

(a) expedite the performance of duty;

(b) cease or desist from the performance of a prejudicial act;

(c) correct the omission;

(d) explain fully the administrative act in question; or

(e) take any other steps as may be necessary under the circumstances to protect and preserve the rights of the complainant.

(4) Any delay or refusal to comply with the referral or directive of the Ombudsman or any of his Deputies, shall constitute a ground for administrative disciplinary action against the officer or employee to whom it was addressed.

Section 27. Effectivity and Finality of Decisions. — (1) All provisional orders of the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:

(1) New evidence has been discovered which materially affects the order, directive or decision;

(2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: provided, that only one motion for reconsideration shall be entertained.

Findings of fact by the Officer of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.

In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require.

Section 28. *Investigation in Municipalities, Cities and Provinces.* — The Office of the Ombudsman may establish offices in municipalities, cities and provinces outside Metropolitan Manila, under the immediate supervision of the Deputies for Luzon, Visayas and Mindanao, where necessary as determined by the Ombudsman. The investigation of complaints may be assigned to the regional or sectoral deputy concerned or to a special investigator who shall proceed in accordance with the rules or special instructions or directives of the Office of the Ombudsman. Pending investigation the deputy or investigator may issue orders and provisional remedies which are immediately executory subject to review by the Ombudsman. Within three (3) days after concluding the investigation, the deputy or investigator shall transmit, together with the entire records of the case, his report and conclusions to the Office of the Ombudsman. Within five (5) days after receipt of said report, the Ombudsman shall render the appropriate order, directive or decision.

Section 29. *Change of Unjust Laws.* — If the Ombudsman believes that a law or regulation is unfair or unjust, he shall recommend to the President and to Congress the necessary changes therein or the repeal thereof.

Section 30. *Transmittal/Publication of Decision.* — In every case where the Ombudsman has reached a decision, conclusion or recommendation adverse to a public official or agency, he shall transmit his decision, conclusion, recommendation or suggestion to the head of the department, agency or instrumentality, or of the province, city or municipality concerned for such immediate action as may be necessary. When transmitting his adverse decision, conclusion or recommendation, he shall, unless excused by the agency or official affected, include the substance of any statement the public agency or official may have made to him by way of explaining past difficulties with or present rejection of the Ombudsman's proposals.

Section 31. *Designation of Investigators and Prosecutors.* — The Ombudsman may utilize the personnel of his office and/or designate or deputize any fiscal, state prosecutor or lawyer in the government service to act as special investigator or prosecutor to assist in the investigation and prosecution of certain cases. Those designated or deputized to assist him herein provided shall be under his supervision and control.

The Ombudsman and his investigators and prosecutors, whether regular members of his staff or designated by him as herein provided, shall have authority to administer oaths, to issue subpoena and subpoena duces tecum, to summon and compel witnesses to appear and testify under oath before them and/or bring books, documents and other things under their control, and to secure the attendance or presence of any absent or recalcitrant witness through application before the Sandiganbayan or before any inferior or superior court having jurisdiction of the place where the witness or evidence is found.

Section 32. *Rights and Duties of Witness.* —

(1) A person required by the Ombudsman to provide the information shall be paid the same fees and travel allowances as are extended to witnesses whose attendance has been required in the trial courts. Upon request of the witness, the Ombudsman shall also furnish him such security for his person and his family as may be warranted by the circumstances. For this purpose, the Ombudsman may, at its expense, call upon any police or constabulary unit to provide the said security.

(2) A person who, with or without service or compulsory process, provides oral or documentary information requested by the Ombudsman shall be accorded the same privileges and immunities as are extended to witnesses in the courts, and shall likewise be entitled to the assistance of counsel while being questioned.

(3) If a person refuses to respond to the Ombudsman's or his Deputy's subpoena, or refuses to be examined, or engages in obstructive conduct, the Ombudsman or his Deputy shall issue an order directing the person to appear before him to show cause why he should not be punished for contempt. The contempt proceedings shall be conducted pursuant to the provisions of the Rules of Court.

Section 33. *Duty to Render Assistance to the Office of the Ombudsman.* — Any officer or employee of any department, bureau or office, subdivision, agency or instrumentality of the Government, including government-owned or controlled corporations and local governments, when required by the Ombudsman, his Deputy or the Special Prosecutor shall render assistance to the Office of the Ombudsman.

Section 34. *Annual Report.* — The Office of the Ombudsman shall render an annual report of its activities and performance to the President and to Congress to be submitted within thirty (30) days from the start of the regular session of Congress.

Section 35. *Malicious Prosecution.* — Any person who, actuated by malice or gross bad faith, files a completely unwarranted or false complaint against any government official or employee shall be subject to a penalty of one (1) month and one (1) day to six (6) months imprisonment and a fine not exceeding Five thousand pesos (P5,000.00).

Section 36. *Penalties for Obstruction.* — Any person who willfully obstructs or hinders the proper exercise of the functions of the Office of the Ombudsman or who willfully misleads or attempts to mislead the Ombudsman, his Deputies and the Special Prosecutor in replying to their inquiries shall be punished by a fine of not exceeding Five thousand pesos (P5,000.00).

