

# **COUNTRY PAPER ON EFFECTIVE METHODS TO COMBAT TRANSNATIONAL ORGANIZED CRIME IN CRIMINAL JUSTICE PROCESSES (PHILIPPINES)**

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## **I. FACTUAL SETTING**

Transnational organized crime (TOC) is a serious global menace that has evolved into a sophisticated and even legitimate means of perpetuating criminal activities and dynasties. It continues to threaten the future, the very existence, of every man, woman, and child because of its innate voraciousness. No one is spared, not the Americas, not the European Community, especially not the developing countries and emerging democracies in Asia and Africa. It destabilizes economies and creates a façade of stability and progress to conceal the erosion of the moral fabric of modern society on which it feeds. Globalization and the growing popularity and application of the internet has made it possible for transnational organized crime groups (TOCGs) to expand their activities at an alarming rate under a cloak of legitimacy and to establish bases of operations beyond their normal and traditional confines. States with high poverty levels are particularly vulnerable to such incursions because of the staggering amounts these groups are willing to invest in employing offshore managers and in gaining the goodwill of local law enforcers and officials.

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The Philippines, which has not attained genuine economic growth in the past, certainly fits this profile. Additionally, its location and thousands of mostly unsecured islands, with rugged coastlines and friendly townsfolk, facilitate infiltration and provide strategic and ideal drop-off and transshipment points for TOCGs.

## **II. TRANSNATIONAL ORGANIZED CRIME IN THE PHILIPPINES**

### **A. The Current Situation**

TOC has not been given much attention by past administrations due in large measure to preoccupation with domestic problems still evident to this day, among them, uneven distribution of wealth, trade imbalance, and the protracted though isolated insurgency in the south. This has been compounded by the traditional notion that crime prevention lies within the purview of domestic law enforcement. Thus, international covenants notwithstanding, TOCs have not been as seriously addressed in the Philippines as in other countries. As a member of the United Nations, the Philippines has participated in the various conventions of the UN Congress on the Prevention of Crime and the Treatment of Offenders, and has become party to such positive measures as the Milan Plan of Action, the Caracas Declaration, and the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order.

For some time, Philippine leaders have been aware of the guidelines and policies on the prevention and control of organized crime, judicial independence, extradition, mutual assistance, transfer of proceedings, and treatment of prisoners, among other matters. Unfortunately, there has been a dearth of relevant local legislation on these subjects, and the ones enacted have been fairly conservative.

Existing criminal laws, however, may be made applicable against TOCGs as long as the crime involved or any of its components falls within the definition of any criminal statute and meets the requirements of Philippine principles on territoriality. The Revised Penal Code (RPC), the main source of criminal law in the Philippines since 1 January 1932, enumerates specific felonies that may be committed by *any person*. Similarly, special laws on specific crimes not identified or defined in the RPC, such as laws on narcotics,<sup>1</sup> graft and corrupt practices,<sup>2</sup> illegal possession or manufacture of firearms and explosives,<sup>3</sup> illegal gambling,<sup>4</sup> illegal fishing,<sup>5</sup> illegal logging,<sup>6</sup> piracy and highway robbery,<sup>7</sup> hijacking,<sup>8</sup> car theft,<sup>9</sup> and white slavery,<sup>10</sup> may also be committed, directly or indirectly, by members of TOCGs. With

such wide coverage, they can accordingly be charged, tried and penalized under Philippine laws, as long as no question of territorial jurisdiction or diplomatic immunity is raised. Still, the Philippines is wanting in legislation on some forms of TOC like money laundering<sup>11</sup>, human trafficking, environmental crimes,<sup>12</sup> card fraud, computer-related crimes,<sup>13</sup> stolen auto and auto parts trafficking, maritime piracy, and violations of intellectual property rights. The latter, described in 1995 by the FBI as the “crime of the 21<sup>st</sup> Century,” is itself a tool for money laundering,<sup>14</sup> but there is no existing local legal mechanism for making such determination or dealing with a given identified situation.

Without belaboring the obvious, the fact is, even the terms “transnational organized crime” and “transnational organized crime groups” have no exact definition under existing Philippine laws. The only known definition of TOC is found in a paper by a police senior superintendent who declared that “there is an emerging consensus defining transnational crime as *an offense that has an international dimension and involves (the) crossing of at least one border before, during and after the fact*. Therefore,

<sup>1</sup> Republic Act No. 6425. (Henceforth, any reference to Republic Acts shall be indicated as “R.A.”).

<sup>2</sup> R.A. No. 3019.

<sup>3</sup> Presidential Decree No. 1866. (Henceforth, any reference to Presidential Decrees shall be indicated as “P.D.”).

<sup>4</sup> R.A. No. 3063 (on horse racing); P.D. No. 449 (on cockfighting); P.D. No. 483 (on game fixing); P.D. No. 510 (on slot machines); and P.D. No. 1306 (on jai alai).

<sup>5</sup> P.D. No. 704.

<sup>6</sup> P.D. No. 330.

<sup>7</sup> P.D. No. 532.

