



UNODC

United Nations Office on Drugs and Crime

Country Review Report of the Philippines

Review by Bangladesh and Egypt of the implementation by
the Philippines of articles 15 – 42 of Chapter III.
“Criminalization and law enforcement” and articles 44 – 50 of
Chapter IV. “International cooperation” of the United Nations
Convention against Corruption for the review cycle
2011 - 2012

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by the Philippines of the Convention is based on the completed response to the comprehensive self-assessment checklist received from the Philippines, and any supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Bangladesh, Egypt and the Philippines, by means of telephone conferences and e-mail exchanges with Mr. Rafael Hipolito, Ms. Evelyn Baliton, Justice Mario Lopez, Mr. Vicente Aquino, Ms. Marlyn Angeles and Ms. Vivian Magno from the Philippines, Ms. Nasreen Begum and Mr. Most. Jannatul Ferdoush from Bangladesh, and Mr. Ayman Elgammal and Mr. Khaled Mohamed Ahmed from Egypt. The staff members of the Secretariat were Ms. Tanja Santucci and Ms. Annika Wythes.
6. A country visit, agreed to by the Philippines, was conducted in Manila from 6 to 10 August 2012.¹ During the on-site visit, meetings were held with representatives of the Office of the Ombudsman, Office of the Special Prosecutor, Department of Justice, Supreme Court, Philippine National Police, Anti-Money Laundering Council and Civil Service Commission.
7. A wide range of stakeholders were consulted at all stages of the review process, including civil society, the private sector and academia. A high level commitment towards transparency of the review process was made by the Ombudsman herself. This was commended by the review team and deemed a good practice.

¹ The information contained herein reflects the implementation of UNCAC Chapters III (Criminalization and law enforcement) and IV (International cooperation) by the Philippines at the time of the peer review process.

III. Executive summary

1. Introduction

1.1. Overview of the legal and institutional framework of the Philippines in the context of implementation of the United Nations Convention against Corruption

8. *The Philippines signed the Convention on 9 December 2003 and ratified it on 8 November 2006. The Convention entered into force for the Philippines on 8 December 2006.*
9. *The legal system of the Philippines is a combination of civil law and common law. The Philippine Constitution dates from 1987, while the substantive criminal law, the Revised Penal Code (RPC), was approved on 8 December 1930. Special penal laws criminalize crimes other than those punishable under the RPC, which is applied suppletorily to such laws, unless they provide otherwise.*
10. *A Criminal Code Committee was established to revise the RPC and to integrate the special criminal laws (anti-corruption matters) into a unified criminal code. Amendments to the Extradition Law to align it more closely to treaty obligations are under consideration, and consultations to draft a law on mutual legal assistance (MLA) are underway.*
11. *The main anti-corruption bodies include the Office of the Ombudsman (OMB), Office of the Special Prosecutor (OSP), Department of Justice, Supreme Court, Philippine National Police (PNP), Anti-Money Laundering Council (AMLC) and Civil Service Commission. There are also specialized courts, including the anti-corruption court Sandiganbayan. A wide range of stakeholders was consulted during the review process, including civil society, the private sector and academia, and the Ombudsman personally demonstrated a high level commitment towards transparency of the review process.*

2. Chapter III: Criminalization and Law Enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (articles 15, 16, 18, 21)

12. *Bribery of public officials is partly criminalized in the RPC, the Anti-Red Tape Act, 2007 (RA 9485) and the Anti-Graft and Corrupt Practices Act, 1960 (RA 3019), among others. Both tangible and intangible, whether pecuniary or non-pecuniary, benefits are covered, and the third party benefit extends to both natural and legal persons. The RPC covers active and passive bribery even within the person's official duties, as well as non-material benefits and omissions. However, the "promise" or "offer" of a bribe is not covered in RA 3019, other than under subsection 3(d) dealing with employment, and only passive bribery is addressed in subsections 3(b) and (c); furthermore, the bribe giver can only be charged together with the offending public officer. However, active bribery, including the "promise" or "offer", is covered under articles 212, 210 and 211 of the RPC, and under the legal principle of "inducement" embodied in article 17(2) of the RPC.*
13. *The bribery of foreign public officials and officials of public international organizations is not criminalized.*

14. *Trading in influence is partly criminalized in RA 3019 and RA 9485, among others. While intermediaries and “other persons” are not addressed in RA 3019, RA 9485 punishes “any person” including intermediaries for active trading in influence.*

15. *Bribery in the private sector is not criminalized, except for private individuals who conspire with public officers.*

Money-laundering, concealment (articles 23, 24)

16. *The Anti-Money Laundering Act, 2001, as amended (AMLA), criminalizes money laundering partly in line with the Convention. Money laundering not only includes the transaction or attempted transaction of proceeds of crime, but also covers acts of facilitation and failing to report covered and suspicious transactions. Moreover, 2013 amendments to the AMLA (RA 10365) address the specific conduct described in subparagraphs (1)(a) and (1)(b)(i) of article 23. While the amendments also cover as predicate crimes bribery, corruption of public officers, malversation of public funds and property, and tax evasion, they do not encompass all UNCAC offences. Foreign offences of a “similar nature” to recognized predicate offences are covered. Acts participatory to money laundering are captured through the application of the amended AMLA and the RPC articles 10, 8 and 16-19.*

17. *Concealment is partly addressed in section 4 of AMLA, as amended, and article 19 of the RPC; however, not all UNCAC offences are covered.*

Embezzlement, abuse of functions and illicit enrichment (articles 17, 19, 20, 22)

18. *Embezzlement and misappropriation of property by public officials is criminalized in the RPC and the Plunder Law (RA 7080). Articles 217 and 220 of the RPC could be applied irrespective of any damage resulting in the public office. Furthermore, the offences of malversation of public funds or property (article 217) and swindling/estafa (article 315) are criminalized regardless of any benefit or enrichment to the public official.*

19. *The abuse of functions is addressed in section 3 of RA 3019, which covers both natural and legal persons.*

20. *Illicit enrichment is partly criminalized in the Forfeiture Law (RA 1379), which creates a rebuttable presumption that property has been unlawfully acquired (section 2) and provides for forfeiture of such properties, but precludes the filing of a matter before court one year prior to a general election. RA 7080, as amended, further penalizes any public officer who, by himself or in connivance with others, accumulates or acquires ill-gotten wealth totaling at least P50 million, which was observed as too high a threshold in practice. Section 8 of the Code of Conduct (RA 6713) requires all public officials and government personnel to make accurate statements of their assets and liabilities regularly.*

21. *Embezzlement of property in the private sector is criminalized in article 315 of the RPC, which applies to “any person”, including those in the private sector.*

Obstruction of justice (article 25)

22. *The offence is partly established by Presidential Decree Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders (PD 1829), the RPC, Ombudsman Act, 1989 (RA 6770) and the Witness Protection Act (RA 6981).*

Liability of legal persons (article 26)

23. *The Philippines has established measures providing for the criminal liability of legal persons, as distinct from that of natural persons.*

Participation and attempt (article 27)

24. *Acts of participation and attempt are criminalized in the RPC, RA 6713 and RA 3019. The preparation for an offence is not addressed.*

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)

25. *A comprehensive range of penalties for corruption-related offences has been established. Proportionality is considered, inter alia, for the penalty of malversation, which may be higher when the amount involved is greater.*
26. *Immunities are partly regulated in line with the Convention. Presidential immunity from suit was reaffirmed by the Supreme Court in 1988. Pursuant to the 1987 Constitution, a relatively high threshold of impeachment for officials who have been convicted of corruption-related offences was observed.*
27. *While prosecutorial discretion in criminal cases, including plea bargaining, exists, there is insufficient evidence to assess the implementation of UNCAC article 30(3).*
28. *Although decisions on early release or parole take into account the gravity of the offence, the grant of executive clemency should be revisited to avoid impunity.*
29. *Measures are in place to encourage the cooperation of participating offenders, including mitigated punishment and immunity from prosecution. Witness protection under RA 6981 is also applicable to cooperating defendants.*

Protection of witnesses and reporting persons (articles 32, 33)

30. *Witness protection is available to persons admitted to the Witness Protection, Security and Benefit Programme and vulnerable persons, including victims, under RA 6981. Pending legislation would extend protection, security and benefits to other witnesses (i.e., relatives and public officials, including law enforcement officers). A need to provide effective protection to testifying witnesses, their relatives and persons close to them was observed.*
31. *Further whistleblower protection would be provided under Senate Bill 2860.*

Freezing, seizing and confiscation; bank secrecy (articles 31, 40)

32. *Forfeiture of criminal proceeds or property of a corresponding value is provided in section 12(c) of AMLA and Rule 3.f. of AMLA's Revised Implementing Rules and Regulations. The identification, freezing and tracing of criminal proceeds is principally addressed in sections 7, 10 and 11 of AMLA. Competent authorities may order the production or seizing of bank, financial or commercial records in line with the Convention. An offender may, but is not required, to demonstrate the lawful origin of criminal proceeds. The administration of frozen, seized or confiscated property is partly addressed.*
33. *The amended AMLA provides exceptions to bank secrecy rules. Prosecutors and investigators obtain bank records and deposit information through information sharing agreements or arrangements with AMLC, which has direct power to request a Court order. In court proceedings, the OSP may also request access to bank records. Salaried officials (under RA 6713) are required to waive bank secrecy rules to allow access to their bank records.*

Statute of limitations; criminal record (articles 29, 41)

34. *The statute of limitations for corruption-related offences is established in the RPC and RA 3326. Suspension of the period of prescription is provided for under articles 91 and 93 of the RPC.*
35. *Previous convictions in another State cannot be introduced in evidence in domestic criminal proceedings, unless the good moral character of the defendant is an issue, as in corruption cases. The Philippines relies on MLA treaties or ad hoc requests to obtain such records.*

Jurisdiction (article 42)

36. *Article 2 of the RPC establishes the extended territoriality principle. Measures are being taken to address the active and passive personality principles. Philippine nationals can be extradited under certain conditions.*

Consequences of acts of corruption; compensation for damage (articles 34, 35)

37. *Procurement laws and the Civil Code address the consequences of corruption, and the additional penalty of confiscation and forfeiture under the RPC is also available.*
38. *Entities or persons who have suffered damage as a result of corruption have the right to initiate legal proceedings to obtain compensation.*

Specialized authorities and inter-agency coordination (articles 36, 38, 39)

39. *Relevant institutions include OMB, AMLC, the Anti-Graft Division in the National Bureau of Investigation (NBI) and PNP. Pursuant to established jurisprudence, the OMB's mandate encompasses all branches of Government, including acts or omissions by public officials that are simple or grave in nature, but it has no disciplinary authority over members of Congress and the judiciary. Furthermore, OMB does not have the mandate to*

investigate private sector individuals, except those who conspire with public officials and, under section 23(2) of RA 6770, OMB may enter and inspect only Government premises, not private property. Pursuant to section 13 of RA 6770, a Court order is needed for OMB to obtain bank records through AMLC, which OMB cannot seek directly. Cooperation mechanisms are in place with other authorities, including the Department of Justice, in the investigation and prosecution of corruption complaints. Pending legislation would enhance the mandate of OMB. AMLC has broad inquiry/investigative powers, although such functions are exclusive to AMLC and cooperation with other law enforcement authorities is essential.

40. *Law enforcement cooperation, particularly in the provinces, is deemed crucial to the effective pursuit of corruption cases in the Philippines. While various cooperation agreements and arrangements exist, a need for enhanced cooperation among public officials and authorities in criminal investigations and prosecutions was observed.*
41. *Cooperation with private sector institutions is addressed in AMLA, RA 6981 and the Laurel Law (RA 6036).*

2.2. Successes and good practices

42. *Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:*
 - *The Witness Protection, Security and Benefit Programme is considered a good practice, both in law and in operation, and the extended inclusion of other witnesses and additional benefits is welcomed.*
 - *The incentives and rewards system under the Rules Implementing RA 6713 is considered a good practice.*
 - *The Sandiganbayan has jurisdiction to hear matters involving high ranking public officials so as not to overburden the judicial system.*
 - *Philippine authorities have fully cooperated and exchanged information with other States, when it came to their attention that similar proceedings were ongoing overseas.*

2.3. Challenges in implementation

43. *The following steps could further strengthen existing anti-corruption measures:*
 - *Consider adopting a unified definition of public officials in line with UNCAC article 2, as well as expanding this definition to include foreign public officials and officials of public international organizations, notwithstanding any existing privileges.*
 - *Consider, in the context of ongoing legal reforms, a stand-alone corruption-related law, which would include an offence of active bribery of national public officials, ensure consistency in its application, and extend the bribery offence to transactions other than those listed in subsections 3(b) and (c) of RA 3019.*

- *Inter-agency co-ordination and limited resources were noted as challenges in the pursuit of bribery and embezzlement cases.*
- *Consider legislative or other measures to enact active and passive trading in influence provisions in line with the Convention.*
- *A reported challenge is that asset and income disclosures are not reviewed unless a complaint is received.*
- *Consider enacting the offence of bribery in the private sector.*
- *Enact amendments to AMLA to cover the requirements of UNCAC article 23, in particular the conduct described in subparagraphs (1)(a) and (1)(b)(i), and to include all UNCAC-related offences as predicate crimes.*
- *Furnish copies of the anti-money laundering laws to the United Nations.*
- *Consider whether the criminal or non-criminal sanctions for legal persons are effective, proportionate and dissuasive.*
- *Criminalize the preparation of corruption-related offences.*
- *Ensure that grants of executive clemency do not create a situation of impunity.*
- *Consider entering into agreements or arrangements with other States for the relocation of witnesses and experts who give testimony.*
- *Provide sufficient resources for the effective implementation of Senate Bill 2860, once adopted into law.*
- *Extend the mandate of OMB to enter and inspect private property.*
- *Limited capacity and resources for law enforcement agencies (such as the absence of any OMB regional offices) were noted as a challenge, including to address the consequences of corruption.*
- *Authorize OMB to have access to all relevant data and information, including tax, custom, financial and bank records.*
- *Adopt proposed amendments to RA 1379 eliminating the restriction that a matter cannot be filed before court one year prior to a general election.*
- *Broadly define conflicts of interest for purposes of the rules implementing RA 6713.*
- *To overcome challenges of inter-agency coordination, grant a competent anti-corruption body/bodies the necessary law enforcement and prosecutorial powers to carry out its functions effectively and without undue influence in the private and public sectors, with a clear legislative mandate and appropriate resources and training to carry out its functions nationally.*

- *Consider enhancing law enforcement cooperation, in particular to ensure that public officials and authorities cooperate sufficiently in criminal investigations and prosecutions; limited financial incentives were noted as a challenge in this context.*
- *Consider extending the direct privilege to request a Court order for access to bank/financial records to other anti-corruption authorities where appropriate.*
- *Provide for the active and passive jurisdictional personality principles; the application of jurisdiction in extradition cases abroad is a reported challenge.*

2.4. Technical assistance needs identified to improve implementation of the Convention

44. *The following forms of technical assistance could assist the Philippines in more fully implementing the Convention:*

- *With respect to proposed revisions to the RPC, a summary of international best practices, norms and expertise.*
- *Article 15: Good practices/lessons learned; legislative drafting; legal advice; on-site assistance by an anti-corruption expert; development of an implementation action plan; inter-agency coordination and investigative training.*
- *Article 16: Good practices/lessons learned; model legislation; legislative drafting; legal advice.*
- *Articles 21 and 41: Legislative drafting.*
- *Article 23: Good practices/lessons learned; legal advice.*
- *Article 25: Good practices/lessons learned; on-site assistance by an anti-corruption expert.*
- *Article 30: Capacity-building.*
- *Article 31: Good practices/lessons learned.*
- *Article 33: Legal advice; capacity-building; financial resources.*
- *Article 34: Good practices/lessons learned; development of an implementation action plan.*
- *Article 36: Good practices/lessons learned; training on investigative techniques; development of a central case management system, data collection and training.*

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

*Extradition; transfer of sentenced persons; transfer of criminal proceedings
(articles 44, 45, 47)*

45. *Under section 3 of PD 1069 (Extradition Law), extradition may be granted only pursuant to a treaty or convention. Dual criminality by imprisonment or deprivation of liberty for a period stipulated in the relevant treaty must be satisfied before extradition may be granted. As such, the Philippine declaration at the time of ratification states that dual criminality is required under its extradition law and that the Convention cannot be considered as the legal basis for extradition.*
46. *The Philippines has signed thirteen bilateral extradition treaties, three of which were not yet in force at the time of the review.*
47. *The majority of bilateral treaties adopt the “Non-List Double Criminality Approach”. Thus, as long as the underlying conduct is punishable in both States by imprisonment for at least one year, the offence is an extraditable offence. On the other hand, some treaties follow the “List Double Criminality Approach” and provide a list of extraditable offences. In those treaties, extradition may also be granted at the discretion of the requested State in respect of any other crimes for which it can be granted according to the laws of both States.*
48. *UNCAC offences are extraditable under existing treaties in light of their minimum period of imprisonment. However, to the extent that the Philippines has not criminalized all UNCAC offences, those offences are not extraditable under Philippine law. Only one corruption-related extradition request was received (and one made) from 2009-2012, while 12 non-corruption related requests were received (and none were made) during the same period. No requests for extradition involving corruption offences have been refused to date.*
49. *Under PD 1069, the Secretary of Foreign Affairs first determines whether the extradition request complies with the legal requirements and relevant treaty. Once this is established, the request and supporting documents are forwarded to the Secretary of Justice who designates a panel of attorneys to handle the extradition case. If the request is made pursuant to a treaty, the panel prepares and files the extradition petition with the court for hearing.*
50. *General conditions for extradition are set forth in sections 3-5 of PD 1069, while the specific minimum penalty requirements as well as the mandatory and discretionary grounds for refusing extradition are addressed in existing treaties.*
51. *Extradition of Filipino nationals is a discretionary ground for refusing extradition, except in the case of three treaties, which state that extradition shall not be refused based on nationality. Treaties where extradition of nationals is a discretionary ground for refusal follow the *aut dedere, aut judicare* principle. To date, the Philippines has not refused an extradition request on the sole basis that the person sought is its own national. The Philippines would not consider the enforcement of a foreign sentence where extradition of a national is refused.*
52. *Under section 13 of the Extradition Act, the provisions of the Rules of Court governing appeals in criminal cases apply. Philippine authorities are required to make available to*

all extraditees such remedies which safeguard their fundamental right to liberty, including the right to counsel and to be admitted to bail. The right to refuse extradition on the grounds of a discriminatory purpose is not addressed in some extradition treaties, though extradition has not been refused on such grounds.