Section 37. *Franking Privilege.* — All official mail matters and telegrams of the Ombudsman addressed for delivery within the Philippines shall be received, transmitted, and delivered free of charge: provided, that such mail matters when addressed to private persons or nongovernment offices shall not exceed one hundred and twenty (120) grams. All mail matters and telegrams sent through government telegraph facilities containing complaints to the Office of the Ombudsman shall be transmitted free of charge, provided that the telegram shall contain not more than one hundred fifty (150) words.

Section 38. *Fiscal Autonomy.* — The Office of the Ombudsman shall enjoy fiscal autonomy. Appropriations for the Office of the Ombudsman may not be reduced below the amount appropriated for the previous years and, after approval, shall be automatically and regularly released.

Section 39. *Appropriations.* — The appropriation for the Office of the Special Prosecutor in the current General Appropriations Act is hereby transferred to the Office of the Ombudsman. Thereafter, such sums as may be necessary shall be included in the annual General Appropriations Act.

Section 40. *Separability Clause.* — If any provision of this Act is held unconstitutional, other provisions not affected thereby shall remain valid and binding.

Section 41. *Repealing Clause.* — All laws, presidential decrees, letters of instructions, executive orders, rules and regulations insofar as they are inconsistent with this Act, are hereby repealed or amended as the case may be.

Section 42. *Effectivity.* — This Act shall take effect after fifteen (15) days following its publication in the Official Gazette or in three (3) newspapers of general circulation in the Philippines.

Approved: **November 17, 1989.**

ANNEX H

I. SECTION 17 AND 18 OF RULE 119, REVISED RULES OF CRIMINAL PROCEDURE

Section 17. *Discharge of accused to be state witness.* — When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

- (a) There is absolute necessity for the testimony of the accused whose discharge is requested;
- (b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;
- (c) The testimony of said accused can be substantially corroborated in its material points;
- (d) Said accused does not appear to be the most guilty; and
- (e) Said accused has not at any time been convicted of any offense involving moral turpitude.

Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence. (9a)

Section 18. *Discharge of accused operates as acquittal.* — The order indicated in the preceding section shall amount to an acquittal of the discharged accused and shall be a bar to future prosecution for the same offense, unless the accused fails or refuses to testify against his co-accused in accordance with his sworn statement constituting the basis for the discharge.

APPENDIX I

I. RA 6981- WITNESS PROTECTION ACT

Section 3. Admission into the Program- Any person who has witnessed or has knowledge or information on the commission of a crime and has testified or is testifying or about to testify before any judicial or quasi-judicial body, or before any investigating authority, may be admitted into the Program: Provided, That: a) the offense in which his testimony will be used is a grave felony as defined under the Revised Penal Code, or its equivalent under special laws; b) his testimony can be substantially corroborated in its material points; c) he or any member of his family within the second civil degree of consanguinity or affinity is subjected to threats to his life or bodily injury or there is a likelihood that he will be killed, forced, intimidated, harassed or corrupted to prevent him from testifying, or to testify falsely, or evasively, because or on account of his testimony; and d) he is not a law enforcement officer, even if he would be testifying against the other law enforcement officers. In such a case, only the immediate members of his family may avail themselves of the protection provided for under this Act. If the Department, after examination of said applicant and other relevant facts, is convinced that the requirements of this Act and its implementing rules and regulations have been complied with, it shall admit said applicant to the Program, require said witness to execute a sworn statement detailing his knowledge or information on the commission of the crime, and thereafter issue the proper certification. For purposes of this Act, any such person admitted to the Program shall be known as the Witness.

Section 8. Rights and Benefits- The witness shall have the following rights and benefits:

(a) To have a secure housing facility until he has testified or until the threat, intimidation or harassment disappears or is reduced to a manageable or tolerable level. When the circumstances warrant, the Witness shall be entitled to relocation and/or change of personal identity at the expense of the Program. This right may be extended to any member of the family of the Witness within the second civil degree of consanguinity or affinity.

(b) The Department shall, whenever practicable, assist the Witness in obtaining a means of livelihood. The Witness relocated pursuant to this Act shall be entitled to a financial assistance from the Program for his support and that of his family in such amount and for such duration as the Department shall determine.

(c) In no case shall the Witness be removed from or demoted in work because or on account of his absences due to his attendance before any judicial or quasi-judicial body or investigating authority, including legislative investigations in aid of legislation, in going thereto and in coming there from: Provided, That his employer is notified through a certification issued by the Department, within a period of thirty (30) days from the date when the Witness last reported for work: Provided, further, That in the case of prolonged transfer or permanent relocation, the employer shall have the option to remove the Witness from employment after securing clearance from the Department upon the recommendation of the Department of Labor and Employment. Any Witness who failed to report for work because of witness duty shall be paid his equivalent salaries or wages corresponding to the number of days of absence occasioned by the Program. For purposes of this Act, any fraction of a day shall constitute a full day salary or wage. This provision shall be applicable to both government and private employees.