<sup>8</sup> R.A. No. 6235

<sup>9</sup> R.A. No. 6538.

<sup>10</sup> Batas Pambansa Blg. 186.

<sup>11</sup> Although the Philippines is not a member of the Financial Action Task Force (FATF) on Money Laundering, it is enjoined to adopt the “Forty Recommendations” of the FATF drawn up on 1990 and revised in 1996.

<sup>12</sup> For instance, in the case of the Philippines, how to protect biodiversity, how to deal with the unauthorized dumping of toxic wastes, how to ensure the safe use of chemicals on food products and raw materials, or how to police marine sanctuaries within Philippine waters.

<sup>13</sup> The efficacy of the recently enacted *E-Commerce Law* (R.A. No. 8792) is yet to be determined.

<sup>14</sup> *Organized Crime and Product Counterfeiting*, <<http://www.ari.net/iacc/economic.html>> 20 May 2000.

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it is a mutual concern of at least two affected countries that they must jointly address.”<sup>15</sup> This definition begs the question, to say the least. To fully understand the nature of TOC and TOCGs, a resort to other sources is inevitable. The INTERPOL defines TOCG as: “Any enterprise or group of persons engaged in a continuing illegal activity which has as its primary purpose the generation of profits, irrespective of national boundaries.”<sup>16</sup> This definition, criticized by Italy, Spain, and Germany for leaving out the requirement of an organized command structure, and by the U.S. and Canada for omitting the requirement of using violence to attain the group’s goals, was later altered to read, “Any group having a corporate structure whose primary objective is to obtain money through illegal activities, often surviving on fear and corruption.”<sup>17</sup>

**B. Legal Frameworks for Combating Transnational Organized Crime**<sup>18</sup>

**1. The Early Experiments**

Early attempts to combat TOC were mostly of local application and, in more ways than one, required further legislation to be effective. In 1979, at the height of martial law, former President Ferdinand E. Marcos established a National Committee on Anti-Organized Crime (NACAC) to formulate government plans, implement actions, and control all activities “relative to the five pillar approach to the National Criminal Justice System, particularly on organized

crimes.”<sup>19</sup> Two years later, Marcos created the Peace and Order Council (POC),<sup>20</sup> whose functions and responsibilities duplicated those of the NACAC. Because of this, E.O. No. 829 was passed on 11 September 1982, abolishing the NACAC with the POC absorbing its functions, duties, and responsibilities. The National Law Enforcement Coordinating Committee (NALECC) was also constituted to coordinate the activities of various law enforcement agencies. In such seminal form, however, the POC and the NALECC were nothing more than toothless organizations that posed no significant threat to the scattered TOCGs operating in the country.

From that time until the ascent to the presidency by Fidel V. Ramos, Marcos’ cousin and former police chief, there was absolutely no forward movement in the battle against TOC. Within his first year in office, Ramos reorganized the NALECC twice. In 1999, the NALECC would undergo yet another organizational shift as the government intensified its TOC programme. Meanwhile, Ramos issued E.O. No. 246 on 18 May 1995, reconstituting the National Action Committee on Anti-Hijacking as the National Committee on Anti-Hijacking and Anti-Terrorism (NACAHT).

Realizing that the task of preventing or eradicating TOC on its own was going to be very difficult, the Philippines sought to fight this war in alliance with its neighbors. In a grand show of regional solidarity, nine Ministers of Interior/Home Affairs and Representatives of ASEAN Member Countries<sup>21</sup> converged in Manila, on 20 December 1997 for the 1<sup>st</sup> ASEAN Conference on Transnational Crime and signed the ASEAN Declaration on

<sup>15</sup> Lucas V. Cauton, Jr., *Transnational Crime: The New Challenge to Law Enforcement*, Transnational Crime Bulletin, Vol. 1, No. 1, 2000, p. 86.

<sup>16</sup> First International Symposium on Organized Crime, St. Cloud, France, May 1988.

<sup>17</sup> *Transnational Organized Crime*, <<http://www.alternatives.com/crime/define.html>> 20 May 2000.

<sup>18</sup> See Appendix A for the Timeline of the Philippines’ Battle Against Transnational Organized Crime.

<sup>19</sup> Letter of Instruction No. 824 s-79.

<sup>20</sup> E.O. No. 727 s-81.

Transnational Crime. The conference marked the culmination of a series of activities beginning with the adoption of the Naples Political Declaration and Global Plan of Action of 23 November 1994. The Baguio Communiqué, reached during the 1<sup>st</sup> International Conference on Terrorism held at Baguio City, Philippines, from 18-21 February 1996, led to the 29<sup>th</sup> ASEAN Ministerial Meeting (AMM) and the 1<sup>st</sup> Informal ASEAN Summit, both held at Jakarta, in July and November 1996. The following year, the 30<sup>th</sup> AMM and the 2<sup>nd</sup> Informal ASEAN Summit were held at Kuala Lumpur, in July and December, respectively. The signatories to the ASEAN Declaration resolved to confront transnational crime by, among other measures, strengthening each nation's commitment to cooperate in combating TOC, encouraging them to assign police attachés and/or liaison officers in each other's capitals to facilitate cooperation, urging the networking of relevant law enforcement agencies in the member countries, and expanding the scope of efforts against TOC.