53. *The Philippines has signed four bilateral transfer of sentenced persons agreements, one of which was not yet in force at the time of the review, and has transferred a prisoner under one of them. There are no measures on the transfer of criminal proceedings.*

Mutual legal assistance (article 46)

54. *The Philippines does not have a stand-alone MLA law or a general legal basis (outside of bilateral and regional MLA treaties (MLATs), including the Convention, and reciprocity) on which to provide and request assistance. Relevant provisions are found in AMLA; however, these are only applicable to requests involving money laundering offences, even in cases where the predicate offence involves corruption.*
55. *The Philippines has signed eight bilateral MLATs, two of which were not yet in force at the time of the review, and is also party to the Treaty on Mutual Legal Assistance in Criminal Matters among States in the Association of Southeast Asian Nations. The scope of the MLATs is broad enough to cover UNCAC offences without regard to whether the crime was committed by natural or legal persons.*
56. *Although the absence of dual criminality is a discretionary ground for refusing MLA under certain MLATs, in practice the Philippines does not decline requests, whether treaty or non-treaty based, on the ground of absence of dual criminality. The Philippines has never denied an MLA request on the ground of absence of dual criminality, and has had experience in asset recovery cases at the international level.*
57. *For non-treaty based requests, assistance may be granted on the basis of reciprocity, provided that the request does not involve coercive action. Moreover, the request must contain a reciprocity undertaking that a similar request by the Philippines will be granted. Non-coercive action means that the request could be executed without having to file an application or petition in court.*
58. *The Philippines provides information spontaneously to agencies abroad, as provided for in some of the MLATs and AMLA. Bank secrecy does not appear to impede the provision of assistance.*
59. *The refusal of MLA on the grounds that it would likely prejudice the sovereignty, security, ordre public or essential interests of the Philippines is a discretionary ground for refusal (in certain MLATs) and a mandatory ground (in others). No incoming or outgoing requests have been denied on this basis.*
60. *The transfer of prisoners, experts and witnesses to provide testimony or evidence, as well as safe conduct and related protections, are addressed in the MLATs. However, these provisions have not been applied in practice.*

61. *The Department of Justice (DOJ), through the Office of the Chief State Counsel, is the central authority for incoming and outgoing requests under existing treaties, and the requisite notifications have been made to the United Nations.*
62. *The length of time between the receipt and execution of a request depends on its nature or complexity. In executing requests, the DOJ takes into account the urgency of the request and preferences of the requesting State.*
63. *It has been the practice of the Philippines to consult with requesting States before refusing or postponing assistance.*

Law enforcement cooperation; joint investigations; special investigative techniques (articles 48, 49, 50)

64. *Philippine law enforcement agencies cooperate largely in anti-money laundering and INTERPOL activities, as well as through agreements on direct law enforcement cooperation to combat transnational crime.*
65. *As a member of the Egmont Group of Financial Intelligence Units (FIUs), AMLC can provide information to other Egmont Group members, spontaneously or upon request, for intelligence purposes. The Philippines has received and sent such requests in cases involving corruption and plunder. AMLC can also exchange information spontaneously with other FIUs through Memoranda of Understanding (MOUs), which it has done. AMLC has executed 36 MOUs with foreign FIUs. The AMLC database of suspicious and covered transactions is used to identify transactions related to unlawful activities, including corruption.*
66. *The Philippine Center for Transnational Crime (PCTC) acts as the contact agency in INTERPOL cases, and PNP as the INTERPOL National Central Bureau. PNP promotes the exchange of personnel with foreign counterparts, including through MOUs. PNP conducts personnel exchanges for trainings and best practices on transnational crime. PNP has placed and received attachés abroad and also maintains foreign country “desks” for general criminal cases.*
67. *Joint investigations are conducted principally on anti-money laundering through ad hoc arrangements that do not always take the form of a formal task force. Several examples involving money laundering were given, and PNP has also conducted joint investigations in a terrorism case.*
68. *There has been little experience using special investigative techniques in corruption cases, apart from surveillance operations. A court order is needed to conduct special investigative techniques under rule 126 of the Rules of Court. Evidence derived from legally conducted special techniques is admissible once properly authenticated, pursuant to rule 132 of the Rules of Court.*

3.2. Successes and good practices

69. *Overall, the following success and good practice in implementing Chapter IV of the Convention is highlighted:*

- *The Philippines has reportedly not refused any requests for extradition or MLA to date.*

3.3. Challenges in implementation

70. *The following points could serve as a framework to strengthen and consolidate the actions taken by the Philippines to combat corruption:*

- *Consider using the Convention as a legal basis for extradition, noting indications that the Philippines may consider amending its declaration in this regard, provided dual criminality is satisfied.*
- *Consider amending its extradition treaties to address the right to refuse extradition on the grounds of a discriminatory purpose of the request.*
- *Consider amending its bilateral treaties to ensure that consultations are held with requesting States before refusing extradition and that there is no discretion to refuse extradition in cases involving fiscal offences.*
- *Identified challenges related to extradition are the inadequacy of existing normative measures, limited capacity and inter-agency co-ordination, in particular a need for the judiciary and courts to be familiar with extradition procedures.*
- *Regarding the transfer of prisoners, reported challenges are specificities in the legal system, competing priorities, limited capacity and limited resources.*
- *Consider enacting an MLA law or provisions in the Rules of Criminal Procedure in line with the Convention; a consultation process is underway in this regard.*
- *Consider amending its existing MLATs to ensure that MLA will not be refused on the ground that the offence involves fiscal matters.*
- *Further strengthening direct law enforcement cooperation, particularly by OMB, to enhance the effectiveness of international cooperation efforts.*
- *Competing priorities have resulted in limited funding and personnel for anti-corruption measures. The consolidation of anti-corruption functions under one agency could address the lack of coordination. Limited capacity, especially the absence of an anti-corruption division in PNP, and limited law enforcement cooperation internationally were noted.*
- *Inter-agency coordination is a reported challenge to conducting special investigative techniques, which could be addressed through more active involvement by OMB and other agencies.*
- *The Anti-Wiretapping Law could be amended to permit wiretapping in corruption cases.*

- *Competing priorities and the wide mandate of PNP were noted as challenges to using special investigative techniques internationally, as well as limited capacity, resources and awareness of modern investigative techniques.*

3.4. Technical assistance needs identified to improve implementation of the Convention

71. *The following forms of technical assistance could assist the Philippines in more fully implementing the Convention:*

- *Article 44: capacity-building, and amendments to PD 1069 consistent with treaty obligations; multi-disciplinary training of participants in extradition proceedings, especially judges.*
- *Article 45: Good practices/lessons learned and capacity-building.*
- *Article 46: Assistance in drafting national MLA legislation.*
- *Article 48: Capacity-building; management of a central database/information portal for law enforcement; public information sharing among agencies; development of an implementation action plan.*
- *Article 50: Good practices/lessons learned and the creation/operation of a specialized anti-corruption unit in the Police; on-site assistance by a relevant expert; capacity-building; development of an implementation action plan; model agreements/arrangements; legal advice to amend the Anti-Wiretapping Law.*

IV. Implementation of the Convention

A. Ratification of the Convention

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

73. The Philippines made the following declaration at the time of ratification:

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

The Department of Justice
Padre Faura Street, Manila, Philippines

In the absence of a bilateral treaty, the Central Authority shall be:
Office of the Ombudsman

Agham Road, Diliman, Quezon City, Philippines

The acceptable language for requests for mutual assistance is English.”

74. Further, the Philippines made a declaration in accordance with Article 44, Paragraph 6 of the Convention that “dual criminality is required under its Extradition Law and the Philippines therefore cannot consider the Convention as legal basis for cooperation on extradition with other States”. However, subject to compliance with domestic legal processes, the Philippines is considering the amendment of its declaration, so that it can use the Convention as a basis for extradition provided that dual criminality is satisfied.

B. Legal system of the Philippines

75. The legal system of the Philippines is a combination of civil law and common law. The Philippine public law is substantially patterned after common law doctrines, while its private law follows the civil tradition of Spain. Public law, notably constitutional law, administrative law and the law of public offices, is based on American law. Private law refers to laws on persons and family relations, obligations and contracts, and succession, which is patterned after the Civil Code of Spain.

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

77. The Revised Penal Code (or “RPC”) is the substantive criminal law, approved on 8 December 1930, which expressly repealed the old Penal Code that was a modified version of the Spanish Penal Code of 1870. There are three cardinal principles of the Philippines’ penal law: 1) prospectivity; 2) generality; and 3) territoriality. Penal laws are construed strictly against the State; any doubt should be resolved in favor of the accused.

78. The special penal laws criminalize crimes other than those punishable under the RPC. Violations of the RPC are *male in se*, meaning inherently wrong, and violations of special penal laws are *mala prohibita*, i.e. wrong as it is prohibited by law and there is no need to prove malice or culpability. The applicability of the RPC to offences punishable under special penal laws is covered by article 10 of the RPC, whereby “Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary”.

79. It was noted that the special penal laws do not require the proof of *mens rea* and also do not specify separate penalties for violations.

80. Rights are guaranteed by the Bill of Rights (Art III) of the 1987 Philippine Constitution. These, *inter alia*, include: the right to due process; right to equal protection of the laws; right to bail; right to be presumed innocent until the contrary is proven; and right to counsel.

81. The Philippines recently enacted legislation against money laundering and terrorist financing. The two measures -- An Act To Further Strengthen The Anti-Money Laundering Law and The Terrorism Financing Prevention And Suppression Act of 2012 -- will expand the Government's powers to investigate funds from illegal or criminal activity that are kept in banks and other institutions. The Anti-Money Laundering Council (AMLC) is the primary agency tasked to implement the legislation.
82. One of the five thematic clusters of Government focus relates to good governance and anti-corruption. The following are recent legislative amendments or pending bills under this cluster:
- RA 9160 was passed in 2001 and amended by RA 9194 in 2003, which came into force in June 2012.
 - Further strengthening the Anti-Money Laundering Law (House Bill 4275 – approved on third reading) / (Senate Bill 3123 – pending second reading).
 - Whistleblower Protection Act (Senate Bill 2860 as of March 2012– pending second reading).
 - The bill strengthening the Witness Protection, Security and Benefit Program (House Bill 5714 – approved on third reading; pending in the Senate and would extend benefits to relatives, as well as public officials including law enforcement officers).
 - Regarding the statute of limitations, House Bill 00588 proposes to increase the prescriptive period for RA 3019 from 15 to 30 years. (House Bill No. 00588: An Act Amending Section 11 of Republic Act Number 3019, Otherwise Known As The "Anti-Graft And Corrupt Practices Act", By Increasing The Prescriptive Period For Its Violation From Fifteen (15) Years To Thirty (30) Years).
 - Bill HB00385 (An Act Reorganizing and Modernizing the National Bureau of Investigation, Providing Necessary Funds Therefore and For Other Purposes) is pending before the Committee on Appropriations;
 - The Freedom of Information Bill (pending in the House Committee) / People's Ownership of Government Information (POGI) Act (Senate Bill 3208 – pending second reading).
83. The reviewing experts were informed that a Criminal Code Committee was established to revise the RPC including and to integrate the special criminal laws (anti-corruption matters) into a unified criminal code. The Committee was created by Administrative Order No. 94 under the Department of Justice.
84. In this regard, a summary of international best practices and norms was requested, as well as international expertise. The reviewers suggest that in line with such reforms the Philippines consider international treaties, such as UNCAC and the United Nations Convention against Transnational Organized Crime, and other international norms.
85. With respect to the definition of a public official, the reviewing experts were informed that section 2 of the RA3019 is commonly used. However, it was agreed that section 3 of RA 6713 is the more comprehensive definition. For this reason, it was recommended that a unified definition of a public official in line with UNCAC article 2 may wish to be considered.
86. The mandate for the investigation and prosecution of criminal offences, particularly corruption, is as follows. All corruption related offences are investigated and prosecuted

by the Office of the Ombudsman (OMB). However, criminal matters (including corruption) involving high ranking public officials whose salary is at defined level 27 and above (i.e. Director level) are investigated and prosecuted by the Office of the Special Prosecutor (OSP) under the OMB. Such cases are filed in the Sandiganbayan (specialized anti-corruption court), except when a public official at a lower salary grade conspires with a high ranking public official.

87. Finally, all non-corruption related criminal offences under grade level 27 are handled by the Prosecutor General’s Office in the Department of Justice. This explains the statistics included under the UNCAC offences below (which have been provided by the Office of the Special Prosecutor and therefore relate to only matters concerning public officials whose salary is at level 27 and above).

88. The range of penalties for corruption-related provisions in the laws of the Philippines is provided below.

REVISED PENAL CODE – CORRUPTION RELATED OFFENSES

Felonies	Penalties	Fines	Accessory Penalties
Art 210. Direct Bribery			
Any public officer who shall agree to perform and performed an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another	<i>Prision mayor</i> in its medium and minimum periods (Imprisonment from six [6] years and one [1] day to ten [10] years)	Fine of not less than three times the value of the gift, in addition to the penalty corresponding to the crime agreed upon	Temporary absolute disqualification Perpetual special disqualification from the right of suffrage
Any public officer who shall agree to perform and performed an act which does not constitute a crime in consideration of a gift	<i>Prision mayor</i> in its medium and minimum periods (Imprisonment from six [6] years and one [1] day to ten [10] years)	Fine of not less than three times the value of the gift, in addition to the penalty corresponding to the crime agreed upon	Temporary absolute disqualification Perpetual special disqualification from the right of suffrage
The above-mentioned act shall not have been accomplished – offender is public officer	<i>Prision correccional</i> , in its medium period (Imprisonment from two [2] years, four [4] months and one [1] day to four [4] years and two [2] months	Fine of not less than three times the value of such gift	Suspension from public office Suspension from the right to follow a profession or calling Perpetual special disqualification from the right of suffrage
If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do	<i>Prision correccional</i> in its maximum period (Imprisonment from four [4] years, two [2] months and one [1] day) to <i>prision mayor</i> in its minimum Period (eight [8] years)	Fine of not less than three times the value of such gift	Temporary absolute disqualification Suspension from public office Suspension from the right to follow a profession or calling

			Perpetual special disqualification from the right of suffrage
Art 211. Indirect Bribery			
Any public officer who shall accept gifts offered to him by reason of his office	<i>Prision correccional</i> in its medium and maximum periods (Imprisonment from two [2] years, four [4] months and one [1] day to six [6] years) Public censure		Suspension from public office Suspension from the right to follow a profession or calling Perpetual special disqualification from the right of suffrage
Art 212. Corruption of public officials			
Any person who shall have made the offers or promises or given the gifts or presents	<i>Prision correccional</i> in its medium and maximum periods (Imprisonment from two [2] years, four [4] months and one [1] day to six [6] years) Public censure		Suspension from public office Suspension from the right to follow a profession or calling Perpetual special disqualification from the right of suffrage
Article 213. – Frauds against the public treasury and similar offenses 1. In his official capacity, in dealing with any person with regard to furnishing supplies, the making of contracts, or the adjustment or settlement of accounts relating to public property or funds, shall enter into an agreement with any interested party or speculator or make use of any other scheme, to defraud the Government; 2. Being entrusted with the collection of taxes, licenses, fees and other imposts, shall be guilty or any of the following acts or omissions: (a) Demanding, directly, or indirectly, the payment of sums different from or larger than those authorized by law. (b) Failing voluntarily to issue a receipt, as provided by law, for any sum of money collected by him officially. (c) Collecting or receiving, directly or indirectly, by way of payment or otherwise things or objects of a nature different from that	<i>Prision correccional</i> in its medium period to <i>prision mayor</i> in its minimum period (Imprisonment from two [2] years, four [4] months and one [1] day to eight [8] years) OR fine OR both	Fine ranging from 200 to 10,000 pesos	Temporary absolute disqualification Suspension from public office Suspension from the right to follow a profession or calling Perpetual special disqualification from the right of suffrage

provided by law.			
Article 214. Other frauds Any public officer who, taking advantage of his official position, shall commit any of the frauds or deceits enumerated in the foregoing article	Temporary special disqualification in its maximum period to perpetual special disqualification		
Article 215. Prohibited Transactions Any appointive public officer who, during his incumbency, shall directly or indirectly become interested in any transaction of exchange or speculation within the territory subject to his jurisdiction.	<i>Prision correccional</i> in its maximum period (Imprisonment from four [4] years, two [2] months and one [1] day to six [6] years OR fine OR both	Fine ranging from 200 to 1,000 pesos	Suspension from public office Suspension from the right to follow a profession or calling Perpetual special disqualification from the right of suffrage
Article 216. Possession of prohibited interest by a public officer Any public officer who directly or indirectly, shall become interested in any contract or business in which it is his official duty to intervene. This provision is applicable to experts, arbitrators and private accountants who, in like manner, shall take part in any contract or transaction connected with the estate or property in appraisal, distribution or adjudication of which they shall have acted, and to the guardians and executors with respect to the property belonging to their wards or estate.	<i>Arresto mayor</i> in its medium period to <i>prision correccional</i> in its minimum period (Imprisonment for a term of two [2] months and one [1] day to two [2] years and four [4] months OR fine OR both	Fine ranging from 200 to 1,000 pesos	Suspension from public office Suspension from the right to follow a profession or calling Perpetual special disqualification from the right of suffrage
Article 217. Malversation of public funds or property Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property			
1. If the amount involved in the misappropriation or malversation does not exceed	<i>Prision correccional</i> in its medium and maximum periods	Fine equal to the amount of the funds malversed or equal to	Suspension from public office

two hundred pesos	(Imprisonment from two [2] years, four [4] months and one [1] day to six [6] years)	the total value of the property embezzled	Suspension from the right to follow a profession or calling Perpetual special disqualification from the right of suffrage
2. If the amount involved is more than two hundred pesos but does not exceed six thousand pesos	<i>Prision mayor</i> in its medium and minimum periods (Imprisonment from six [6] years and one [1] day to ten [10] years)	Fine equal to the amount of the funds malversed or equal to the total value of the property embezzled	Temporary absolute disqualification Perpetual special disqualification from the right of suffrage
3. If the amount involved is more than six thousand pesos but is less than twelve thousand pesos	<i>Prision mayor</i> in its maximum period to <i>reclusion temporal</i> in its minimum period (Imprisonment from ten [10] years and one [1] day to fourteen [14] years and eight [8] months	Fine equal to the amount of the funds malversed or equal to the total value of the property embezzled	Civil interdiction for life or during the period of the sentence, as the case may be Perpetual absolute disqualification – (1) deprivation of the public offices and employment which the offender may have held; (2) deprivation of the right to vote in any election for any popular elective office or to be elected to such office; (3) disqualification for the offices or public employments and for the exercise of any of the rights mentioned; and, (4) loss of all rights to retirement pay or other pension for any office formerly held.
4. If the amount involved is more than twelve thousand pesos but is less than twenty-two thousand pesos.	<i>Reclusion temporal</i> , in its medium and maximum periods (Imprisonment from fourteen [14] years, four [4] months and one [1] day to twenty [20] years)	Fine equal to the amount of the funds malversed or equal to the total value of the property embezzled	Civil interdiction for life or during the period of the sentence, as the case may be Perpetual absolute disqualification – (1) deprivation of the public offices and employment which the offender may have held; (2) deprivation of the right to vote in any election for any popular elective office or to be elected to such office; (3) disqualification for the offices or public employments and for the exercise of any of the rights mentioned; and, (4) loss of all

			rights to retirement pay or other pension for any office formerly held.
5. If the amount exceeds twenty-two thousand pesos	<i>Reclusion temporal</i> in its maximum period to <i>reclusion perpetua</i> (Imprisonment from seventeen [17] years, four [4] months and one [1] day to forty [40] years	Fine equal to the amount of the funds malversed or equal to the total value of the property embezzled	Civil interdiction for life or during the period of the sentence, as the case may be Perpetual absolute disqualification – (1) deprivation of the public offices and employment which the offender may have held; (2) deprivation of the right to vote in any election for any popular elective office or to be elected to such office; (3) disqualification for the offices or public employments and for the exercise of any of the rights mentioned; and, (4) loss of all rights to retirement pay or other pension for any office formerly held.
Article 218 – Failure of accountable officer to render accounts Any public officer, whether in the service or separated there from by resignation or any other cause, who is required by law or regulation to render account to the Insular Auditor, or to a provincial auditor and who fails to do so for a period of two months after such accounts should be rendered	<i>Prision correccional</i> in its minimum period (Imprisonment from six [6] months and one [1] day to two [2] years and four [4] months) OR fine OR both	Fine ranging from 200 to 6,000 pesos	Suspension from public office Suspension from the right to follow a profession or calling Perpetual special disqualification from the right of suffrage
Article 219 – Failure of a responsible public officer to render accounts before leaving the country Any public officer who unlawfully leaves or attempts to leave the Philippine Islands without securing a certificate from the Insular Auditor showing that his accounts have been finally settled	<i>Arresto mayor</i> (Imprisonment from one [1] month and one [1] day to six [6] months) OR fine OR both	Fine ranging from 200 to 1,000 pesos	Suspension of the right to hold office Suspension of the right of suffrage
Article 220 – Illegal use of public funds or property			
Any public officer who shall apply any public fund or property under his administration to any public use other than for which such fund or property were	<i>Prision correccional</i> in its minimum period (Imprisonment from six [6] months and one [1] day to two [2] years and four [4] months)		Suspension from public office Suspension from the right to follow a profession or calling

appropriated by law or ordinance			Perpetual special disqualification from the right of suffrage
If by reason of such misapplication, any damages or embarrassment shall have resulted to the public service	<i>Prision correccional</i> in its minimum period (Imprisonment from six [6] months and one [1] day to two [2] years and four [4] months) OR fine	Fine ranging from one-half to the total of the sum misapplied	Suspension from public office Suspension from the right to follow a profession or calling Perpetual special disqualification from the right of suffrage
If no damage or embarrassment to the public service has resulted		Fine from 5 to 50 per cent of the sum misapplied.	
Article 221 – Failure to make delivery of public funds or property Any public officer under obligation to make payment from Government funds in his possession, who shall fail to make such payment	<i>Arresto mayor</i> (Imprisonment from one [1] month and one [1] day to six [6] years)	Fine from 5 to 25 per cent of the sum which he failed to pay	Suspension of the right to hold office Suspension of the right of suffrage