(d) To be provided with reasonable travelling expenses and subsistence allowance by the Program in such amount as the Department may determine for his attendance in the court, body or authority where his testimony is required, as well as conferences and interviews with prosecutors or investigating officers.

(e) To be provided with free medical treatment, hospitalization and medicines for any injury or illness incurred or suffered by him because of witness duty in any private or public hospital, clinic, or at any such institution at the expense of the Program.

(f) If a Witness is killed, because of his participation in the Program, his heirs shall be entitled to a burial benefit of not less than Ten thousand pesos (P10,000.00) from the Program exclusive of any other similar benefits he may be entitled to under other existing laws. (g) In case of death or permanent incapacity, his minor or dependent children shall be entitled to free education, from primary to college level in any state, or private school, college or university as may be determined by the Department, as long as they shall have qualified thereto.

II. DOJ RULES ON WITNESS PROTECTION PROGRAM

Who can be admitted into the Program?

1. Any person who has knowledge of or information on the commission of a crime and has testified or is testifying or is willing to testify. 2. A witness in a congressional investigation, upon the recommendation of the legislative committee where his testimony is needed and with the approval of the Senate President or the Speaker of the House of Representatives, as the case may be. 3. A witness who participated in the commission of a crime and who desires to be a State witness. 4. An accused who is discharged from an information or criminal complaint by the court in order that he may be a State witness.

What benefits may a witness under the Program receive?

The benefits include the following:

- Security protection and escort services.
- Immunity from criminal prosecution and not to be subjected to any penalty or forfeiture for any transaction, matter or thing concerning his compelled testimony or books, documents or writings produced. Secure housing facility.
- Assistance in obtaining a means of livelihood.
- Reasonable traveling expenses and subsistence allowance while acting as a witness.
- Free medical treatment, hospitalization and medicine for any injury or illness incurred or suffered while acting as a witness. Burial benefits of not less than Ten Thousand pesos (P10,000.00) if the witness is killed because of his participation in the Program.
- Free education from primary to college level for the minor or dependent children of a witness who dies or is permanently incapacitated.
- Non-removal or demotion in work because of absences due to his being a witness and payment of full salary or wage while acting as witness.

APPENDIX J

I. SALIENT POINTS OF PROPOSED WHISTLEBLOWER'S LAW

An organic Witness Protection, Security and Benefit Program (WPSBP) security unit shall be created to provide security and protective services.

"Whistleblower" shall refer to an informant or any person who has personal knowledge or access to data of any information or event involving improper conduct by a public officer and/or a public body.

Whistleblowers or informants, whether from the public or private sector, shall be entitled to the benefits under this Act, provided, that all the following requisites concur:

-The disclosure is voluntary, in writing and under oath;

-The disclosure relates to acts constituting improper conduct by public officers and/or public bodies; and

-The information to be disclosed is admissible in evidence.

Except insofar as allowed by this Act, during and after the disclosure, and throughout and after any proceeding taken thereafter, a whistleblower or an informant is entitled to

absolute confidentiality as to:

-His identity;

-The subject matter of his disclosure; and,

-The person to whom such disclosure was made.

A whistleblower, informant or any person who has made a disclosure under this Act shall have, as defense in any other inquiry or proceeding, the absolute privilege with respect to the subject matter of his/her disclosure or information given to the proper authorities.

A whistleblower, informant, or a person who has made or is believed or suspected to have made a disclosure under this Act is not liable to disciplinary action for making said disclosure. When determined to be necessary and appropriate, a whistleblower or informant, even if the disclosure is made in confidence, shall be entitled to personal security. Should, at anytime the identity of the informant be revealed, or his anonymity compromised, the whistleblower or informant shall, in addition to the other benefits under this Act, and when warranted, be entitled to the benefits of R.A. No. 6891.

The Senate of the Philippines or the House of Representatives, as the case may be, shall provide for a separate "Witness Protection, Security and Benefit Program" for their resource persons and/or witnesses.

Before a person is provided protection under this Act, he shall first execute a Memorandum of Agreement (MOA) which shall set forth his responsibilities, including not to enter into an amicable settlement through the execution of an affidavit of desistance.

Substantial breach of the MOA may be a ground for criminal action.

When the circumstances warrant, the witness shall be entitled to relocation and/or change of personal identity at the expense of the program. This right may be extended to any member of the family of the witness within the second civil degree of consanguinity or affinity who is under threat.

Upon request of the program the TESDA and/or DepEd shall provide vocational training to qualified witnesses to encourage them to be self-sufficient in preparation for their reintegration to mainstream society. The Department of Labor and Employment (DOLE) and/or Overseas Workers Welfare Administration (OWWA) shall likewise render assistance for the placement and employment of covered witnesses locally and abroad.

In extremely meritorious cases, to be determined by the Secretary of Justice and upon request of the witness, he may be relocated abroad.

The coverage of a witness under the program shall be one of the circumstances under which the perpetuation of the testimony of a witness shall be allowed in addition to those provided for in Rule 24 in relation to Rule 134 of the Revised Rules of the Court of the Philippines.