## 2. The Creation of the Philippine Center on Transnational Crime

To this end, President Joseph E. Estrada signed E.O. No. 62 on 15 January 1999, creating the Philippine Center on Transnational Crime (PCTC). Estrada, who as Vice-President headed the defunct Presidential Anti-Crime Commission (PACC)<sup>22</sup>, considered the establishment of the PCTC necessary after determining, among other things, that (a) TOC has

adversely affected the political, economic, and socio-cultural stability and security of the Philippines; (b) the functions and responsibilities of various law enforcement and related agencies need to be linked, coordinated, and complemented to effectively combat TOC; and (c) the growing sophistication of TOC demands a concerted, synchronized, and focused effort from these agencies.

As so created, the PCTC has the following powers and functions:

- (i) To establish, through the use of modern information and telecommunications technology, a shared central database among government agencies for information on criminals, methodologies, arrests and convictions on the following transnational crime:
  - (a) illicit trafficking of narcotic drugs and psychotropic substances;
  - (b) money laundering;
  - (c) terrorism;
  - (d) arms smuggling;
  - (e) trafficking in persons;
  - (f) piracy; and
  - (g) other crimes that have an impact on the stability and security of the country;
- (ii) To supervise and control (the) conduct of anti-transnational crime operations of all government agencies and instrumentalities;
- (iii) To establish a central database on national as well as international legislation and jurisprudence on transnational crime, with the end in view of recommending measures to strengthen responses and provide immediate intervention for the prevention, detection and apprehension of criminals operating in the country;
- (iv) To establish a center for strategic

<sup>21</sup> Brunei Darussalam, Republic of Indonesia, Lao People's Democratic Republic, Malaysia, Union of Myanmar, Republic of the Philippines, Republic of Singapore, Kingdom of Thailand, and the Socialist Republic of Vietnam.

<sup>22</sup> The PACC's successor was the Presidential Anti-Organized Crime Task Force (PAOCTF).

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- research on the structure and dynamics of transnational organized crime in all its forms, predict trends and analyze relationships of given factors for the formulation of individual and collective strategies for the prevention and detection of transnational organized crime and for the apprehension of criminal elements involved;
- (v) To design programmes and projects aimed at enhancing national capacity-building in combating transnational crime, as well as supporting the related programmes and projects of other ASEAN and international centers;
- (vi) To explore and coordinate information exchanges and training with other government agencies, foreign countries and international organizations involved in the combat against transnational crime;
- (vii) To select personnel from within the NAPOLCOM, PNP and other government agencies for detail with the PCTC;
- (viii) To enlist the assistance of any department, bureau, office, agency or instrumentality of the government, including government-owned or controlled corporations, to carry out its functions, including the use of their respective personnel, facilities and resources; and
- (ix) To perform such functions and carry out such activities as may be directed by the President.<sup>23</sup>
- following government agencies and instrumentalities:
- (i) Philippine National Police (PNP);
- (ii) National Bureau of Investigation (NBI);
- (iii) National Action Committee on Anti-Hijacking and Anti-Terrorism (NACAHT);
- (iv) Presidential Anti-Organized Crime Task Force (PAOCTF);
- (v) Presidential Anti-Smuggling Task Force (PASTF);
- (vi) National Police Commission (NAPOLCOM);
- (vii) Department of the Interior and Local Government (DILG);
- (viii) Department of Justice (DOJ)
- (ix) Department of Finance (DOF);
- (x) Department of Transportation and Communication (DOTC);
- (xi) Dangerous Drugs Board (DDB);
- (xii) National Prosecution Service (NPS);
- (xiii) Bureau of Immigration and Deportation (BID);
- (xiv) Bureau of Internal Revenue (BIR);
- (xv) Economic Intelligence and Investigation Bureau (EIIB);
- (xvi) Bureau of Customs (BOC);
- (xvii) National Intelligence Coordinating Agency (NICA);
- (xviii) Armed Forces of the Philippines (AFP);
- (xix) Land Transportation Office (LTO);
- (xx) National Telecommunications Commission (NTC);
- (xxi) National Statistics and Census Office (NSCO); and
- (xxii) Other government agencies which the PCTC may find necessary to implement its mandate.

E.O. No. 62 also mandates<sup>24</sup> that the PCTC shall be supported and assisted in the performance of its tasks by the

<sup>23</sup> E.O. No. 62, § 3.

<sup>24</sup> *Ibid.*, § 5.