Republic Act No. 6770 (Ombudsman Act of 1989)

Offenses	Penalty/ies	Fine/s/ Accessory Penalties
Malicious Prosecution (Sec. 35)	One (1) month and one (1) day to Six (6) months imprisonment	Not exceeding Five thousand pesos (P 5,000.00)
Obstruction (Sec. 36)		Not exceeding Five thousand pesos (P 5,000.00)
Administrative offenses under Presidential Order No. 807	Penalties provided in PD No. 807 shall be applied	Fines provided in said decree shall be applied
Other administrative offences	Minimum: Suspension without pay for one (1) year Maximum: Dismissal from service	Minimum: Five thousand pesos (P5,000.00) Maximum: Twice the amount malversed , illegally taken or lost OR both penalties and fines at the discretion of the Ombudsman Forfeiture of benefits

Republic Act No. 7080 (Plunder Law)

Offenses	Penalties	Fines	Accessory Penalties
Plunder – committed by public officer. Section 2. Definition of the Crime of Plunder; Penalties. - Any public	<i>Reclusion perpetua</i> (Imprisonment for a term of twenty [20] years and one [1] day to forty [40] years)to death ²		Civil interdiction for life or during the period of the sentence, as the case may be Perpetual absolute disqualification – (1)

²Imposition of death penalty prohibited by virtue of Republic Act 9346

<p>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) hereof, in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00), shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death.</p>	<p>Ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State</p>		<p>deprivation of the public offices and employment which the offender may have held; (2) deprivation of the right to vote in any election for any popular elective office or to be elected to such office; (3) disqualification for the offices or public employments and for the exercise of any of the rights mentioned; and, (4) loss of all rights to retirement pay or other pension for any office formerly held.</p>
<p>Plunder – any person who participated in the commission of plunder</p> <p>Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense.</p>	<p><i>Reclusion perpetua</i> (Imprisonment for a term of twenty [20] years and one [1] day to forty [40] years)to death³</p> <p>In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.</p>		<p>Civil interdiction for life or during the period of the sentence, as the case may be</p> <p>Perpetual absolute disqualification – (1) deprivation of the public offices and employment which the offender may have held; (2) deprivation of the right to vote in any election for any popular elective office or to be elected to such office; (3) disqualification for the offices or public employments and for the exercise of any of the rights mentioned; and, (4) loss of all rights to retirement pay or other pension for any office formerly held.</p>

Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act)

Offenses	Penalties	Fines	Accessory Penalties
<p>Violation of Sections 3, 4, 5, and 6 of RA 3019</p>	<p>Minimum: Not less than six (6) years and one (1) month imprisonment</p> <p>Maximum: Not more than fifteen (15) years imprisonment</p>		<p>Forfeiture of retirement or gratuity benefits under any law</p>

³ Imposition of death penalty prohibited by virtue of Republic Act 9346

	Perpetual disqualification from public office Confiscation or forfeiture of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income		
Violations of Sec. 7 of RA 3019 (Statement of Assets and Liabilities)	Imprisonment for a term of not exceeding one (1) year and six (6) months OR fine OR both at the discretion of the Court	Minimum: Not less than one thousand pesos (P 1,000.00) Maximum: Not more than five thousand pesos (P 5,000.00)	Forfeiture of retirement or gratuity benefits under any law
Any offense involving fraud upon government or public funds or property	Penalties provided under the law in which the offender was charged		Forfeiture of retirement or gratuity benefits under any law

Republic Act No. 1379 (Forfeiture of Unlawfully Acquired Wealth)

Offenses	Penalties	Fines	Accessory Penalties
Public officer or employee who shall, after the effective date of RA 1379, transfer or convey any unlawfully acquired property	Imprisonment for a term not exceeding five (5) years OR fine OR both	Not exceeding ten thousand pesos (P 10,000.00) OR both imprisonment and fine	
Any person who knowingly accept such transfer or conveyance	Imprisonment for a term not exceeding five (5) years OR fine OR both	Not exceeding ten thousand pesos (P 10,000.00)	

Presidential Decree No. 46 (Prohibition on Gifts)

Offenses	Penalties	Fines	Accessory Penalties
Public officer: Receiving of gifts, directly or indirectly when such gift is given by reason of his official position	Minimum: Not less than one (1) year imprisonment Maximum: not more than five (5) years imprisonment Perpetual disqualification from public office Suspension or removal from office (depending on the seriousness of the offense)		
Private individual: Giving or offering of gifts, directly or indirectly to a public officer by reason of his official position	Minimum: Not less than one (1) year imprisonment Maximum: Five (5) years imprisonment Perpetual disqualification		

	from public office		
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Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees)

Offenses	Penalties	Fines	Accessory Penalties
Violation of RA 6713, except Sections 7, 8 or 9.	Suspension not exceeding one (1) year OR Removal from office OR fine	Fine not exceeding the equivalent of six (6) months' salary	
Violations of Section 7, 8 or 9	Imprisonment for a term not exceeding five (5) years OR fine OR both	Fine not exceeding five thousand pesos (P5,000)	

Presidential Decree No. 1829 (Decree Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders)

Offenses	Penalties	Fines	Accessory Penalties
Public official or employee: Violation of Section 1	<i>Prision Correccional</i> in its maximum period (Imprisonment for a term of four [4] years, two [2] months and one [1] day to six [6] years) OR fine OR both	Fine ranging from 1,000 to 6,000 pesos	Perpetual disqualification from holding public office Suspension from the right to follow a profession or calling Perpetual special disqualification from the right of suffrage
Private individual: Violation of Section 1	<i>Prision Correccional</i> in its maximum period (Imprisonment for a term of four [4] years, two [2] months and one [1] day to six [6] years) OR fine OR both	Fine ranging from 1,000 to 6,000 pesos	Suspension from public office Suspension from the right to follow a profession or calling Perpetual special disqualification from the right of suffrage

Republic Act No. 9160, as amended by Republic Act No. 9194, and further amended by Republic Act No. 10167 (Anti-Money Laundering Act)

Offenses	Penalties	Fines	Accessory Penalties
Violation of Section 4 (a)	Imprisonment for a term ranging from seven (7) to fourteen (14) years	Fine of not less than Three Million Pesos (P 3,000,000.00) but not more than twice the value of the monetary instrument or property involved in the offense	
Violation of Section 4 (b)	Imprisonment for a term of four (4) to seven (7) years	Fine of not less than One Million five hundred thousand pesos (P 1,500,000.00) but not more than Three Million pesos (P 3,000,000.00)	
Violation of Section 4 (c)	Imprisonment for a term of six (6) months to four	Fine of not less than One hundred thousand pesos	

	(4) years OR fine OR both	(P100,000.00) but not more than Five hundred thousand pesos (P500,000.00)	
Failure to Keep Records - Violation of Section 9 (b)	Imprisonment for a term of six (6) months to one (1) year OR fine OR both	Fine of not less than One hundred thousand pesos (P100,000.00) but not more than Five hundred thousand pesos (P500,000.00)	
Malicious Reporting – Offender is public official or employee	Imprisonment for a term of six (6) months to four (4) years	Fine of not less than One hundred thousand pesos (P100,000.00) but not more than Five hundred thousand pesos (P500,000.00)	Perpetual or temporary absolute disqualification from office
Malicious Reporting – Offender is private individual	Imprisonment for a term of six (6) months to four (4) years	Fine of not less than One hundred thousand pesos (P100,000.00) but not more than Five hundred thousand pesos (P500,000.00)	
Malicious Reporting - Offender is corporation, association, partnership or any juridical person – penalty to be imposed upon the responsible officers	Imprisonment for a term of six (6) months to four (4) years	Fine of not less than One hundred thousand pesos (P100,000.00) but not more than Five hundred thousand pesos (P500,000.00)	
Malicious Reporting – Offender is alien	Imprisonment for a term of six (6) months to four (4) years Deportation after serving the sentence	Fine of not less than One hundred thousand pesos (P100,000.00) but not more than Five hundred thousand pesos (P500,000.00)	
Breach of Confidentiality - Violation of Section 9(c)	Imprisonment for a term ranging from three (3) to eight (8) years	Fine of not less than Five Hundred thousand pesos (P500,000.00) but not more than One Million pesos (P1,000,000.00)	

C. Political system of the Philippines

89. The branches of Government include the executive (headed by the President), legislature (bicameral system) and judiciary (Supreme Court and lower courts, as established by law).

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

law”. The Philippine judicial system is composed of the Supreme Court, the Court of Appeals, the Regional Trial Courts, the Court of Tax Appeals, and the Metropolitan and Municipal Trial Courts.

91. The reviewing experts were informed that there are Special Courts that address matters under the special laws. For this reason, the Anti-Graft Court focuses on the Anti-Graft and Corrupt Practices Act. Moreover, if the offence is subject to a penalty of over six years' imprisonment, the matter would go to the Courts of First Instance (Municipal Trial Court, Municipal Circuit Trial Court and Metropolitan Trial Court; all of which have the same jurisdiction). The Sandiganbayan has the jurisdiction to hear matters involving high ranking public officials (i.e. salary level of grade 27 or above). The only exception involves cases when a public official at a lower salary grade conspires with a high ranking public official.
92. The Ombudsman's Office focuses on anti-graft and corrupt practices. It investigates such matters pursuant to the special laws (especially RA 3019) and RPC. It has its Headquarters in Manila and also has regional offices.

D. Implementation of selected articles

Chapter III. Criminalization and law enforcement

Article 15 Bribery of national public officials

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(a) Summary of information relevant to reviewing the implementation of the article

93. The Philippines deemed that it has partly implemented the provision under review, pursuant to the Revised Penal Code, 1932, the Anti-Red Tape Act, 2007 and Anti-Graft and Corrupt Practices Act, 1960. The cited provisions include:
 - i. Articles 210 (covers purpose / object for which the gift was received/ promised), 211, 211-A and 212 of the Revised Penal Code;
 - ii. Section 12 of the RA 9485 (Anti-Red Tape Act, 2007); and
 - iii. Section 3 (last paragraph) of the RA 3019 (Anti-Graft and Corrupt Practices Act in relation to sections 3b and 3c (third party benefit, non-material benefit).
94. The Penal Code was revised on 1 January 1932 and is now known as the “Revised Penal Code” (RPC). It has been amended several times.

Revised Penal Code

Article 210. Direct bribery

Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of *prision mayor* in its medium and maximum periods and a fine [of not less than the value of the gift and] not less than three times the value of the gift in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.

If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of *prision correccional*, in its medium period and a fine of not less than twice the value of such gift.

If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of *prision correccional* in its maximum period and a fine [of not less than the value of the gift and] not less than three times the value of such gift.

In addition to the penalties provided in the preceding paragraphs, the culprit shall suffer the penalty of special temporary disqualification.

The provisions contained in the preceding paragraphs shall be made applicable to assessors, arbitrators, appraisal and claim commissioners, experts or any other persons performing public duties. (As amended by Batas Pambansa Blg. 872, June 10, 1985)

Article 211. Indirect bribery

The penalties of *prision correccional* in its medium and maximum periods, suspension and public censure shall be imposed upon any public officer who shall accept gifts offered to him by reason of his office.

Article 211-A. Qualified Bribery

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

If it is the public officer who asks or demands such gift or present, he shall suffer the penalty of death.

Article 212. Corruption of public officials

The same penalties imposed upon the officer corrupted, except those of disqualification and suspension, shall be imposed upon any person who shall have made the offers or promises or given the gifts or presents as described in the preceding articles.)

Republic Act No. 9485 ("Anti-Red Tape Act of 2007")

Section 12. Criminal Liability for Fixers

In addition to Section 11(b), fixers, as defined in this Act, shall suffer the penalty of imprisonment not exceeding six years or a fine of not less than Twenty thousand pesos (P20,000.00) but not more than Two hundred thousand pesos (P200,000.00) or both fine and imprisonment at the discretion of the court.

95. The provision penalizes “fixers” who are defined under Section 4(g) of the said statute as “any individual whether or not officially involved in the operation of a government office or agency who has access to people working therein, and whether or not in collusion with them, facilitates speedy completion of transactions for pecuniary gain or any other advantage or consideration.”

Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act)

Section 3. Corrupt practices of public officers

In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(a) The person giving the gift, present, share, percentage or benefit referred to in subparagraphs (b) and (c); or offering or giving to the public officer the employment mentioned in subparagraph (d); or urging the divulging or untimely release of the confidential information referred to in subparagraph (k) of this section shall, together with the offending public officer, be punished under Section nine of this Act and shall be permanently or temporarily disqualified in the discretion of the Court, from transacting business in any form with the Government.

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.

(c) Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act.

(d) Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination.

...

(k) Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date.

96. The definition of public officer in RA 3019 does not include those who do not receive compensation. However, the definition is not restrictive (*Preclaro v. Sandiganbayan*, 247 SCRA 454). RA 3019 is one of several laws that define public officers. Article 203 of the RPC also defines a public officer as “any person who, by direct provision of the law, popular election or appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class, shall be deemed to be a public officer”. There is no provision requiring compensation as a requisite for one to become a public officer but only performance of a public function is required.

RA 3019

Section 2. Definition of terms

As used in this Act, the term — (b) "Public officer" includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government as defined in the preceding subparagraph.

97. Under Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees), public officers may or may not receive compensation. The definition is also provided below.

RA 6713

Section 3. Definition of Terms

As used in this Act, the term: (b) "Public Officials" includes elective and appointive officials and employees, permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive compensation, regardless of amount.

98. The Philippines also cited the following cases.

PP v P. Salanga (CC 27890 Bribery):

This bribery case was filed against a Manila City Prosecutor who had demanded money for a favorable decision. The complainant in coordination with the law enforcement agents from the National Bureau of Investigation (NBI) conducted an entrapment operation, resulting in the arrest of the accused Prosecutor. Due to the evidence collected, the accused was convicted.

PP v T. Manuel (SB-07-CRM-0001 Bribery):

An Assistant Provincial Prosecutor from Surigao del Sur was charged for demanding money in order that he would file a comment on the Motion to defer proceedings of a case that he was handling. The complainant, in the guise of agreeing to his demands, coordinated with the NBI for an entrapment against the accused. The accused was convicted.

PP v A. Solamo (CC 28258 Bribery):

Amado Solamo was a labor arbiter of the NLRC Region IX Davao City who was accused of soliciting and accepting the amount of P15,000.00 as consideration for a favourable decision of a case pending before him. With the assistance of NBI agents, an entrapment plan was put in place and the accused was caught in flagrante. He was subsequently convicted.

PP v O. Ramos (CC 27509; violation of section 3(b) of RA 3019):

The accused was a senior member of the Provincial Board of Batangas and a Member of the Bids and Awards Committee. The complainant is an owner and proprietor of a business in the Province who was disqualified as being a supplier for the Province. The accused demanded money in exchange for helping him become a supplier again. The complainant, at first, appeared to accede to the request for money but later, relented and wanted to put a stop to the illegal acts of the accused; thus, he set up an entrapment operation. The accused was convicted. It was noted that the Court deemed, pursuant to section 3(b) of RA 3019, that a mere request or the receiving is sufficient to amount to the offence; thus, it was not required that the accused requested and received the money.

PP v V. Tablang (CC 22880; violation of section 3(b) of RA 3019):

The accused was the former Regional Trial Court Judge in Tacurong Sultan Kudarat, charged with violating section 3(b) and (e) of RA 3019. The charges stemmed from the accused's acts of asking/ obtaining money and other considerations from persons who have pending cases before him. He was also accused of using for his own personal benefit the proceeds from the rental of the building, which is another pending case against him. The accused was convicted.

PP v Roberto Kollin Fernando (CC 27920; violation of section 3(c) of RA 3019):

The accused was the Assistant Director of the Department of Transportation and Communication. The complainant was the applicant for the franchise, namely for his vehicle to serve the Baguio Route. The accused pretended to have the capacity and authority to give the complainant a franchise, asking for the amount of P20,000.00 from the complainant. It appears that the accused later showed a supposed franchise to the complainant not in his name and for a different route. Thus, there was a criminal complaint. The accused was convicted.

Laurel v Desierto (GR No. 145368, 12 April 2002):

This case defines “public official” which, under Article 8 of the Philippine Civil Code, shall form part of the law of the land. Thus, “Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines”.

99. Cases filed in the Sandiganbayan from 2009-2011:

NATURE OF OFFENSE	Filed			Revived (cases that have been provisionally dismissed, then revived i.e. accused has resurfaced)			Total			Disposed		
	2009	2010	2011	2009	2010	2011	2009	2010	2011	2009	2010	2011
Bribery	2	0	4	0	0	0	2	0	4	1	4	3
Malversation Cases	10	61	64	7	1	7	17	62	71	69	50	110
Violation of R. A. 3019	96	100	0	12	12	0	108	112	0	132	85	198
Plunder	0	0	1	0	0	0	0	0	1	0	0	0
VRA 1379 (Forfeiture)	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	108	161	69	19	13	7	127	174	76	244	139	311

100. It was provided that OMB’s conviction rate formula has been used by the Office since 2003 and has been approved and accepted by the MCA-PTP-TAP as an objective and accurate measure to determine the conviction rate obtained by the OMB.

101. As stated in the Annual Report for 2008, the conviction rate of the OMB for calendar year 2008 is 73.42%, the highest rate in the twenty-one year history of the OMB. This became possible because of the conviction of Mayor Leovegildo R. Ruzol on 221 counts for the offence of usurpation of authority or official function and the increase in the number of respondents charged before the Philippine anti-graft court, known as the Sandiganbayan, who pleaded guilty to a lesser offense during plea bargaining and even before formal trial had commenced. The high number of plea bargains in 2008, a total of 76 in all, is attributable to the efforts of the field investigation units of the OMB in the gathering of evidence against the accused.

102. In the Annual Report for 2009, the OMB posted a 33.6% conviction rate in the Sandiganbayan, lower than the conviction rate posted for the last two years, but still higher than the average annual conviction rate from 2001 to 2007 which was 30%.

(b) Observations on the implementation of the article

103. The reviewing experts were informed that “person” is interpreted as both a natural and/or legal person for purposes of the benefit.

104. The UNCAC Legislative Guide provides that “an undue advantage may be something tangible or intangible, whether pecuniary or non-pecuniary”. The Philippines subsequently provided that as the law uses words, such as offer, promise and benefit, it is to be interpreted as meaning tangible or intangible/pecuniary or not.

105. Article 210 of the RPC covers active bribery even within the official duties of the public official; also non-material benefits are covered.

106. It was noted that with respect to article 211-A of the RPC, under RA 9346 (An Act Prohibiting the Imposition of Death Penalty in the Philippines) which became effective on 30 June 2006, the imposition of the death penalty was suspended in the Philippines.

107. When the reviewing experts questioned the applicability of paragraphs 3(b) and 3(c) of R.A. No. 3019 in relation to active bribery of national public officials (as it appeared relevant to passive), the Philippines provided that the paragraphs should not be read independently and instead correlated with the last paragraph of section 3 to comply with the provision under review. The last paragraph is below.

The person giving the gift, present, share, percentage or benefit referred to in subparagraphs (b) and (c);... together with the offending public officer, be punished under Section nine of this Act and shall be permanently or temporarily disqualified in the discretion of the Court, from transacting business in any form with the Government.

108. The reviewing experts were of the view that “promise” or “offering” as provided for in the provision under review was not covered by section 3 of the R.A. No. 3019, other than under subsection (d) that only deals with employment. Furthermore, the giving of the bribe appears only to be something that can be charged with the passive form of the offence by the offending public officer. However, active bribery, including the “promise” or “offer”, is defined under article 212 of the RPC – corruption of a public officer – in relation to articles 210 and 211. Also, it is a legal principle in the Philippines that those who “directly force” or “induce” others to commit an offence shall be liable as principals. This is embodied in article 17(2) of the RPC. A “promise” or “offer” may be a mode of inducement.

109. The national authorities provided that an omission to act is covered by the following provisions.

RPC

Section 210

If the object for which gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of prision correccional in its maximum period and a fine [of not less than the value of the gift and] not less than three times the value of such gift.

Section 211-A

If any public officer is entrusted with law enforcement and he refrains from arresting or prosecuting an offender who has committed a crime punishable by reclusion perpetua and/or death in consideration of any offer, promise, gift or present, he shall suffer the penalty for the offense which was not prosecuted.

RA 3019

Section 3. Corrupt practices of public officers

In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful

110. Based on the above, it was recommended that, in the context of its ongoing legal reforms of the RPC, the Philippines consider a stand-alone corruption-related law, which would include an offence of active bribery of national public officials, to ensure consistency in its application.

Article 15 Bribery of national public officials

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

111. The Philippines deemed that it has partly implemented the provision under review, pursuant to the following:

- □RPC, Articles 211 and 212;
- RA 3019 (Anti-Graft and Corrupt Practices Act), last paragraph of Section 3 in relation to Sections 3b and 3c of (third party benefit, non-material benefit);
- P.D. 46, Nov. 10, 1972 Making it punishable for public officials and employees to receive, and for private persons to give, gifts on any occasion, incl. Christmas;
- RA 9485 (Anti Red Tape Act), Section 12;
- □RA 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees), Section 7-d; and
- EO 292 (Administrative Code of 1987), Book V Section 46(9).

RA 3019

Last paragraph of Section 3

The person giving the gift, present, share, percentage or benefit referred to in subparagraphs (b) and (c); or offering or giving to the public officer the employment mentioned in subparagraph (d); or urging the divulging or untimely release of the confidential information referred to in subparagraph (k) of this section shall, together with the offending public officer, be punished under Section nine of this Act and shall be permanently or temporarily disqualified in the discretion of the Court, from transacting business in any form with the Government.

RA 9485

Section 12. Criminal Liability for Fixers

In addition to Sec. 11 (b), fixers, as defined in this Act, shall suffer the penalty of imprisonment not exceeding six years or a fine not less than Twenty Thousand Pesos (P20,000.00) but not more than Two Hundred Thousand Pesos (P200,000.00) or both fine and imprisonment at the discretion of the court.

RA 6713

Section 7(d). Solicitation or acceptance of gifts

Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

As to gifts or grants from foreign governments, the Congress consents to:

- (i) The acceptance and retention by a public official or employee of a gift of nominal value tendered and received as a souvenir or mark of courtesy;
- (ii) The acceptance by a public official or employee of a gift in the nature of a scholarship or fellowship grant or medical treatment; or
- (iii) The acceptance by a public official or employee of travel grants or expenses for travel taking place entirely outside the Philippine (such as allowances, transportation, food, and lodging) of more than nominal value if such acceptance is appropriate or consistent with the interests of the Philippines, and permitted by the head of office, branch or agency to which he belongs.

EO 292

Section 46. Discipline: General Provisions

(a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process.

(b) The following shall be grounds for disciplinary action:

(9) Receiving for personal use of a fee, gift or other valuable thing in the course of official duties or in connection therewith when such fee, gift, or other valuable thing is given by any person in the hope or expectation of receiving favor or better treatment than that accorded other persons, or committing acts punishable under the anti-graft laws;

112. The Philippines provided the following case example: Sandiganbayan Criminal Case No. 26558 - *PP vs. Charlie "Atong" Ang* (March 19, 2007):

Mr. Charlie "Atong" Ang a close associate and co-accused of former Philippine President Joseph Estrada in the crime of plunder had pleaded guilty to charges of bribing public officials (Article 212, RPC). He was sentenced to a jail term of not less than 2 years and 4 months but not exceeding 6 years. Mr. Ang was also forced to pay P20M to the Government representing the amount he was accused of pocketing from the P130M tobacco excise tax intended for Ilocos Sur in 1998.

113. Statistics were provided from 2008 to 2010 by the OSP:

Year	Number of Prosecutions (Information Filed)	Pending Cases (Cumulative Data)	Convictions	Acquittals
2009	5	33	3	1
2010	6	27	2	3
2011	9	22	4	0

(b) Observations on the implementation of the article

114. It was confirmed that the terms “gratuity”, “favor”, and “entertainment” in section 7(d) of RA 6713 may cover the non-monetary undue advantage. Moreover, section 3 of RA 6713 defines “gift” as a thing or right disposed of gratuitously, or any act of liberality, in favor of another who accepts it, and shall include simulated sale or an ostensibly onerous disposition thereof. As such, a gift may include an undue advantage with no monetary value.

115. Article 211 of the RPC covers passive bribery even within the official duties of the public official; also non-material benefits are covered.

116. The Philippines subsequently provided that as the law uses words, such as “offer, promise and benefit”, it is to be interpreted as meaning tangible or intangible/pecuniary or not.

117. It was noted by the reviewing experts that subsections 3(b) and (c) of the RA 3019 only refer to the passive form of bribery in terms of the transactions listed in those subsections (i.e. Government contracts and licences).

118. It was explained that the third party benefit would extend to natural and/or legal persons as mentioned above.

119. The reviewers were informed by the national authorities that the omission to act is addressed in the cited legislation above. However, it was recommended that the Philippines extend the offence to transactions other than those listed in subsections 3(b) and (c) of the RA 3019. The Philippines should also consider a stand-alone corruption-related law. The reviewers were also informed that the Criminal Code Committee is currently preparing for the re-codification/harmonization of Book II of the RPC which covers crimes committed by public officers. The standing proposal in the Criminal Code Committee is to devote a separate chapter exclusively to graft and corruption, which would harmonize and integrate all existing anti-graft laws found in the existing RPC and special penal laws. It would also include amendments to existing laws based on various reform proposals, as well as UNCAC.

(c) Challenges

120. The Philippines has identified the following challenges and issues in fully implementing the article under review:

- a. Inter-agency co-ordination;
- b. Inadequacy of existing normative measures (Constitution, laws, regulations, etc.);
- c. Specificities in its legal system;
- d. Limited resources for implementation (e.g. human/financial/other);
- e. Other issues: the Filipino culture of gift-giving, etc.

(d) Technical assistance needs

121. The Philippines has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;
2. Legislative drafting;
3. Legal advice;
4. On-site assistance by an anti-corruption expert;
5. Development of an action plan for implementation;
6. Other assistance: Inter-agency coordination in the investigation of complaints, and investigative trainings on bribery.

The Philippines stated that capacity building training has been provided by development partners (US-Aid) and their extension/expansion would be helpful for the adoption of measures described above.

122. As also noted in the introduction, in the context of ongoing efforts to revise the RPC, a summary of international best practices and norms was requested, as well as international expertise. The national authorities confirmed that such reforms would consider international treaties, such as UNCAC and the United Nations Convention against Transnational Organized Crime, and other international norms.

Article 16 Bribery of foreign public officials and officials of public international organizations

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

2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

(a) Summary of information relevant to reviewing the implementation of the article

123. The Philippines noted that it has not implemented the article under review.

124. It held that it should enact a law to criminalize the bribery of officials of foreign government and public international organizations in the conduct of international business in the Philippines.

(b) Observations on the implementation of the article

125. The reviewing experts recommended that the Philippines consider expanding its definition of public officials to include foreign public officials and officials of public international organizations. It was noted that the obligation to criminalize foreign bribery exists, notwithstanding any privileges that such officials may enjoy under public international law.

(c) Challenges

126. The Philippines has identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency co-ordination;
2. Inadequacy of existing normative measures (Constitution, laws, regulations, etc.);
3. Specificities in its legal system.

(e) Technical assistance needs

127. The Philippines has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;
2. Model legislation;
3. Legislative drafting;
4. Legal advice.

None of these forms of technical assistance has been provided to the Philippines to date.

Article 17 Embezzlement, misappropriation or other diversion of property by a public official

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

(a) Summary of information relevant to reviewing the implementation of the article

128. The Philippines cited the following measures:
- Articles 217, 220 and 315 of the RPC; and
 - RA 7080 (an Act defining and penalizing the crime of plunder as amended by RA 7659)

Revised Penal Code

Article 217. Malversation of public funds or property; Presumption of malversation

Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

The penalty of prision correccional in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.

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

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

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

In all cases, persons guilty of malversation shall also suffer the penalty of perpetual special disqualification and a fine equal to the amount of the funds malversed or equal to the total value of the property embezzled.

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal use. (As amended by RA 1060).

Article 220. Illegal use of public funds or property

Any public officer who shall apply any public fund or property under his administration to any public use other than for which such fund or property were appropriated by law or ordinance shall suffer the penalty of prision correccional in its minimum period or a fine ranging from one-half to the total of the sum misapplied, if by reason of such misapplication, any damages or embarrassment shall have resulted to the public service. In either case, the offender shall also suffer the penalty of temporary special disqualification. If no damage or embarrassment to the public service has resulted, the penalty shall be a fine from 5 to 50 per cent of the sum misapplied.

Article 315. Swindling (estafa).

- Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

1st. The penalty of prision correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.

2nd. The penalty of prision correccional in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3rd. The penalty of arresto mayor in its maximum period to prision correccional in its minimum period if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By arresto mayor in its maximum period, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

1. With unfaithfulness or abuse of confidence, namely:

(a) By altering the substance, quantity, or quality or anything of value which the offender shall deliver by virtue of an obligation to do so, even though such obligation be based on an immoral or illegal consideration.

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

(c) By taking undue advantage of the signature of the offended party in blank, and by writing any document above such signature in blank, to the prejudice of the offended party or of any third person.

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

(b) By altering the quality, fineness or weight of anything pertaining to his art or business.

(c) By pretending to have bribed any Government employee, without prejudice to the action for calumny which the offended party may deem proper to bring against the offender. In this case, the offender shall be punished by the maximum period of the penalty.

(d) [By post-dating a check, or issuing a check in payment of an obligation when the offender therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack of insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act. (As amended by R.A. 4885, approved June 17, 1967.)]

(e) By obtaining any food, refreshment or accommodation at a hotel, inn, restaurant, boarding house, lodging house, or apartment house and the like without paying therefore, with intent to defraud the proprietor or manager thereof, or by obtaining credit at hotel, inn, restaurant, boarding house, lodging house, or apartment house by the use of any false pretense, or by abandoning or surreptitiously removing any part of his baggage from a hotel, inn, restaurant, boarding house, lodging house or apartment house after obtaining credit, food, refreshment or accommodation therein without paying for his food, refreshment or accommodation.

3. Through any of the following fraudulent means:

(a) By inducing another, by means of deceit, to sign any document.

(b) By resorting to some fraudulent practice to insure success in a gambling game.

(c) By removing, concealing or destroying, in whole or in part, any court record, office files, document or any other papers.

RA 7080

Section 2. Definition of the Crime of Plunder; Penalties

Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death.

Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.

129. The Philippines cited the following cases.

PP v Sampaga (CC 24395; malversation)

The accused was the Municipal Mayor and Municipal Treasurer, respectively of Uson Masbate. He was charged for malversation in the amount of P1,800,000.00. The records, as found by the Commission on Audit (COA), showed that upon a cash examination of the municipality, there was a shortage of P 1,800,000.00, which could not be explained by Treasurer Sampaga. Records further showed that the COA had disallowed two disbursements as they violated the auditing rules. The Court convicted the accused, as he was not able to sufficiently explain the expenses charged to the public funds and not account for the shortage of funds.

PP v Mario Icdang (CC 25009-25010; 25012; malversation)

Several cases of malversation were brought against the accused, Mario Icdang. He was the Regional Director of the Office for Southern Cultural Communities. Records showed that the COA Region 11 had conducted an audit on the Office and discovered that there were several transactions and disbursements of public funds without any supporting papers/justifications. The accused was convicted.

PP v T. Pantaleon and J. Vallejos (CC 25809-10; malversation through falsification):

The accuseds were the Municipal Mayor and Treasurer of the Municipality of Castillejos. The COA discovered that there were deficiencies in the disbursement vouchers pertaining to the repairs and improvement of the drainage and roads. A further verification showed that the contractor who had allegedly performed the works for the Municipality disowned such works and denied any receipt of money since there was no existing construction agreement. The accuseds were convicted.

PP v Joseph Ejercito Estrada, et al. (Sandiganbayan Criminal Case No. 26558; 19 March 2007). The Sandiganbayan (Anti-Graft Court of the Philippines) convicted former Philippine President Joseph Estrada for the crime of plunder. President Estrada was found to have unjustly enriched himself at the expense and to the damage and prejudice of the Filipino people and the Republic when he:

(a) acted in connivance with then Governor Luis "Chavit" Singson, who was granted immunity from suit by the OMB, and with the participation of other persons named by prosecution witnesses in the course of the trial of this case, in amassing, accumulating and acquiring ill-gotten wealth as follows:

(i) by a series of acts received bi-monthly collections from "jueteng", a form of illegal gambling, during the period beginning November 1998 to August 2000 in the aggregate amount of Five Hundred Forty-Five Million Two Hundred Ninety-One Thousand Pesos (545,291,000), Two Hundred Million Pesos (200,000,000) of which was deposited in the Erap Muslim Youth Foundation; and

(ii) by a series consisting of two (2) acts ordered the GSIS and the SSS to purchase shares of stock of Belle Corporation and collecting or receiving commission from the sales of Belle Shares in the amount of One Hundred Eighty-Nine Million Seven Hundred Thousand Pesos (189,700,000) which was deposited in the Jose Velarde account.

130. Statistics on the number of prosecutions were provided by the Office of the Special Prosecutor (OSP) from 2009 to 2011.

Year	Number of Prosecutions (Informations Filed)	Pending Cases (Cumulative Data)	Convictions	Acquittals
2009	52	719	23	6
2010	67	692	12	15
2011	71	605	51	36

(b) Observations on the implementation of the article

131. The reviewing experts questioned how article 220 of the RPC applies in practice. It was provided that the elements in article 220 are: 1) that the offender is a public officer; 2) that there is public fund or property under his administration; 3) that such public fund or property has been appropriated by law or ordinance; and 4) that s/he applies the same to a public use other than that for which such fund or property has been appropriated by law or ordinance. In reference to the provision “if by reason of such misappropriation, any damages or embarrassment shall have resulted to the public service”, it was held that this is not a condition that needs to be proven. Regardless of whether or not damage or embarrassment resulted, the crime of illegal use of public funds or property had already been consummated. Damages or embarrassment would only be considered for purposes of imposing the penalty.
132. When questioned what “temporary special disqualification” means, reference was made to article 31 of RPC. This shall produce the following effects: a) the deprivation of the office, employment, profession or calling affected; and b) the disqualification for holding similar offices or employments either perpetually or during the term of the sentence, according to the extent of such disqualification. In cases where the accessory penalty of temporary special disqualification is imposed, the erring public official was held to be disqualified from holding similar offices or employments either perpetually or during the term of the sentence, according to the extent of such disqualification.
133. The penalty of *prision correccional* (minimum is 6 months and 1 day to 2 years and 4 months imprisonment) was deemed a light penalty by the Governmental authorities, but the offenses of malversation of public funds or property and swindling/estafa are to be considered as crimes which do not cause the public officer to benefit, or enrich herself/himself. The Office of the Special Prosecutor further provided that when there is a misapplication and the public officer claims that he did not benefit from the project or transaction, this cannot be used as an excuse; s/he would still be held liable (section 68 of RA 3019, pertaining to article 220 of RPC on technical malversation/illegal use of public funds or property). The penalty of malversation is found in article 217 of RPC which is the general law for embezzlement/misappropriation. Article 220 punishes technical malversation, where the money appropriated was used for another purpose. In both cases, it was held that the embezzlement/misappropriation may not benefit the public officer.
134. In considering article 315 of the RPC, it was confirmed that *arresto mayor* (as defined in article 27 of RPC) is a penalty with duration of one month and one day to six months.