Although the PCTC is under the Office of the President, general supervision and control are exercised by the NAPOLCOM. The Executive Director of the PCTC, who reports to the President through the

Secretary of Interior and Local Government or Chairman of the NAPOLCOM, has immediate supervision and control over all PCTC units, with the power to assign the respective duties and responsibilities of all officers and personnel of the PCTC. In this effort, he is assisted by a Deputy Executive Director and Chief Directorial Staff. The latter, in turn, oversees the seven directorates comprising the PCTC offices, namely, Administration and Finance, Research, Operations, Technology Management, Plans and Programs, Legal Affairs, and Detection and Investigation.<sup>25</sup>

From the time it was established in 1999, the PCTC has evolved into the operational contact agency of the United Nations Office for Drug Control and Crime Prevention (UNODCCP), the Asia-Pacific Group (APG) on money laundering, the ASEAN on the proposed ASEAN Center for Combating Transnational Crime; the US Counter-Narcotics and Crime Center (USCCC); the National Crime Authority (NCA) of Australia; and Japan's National Police Agency (NPA) and JICA. In this regard, the PCTC has gone beyond its stated mission, that is, "To formulate and implement a concerted programme of action (for) all law enforcement, intelligence and other agencies for the prevention and control of transnational crime," but held fast to its belief "in a united and coordinated approach, both domestic and international, to safeguard national security and interest against the menace of transnational crime."<sup>26</sup>

Sensing the growing importance of the PCTC, former PNP Chief Roberto C. Lastimoso issued Resolution 99-03 dated 30 April 1999, assimilating the National Drug Law Enforcement and Prevention

Coordinating Center (NDLEPCC) and the PCTC as regular members of the NALECC. A week later, in further affirmation of this move, Estrada issued E.O. No. 100, strengthening the operational, administrative and information support system of the PCTC by placing under its general supervision and control the Loop Center of the NACAHT, the INTERPOL National Central Bureau for the Philippines, the police attachés of the PNP, as well as the DILG's political attachés/counselors for security matters.

Current PCTC efforts are concentrating on human trafficking. According to Police Chief Inspector Camilo PP Cascolan, Chief of the Special Research Division of the PCTC Directorate for Research, the upward trend in the trafficking of persons, most of whom are women and children, is alarming not only because it reduces human beings into mere commodities, but also because it breeds such other crimes as those involving drugs, firearms, smuggling, illegal recruitment, and corruption of public officials.<sup>27</sup> In white slavery cases, for example, methods of procuring women range from harmless and seemingly unrelated activities (like foreign training or internship, adoption, family tours, religious pilgrimage, cultural exchange/promotion, sports events, and escort service), to cultural (marriage matchmaking or selling of a woman by her family), economic (job promises by illegal recruiters), and even criminal (abduction).<sup>28</sup>

<sup>27</sup> Interview, 29 June 2000.

<sup>28</sup> *RP-Europe Concerns on Trafficking in Persons, The Philippine Experience*, Directorate for Research, PCTC, 2000, pp. 6-7. See also Youngik Yoon's *International Sexual Slavery*, <<http://www.alternatives.com/crime/PART7.HTML>> 20 May 2000.

<sup>25</sup> *Id.*, § 6.

<sup>26</sup> *PCTC Briefing Manuscript*, July 2000, p. 6.

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In spite of the tremendous support of the Chief Executive for the PCTC, E.O. No. 62 has been criticized in some quarters for its overly restrictive enumeration of TOCs falling within the jurisdiction of the PCTC. What, for instance, should be done about the smuggling of cultural artifacts? In a paper by a researcher from the Institute of International Legal Studies of the University of the Philippines Law Center, the writer lamented that "the amount of money that changes hands worldwide in respect of illegal trade in cultural property comes third after those of prohibited drugs and armaments. Unlike the latter two objects of commerce, whose destruction is sought by many because of their pernicious implications for the safety and, oftentimes, the lives of the people, the preservation of cultural artifacts, especially *in situ*, is sought as their removal from their original site, and possible damage thereto, and even eventual loss, can produce untold harm for mankind in general, and for a culture, in particular."<sup>29</sup>

### III. BATTLING TOC IN THE PHILIPPINES

#### A. Problems

##### 1. In General

There is no doubt that the fight against TOC in the Philippines cannot be waged by a single entity. All components of the Philippine Criminal Justice System - law enforcement, prosecution, judicial process, correction, and the community - must act together in pursuit of the common goal of eradicating or at least emasculating TOC. The paper has shown that existing mechanisms for battling TOC primarily consist of legislation creating coordinate bodies that are mandated to channel the efforts of a slew of law enforcement and related agencies. Hence, the first real

obstacle in the Philippines' struggle to liberate itself from the stranglehold of TOCGs is the lack of a *bona fide* government agency *exclusively* assigned to tackle cases involving TOCs and TOCGs.

Penal statutes that may be used in the prosecution of individual members of TOCGs are abundant, but their enforcement remains lax due to a host of factors. There is also great difficulty in prosecuting criminals, a problem that has as much to do with deficiencies on the part of law enforcers who either lack investigative skills or do not wish to be burdened with complex legal procedures, as with the people's penchant for soliciting or offering political patronage.

Of course, lack of funds is a nagging issue. Every department of government is haunted by this problem. Even if meaningful and viable projects were devised, if they are not backed by sufficient funding, the rate of failure would remain high. To cite an example, the judiciary's budget has steadily declined in the last two years. In 1999, it was allotted a 1.20% share of the national budget, which was cut by .13% this year. A further 2-billion peso reduction is being contemplated by the legislature for fiscal year 2001. The Supreme Court recently submitted a Medium-Term Public Investment Programme (MTPIP) to the National Economic Development Authority, enumerating the projects it intends to pursue in the next three years. With a shrinking budget, the judiciary is experiencing difficulty in raising the salaries of judges and other court employees - a measure designed to reduce graft and corruption in the institution. It would, however, require great political will, sacrifice, and a unified judiciary to implement the identified projects.

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<sup>29</sup> Joseph Sedfrey S. Santiago, *Smuggling of Cultural Artifacts*, TCB, Vol. 1, No. 1, 2000, p. 43.

Another factor to be considered is the inability of each administration to fill the needs of certain sectors of society. The soaring cost of auto parts, for instance, has greatly contributed to the continuous smuggling of this commodity. “New business” for crime is created when any human desire is stifled by the State.<sup>30</sup> In the given example, the human desire satisfied by the entry of smuggled, yet cheaper, auto parts is the desire to maximize or stretch the purchasing power of the local currency.

One area of concern, which has been overlooked by and is receiving meager attention from government, is how to control or minimize health and safety risks associated with seemingly innocuous TOCs like counterfeiting of such mass-based products as baby formulas, foodstuff, drugs, cosmetics, toys, apparels, and auto and aviation parts.<sup>31</sup> The pernicious effects of passing off substandard imitations as genuine articles cannot simply be ignored by the State in this era of mass consumption.

## 2. In Detection and Investigation

As intimated earlier, one major problem area in the detection and investigation of TOCs in the Philippines is the lack of funds to meet the demands of modern law enforcement. The compensation of regular members of the police force and other related agencies is simply not commensurate with the perils of their job. TOCGs, on the other hand, with their vast financial resources, can hire the best team of consultants and lawyers, eventually employing corporate management skills in their global operations, thus, making the

fight even more lopsided in their favor. And while their army of followers, their “families,” grow and flourish, young and impressionable Filipinos tend to eschew a career in law enforcement for reasons ranging from low wages vis-à-vis work hazards, to negative public image and exposure to corruption. The resultant manpower shortage is more than enough to embolden even the lowliest lackey in the TOC hierarchy.

The dubious distinction of law enforcement is imputable not only to the popular notion that corruption permeates its ranks, but also to the emerging opinion that agents of the law do not possess the necessary skills to properly perform their duties and functions. The lack of modern and appropriate forensic tools, another offshoot of fund scarcity, is compounded by the impression that local forensics practitioners are not endowed with the ability necessary to fully utilize available technology. And to human rights advocates, documented cases of violation by the police of basic individual liberties, especially during arrests, searches and seizures, and custodial interrogation, constitute a virtual abandonment by the latter of their sworn obligation to uphold the law. Ironically, this situation sometimes arises out of the very desire of law enforcers, their eagerness, to send to jail in earnest a known criminal instead of going through the tedious process of obtaining warrants and supporting an indictment in court where there is a possibility that the accused may be acquitted.

Aside from a negative image, a recent study on the Philippine criminal justice system has revealed other problems involving the police which are connected with the administration of justice, to name a few inadequate investigation training, lack of coordination among police officers

<sup>30</sup> *Why be Concerned Now?* <<http://www.alternatives.com/crime/crime6.html>> 20 May 2000.

<sup>31</sup> *Health and Safety Risks*, <<http://www.ari.net/iacc/health.safety.html>> 20 May 2000.

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and agencies, and failure of law enforcers to effect arrests by non-service of warrants.<sup>32</sup>

### 3. In Prosecution

Every criminal charge is filed in and admitted by Philippine trial courts on the basis of evidence submitted by the police and those discovered by the prosecutors. During the trial, the case continues to be considered on the basis of physical, testimonial, and documentary proof. As in any jurisdiction, it is clear that evidence plays a crucial role in every successful conviction. In this regard, success is equated with confirmation of the judgment on appeal. This is one area of concern, for many crimes go unpunished because of mishandling of evidence - from the moment the crime scene is secured to the time the pieces of evidence gathered are actually placed under the care and custody of the police. The prosecutor is placed in a dilemma: Should the case be filed even if it is weak due to lack of evidence or inadmissibility of those actually found? Or should it be dismissed at the risk of letting loose into society someone who might commit more crimes? Law enforcers sometimes conduct arrests, searches and seizures, and custodial investigation without following procedure expressly stated in the Constitution, as well as in the Rules of Court. This gives rise to a situation where a case that is otherwise strong suddenly becomes infirm because of matters beyond the prosecutor's control.

Another scourge in the prosecutorial service is the reluctance or unwillingness of witnesses to testify, usually for fear of reprisal and not so unusually for pecuniary gain. Members of TOCGs who are on the brink of being placed within the Philippine

judicial process may find an ally in a witness whose silence can be bought or coerced. The lure of money is sometimes combined with subtle threats to produce the desired results.