Under Article 76 of RPC, *arresto mayor* in its minimum period is from one to two months. The amount of fraud would include any and all moneys that were lost by the Government due to deceit employed under article 315.

135. The punishment in section 2 of RA 7080 is *reclusion perpetua* to death. Pursuant to article 27 of RPC, *reclusion perpetua* is a penalty of imprisonment of more than twenty years. This is the minimum imposable penalty for the crime of plunder. The penalty of death is the maximum imposable penalty depending on the presence of qualifying circumstances. However, as provided for above, under RA 9346 (An Act Prohibiting the Imposition of Death Penalty in the Philippines), which became effective on 30 June 2006, the death penalty has been abolished in the Philippines.

(c) Challenges

136. The Philippines has identified following challenges and issues in fully implementing the article under review:

1. Inter-agency co-ordination;
2. Assessment of evidence (COA);
3. Coordination with DOJ from investigation to prosecution.

Article 18 Trading in influence

Subparagraph (a)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;

(a) Summary of information relevant to reviewing the implementation of the article

137. The Philippines cited sections 3(a), (e), (f) and (g), and 4 of RA 3019 (Anti-Graft and Corrupt Practices Act), as well as section 2 of EO 317 (Prescribing a Code of Conduct for Relatives and Close Personal Relations of the President, Vice-President and Members of the Cabinet).

RA 3019

Section 4. Prohibition on private individuals

(a) It shall be unlawful for any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift or material or pecuniary advantage from any other person having some business, transaction, application, request or contract with the government, in which such public official has to intervene. Family relation shall include the spouse or relatives by consanguinity or affinity in the third civil degree. The word "close personal relation" shall include close personal friendship, social and fraternal connections, and professional employment all giving rise to intimacy which assures free access to such public officer.

(b) It shall be unlawful for any person knowingly to induce or cause any public official to commit any of the offenses defined in Section 3 hereof.

EO 317

Section 2. Prohibited Acts and Transactions

In addition to acts and omissions of presidential Relatives provided in the Constitution and existing laws, the following shall constitute prohibited acts and transactions by a Relative or a Close Personal Relation:

- a. Solicitation and acceptance, directly or indirectly, of any funds, gift, gratuity, favor, entertainment, loan or anything of monetary value for any purpose from any person or corp.;
- b. Persuading, inducing or influencing another public official to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter;
- c. Directly or indirectly engaging in transactions with Government, particularly government financial institutions ("GFIs"), including securing any loan or accommodation from such GFIs;
- d. Exerting undue influence, directly or indirectly, on the outcome public biddings for government contracts;
- e. Directly or indirectly having financial or pecuniary interest in any business, contract or transaction with the Government.
- f. Using the name of the President, Vice President or Members of the Cabinet, directly or through another person not related to the President, Vice President, and Members of the Cabinet, in order to obtain any contract, favor or other benefit from the government.

138. It was submitted that there have been no cases regarding active trading in influence in the Philippines during the period from 2009 to 2011.

(b) Observations on the implementation of the article

139. "Any other person" (i.e. intermediaries) was not addressed in the cited legislation (i.e. sections 3 and 4 of RA 3019 only address the public official or any person having family or close personal relations with any public official). However, the national authorities subsequently referred to RA 9485, the Anti-Red Tape Act of 2007, which punishes 'any person' or intermediaries for active trading in influence. Specific reference was made to section 12 on the criminal liability for fixers. In addition to section 11 (b), fixers, as defined in this Act, shall suffer the penalty of imprisonment not exceeding six years or a fine not less than Twenty Thousand Pesos (P20,000.00) but not more than Two Hundred Thousand Pesos (P200,000.00) or both fine and imprisonment at the discretion of the court. In section 4 on the definition of terms, namely (g) "Fixer" refers to any individual whether or not officially involved in the operation of a government office or agency who has access to people working therein, and whether or not in collusion with them, facilitates speedy completion of transactions for pecuniary gain or any other advantage or consideration. Despite the information provided, the experts recommended that the Philippines consider legislative or other measures to enact active trading in influence.

Article 18 Trading in influence

Subparagraph (b)

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

(a) Summary of information relevant to reviewing the implementation of the article

140. The Philippines provided that it has partly implemented the provision under review, pursuant to:

- section 4 of RA 3019 (Anti-Graft and Corrupt Practices Act);
- section 11 and 12 of RA 9485 (Anti-Red Tape Act);
- section 2 of EO 317 (Prescribing a Code of Conduct for Relatives and Close Personal Relations of the President, Vice-President and Members of the Cabinet).

141. The Philippines cited the following cases.

PP v A. Jacinto, et.al. (CC 25362; violation of section 3(e) of RA 3019):

The accuseds were members of the Philippine Navy who had participated in the procurement of supplies. COA reported that several purchases amounting to hundreds of thousands of pesos were discovered to be missing or ghost purchases, which were supported by spurious and manufactured receipts and certificates of acceptance. These purchases were supposed to be medicines and medical supplies for the Philippine Navy. The accuseds were convicted.

PP v M. Sanchez (CC 26748; violation of section 3(e) of RA 3019 and CC 27766; malversation)

Manuel Sanchez was Deputy Administrator of the National Electrification Administration and caused the opening of a special savings deposit account in the sum of P55m (USD 779,388.10) with the Landbank North Ave Branch. Subsequent transactions showed that the accused authorized the withdrawal of P 54,064,542.44 and P934,357.00. Another withdrawal was made again as authorized by the accused for P2,255,000.00. Later, the accused wrote a letter authorizing the termination of the dollar deposits in the amount of USD754,988.10 and USD24,400.00. Thereafter, the money was converted into cashier's cheques and made payable to Dandale Enterprises. The P89m deposited at Landbank was lost and nowhere to be found. In convicting the accused, the Court took note that the written authority sent by the accused, through his technical assistant, paved the way for the eventual withdrawal of the money from Landbank; all of which could not have happened without the knowledge, consent and participation of the accused.

PP v S. Jauod (Dr. CC SB-06-CRM-0440 to 0441; violation of section 3(e) and (g) of RA 3019)

The accused was a mayor of Montevista, Compostela Valley charged with entering into a contract for the purchase of medical supplies for DMI medical supply for the amount of P9,999,973.40. The records showed that the accused purchased medicines that had expired two to six months from delivery. There was also no competitive bidding process when the accused chose to purchase from the supplier, aside from the overpriced medicines. The loss of public funds amounted to P6,356,763.44. The accused was convicted.

142. It was submitted that there have been no cases regarding passive trading in influence in the Philippines during the period from 2009 to 2011. However, the OSP referred to its bribery statistics from 2009 to 2011.

Year	Number of Prosecutions (Information Filed)	Pending Cases (Cumulative Data)	Convictions	Acquittals
2009	92	1033	26	5
2010	91	994	15	24

2011	198	869	49	76
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(b) Observations on the implementation of the article

143. The reviewing experts noted that “any other person” (i.e. intermediaries) was not addressed in the cited legislation (i.e. section 4 of RA 3019 only address any person having family or close personal relations with any public official). The cases were also not deemed applicable to the provision under review. Therefore, the experts recommended that the Philippines consider legislative or other measures to enact passive trading in influence.

Article 19 Abuse of Functions

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.

(a) Summary of information relevant to reviewing the implementation of the article

144. The Philippines cited section 3 of RA 3019 (Anti-Graft and Corrupt Practices Act).

RA 3019

Section 3. Corrupt practices of public officers. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

- (a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.
- (b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other part, wherein the public officer in his official capacity has to intervene under the law.
- (c) Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act.
- (d) Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination.
- (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.
- (f) only pertains to “neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.
- (g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.
- (h) Directly or indirectly having financing or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.
- (i) Directly or indirectly becoming interested, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which

exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transaction or acts by the board, panel or group to which they belong.

(j) Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled.

(k) Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date.

P.D. 46

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081 dated September 21, 1972, and General Order No. 1 dated September 22, 1972, do hereby make it punishable for any public official or employee, whether of the national or local governments, to receive, directly or indirectly, and for private persons to give, or offer to give, any gift, present or other valuable thing to any occasion, including Christmas, when such gift, present or other valuable thing is given by reason of his official position, regardless of whether or not the same is for past favor or favors or the giver hopes or expects to receive a favorable or better treatment in the future from the public official or employee concerned in the discharge of his official functions. Included within the prohibition is the throwing of parties or entertainments in honor of the official or employees or his immediate relatives.

145. Section 3(f) of RA 3019 was deemed to be of specific relevance, and one case was cited regarding this. In *PP v C. Lacap* CC SB-08-CRM-0030, the accused mayor was charged with neglecting and refusing, after due demand and without sufficient justification, to act within reasonable time on a complainant’s application for a business permit. The accused was unable to justify her inaction, and she was said to have expressed animosity against the complainant. The accused was convicted.

146. Statistics on abuse of functions were provided by OSP during the period from 2009 to 2011.

Year	Number of Prosecutions (Information Filed)	Pending Cases (Cumulative Data)	Convictions	Acquittals
2009	0	3	0	0
2010	1	2	0	1
2011	2	1	1	0

(b) Observations on the implementation of the article

147. As provided for above, the definition of person includes both a natural and legal person or “entity”. While noting that there have been very few cases, the reviewing experts deemed the provision under review to have been adequately implemented.

Article 20 Illicit Enrichment

Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a

significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.

(a) Summary of information relevant to reviewing the implementation of the article

148. The Philippines provided that it has partly criminalized illicit enrichment and cited section 2 of RA 1379, which creates a rebuttable presumption that property has been unlawfully acquired.

RA 1379

Section 2. Filing of petition.

Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed prima facie to have been unlawfully acquired. The Solicitor General, upon complaint by any taxpayer to the city or provincial fiscal who shall conduct a previous inquiry similar to preliminary investigations in criminal cases and shall certify to the Solicitor General that there is reasonable ground to believe that there has been committed a violation of this Act and the respondent is probably guilty thereof, shall file, in the name and on behalf of the Republic of the Philippines, in the Court of First Instance of the city or province where said public officer or employee resides or holds office, a petition for a writ commanding said officer or employee to show cause why the property aforesaid, or any part thereof, should not be declared property of the State: Provided, That no such petition shall be filed within one year before any general election or within three months before any special election.

The resignation, dismissal or separation of the officer or employee from his office or employment in the Government or in the Government-owned or controlled corporation shall not be a bar to the filing of the petition: Provided, however, That the right to file such petition shall prescribe after four years from the date of the resignation, dismissal or separation or expiration of the term of the office or employee concerned, except as to those who have ceased to hold office within ten years prior to the approval of this Act, in which case the proceedings shall prescribe after four years from the approval hereof.

149. RA 7080 or the Plunder Law, as amended by RA 7659, penalizes any public officer who by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, accumulates or acquires ill-gotten wealth, through a combination or series of overt criminal acts, in an aggregate amount or total value of at least P50,000,000.

150. RA 1379 (An Act Declaring Forfeiture in favor of the State any property found to have been unlawfully acquired by any public officer or employee and providing for the proceedings therefore) provides for the remedy of forfeiture of unlawfully acquired properties by public officers or employees.

151. EO 259 of 2003, creating Revenue Integrity Protection Service (RIPS), empowers the Department of Finance (DOF) to file cases for illicit enrichment against public officials and employees of revenue generating agencies.

152. There is a requirement under section 8 of RA 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees) mandating all public officials/ government personnel to make accurate statements of their assets and liabilities regularly (including upon commencement and completion of service), and disclosure of net worth and financial connections. It also requires new public officials to divest ownership in any private enterprise within 30 days from assumption of office to avoid conflicts of interest.

RA 6713, dated February 20, 1989

AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES

Section 8. Statements and Disclosure

Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

(A) Statements of Assets and Liabilities and Financial Disclosure. - All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

The two documents shall contain information on the following:

- (a) real property, its improvements, acquisition costs, assessed value and current fair market value;
- (b) personal property and acquisition cost;
- (c) all other assets such as investments, cash on hand or in banks, stocks, bonds, and the like;
- (d) liabilities, and;
- (e) all business interests and financial connections.

The documents must be filed:

- (a) within thirty (30) days after assumption of office;
- (b) on or before April 30, of every year thereafter; and
- (c) within thirty (30) days after separation from the service.

All public officials and employees required under this section to file the aforesaid documents shall also execute, within thirty (30) days from the date of their assumption of office, the necessary authority in favor of the Ombudsman to obtain from all appropriate government agencies, including the Bureau of Internal Revenue, such documents as may show their assets, liabilities, net worth, and also their business interests and financial connections in previous years, including, if possible, the year when they first assumed any office in the Government.

Husband and wife who are both public officials or employees may file the required statements jointly or separately.

The Statements of Assets, Liabilities and Net Worth and the Disclosure of Business Interests and Financial Connections shall be filed by:

- (1) Constitutional and national elective officials, with the national office of the Ombudsman;
- (2) Senators and Congressmen, with the Secretaries of the Senate and the House of Representatives, respectively; Justices, with the Clerk of Court of the Supreme Court; Judges, with the Court Administrator; and all national executive officials with the Office of the President.
- (3) Regional and local officials and employees, with the Deputy Ombudsman in their respective regions;
- (4) Officers of the armed forces from the rank of colonel or naval captain, with the Office of the President, and those below said ranks, with the Deputy Ombudsman in their respective regions; and
- (5) All other public officials and employees, defined in Republic Act No. 3019, as amended, with the Civil Service Commission.

(B) Identification and disclosure of relatives. - It shall be the duty of every public official or employee to identify and disclose, to the best of his knowledge and information, his relatives in the Government in the form, manner and frequency prescribed by the Civil Service Commission.

(C) Accessibility of documents. - (1) Any and all statements filed under this Act, shall be made available for inspection at reasonable hours.

(2) Such statements shall be made available for copying or reproduction after ten (10) working days from the time they are filed as required by law.

(3) Any person requesting a copy of a statement shall be required to pay a reasonable fee to cover the cost of reproduction and mailing of such statement, as well as the cost of certification.

(4) Any statement filed under this Act shall be available to the public for a period of ten (10) years after receipt of the statement. After such period, the statement may be destroyed unless needed in an ongoing investigation.

(D) Prohibited acts. - It shall be unlawful for any person to obtain or use any statement filed under this Act for:

- (a) any purpose contrary to morals or public policy; or

(b) any commercial purpose other than by news and communications media for dissemination to the general public.

Section 11. Penalties

(a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punished with a fine not exceeding the equivalent of six (6) months' salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (P5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office.

(b) Any violation hereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him.

(c) Private individuals who participate in conspiracy as co-principals, accomplices or accessories, with public officials or employees, in violation of this Act, shall be subject to the same penal liabilities as the public officials or employees and shall be tried jointly with them.

(d) The official or employee concerned may bring an action against any person who obtains or uses a report for any purpose prohibited by Section 8 (D) of this Act. The Court in which such action is brought may assess against such person a penalty in any amount not to exceed twenty-five thousand pesos (P25,000). If another sanction hereunder or under any other law is heavier, the latter shall apply.

153. The Philippines cited the following cases:

1) GR No 15254 *Republic v Sandiganbayan & Marcos* (July 15, 2003).

In *Republic v Sandiganbayan & Marcos*, the unlawfully acquired wealth of the Marcoses in the form of Swiss deposits were forfeited in favor of the Government. The Swiss deposits which were transferred to and are now deposited in escrow at the Philippine National Bank in the estimated aggregate amount of US\$658,175,373.60 as of January 31, 2002, plus interest, are hereby forfeited in favor of petitioner Republic of the Philippines.

2) GR No L-18428 *Almeda v Perez* (August 30, 1962) Forfeiture in RA 1379 is not a criminal proceeding (*Almeda v Perez*) but forfeiture partakes of a penalty (*Cabal v Kapunan*). The proceeding under Republic Act No. 1379, otherwise known as the Anti-Graft Law, is not a criminal proceeding, because it does not terminate in the imposition of a penalty but merely in the forfeiture of the properties illegally acquired in favor of the State (Section 6), and because the procedure outlined therein leading to forfeiture is that provided for in a civil action.

3) GR No. L-19052 *Cabal v Kapunan, Jr, et al* (December 29, 1962) RA 1379 authorizes the forfeiture to the State of property of a public officer or employee which is manifestly out of proportion to his salary as such public officer or employee and his other lawful income and the income from legitimately acquired property. Such forfeiture has been held, however, to partake of the nature of a penalty.

154. Statistics from RIPS (Revenue Integrity Protection Service), which conducts lifestyle checks on officials of the Department of Finance are that:

- 23 have been suspended;
- 9 dismissed; and
- 12 in the initiatory stage.

155. Statistics on illicit enrichment were provided by OSP during the period from 2009 to 2011.

Year	Number of Prosecutions (Information Filed)	Pending Cases (Cumulative Data)	Convictions	Acquittals
2009	3	9	0	0
2010	0	9	0	0
2011	2	9	0	0

(b) Observations on the implementation of the article

156. During the country visit, the reviewers were informed by the Civil Service Commission (CSC) that the issuance of a new form for income and asset declarations had been suspended. RA 6713 provides that such forms will be submitted to different agencies. For example, the President and Vice President are to submit their forms to the OMB, Congressmen and the Chief Justice to the Supreme Court, and Judges to the Supreme Court Administrator. This is coupled with a lifestyle check, and requires cooperation between agencies with the RIPS or the BIR (under the Department of Finance). BIR provided that they request such declarations of their employees up to a certain level, and disciplinary actions are being taken by the CSC against employees who had not filed such forms. NBI also provided that unexplained wealth (i.e. in case of a public officer: section 2, RA 1379) amounts to illicit enrichment. It was also commented that to initiate the Plunder Law, the threshold is too high in practice.

157. It was provided that, pursuant to section 8 of RA 6713, statements of public officials' assets and liabilities are filed with the individual Government institutions. The reviewers were handed a Memorandum Circular (MC No. 10, s. 2006, dated 17 April 2006) addressed to all Heads of Departments, Bureaus, Offices and Agencies of the National and Local Governments; State Colleges and Universities, including Government-owned and controlled corporations with original Charters, on the subject of a review and compliance procedure in the filing and submission of the statement of assets, liabilities and net worth, and disclosure of business interests and financial connections.