As with law enforcers, many prosecutors lack basic and advanced advocacy skills due in large measure to inadequate continuing legal education.<sup>33</sup> The good lawyers are usually found in private practice, either alone, with others, or with a firm, preferring the trappings of wealth and power that come with a successful practice over the selfless notion of serving the public or defending a common criminal. Because of this reality, or as a result of it, critics of government have accused justice, particularly the legal profession, of being pro-rich or anti-poor. While this allegation is not totally accurate, it is not entirely false either. No statistical data is necessary to conclude that there are more people in the lower bracket of society who are in need of professional legal assistance, the kind of aid that most times can be availed of only by the moneyed class. Unfortunately, TOCGs belong to the latter class.

### 4. In Punishment

Criminal law in the Philippines is one of the legacies of Spain, a vestige of its colonial past. For three hundred years, Roman law principles on crime and punishment were applied in writing laws and deciding cases. A century after the Spaniards were ousted from the country, the Philippines continues to use these legal precepts, even enhancing them to suit present situations. But the race against the evolving face of crime, including the relatively new genre of TOC, seems to be a futile effort. Crime, as in other parts of the world, is always one or two steps ahead. To cite an example, in the Philippines, the prohibited stimulant drug known locally as

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<sup>32</sup> Myrna S. Feliciano and Alberto T. Muyot, *The Philippine Criminal Justice System*, 17 July 2000, p. 49.

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<sup>33</sup> *Ibid.*, p. 57.

“Ecstasy” had been widely and indiscriminately sold to mostly young users for years before somebody even filed a bill in Congress to bring the distribution and sale of that drug within the purview of the Dangerous Drugs Act. Laws on environmental crimes and product counterfeiting are also archaic, making them top areas of concern for international organizations willing to extend financial or technical assistance to the country.

Another major obstacle to punishing TOC in the Philippines is judicial restraint. For TOCGs, the physical boundaries of nations do not exist. In dealing with them, there is bound to be a conflict between national or municipal laws and international laws governing controversies between or among states. The other factor to be considered is the effectiveness of international conventions vis-à-vis domestic laws. “In view of the jurisdictional and political weaknesses of international tribunals, are national courts the more promising avenue in certain fields for the growth of a body of law regulating state conduct?”<sup>34</sup> Two principles of judicial restraint must first be considered. Even if the doctrine of sovereign immunity and the act of state doctrine are similar in that they prevent “courts from becoming involved in disputes which might lead to friction between a foreign nation and their own . . . sovereign immunity applies only where a foreign state or its instrumentality is sought to be made a *party* to litigation or where its property is involved. On the other hand, the act of state doctrine focuses entirely on the *action* taken by that state, and may be applicable to litigation between two private parties to which that action is relevant. It determines not whether a court

can assert (or must relinquish) *jurisdiction* over a party but whether it can fully examine and decide certain claims *on the merits*, even when such claims rest on the asserted illegality of foreign governmental conduct.”<sup>35</sup> Without clear rules on conflicts of laws, problems may arise in executing judgments of conviction against foreign nationals.

If no such conflict exists, or if they are resolved without raising any diplomatic question, the next crimp to be ironed out are prison concerns. As in other countries, the Philippine correctional system suffers from such common problems as overcrowding, understaffing, dismal prison conditions, poor security, staff unrest or stress, and low budgetary allocation.<sup>36</sup> Crowded and substandard prison facilities breed diseases and discontent among inmates.<sup>37</sup> This is a direct consequence of the low budget allocation for the corrections system, a situation that practically forestalls the government from taking or continuing contingency measures aimed at decongesting prison facilities.<sup>38</sup> Budget, of course, includes salaries, which, in the case of law enforcement, is dismally low, hence, resulting in vacancies. Prison officials and employees are also members of the Philippine National Police so they suffer the same problems being experienced by law enforcers. As a result, penitentiaries are understaffed and security is lax. Prison breaks, especially in the provinces, are not uncommon.

But no issue has received as much attention from the three branches of government, the clergy, and mass media as

<sup>34</sup> Henry J. Steiner and Detlev F. Vagts, *Transnational Legal Problems (Materials and Text)*, New York: The Foundation Press, Inc., 1976, p. 637.

<sup>35</sup> *Ibid.*, pp. 672-673.

<sup>36</sup> Michael Cavadino and James Dignan, *The Penal System, An Introduction*, 2d, SAGE Publications, London: 1997, p. 10.

<sup>37</sup> Feliciano and Muyot, p. 86.

<sup>38</sup> *Philippine Corrections Today*, 28 Philippine Panorama (no. 41, 24 October 1999), 13-17.

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the death penalty. Suspended under the 1987 Constitution, the death penalty was revived on 1 January 1994 via Republic Act No. 7659. Despite its resurgence, there is no sign that the death penalty has effectively deterred people from committing crimes. It is just a matter of time before an innocent person is executed. A life sentence without parole could become a strong incapacitative, retributive punishment. "But the death penalty will remain and perhaps even flourish because it represents the supreme quick fix for the violent crime rate."<sup>39</sup> Critics would continue to question the efficacy of the death penalty as the ultimate form of social retribution, but its deterrent power would still be another issue.

### **B. Possible Solutions**

With such a diverse set of obstacles confronting the Philippines in its battle against TOC, no single solution is in the horizon. Varying responses to each problem, given on a case-to-case basis, may be the only way to beat the growing threat of TOC.

Old laws must be updated so that they would be more responsive to present and emerging crisis situations involving TOC and TOCGs. To complement this, new forensic investigation techniques must be explored, like DNA testing. In the Philippines, the admissibility of DNA evidence is quite novel. It would have been tested during the trial of a celebrated rape-murder case,<sup>40</sup> but the defense, perhaps realizing that the results would be incriminating, challenged the admissibility of any evidence that would be obtained

therefrom. In any event, the trial court convicted the accused and the case is currently being reviewed by the Supreme Court. This turn of events prompted a law professor at the University of the Philippines to say that, "The novelty of the scientific method for DNA testing should not be a ground for exclusion of evidence under (Philippine) rules. Neither should degradation of the specimen be invoked against admission, since this goes merely into the weight, rather than admissibility, of the evidence."<sup>41</sup>

The development of pilot programs to enhance inter-institutional coordination can be initiated by agencies such as the PCTC. This can be supplemented by training modules on skills enhancement for enforcers (especially in handling evidence and securing crime scenes), prosecutors, and judges. In the case of judges, the programme has begun with the creation of the Philippine Judicial Academy, the training arm of the Supreme Court, and the launching of the Pre-Judicature Programme for future and present magistrates.

In the prosecutorial services, the incumbent Justice Secretary, Artemio G. Tuquero, has proposed some reforms such as, but not limited to, the following: strengthening of the support staff and upgrading of equipment; providing a more competitive compensation package to attract better and morally upright lawyers to join the service; setting up a national prosecution academy to undertake a comprehensive professional and career development programme for prosecutors; stricter enforcement of disciplinary measures against errant prosecutors; and

<sup>39</sup> John Klofas and Stan Stojkovic, editors, *Crime and Justice in the Year 2010*, USA: Wadsworth Publishing Company, 1995, pp. 263-264.

<sup>40</sup> The case of *People of the Philippines v. Hubert Webb, et al.*, dubbed by the local media as the *Visconde Massacre*.

<sup>41</sup> Pacifico Agabin, "Admissibility of DNA Evidence in Philippine Courts," lecture given at the 7<sup>th</sup> National Convention-Seminar and General Meeting of the Philippine Women Judges Association.

close coordination with law enforcement agencies and the community in evidence-gathering.<sup>42</sup>

Similarly, the correctional system is far from being perfect, but things could be better if only there would be a shift in government policy, from stressing imprisonment and punishment to encouraging rehabilitation and correction. This would not only decongest the penitentiaries but would also give prisoners a more positive goal, a human purpose that would nourish any potential for improvement.

There is also a need to strengthen the country's witness protection programme. Witnesses in TOCs would be motivated to come out in the open and give unadulterated statements if their safety against possible retribution from TOCGs could be assured. As an additional incentive, they could be given rewards for their efforts. At the moment, there are laws specifically allowing the release of funds as reward to state witnesses<sup>43</sup> and informers.<sup>44</sup> A former public official at the Department of Justice even opined that he "cannot discount altogether the usefulness of the reward system in the campaign against organized crimes."<sup>45</sup>

In cases where extradition is proper, calling for mutual legal assistance in connection with a criminal investigation or execution of a prison sentence, extradition treaties may be resorted to, in accordance

with the Philippine Extradition Law.<sup>46</sup>

For its part, the Supreme Court has embarked on a Judicial Reform Programme (SC-JRP)<sup>47</sup> designed to enhance the skills of judges and court employees, as well as improve court facilities and services all over the country. An integral component of the SC-JRP is to address all issues relevant to the administration and dispensation of justice. The MTPIP mentioned in **III-A(1)** on page 13 is a product of consultations with the various stakeholders in the justice system. It enumerates the projects identified by the Court itself based on studies commissioned for that purpose on the following areas of substance: past judicial reform efforts, the criminal justice system, strengthening of the communication system of the Supreme Court, a review of the *barangay* justice system to de-clog court dockets, alternative dispute resolution, formulation of administrative reforms, case decongestion, and impact of judicial education.

#### IV. CONCLUSION AND RECOMMENDATIONS

The TOC menace is precisely that - a menace. In a country like the Philippines, where all forms of wealth are in the hands of a handful of people - the same people who control government, directly or otherwise - TOCGs can wreak havoc in every Filipino's life by providing a placebo for society's ills. Using illegally generated money, TOCGs are able to set up bases of operation wherever they are welcome. Like legitimate corporations, they "invest" heavily in foreign shores, and local officials are all too willing to embrace their presence because of necessity. It is this necessity on which TOCGs feast. How can anyone avert the spread of a disease such as TOC?