158. In Resolution No. 060231, section 4 provides that sanctions for failing to file such a statement include for the first offence, a suspension of one month and one day to six months, and for the second offence, dismissal from service. Section 5 provides that the National Office of the Ombudsman is to receive the forms from the President and Vice-President of the Philippines, as well as Chairmen and Commissioners of the Constitutional Commissions and Offices; the Secretary of the Senate from Senators; the Secretary General of the House of Representatives from Congressmen; the Clerk of Court of the Supreme Court from the Justices of the Supreme Court, Court of Appeals, Sandiganbayan and Court of Tax Appeal; the Court Administrator from the Judges of the Regional Trial Court, Metropolitan Circuit Trial Court, Municipal and Special Courts; the Office of the President from the National Executive Officials such as Members of the Cabinet, Under-Secretaries and Assistant Secretaries, including the Foreign Service Offices, Head of Government-Owned and Controlled Corporations with original Charters and their subsidiaries, and State Colleges and Universities, as well as from Officers of the Armed Forces from the rank of colonel or Naval Captain; and the Deputy Ombudsman from (a) the Regional Officials and employees of Departments, Bureaus and Agencies of the National Government including the Judiciary and Constitutional Commissions and

Offices, (b) Regional Officials and employees of Government-owned and controlled corporations and their subsidiaries in the region, (c) all other officials and employees of State Colleges and Universities, (d) Regional Officers below the rank of Colonel or Naval Captain including Civilian Personnel of the AFP, (e) Regional Officials and employees of the PNP Provincial Officials and employees including Governors, Vice-Governors and Sangguniang Panlalawigan Members, and (f) Municipal and City Officials and employees including Mayors, Vice-Mayors, Sangguniang Bayan/ Panlungsod Members and Barangay Officials; and the Civil Service Commission from (a) all other Central Offices and employees of Departments, Bureaus and Agencies of the National Government, including the Judiciary and Constitutional Commissions and Offices, as well as Government-owned and controlled corporations and their subsidiaries, (b) appointive Officials and employees of the Legislature, (c) all other Central Officers below the Rank of Colonel or Naval Captain as well as Civilian Personnel of the AFP, and (d) all other uniformed or non-uniformed Central Officials and employees of the PNP, BJMP and BFP.

159. During the country visit, the experts were also informed that an amendment is pending to the RA 1379, providing criminal penalties, namely:

“**Enrichment through Unlawful Means** – any public officer or employee who intentionally acquires wealth through unlawful means while in office.

Penalties: Unlawful enrichment amounting to at least P1M but not more than P2.5M – imprisonment for two (2) years and one day up to four (4) years.

Unlawful enrichment amount to more than P2.5M but not more than P5M – imprisonment for four (4) years and one day up to six (6) years.

Unlawful enrichment amounting to more than P5M but not more than P10M – imprisonment for six (6) years and one day up to ten (10) years.

Unlawful enrichment amounting to more than P10M but not more than P15M.

...

Any property found to have been unlawfully acquired shall in the same criminal proceedings, or in separate civil proceedings filed to the purpose, be forfeited in favor of the Government.

Prima Facie Unlawful Acquisition of Wealth Civil Proceedings for Forfeiture

Independent Proceedings: Notwithstanding any law or rule providing the contrary, forfeiture proceedings at the Sandiganbayan and the regular trial courts may proceed independently of, and simultaneously with, any criminal action arising from, or related, directly or indirectly, to the lawful acquisition of wealth.

Prescription: The crime punishable under this Act shall prescribe in twenty (20) years.

However, the laws on prescription, laches or estoppel cannot be invoked by, nor shall they benefit the respondent, in respect to any property unlawfully acquired by him and sought to be recovered by the State...” (SBN 150 Sen. Pangilinan).

160. In its 2011 Annual Report, OMB subjected 435 government officials and employees to lifestyle checks. Almost 3 out of 10 of these were high-ranking officials. The investigations resulted in the filing of 39 criminal and 32 administrative cases against those who failed the lifestyle checks.

(c) Challenges

161. The Philippines has identified the following challenge and issue in fully implementing the article under review:

- a. Section 8 of RA 6713 enumerates which officials are authorized to conduct review of assets and income disclosures. However, it appears that this section is not enforced / practiced. In practice, those disclosures are not reviewed unless a complaint is received.

Article 21 Bribery in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:

(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;

(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.

(a) Summary of information relevant to reviewing the implementation of the article

162. The Philippines provided that it has not implemented the provision under review.

(b) Observations on the implementation of the article

163. The reviewers noted the exception that if a private individual is conspiring with a public officer, then such a person would also be investigated and prosecuted. However, the reviewing experts recommended that the Philippines consider enacting the offence of bribery in the private sector.

(c) Challenges

164. The Philippines has identified the following challenges and issues in fully implementing the article under review:

1. Inadequacy of existing normative measures (Constitution, laws, regulations, etc.);
2. Specificities in its legal system.

(d) Technical assistance needs

165. The Philippines has indicated that the following form of technical assistance, if available, would assist it in better implementing the article under review:

1. Legislative drafting;

This form of technical assistance has not been provided to the Philippines to date.

Article 22 Embezzlement of property in the private sector

Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position

(a) Summary of information relevant to reviewing the implementation of the article

166. The Philippines referred to article 315 of the RPC. Article 315 (swindling by abuse of confidence) penalizes the misappropriation or conversion of money or property received

by an offender in trust, on commission, for administration, or under obligation to make delivery or return to the prejudice of another. Note that the requirement that the person who "embezzles" must be a person who directs or works in the private sector is not stated in the provision.

Revised Penalty Code

Article 315. Swindling (estafa)

Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

1st. The penalty of prision correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.

2nd. The penalty of prision correccional in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3rd. The penalty of arresto mayor in its maximum period to prision correccional in its minimum period if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By arresto mayor in its maximum period, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

1. With unfaithfulness or abuse of confidence, namely:

(a) By altering the substance, quantity, or quality or anything of value which the offender shall deliver by virtue of an obligation to do so, even though such obligation be based on an immoral or illegal consideration.

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

(c) By taking undue advantage of the signature of the offended party in blank, and by writing any document above such signature in blank, to the prejudice of the offended party or of any third person.

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

(b) By altering the quality, fineness or weight of anything pertaining to his art or business.

(c) By pretending to have bribed any Government employee, without prejudice to the action for calumny which the offended party may deem proper to bring against the offender. In this case, the offender shall be punished by the maximum period of the penalty.

(d) [By post-dating a check, or issuing a check in payment of an obligation when the offender therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack of insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act. (As amended by R.A. 4885, approved June 17, 1967.)]

(e) By obtaining any food, refreshment or accommodation at a hotel, inn, restaurant, boarding house, lodging house, or apartment house and the like without paying therefore, with intent to defraud the proprietor or manager thereof, or by obtaining credit at hotel, inn, restaurant, boarding house, lodging house, or apartment house by the use of any false pretense, or by abandoning or surreptitiously removing any part of his baggage from a hotel, inn, restaurant, boarding house, lodging house or apartment house after obtaining credit, food, refreshment or accommodation therein without paying for his food, refreshment or accommodation.

3. Through any of the following fraudulent means:

(a) By inducing another, by means of deceit, to sign any document.

(b) By resorting to some fraudulent practice to insure success in a gambling game.

(c) By removing, concealing or destroying, in whole or in part, any court record, office files, document or any other papers.

167. Statistics on embezzlement (estafa/swindling) from the Sandiganbayan Court were provided by OSP during the period from 2009 to 2011.

Year	Number of Prosecutions (Information Filed)	Revived	Total	Disposed
2009	40	5	45	7
2010	6	24	30	18
2011	7	-	7	8

(b) Observations on the implementation of the article

168. The reviewing experts noted that article 315 of the RPC applies to “any person”, which they took to include persons in the private sector. This was confirmed by the NBI. Therefore, the provision under review appears to have been legislatively implemented.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (i)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(a) Summary of information relevant to reviewing the implementation of the article

169. The Philippines cited Republic Act No. 9160, otherwise known as the Anti-Money Laundering Act (AMLA) of 2001. The AMLA, which took effect on 17 October 2001, defines and penalizes money laundering as follows:

AMLA

Section 4. Money Laundering Offense.

Money laundering is a crime whereby the proceeds of an unlawful activity as herein defined are transacted thereby making them appear to have originated from legitimate sources. It is committed by the following:

“(a) Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property.

“(b) Any person knowing that any monetary instrument or property involves the proceeds of any unlawful activity performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraph (a) above.

”(c) Any person knowing that any monetary instrument or property is required under this Act to be disclosed and filed with the Anti-Money Laundering Council (AMLC), fails to do so.

Section 14. Penal Provisions

(a) Penalties for the Crime of Money Laundering. The penalty of imprisonment ranging from seven (7) to fourteen (14) years and a fine of not less than Three million Philippine pesos (Php 3,000,000.00) but not more than twice the value of the monetary instrument or property involved in the offense, shall be imposed upon a person convicted under Section 4(a) of this Act.

The penalty of imprisonment from four (4) to seven (7) years and a fine of not less than One million five hundred thousand Philippine pesos (Php1,500,000.00) but not more than Three million Philippine pesos (Php3,000,000.00), shall be imposed upon a person convicted under Section 4(b) of this Act.

The penalty of imprisonment from six (6) months to four (4) years or a fine of not less than One hundred thousand Philippine pesos (Php100,000.00) but not more than Five hundred thousand Philippine pesos (Php500,000.00), or both, shall be imposed on a person convicted under Section 4(c) of this Act.

170. The AMLA likewise defines "transaction" as referring to any act establishing any right or obligation or giving rise to any contractual or legal relationship between the parties thereto. It also includes any movement of funds by any means with a covered institution (Sec 3.h., AMLA). Under Rule 3.f of the AMLA's Revised Implementing Rules and Regulations, proceeds of crime include:

1. All material results, profits, effects and any amount realized from any unlawful activity;
2. All monetary, financial or economic means, devices, documents, papers or things used in or having any relation to any unlawful activity; and
3. All moneys, expenditures, payments, disbursements, costs, outlays, charges, accounts, refunds and other similar items, for the financing, operations, and maintenance of any unlawful activity.

171. As can be gleaned from the foregoing AMLA provisions that money laundering not only includes the transaction or attempted transaction of the proceeds of crime, but also covers the acts of facilitating money laundering as well as failing to report covered and suspicious transactions to the Anti-Money Laundering Council (AMLC). Notwithstanding the foregoing, Congress further strengthened the AMLA in 2013 through additional amendments which include the following:

1. Expanding the scope of the crime of money laundering to include knowingly possessing, using, transferring, acquiring, concealing, moving, disguising and disposing of, criminal proceeds; and
2. Increasing the number of predicate crimes to include *inter alia* the following:
 - a. Bribery under articles 210, 211-A of the RPC, as amended, and corruption of Public Officers under article 212 of the RPC, as amended;
 - b. Frauds and illegal exactions and transactions under articles 213, 214, 215 and 216 of the RPC, as amended; and
 - c. Malversation of public funds and property under articles 217 and 222 of the RPC, as amended.

172. Under R.A. No. 10365, section 4 of the AMLA (R.A. No. 9160) was amended in 2013 to read as follows:

Sec. 4. Money Laundering Offense. - Money laundering is committed by any person who, knowing that any monetary instrument or property represents, involves, or relates to the proceeds of any unlawful activity:

- (a) transacts said monetary instrument or property;
- (b) converts, transfers, disposes of, moves, acquires, possesses or uses said monetary instrument or property;
- (c) conceals or disguises the true nature, source, location, disposition, movement or ownership of or rights with respect to said monetary instrument or property;
- (d) attempts or conspires to commit money laundering offenses referred to in paragraphs (a), (b) or (c);
- (e) aids, abets, assists in or counsels the commission of the money laundering offenses referred to in paragraphs (a), (b) or (c) above; and

(f) performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraphs (a), (b) or (c) above.

173. The AMLC is the primary agency tasked to implement the AMLA.

174. The Philippines cited the following cases:

Money Laundering Criminal Complaints filed before the Department of Justice:

AMLC vs. Cloribel, et al.

AMLC vs. Baligad, et al.

AMLC vs. Isnaji, et al.

AMLC vs. Isaac

AMLC vs. Pamplona, et al.

Money Laundering Criminal Complaint filed before the OMB:

AMLC vs. Garcia, et al.

AMLC vs. Gagelonia, et al.

Money Laundering Cases filed before the Regional Trial Court

People vs. Allagadan

People vs. San Juan, et al.

People vs. Acuatin, et al.

People vs. Baclado, et al.

Money Laundering Case filed before the Sandiganbayan (Anti-Graft Court)

People vs. Garcia, et al.

Money Laundering Criminal Complaints filed before the Department of Justice:

AMLC vs. Cloribel, et al.

Accused was an examiner of the BSP's Supervision and Examination Department IV (SED IV), the department charged with the supervision and examination of rural banks. He examined Bank A in 2005 and as a result of the said examination found the bank encountering liquidity problems and promised bank management to help in its recovery and try to find investors who can infuse additional funds. Later developments however revealed that he wanted to take over the operations and control of the bank. He changed the name of Bank A without the approval of the Monetary Board. Accused was able to siphon the funds of the bank through doubtful investments, purchases and payment for his consultancy fees/salaries and travel expenses. Approximate amount involved: P1.56M.

AMLC vs. Isnaji, et al.

A certain mayor together with his son, an ex-mayor and several John Does, were charged with the Kidnapping for Ransom (KFR) of 3 members of the media with a ransom demand of P20 Million during the period June 7-17, 2008.

The mayor and his son maintained several deposit accounts with Bank A and Bank B. The bank inquiry showed that a portion of the initial P5 million ransom payment made to the kidnappers on June 12, 2008 was deposited to an account of the mayor on June 13, 2008, a day after the kidnapping. Other amounts were deposited to and withdrawn from the accounts of both the mayor and his son after the total P20 million ransom money was paid to the kidnappers.

However, on April 12, 2010, the court acquitted the mayor and his son of kidnapping after their guilt was not proven beyond reasonable doubt. However, the case was elevated to the DOJ for automatic review and the DOJ ruled for a re-trial of the case. The money- laundering case is pending resolution by the Department of Justice for determination the filing of indictment charges in court.

Incidentally, based on a certification from the Civil Service Commission (CSC), it appears that the CSC has no record of the Statement of Assets, Liabilities and Networth (SALN) filed by the mayor and his son, for CY 2006 to 2008.

AMLC vs. Pamplona, et al.

This case involved qualified theft committed by two former employees of the Philippine National Bank –UP Campus Branch by pre-terminating sometime in January 2007 a time deposit belonging to the University of the Philippines – Diliman maintained at PNB-UP Campus Branch, in the amount of Php 25,148,980.94, including interest, without the client's authority and knowledge, and the proceeds thereof were deposited to the 3 accounts opened by the said former employees in the said bank.

Money Laundering Criminal Complaint filed before the OMB:

AMLC vs. Garcia

The case involved a military officer, his wife and three sons, charged with plunder. During the period from 1993- 2004, accused, a high-ranking public officer, having been a colonel of the Armed Forces of the Philippines since 1990 until his retirement with the rank of Major General in November 2004, by himself and in connivance/conspiracy with his co-accused members of his family, accumulated and acquired ill-gotten wealth in the form of funds, landholdings and other real and personal properties in the aggregate amount of at least Php 303,272,005.99, more or less.

Money Laundering Cases filed before the Regional Trial Court

AMLC vs. Baclado (alias James Yap)

In accordance with the instructions of the kidnapers of Mr. A, his eldest daughter remitted the ransom money of six (6) million yen (P2,646,668.50 peso equivalent) on February 6, 2003, to Bank X to the account of a certain James Yap. The remittance was made through the Tokyo Branch of a Philippine bank. Such amount was credited to the account of a certain James Yap on February 10, 2003.

The amount of deposits prior to the kidnapping and the remittance has no underlying legal or trade origin or economic justification. Documents presented during the opening of the account do not show any other source of income. James Yap was allegedly employed at a security detective agency.

Finding probable cause that the afore-said account of James Yap was used in the kidnapping for ransom committed against Mr. A, the Anti-Money Laundering Council filed a complaint against Baclado, a.k.a. James Yap with the Department of Justice, for violation of Section 4 (a) of R.A. 9160, as amended; and instituted civil forfeiture action in court against the deposits of James Yap.

175. The Philippines cited the following statistics:

A. Investigations

The Anti-Money Laundering Council (AMLC) (Philippine FIU) primarily makes use of referrals from law enforcement agencies and other government agencies as well as Suspicious Transaction Reports (STRs) from covered institutions as triggers for Money Laundering (ML) investigations. Hereunder is a table showing the number of referrals and STRs received and investigated by the AMLC:

Investigative Triggers	2008	2009	2010	2011 (January of August)	Total (2001 to August 2011)
Referrals from Laws Enforcement Agencies and Other Government Agencies	75	89	61	85	506
Suspicious Transactions reports (STRs) from Covered Institutions	6,311	6,235	7,471	2,602	38,478

B. Prosecutions, Convictions and Acquittals

176. The cases filed, as of 31 August 2011 are below.

A. MONEY LAUNDERING - Total: 50 cases

1. Money Laundering Criminal Complaints filed before the Department of Justice and the OMB - Total: 28 Cases

Prosecuting Agency	Pending	Resolved		Total
		For Filing in Court	Dismissed	
Department of Justice	10	16	-	26
Office of the Ombudsman	1	1	-	2
Total	11	17	-	28

2. Money Laundering Criminal Cases filed before the Regional Trial Court and the Sandiganbayan - Total: 22 Cases

Court	Pending	Decided		Total
		Convictions	Acquittals	
Regional trial Court	18	1	2	21
Sandiganbayan	-	1	-	1
Total	18	2	2	22

177. In June 2007, the AMLC filed with the OMB a complaint for money laundering against a former high-ranking Officer of the Armed Forces of the Philippines and members of his immediate family for transacting the proceeds of Plunder (large-scale corruption). Finding probable cause on the complaint filed by the AMLC, the OMB filed a criminal information with the Sandiganabayan (Anti-Graft Court) against the said Official and the members of his immediate family. In May 2011, the Sandiganabayan approved the plea bargaining agreement entered into between the said Official and the Republic wherein he pleaded guilty to the lesser offense of Facilitating Money Laundering under Article 4(b) of the AMLA and Indirect Bribery under Article 211 of the RPC.

178. In November 2010, the AMLC also filed with the OMB a money laundering complaint against four (4) former government officials for violations of the Ant-Graft and Corrupt Practices Act. The said officials were previously employed in a certain government agency which was mandated to provide credit and guarantee services to farmers and small enterprises in the rural areas. The complaint is currently pending with the OMB.

B. BANK INQUIRY - Total: 108 Cases

1. Without Court Order - Total: 54 cases

Unlawful Activity	No. of Cases
Drug Trafficking	23
Kidnapping for Ransom	9
Terrorist-Related	21
Murder	1
Total	54

2. With Court Order - Total: 54 cases

	No. of Cases
Decided by the Regional Trial Court (RTC)	46
Pending before the RTC	8
Total	54

179. Of the said forty-six (46) cases for Application of Bank Inquiry decided by the Regional Trial Court (RTC), three (3) cases involved Plunder while four (4) cases involved Violations of the Anti-Graft and Corrupt Practices Act.

180. Of the eight (8) cases for Application of Bank Inquiry pending before the RTC, one (1) case involves Plunder while another case involve violations of the Anti-Graft and Corrupt Practices Act.

C. FREEZE - Total: 55 cases

	No. of Cases
Expired freeze Orders	42
Active freeze Orders	13
Total	55

181. Acting on the Petitions filed by the AMLC, the Court of Appeals has ordered the freezing of funds and other assets in the aggregate amount of Php415,551,895.29 in three (3) cases involving the unlawful activity of Plunder (Large-scale Corruption).