<sup>42</sup> Feliciano and Muyot, pp. 59-60.

<sup>43</sup> P.D. Nos. 1731 and 1732.

<sup>44</sup> P.D. No. 749, in relation to Articles 210, 211, and 212 of the Revised Penal Code; R.A. No. 3019; § 345 of the National Internal Revenue Code; and § 3604 of the Tariff and Customs Code.

<sup>45</sup> Catalino Macaraig, *in* DOJ Opinion No. 157, s. 1978, 2<sup>nd</sup> Indorsement, 6 October 1978.

<sup>46</sup> P.D. No. 1069.

<sup>47</sup> The author is a member of the Programme Management Office of the SC-JRP.

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The answer lies in community vigilance. Community participation in law enforcement, in the prosecution of TOCs, in court proceedings, and in the rehabilitation of members of TOCGs cannot simply be ignored. This is the reason why the community is at the heart of the criminal justice system. After all, defeating TOC would ultimately redound to the benefit of every member of the community. Their alertness and active participation, therefore, are not only desirable but even necessary. The smallest political unit in the Philippines, the *barangay*, is composed of members living within a specified zone or geographical area. Tribal in origin and clannish in nature, the *barangay* perfectly demonstrates how an indigenous entity could aid the CJS by the simple expedient of maintaining an active community-watch programme. As former President Ramos declared while calling attention to the incursion of drug syndicates in the country, “(The government) will never be able to root out the drug menace unless the citizenry lend a strong hand, especially the media, the church, the schools, the civic groups, the business sector and the local community leaders.”<sup>48</sup>

Positive steps have already been made in this direction. In 1997, the PNP mobilized anti-crime civic organizations as a pipeline between kidnap victims and their relatives. “This was formulated to address the particular dilemma concerning the people’s fear and distrust of the police which often results in very few reports of crime incidents being brought before the law enforcement offices.”<sup>49</sup> In the later part of 1999, the PNP also launched a programme involving *barangay* officials. Patterned after the Hong Kong police, the “buddy system” sought to pair off police

officers with members of the *barangay* in responding to crimes committed in the *barangay*. “The programme relies heavily on the *barangay* officials having expert knowledge of the situation and physical layout of their respective jurisdictions. More significantly, those who conceptualized this programme were counting on the high degree of trust that the *barangay* officials command of their constituents that the information and manpower support that the latter would ordinarily withhold from the police would now be more freely extended by virtue of the presence of their *barangay* officials.”<sup>50</sup>

Anywhere around the world, if members of the same community would only watch after the welfare of their neighbors, both materially and emotionally, there would be no opportunity for TOCGs to penetrate their closed group and perpetrate venalities. And is this not the way it should be?

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<sup>48</sup> Ramos Urges People: Join Fight versus Crime, Philippine Daily Inquirer (12 August 1997), 2.

<sup>49</sup> Feliciano and Muyot, p. 90.

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<sup>50</sup> Ibid.

**APPENDIX A**

**TIMELINE OF THE PHILIPPINES' BATTLE AGAINST  
TRANSNATIONAL ORGANIZED CRIME**

<b>WHAT</b>	<b>WHEN</b>
LOI No. 824 s-79, establishment the National Committee on Anti-Organized Crime (NACAC)	1979
E.O. No. 727 s-81, creating the Peace and Order Council (POC)	1981
E.O. No. 829, creating the National Law Enforcement Coordinating Committee (NALECC), abolishing the NACAC, transferring its functions, duties, and responsibilities to the POC	11 September 1982
E.O. No. 41, amending E.O. No. 829	9 December 1992
E.O. No. 41-A, amending E.O. No. 41	1 February 1993
Adoption of the Naples Political Declaration and Global Plan of Action	23 November 1994
E.O. No. 246, reconstituting the National Action Committee on Anti-Hijacking as the National Committee on Anti-Hijacking and Anti-Terrorism (NACAHT)	18 May 1995
1 <sup>st</sup> International Conference on Terrorism (Baguio City)	18-21 February 1996
29 <sup>th</sup> ASEAN Ministerial Meeting (Jakarta)	July 1996
1 <sup>st</sup> Informal ASEAN Summit (Jakarta)	November 1996
30 <sup>th</sup> ASEAN Ministerial Meeting (Kuala Lumpur)	July 1997
2 <sup>nd</sup> Informal ASEAN Summit (Kuala Lumpur)	December 1997
Signing of the ASEAN Declaration on Transnational Crime during the 1 <sup>st</sup> ASEAN Conference on Transnational Crime (Manila)	20 December 1997
E.O. No. 62, creating the Philippine Center on Transnational Crime (PCTC)	15 January 1999
E.O. No. 100, strengthening the operational, administrative, and information support system of the PCTC	7 May 1999
Res. No. 99-03, assimilating the National Drug Law Enforcement and Prevention Coordinating Center and the PCTC as regular members of the NALECC.	30 April 1999