D. CIVIL FORFEITURE - Total: 45 Cases

Unlawful Activity	No. of Cases
Decided civil Forfeiture Action	
Executed	12
Pending Execution	10
Ongoing Civil Forfeiture Actions	23
Total	45

182. Funds and other assets in one plunder case in the aggregate amount of Php89,198,163.79 have been recently forfeited in favor of the Philippine Government. Two (2) Petitions for Civil Forfeiture involving violations of the Anti-Graft and Corrupt Practices Act in the total amount of Php8,517,678.59 are currently pending execution before the Regional Trial Court while another Civil Forfeiture case for violation of the same Act involving funds in the total amount of Php512,867.46 is currently pending trial.

Summary of Cases Filed per year from 2008 to 2011

	2008	2009	2010	2011 (January to August)
Money Laundering Criminal Complaints				
Department of Justice	3	1	5	-
Office of the Ombudsman	-	-	1	-
Money Laundering Criminal Cases				
Regional Trial Courts (RTC)	8	5	-	-
Sandiganbayan	-	1	-	-
Bank Inquiry				
Without Court Order				
Drug-Trafficking	2	2	1	3
Kidnapping for ransom	-	1	-	-
Terrorist-Related	5	-	-	3
Murder	1	-	-	-
With Court Order	6	7	2	10
Petitions for Freeze Order filed before the Court of Appeals	13	9	4	10
Petitions for Civil forfeiture filed before the Regional Trial Court	2	9	6	-
Total	40	35	19	26

(b) Observations on the implementation of the article

183. "Unlawful activity" under section 4 of the AMLA is defined in sub-section 3(i) of the AMLA.

AMLA

Section 3. Definitions

For purposes of this Act, the following terms are hereby defined as follows:

(i) "Unlawful activity" refers to any act or omission or series or combination thereof involving or having relation to the following:

- (1) Kidnapping for ransom under Article 267 of Act No. 3815, otherwise known as the Revised Penal Code, as amended;
- (2) Sections 3, 4, 5, 7, 8 and 9 of Article Two of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972;
- (3) Section 3 paragraphs B, C, E, G, H and I of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act;
- (4) Plunder under Republic Act No. 7080, as amended;
- (5) Robbery and extortion under Articles 294, 295, 296, 299, 300, 301 and 302 of the Revised Penal Code, as amended;
- (6) Jueteng and Masiao punished as illegal gambling under Presidential Decree No. 1602;
- (7) Piracy on the high seas under the Revised Penal Code, as amended and Presidential Decree No. 532;
- (8) Qualified theft under Article 310 of the Revised Penal Code, as amended;
- (9) Swindling under Article 315 of the Revised Penal Code, as amended;
- (10) Smuggling under Republic Act Nos. 455 and 1937;
- (11) Violations under Republic Act No. 8792, otherwise known as the Electronic Commerce Act of 2000;
- (12) Hijacking and other violations under Republic Act No. 6235; destructive arson and murder, as defined under the Revised Penal Code, as amended, including those perpetrated by terrorists against non-combatant persons and similar targets;
- (13) Fraudulent practices and other violations under Republic Act No. 8799, otherwise known as the Securities Regulation Code of 2000;
- (14) Felonies or offenses of a similar nature that are punishable under the penal laws of other countries.

184. Senate Bill No. 3123 proposes to amend *inter alia* the provisions of the AMLA on unlawful activities to include bribery, corruption of public officers, malversation of public funds and property, and tax evasion. Senate Bill No. 3123 is currently subject to Senate plenary deliberations.

185. The reviewing experts noted the recent amendments to the AMLA as a result of which this provision is legislatively implemented.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (a) (ii)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

- (a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

(a) Summary of information relevant to reviewing the implementation of the article

186. The Philippines cited sections 4 and 14 of the AMLA, as amended.

187. Under R.A. No. 10365, section 4 of the AMLA (R.A. No. 9160) was amended in 2013 to read as follows:

Sec. 4. Money Laundering Offense. - Money laundering is committed by any person who, knowing that any monetary instrument or property represents, involves, or relates to the proceeds of any unlawful activity:

- (a) transacts said monetary instrument or property;

- (b) converts, transfers, disposes of, moves, acquires, possesses or uses said monetary instrument or property;
- (c) conceals or disguises the true nature, source, location, disposition, movement or ownership of or rights with respect to said monetary instrument or property;
- (d) attempts or conspires to commit money laundering offenses referred to in paragraphs (a), (b) or (c);
- (e) aids, abets, assists in or counsels the commission of the money laundering offenses referred to in paragraphs (a), (b) or (c) above; and
- (f) performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraphs (a), (b) or (c) above.

(b) Observations on the implementation of the article

188. In light of the above amendments to section 4 of the AMLA, the Philippines has legislatively implemented the provision.

Article 23 Laundering of proceeds of crime

Subparagraph 1 (b)

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) Subject to the basic concepts of its legal system:

- (i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*
- (ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

(a) Summary of information relevant to reviewing the implementation of the article

189. The laws and cases cited by Philippines are below.

AMLA

Sec. 4. Money Laundering Offense. - Money laundering is committed by any person who, knowing that any monetary instrument or property represents, involves, or relates to the proceeds of any unlawful activity:

- (a) transacts said monetary instrument or property;
- (b) converts, transfers, disposes of, moves, acquires, possesses or uses said monetary instrument or property;
- (c) conceals or disguises the true nature, source, location, disposition, movement or ownership of or rights with respect to said monetary instrument or property;
- (d) attempts or conspires to commit money laundering offenses referred to in paragraphs (a), (b) or (c);
- (e) aids, abets, assists in or counsels the commission of the money laundering offenses referred to in paragraphs (a), (b) or (c) above; and
- (f) performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraphs (a), (b) or (c) above.

190. The RPC, specifically article 10, provides that the RPC provisions shall apply suppletorily to offenses which are, or in the future, may be punishable under special laws, unless the latter provides otherwise. The RPC defines persons who are criminally liable depending on the degree of their participation in the commission of a felony. Thus, in a violation of Anti-Money Laundering Law, principals, accessories, and accomplices are all liable.

191. The same also contains the following provisions on conspiracy, proposal to commit an offense and the persons criminally liable for felonies:

Article 8. Conspiracy and proposal to commit felony.

Conspiracy and proposal to commit felony are punishable only in the cases in which the law specially provides a penalty therefor.

A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.

There is proposal when the person who has decided to commit a felony proposes its execution to some other person or persons.

Article 16. Who are criminally liable.

The following are criminally liable for grave and less grave felonies:

1. Principals.
2. Accomplices.
3. Accessories.

The following are criminally liable for light felonies:

1. Principals
2. Accomplices.

Article 17. Principals.

The following are considered principals:

1. Those who take a direct part in the execution of the act;
2. Those who directly force or induce others to commit it;
3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished.

Article 18. Accomplices.

Accomplices are those persons who, not being included in article 17, cooperate in the execution of the offense by previous or simultaneous acts.

Article 19. Accessories.

Accessories are those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners:

By profiting themselves or assisting the offender to profit by the effects of the crime.

By concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery.

192. The aforesaid provisions of the RPC supplement the provisions of the AMLA, as amended. Thus, a person may be found guilty of participating in, associating with, conspiring to commit or counselling the commission of money laundering depending on degree of his participation in the offense.

193. In addition, Section 4(b) and (c) of the AMLA, as amended, criminalizes the act of facilitating (including aiding and abetting) money laundering.

A. Investigations

194. The Anti-Money Laundering Council (AMLC) (Philippine FIU) primarily makes use of referrals from law enforcement agencies and other government agencies as well as Suspicious Transaction Reports (STRs) from covered institutions as triggers for Money Laundering (ML) investigations. Hereunder is a table showing the number of referrals and STRs received and investigated by the AMLC:

Investigative Triggers	2008	2009	2010	2011 (January of August)	Total (2001 to August 2011)
Referrals from Laws Enforcement Agencies and Other Government Agencies	75	89	61	85	506
Suspicious Transactions reports (STRs) from Covered Institutions	6,311	6,235	7,471	2602	38,478

B. Prosecutions, Convictions/Acquittal

195. Number of Money Laundering Complaints Filed Before the Department of Justice and the OMB.

Prosecuting Agency	2009	2010	2011	Total (from 2001 to 2011)
Department of Justice	1	5	4	29
Office of the Ombudsman	-	1	-	2
TOTAL	1	6	4	31

196. The Money Laundering Criminal Complaints filed were based on the following violations of the AMLA, as amended:

- Sec. 4(a) of the AMLA, as amended – Knowingly Transacting or Attempting to Transact the Proceeds of Money Laundering
- Sec. 4(b) of the AMLA - Knowingly Facilitating Money Laundering
- Sec. 4(c) of the AMLA for the Persons who Knowingly Failed to file a Covered or Suspicious Transaction Report with the AMLC - all filed before the DOJ prior to 2009

197. Hereunder is the breakdown of the cases filed before the Department of Justice according to type of Money Laundering Offense under the AMLA, as amended:

Violation of the AMLA, as amended	2009	2010	2011	Total (from 2001 to 2011)
Sec. 4(a)	1	5	4	24
Sec. 4(b)	-	-	-	2
Sec. 4(c)	-	-	-	3
TOTAL	1	5	4	29

198. Hereunder is the breakdown of the cases filed before the OMB according to type of Money Laundering Offense under the AMLA, as amended.

Violation of the AMLA, as amended	2009	2010	2011	Total (from 2001 to 2011)
Sec. 4(a)	-	1	-	2
Sec. 4(b)	-	-	-	-
Sec. 4(c)	-	-	-	0
TOTAL	0	1	-	2

199. Number of Money Laundering Complaints Resolved (for filing of Criminal Information) by the Department of Justice and the OMB.

Prosecuting Agency	2009	2010	2011	Total (from 2001 to 2011)
Department of Justice	4	1	1	17
Office of the Ombudsman	1	-	-	1
TOTAL	5	1	1	18

* To date, no Criminal Complaint for Money Laundering filed by the AMLC has been dismissed by the Department of Justice or the OMB.

200. Hereunder is the breakdown of the cases resolved by the Department of Justice according to type of Money Laundering Offense under the AMLA, as amended:

Violation of the AMLA, as amended	2009	2010	2011	Total (from 2001 to 2011)
Sec. 4(a)	3	1	-	12
Sec. 4(b)	1	-	-	2
Sec. 4(c)	-	-	-	3
TOTAL	4	1	-	17

201. The case resolved by the OMB in 2009 involved the violation of Sec. 4(a) of the AMLA, as amended, for transacting the proceeds of Plunder (Maj. Gen. Garcia case).

Number of Money Laundering Cases Filed Before the Regional Trial Court and the Sandiganbayan (Anti-Graft Court)

Court	2009	2010	2011	Total (from 2001 to 2011)
Regional Trial Court	9	1	-	17
Sandiganbayan	1	-	-	1
TOTAL	10	1	-	18

202. Hereunder is the breakdown of the cases filed before the Regional Trial Court according to type of Money Laundering Offense under the AMLA, as amended:

Violation of the AMLA, as amended	2009	2010	2011	Total (from 2001 to 2011)
Sec. 4(a)	3	1	-	12
Sec. 4(b)	1	-	-	2
Sec. 4(c)	-	-	-	3
TOTAL	4	1	-	17

203. The case filed before the Sandiganbayan in 2009 involved the violation of Sec. 4(a) of the AMLA, as amended, for transacting the proceeds of Plunder (Maj. Gen. Garcia case).

Number of Convictions in the Regional Trial Court and the Sandiganbayan (Anti-Graft Court)

Court	2009	2010	2011	Total (from 2001 to 2011)
Regional Trial Court	-	-	-	1
Sandiganbayan	-	1	-	1
TOTAL	-	1	-	2

204. A money laundering case was decided for conviction by the Regional Trial Court in 2003 for violation of Sec. 4(c) for knowingly failing to file a covered or suspicious transaction related to the crime of Estafa or Swindling. The case decided for conviction by the Sandiganbayan in 2010 involved the violation of Sec. 4(a) of the AMLA, as amended, for transacting the proceeds of Plunder (Maj. Gen. Garcia case).

Number of Acquittals in the Regional Trial Court and the Sandiganbayan (Anti-Graft Court)

Court	2009	2010	2011	Total (from 2001 to 2011)
Regional Trial Court	1	-	-	2
Sandiganbayan	-	-	-	-
TOTAL	1	-	-	2

205. The two (2) cases decided for acquittal by the Regional Trial Court in 2008 and 2009 involved violations of Sec. 4(c) for knowingly failing to file a covered or suspicious transaction related to the crime of Estafa or Swindling.

206. In June 2007, the AMLC filed with the OMB a complaint for money laundering against a former high-ranking Officer of the Armed Forces of the Philippines and members of his immediate family for transacting the proceeds of Plunder (large-scale corruption). Finding probable cause on the complaint filed by the AMLC, the OMB filed a criminal information with the Sandiganabayan (Anti-Graft Court) against the said Official and members of his immediate family. In May 2011, the Sandiganabayan approved the plea bargaining agreement entered into between the said Official and the Republic wherein he pleaded guilty to the lesser offense of Facilitating Money Laundering under Article 4(b) of the AMLA and Indirect Bribery under Article 211 of the RPC. However, the Office of the Solicitor General (OSG) filed a Motion for Reconsideration on the judgment of the Sandiganabayan approving the plea bargaining agreement. To date, the Sandiganabayan has yet to decide on the Motion for Reconsideration filed by the OSG.

207. In November 2010, the AMLC also filed with the OMB a money laundering complaint against four (4) former government officials for violations of the Ant-Graft and Corrupt Practices Act. The said officials were previously employed in a Government agency which was mandated to provide credit and guarantee services to farmers and small enterprises in the rural areas. The said criminal complaint for money laundering is currently pending before the OMB.

(b) Observations on the implementation of the article

208. . In light of the recent amendments to the AMLA and the cited provisions of the RPC, the provision is legislatively implemented.

Article 23 Laundering of proceeds of crime

Subparagraphs 2 (a) and (b)

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

209. The Philippines provided that it has partly implemented the provision under review. Under section 3 of the AMLA of 2001, as amended, there are 34 categories of underlying unlawful activities or predicate crimes to money laundering.

210. Moreover, Rule 3.i of the AMLA's Revised Implementing Rules and Regulations enumerates the criminal offenses that constitute predicate crimes to money laundering.

211. Under R.A. No. 10365, Section 3(i) 4 of the AMLA (R.A. No. 9160) was amended to read as follows:

(i) 'Unlawful activity' refers to any act or omission or series or combination thereof involving or having direct relation to the following:

- (1) Kidnapping for ransom under Article 267 of Act No. 3815, otherwise known as the Revised Penal Code, as amended;
- (2) Sections 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002;
- (3) Section 3 paragraphs B, C, E, G, H and I of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act;
- (4) Plunder under Republic Act No. 7080, as amended;
- (5) Robbery and extortion under Articles 294, 295, 296, 299, 300, 301 and 302 of the Revised Penal Code, as amended;
- (6) Jueteng and Masiao punished as illegal gambling under Presidential Decree No. 1602;
- (7) Piracy on the high seas under the Revised Penal Code, as amended, and Presidential Decree No. 532;
- (8) Qualified theft under Article 310 of the Revised Penal Code, as amended;
- (9) Swindling under Article 315 and Other Forms of Swindling under Article 316 of the Revised Penal Code, as amended;
- (10) Smuggling under Republic Act Nos. 455 and 1937;
- (11) Violations of Republic Act No. 8792, otherwise known as the Electronic Commerce Act of 2000;
- (12) Hijacking and other violations under Republic Act No. 6235; destructive arson and murder, as defined under the Revised Penal Code, as amended;
- (13) Terrorism and conspiracy to commit terrorism as defined and penalized under Sections 3 and 4 of Republic Act No. 9372;
- (14) Financing of terrorism under Section 4 and offenses punishable under Sections 5, 6, 7 and 8 of Republic Act No. 10168, otherwise known as the Terrorism Financing Prevention and Suppression Act of 2012;
- (15) Bribery under Articles 210, 211, 211-A of the Revised Penal Code, as amended, and Corruption of Public Officers under Article 212 of the Revised Penal Code, as amended;
- (16) Frauds and Illegal Exactions and Transactions under Articles 213, 214, 215, and 216 of the Revised Penal Code, as amended;
- (17) Malversation of Public Funds and Property under Articles 217 and 222 of the Revised Penal Code, as amended;
- (18) Forgeries and Counterfeiting under Articles 163, 166, 167, 168, 169 and 176 of the Revised Penal Code, as amended;
- (19) Violations of Sections 4 to 6 of Republic Act No. 9208, otherwise known as the Anti-Trafficking in Persons Act of 2003;
- (20) Violations of Sections 78 to 79 of Chapter IV, of Presidential Decree No. 705, otherwise known as the Revised Forestry Code of the Philippines, as amended;
- (21) Violations of Sections 86 to 106 of Chapter VI, of Republic Act No. 8550, otherwise known as the Philippine Fisheries Code of 1998;
- (22) Violations of Sections 101 to 107, and 110 of Republic Act No. 7942, otherwise known as the Philippine Mining Act of 1995;
- (23) Violations of Section 27 (c), (e), (f), (g) and (i), of Republic Act No. 9147, otherwise known as the Wildlife Resources Conservation and Protection Act;
- (24) Violation of Section 7(b) of Republic Act No. 9072, otherwise known as the National Caves and Cave Resources Management Protection Act;

- (25) Violation of Republic Act No. 6539, otherwise known as the Anti-Carnapping Act of 2002, as amended;
- (26) Violations of Sections 1, 3 and 5 of Presidential Decree No. 1866, as amended, otherwise known as the decree Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition of Firearms, Ammunition or Explosives;
- (27) Violation of Presidential Decree No. 1612, otherwise known as the Anti-Fencing Law;
- (28) Violation of Section 6 of Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended by Republic Act No. 10022;
- (29) Violation of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines;
- (30) Violation of Section 4 of Republic Act No. 9995, otherwise known as the Anti-Photo and Video Voyeurism Act of 2009;
- (31) Violation of Section 4 of Republic Act No. 9775, otherwise known as the Anti-Child Pornography Act of 2009;
- (32) Violations of Sections 5, 7, 8, 9, 10(c), (d), and (e), 11, 12 and 14 of Republic Act No. 7610, otherwise known as the Special Protection of Children against Abuse, Exploitation and Discrimination;
- (33) Fraudulent practices and other violations under Republic Act No. 8799, otherwise known as the Securities Regulation Code of 2000; and
- (34) Felonies or offenses of a similar nature that are punishable under the penal laws of other countries.

212. On 6 June 2012, the Congress of the Philippines (House of Representatives and the Senate) enacted the following laws which were signed by the President of the Philippines on 18 June 2012:

1. Republic Act No. 10167 entitled, “An Act to Further Strengthen the Anti-Money Laundering Law, Amending for the Purpose Sections 10 and 11 of Republic Act No. 9160, otherwise known as ‘The Anti-Money Laundering Act of 2001’ as Amended, and for Other Purposes”.
 - Became effective on 6 July 2012.
 - Based on the provisions of House Bill No. 4275 and Senate Bill No. 2484.
 - Amended only Section 10 (ex parte filing of an application for the issuance of a freeze order) and Section 11 (ex parte filing of an application for the issuance of a bank inquiry order) of the AMLA, as amended.
2. Republic Act No. 10168 entitled, “An Act Defining the Crime of Financing of Terrorism, Providing Penalties therefor and for Other Purposes.”
 - Became effective on 5 July 2012.
 - Criminalized Financing of Terrorism as a stand-alone offense, including:
 - a) Dealing with Property or Funds of Designated Persons;
 - b) Attempt or Conspiracy to Commit the Crimes of Financing of Terrorism and Dealing with Property or Funds of Designated Persons;
 - c) Accomplices;
 - d) Accessories; and
 - e) Failure to comply with a Freeze Order issued by the AMLC.

(b) Observations on the implementation of the article

213. The reviewing experts noted that even the recent amendments to the AMLA are limiting. The experts noted that the Philippines should legislatively amend the AMLA to include all UNCAC-related offences (i.e. active bribery of foreign public officials).

Article 23 Laundering of proceeds of crime

Subparagraph 2 (c)

2. For purposes of implementing or applying paragraph 1 of this article:

(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(a) Summary of information relevant to reviewing the implementation of the article

214. The Philippines provided that it has partly implemented the provision under review.

215. Based on Section 3(i)(14) of the AMLA, conduct that occurred in another country may constitute a predicate offense for money laundering, if such conduct is similar in nature to any of the listed predicate offenses under the AMLA, provided that the dual criminality requirement is met (i.e., the conduct is also punishable under the laws of the foreign country). By corollary, Rule 3(i)(N) of the AMLA's Revised and Implementing Rules and Regulations provides that "in determining whether or not a felony or offense punishable under the penal laws of other countries, is 'of a similar nature' as to constitute the same as an unlawful activity under the AMLA, the nomenclature of said felony or offense need not be identical to any of the predicate crimes listed under Rule 3(i)."

216. The Philippines also provided the follow cases:

Civil Forfeiture Cases filed before the Regional Trial Court

RP vs. IIRO

RP vs. Hilarion del Rosario, et al.

RP vs. Baclado, et al.

Money Laundering Criminal Cases filed before the Sandiganbayan People vs. Garcia, et al.

217. In 2003, the AMLC was able to remit to the United Kingdom (UK) funds laundered in the Philippines which were related to a certain fraud case committed in the UK. The total amount remitted to the UK was approximately US\$730,000.00.

218. In 2004, the AMLC was also able to remit to the United States funds laundered in the Philippines which were related to murder and insurance fraud. The fraud took place in Texas. The total amount remitted to the US in relation to the said case was approximately US\$110,000.00.

(b) Observations on the implementation of the article

219. During the country visit, it was affirmed that the provision under review is provided for (i.e. offences committed both within and outside the jurisdiction of the Philippines). The reviewing experts therefore deemed the provision to have been implemented.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (d)

2. For purposes of implementing or applying paragraph 1 of this article:

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(a) Summary of information relevant to reviewing the implementation of the article

220. The Philippines provided that it has not implemented the provision under review.

(b) Observations on the implementation of the article

221. The reviewers recommended that the Philippines furnish copies of its anti-money laundering laws to the UN Secretary General.

Article 23 Laundering of proceeds of crime

Subparagraph 2 (e)

2. For purposes of implementing or applying paragraph 1 of this article:

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.

(a) Summary of information relevant to reviewing the implementation of the article

222. The Philippines cited section 6(a) of the AMLA.

Section 6. Prosecution of Money Laundering.

(a) Any person may be charged with and convicted of both the offense of money laundering and the unlawful activity as herein defined."

(b) Observations on the implementation of the article

223. In light of section 6(a) of the AMLA, the reviewing experts deemed the provision under review to have been implemented.

(c) Technical assistance needs

224. The Philippines has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned;

2. Legal advice.

The Philippines has received technical assistance from the International Monetary Fund (IMF) through their sponsorship of a Legislative Drafting Workshop held at the Singapore Training Institute in March 2011.

Article 24 Concealment

Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

225. The Philippines referred to the RPC, namely the provision on accessories.

Article 19. Accessories.

Accessories are those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners:

1. By profiting themselves or assisting the offender to profit by the effects of the crime.
2. By concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery.
3. By harboring, concealing, or assisting in the escape of the principal of the crime, provided the accessory acts with abuse of his public functions or whenever the author of the crime is guilty of treason, parricide, murder, or an attempt to take the life of the Chief Executive, or is known to be habitually guilty of some other crime."

226. The aforesaid provision of the RPC is applicable suppletorily to the AMLA. Article 10 provides that the RPC provisions shall apply suppletorily to offenses which are, or in the future, may be punishable under special laws, unless the latter provide otherwise.

Article. 10. Offenses not subject to the provisions of this Code.

Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

227. Thus, a person may be found guilty as an accessory to the crime of money laundering provided that the conditions of article 19 of the RPC are met.

228. Moreover, under section 4 of the AMLA, as amended, a person who performs or fails to perform any act as a result of which he facilitates money laundering may be found guilty of the crime of money laundering:

AMLA

Sec. 4. Money Laundering Offense. - Money laundering is committed by any person who, knowing that any monetary instrument or property represents, involves, or relates to the proceeds of any unlawful activity:

- (a) transacts said monetary instrument or property;
- (b) converts, transfers, disposes of, moves, acquires, possesses or uses said monetary instrument or property;

- (c) conceals or disguises the true nature, source, location, disposition, movement or ownership of or rights with respect to said monetary instrument or property;
- (d) attempts or conspires to commit money laundering offenses referred to in paragraphs (a), (b) or (c);
- (e) aids, abets, assists in or counsels the commission of the money laundering offenses referred to in paragraphs (a), (b) or (c) above; and
- (f) performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraphs (a), (b) or (c) above.

229. Based on the foregoing provision of the AMLA, as amended, the act of concealment or continued retention of property may constitute an act of money laundering. Under the aforesaid provision, concealment is already covered in the crime of money laundering since the purpose of concealment is to make it appear that criminal proceeds did not originate from an unlawful activity. The continued retention of property is covered under the acts of acquisition or possession, as well as concealing or disguising the source or location of property.

(b) Observations on the implementation of the article

230. The reviewing experts noted that the amendments to the AMLA legislatively implement the provision under review; however, not all UNCAC offences are covered. It is also noted that under section 4, as amended, it is irrelevant whether the person who commits the act of concealment participated in the predicate offence or not.

(c) Technical assistance needs

231. The Philippines has indicated that the following form of technical assistance, if available, would assist it in better implementing the article under review:

- a. Summary of good practices/lessons learned.

The Philippines has received technical assistance from the International Monetary Fund (IMF) through their sponsorship of a Legislative Drafting Workshop held at the Singapore Training Institute in March 2011.

Article 25 Obstruction of Justice

Subparagraph (a)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;

(a) Summary of information relevant to reviewing the implementation of the article

232. The Philippines provided that it has partly implemented the provision under review and referred to:

- i. Sections 1 and 180-184 of PD 1829 (Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders);
- ii. Article 27 of the RPC;

- iii. Section 36 of RA 6770 (Ombudsman Act);
- iv. Section 17 of RA 6981 (Witness Protection, Security and Benefit Act).

Presidential Decree 1829

Section 1.

The penalty of prision correccional in its maximum period, or a fine ranging from 1,000 to 6,000 pesos, or both, shall be imposed upon any person who knowingly or willfully obstructs, impedes, frustrates or delays the apprehension of suspects and the investigation and prosecution of criminal cases by committing any of the following acts:

(a) preventing witnesses from testifying in any criminal proceeding or from reporting the commission of any offense or the identity of any offender/s by means of bribery, misrepresentation, deceit, intimidation, force or threats;

(b) altering, destroying, suppressing or concealing any paper, record, document, or object, with intent to impair its verity, authenticity, legibility, availability, or admissibility as evidence in any investigation of or official proceedings in, criminal cases, or to be used in the investigation of, or official proceedings in, criminal cases;

(c) harboring or concealing, or facilitating the escape of, any person he knows, or has reasonable ground to believe or suspect, has committed any offense under existing penal laws in order to prevent his arrest prosecution and conviction;

(d) publicly using a fictitious name for the purpose of concealing a crime, evading prosecution or the execution of a judgment, or concealing his true name and other personal circumstances for the same purpose or purposes;

(e) delaying the prosecution of criminal cases by obstructing the service of process or court orders or disturbing proceedings in the fiscal's offices, in Tanodbayan, or in the courts;

(f) making, presenting or using any record, document, paper or object with knowledge of its falsity and with intent to affect the course or outcome of the investigation of, or official proceedings in, criminal cases;

(g) soliciting, accepting, or agreeing to accept any benefit in consideration of abstaining from, discounting, or impeding the prosecution of a criminal offender;

(h) threatening directly or indirectly another with the infliction of any wrong upon his person, honor or property or that of any immediate member or members of his family in order to prevent such person from appearing in the investigation of, or official proceedings in, criminal cases, or imposing a condition, whether lawful or unlawful, in order to prevent a person from appearing in the investigation of or in official proceedings in, criminal cases;

(i) giving of false or fabricated information to mislead or prevent the law enforcement agencies from apprehending the offender or from protecting the life or property of the victim; or fabricating information from the data gathered in confidence by investigating authorities for purposes of background information and not for publication and publishing or disseminating the same to mislead the investigator or to the court.

Article 180. False testimony against a defendant.

Any person who shall give false testimony against the defendant in any criminal case shall suffer:

1. The penalty of reclusion temporal, if the defendant in said case shall have been sentenced to death;

2. The penalty of prision mayor, if the defendant shall have been sentenced to reclusion temporal or reclusion perpetua;

3. The penalty of prision correccional, if the defendant shall have been sentenced to any other afflictive penalty; and

4. The penalty of arresto mayor, if the defendant shall have been sentenced to a correctional penalty or a fine, or shall have been acquitted.

In cases provided in subdivisions 3 and 4 of this article the offender shall further suffer a fine not to exceed 1,000 pesos.

Article 181. False testimony favorable to the defendants

Any person who shall give false testimony in favor of the defendant in a criminal case, shall suffer the penalties of arresto mayor in its maximum period to prision correccional in its minimum period a fine not to exceed 1,000 pesos, if the prosecution is for a felony punishable by an afflictive penalty, and the penalty of arresto mayor in any other case.

Article 182. False testimony in civil cases.

Any person found guilty of false testimony in a civil case shall suffer the penalty of prision correccional in its minimum period and a fine not to exceed 6,000 pesos, if the amount in controversy shall exceed 5,000 pesos, and the penalty of arresto mayor in its maximum period to prision correccional in its minimum period and a fine not to exceed 1,000 pesos, if the amount in controversy shall not exceed said amount or cannot be estimated.

Article 183. False testimony in other cases and perjury in solemn affirmation.

The penalty of arresto mayor in its maximum period to prision correccional in its minimum period shall be imposed upon any person, who knowingly makes untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein.

Article 184. Offering false testimony in evidence.

Any person who shall knowingly offer in evidence a false witness or testimony in any judicial or official proceeding, shall be punished as guilty of false testimony and shall suffer the respective penalties provided in this section.

Revised Penal Code

Article 27. Prision correccional, suspension, and destierro

The duration of the penalties of prision correccional, suspension and destierro shall be from six months and one day to six years, except when suspension is imposed as an accessory penalty, in which case, its duration shall be that of the principal penalty.

RA 6770

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).

RA 6981

Section 17. Penalty for Harassment of Witness.

Any person who harasses a Witness and thereby hinders, delays, prevents or dissuades a Witness from:

- (a) attending or testifying before any judicial or quasi-judicial body or investigating authority;
- (b) reporting to a law enforcement officer or judge the commission or possible commission of an offense, or a violation of conditions or probation, parole, or release pending judicial proceedings;
- (c) seeking the arrest of another person in connection with the offense;
- (d) causing a criminal prosecution, or a proceeding for the revocation of a parole or probation;
- or
- (e) performing and enjoying the rights and benefits under this Act or attempts to do so, shall be

fined not more than Three thousand pesos (P3,000.00) or suffer imprisonment of not less than six (6) months but not more than one (1) year, or both, and he shall also suffer the penalty of perpetual disqualification from holding public office in case of a public officer.

233. The Philippines cited one case.

PP v Bosque and Escara (CC27788; violation of paragraph (b), section 1, PD 1829)

The accused, Mr. Bosque was the Mayor of Polilio Quezon and the accused, Mr. Escara was the Private Secretary of the Mayor. Both were charged for obstruction of justice, as defined under Presidential Decree 1829. The indictment stated that Mr. Bosque, in his capacity as Mayor, altered the Personal Data Sheet (PDS) which was under the custody of the Human Resources Department (HRD) of the Municipality by including or substituting a different PDR from the copy submitted by Mr. Escara. The

aim was to indicate a “yes” answer to the question on whether or not he has any pending administrative or criminal case, with the intention of impairing the validity and admissibility of the testimony of Mr. Escara. In convicting the accused, the Court took note of the bare denial of the accused, Mr. Bosque that he had borrowed the PDS of Mr. Escara from the HRD. Apparently, the purpose of the alteration/ inclusion of the handwritten PDS was to frustrate the administration of justice. It was also noted that Mr. Escara had a pending complaint for perjury before the OMB.

(b) Observations on the implementation of the article

234. The reviewing experts deemed the provision to have been legislatively implemented.

Article 25 Obstruction of Justice

Subparagraph (b)

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.

(a) Summary of information relevant to reviewing the implementation of the article

235. The Philippines referred to:
- i. Sections 1 and 180-184 of PD 1829 (Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders);
 - ii. Articles 148 – 151 and 231 – 233 of the RPC;
 - iii. Section 36 of RA 6770 (Ombudsman Act);
 - iv. Section 17 of RA 6981 (Witness Protection, Security and Benefit Act).

PD 1829

Section 1. The penalty of prision correccional in its maximum period, or a fine ranging from 1,000 to 6,000 pesos, or both, shall be imposed upon any person who knowingly or willfully obstructs, impedes, frustrates or delays the apprehension of suspects and the investigation and prosecution of criminal cases by committing any of the following acts:

- (a) preventing witnesses from testifying in any criminal proceeding or from reporting the commission of any offense or the identity of any offender/s by means of bribery, misrepresentation, deceit, intimidation, force or threats;
- (b) altering, destroying, suppressing or concealing any paper, record, document, or object, with intent to impair its verity, authenticity, legibility, availability, or admissibility as evidence in any investigation of or official proceedings in, criminal cases, or to be used in the investigation of, or official proceedings in, criminal cases;
- (c) harboring or concealing, or facilitating the escape of, any person he knows, or has reasonable ground to believe or suspect, has committed any offense under existing penal laws in order to prevent his arrest prosecution and conviction;
- (d) publicly using a fictitious name for the purpose of concealing a crime, evading prosecution or the execution of a judgment, or concealing his true name and other personal circumstances for the same purpose or purposes;
- (e) delaying the prosecution of criminal cases by obstructing the service of process or court orders or disturbing proceedings in the fiscal's offices, in Tanodbayan, or in the courts;
- (f) making, presenting or using any record, document, paper or object with knowledge of its falsity and with intent to affect the course or outcome of the investigation of, or official proceedings in, criminal cases;

- (g) soliciting, accepting, or agreeing to accept any benefit in consideration of abstaining from, discounting, or impeding the prosecution of a criminal offender;
- (h) threatening directly or indirectly another with the infliction of any wrong upon his person, honor or property or that of any immediate member or members of his family in order to prevent such person from appearing in the investigation of, or official proceedings in, criminal cases, or imposing a condition, whether lawful or unlawful, in order to prevent a person from appearing in the investigation of or in official proceedings in, criminal cases;
- (i) giving of false or fabricated information to mislead or prevent the law enforcement agencies from apprehending the offender or from protecting the life or property of the victim; or fabricating information from the data gathered in confidence by investigating authorities for purposes of background information and not for publication and publishing or disseminating the same to mislead the investigator or to the court.

Art. 180. False testimony against a defendant.

Any person who shall give false testimony against the defendant in any criminal case shall suffer:

1. The penalty of reclusion temporal, if the defendant in said case shall have been sentenced to death;
2. The penalty of prision mayor, if the defendant shall have been sentenced to reclusion temporal or reclusion perpetua;
3. The penalty of prision correccional, if the defendant shall have been sentenced to any other afflictive penalty; and
4. The penalty of arresto mayor, if the defendant shall have been sentenced to a correctional penalty or a fine, or shall have been acquitted.

In cases provided in subdivisions 3 and 4 of this article the offender shall further suffer a fine not to exceed 1,000 pesos.

Art. 181. False testimony favorable to the defendants.

Any person who shall give false testimony in favor of the defendant in a criminal case, shall suffer the penalties of arresto mayor in its maximum period to prision correccional in its minimum period a fine not to exceed 1,000 pesos, if the prosecution is for a felony punishable by an afflictive penalty, and the penalty of arresto mayor in any other case.

Art. 182. False testimony in civil cases.

Any person found guilty of false testimony in a civil case shall suffer the penalty of prision correccional in its minimum period and a fine not to exceed 6,000 pesos, if the amount in controversy shall exceed 5,000 pesos, and the penalty of arresto mayor in its maximum period to prision correccional in its minimum period and a fine not to exceed 1,000 pesos, if the amount in controversy shall not exceed said amount or cannot be estimated.

Art. 183. False testimony in other cases and perjury in solemn affirmation.

The penalty of arresto mayor in its maximum period to prision correccional in its minimum period shall be imposed upon any person, who knowingly makes untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein.

Art. 184. Offering false testimony in evidence.

Any person who shall knowingly offer in evidence a false witness or testimony in any judicial or official proceeding, shall be punished as guilty of false testimony and shall suffer the respective penalties provided in this section.

Revised Penal Code

Article. 148. Direct assaults.

Any person or persons who, without a public uprising, shall employ force or intimidation for the attainment of any of the purpose enumerated in defining the crimes of rebellion and sedition, or shall attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance, shall suffer the penalty of prision correccional in its medium and maximum periods and a fine not exceeding P1,000 pesos, when the assault is committed with a weapon or when the offender is a public officer or employee, or when the offender lays

hands upon a person in authority. If none of these circumstances be present, the penalty of prison correccional in its minimum period and a fine not exceeding P500 pesos shall be imposed.

Article. 149. *Indirect assaults.*

The penalty of prison correccional in its minimum and medium periods and a fine not exceeding P500 pesos shall be imposed upon any person who shall make use of force or intimidation upon any person coming to the aid of the authorities or their agents on occasion of the commission of any of the crimes defined in the next preceding article.

Article. 150. *Disobedience to summons issued by the National Assembly, its committees or subcommittees, by the Constitutional Commissions, its committees, subcommittees or divisions.*

The penalty of arresto mayor or a fine ranging from two hundred to one thousand pesos, or both such fine and imprisonment shall be imposed upon any person who, having been duly summoned to attend as a witness before the National Assembly, (Congress), its special or standing committees and subcommittees, the Constitutional Commissions and its committees, subcommittees, or divisions, or before any commission or committee chairman or member authorized to summon witnesses, refuses, without legal excuse, to obey such summons, or being present before any such legislative or constitutional body or official, refuses to be sworn or placed under affirmation or to answer any legal inquiry or to produce any books, papers, documents, or records in his possession, when required by them to do so in the exercise of their functions. The same penalty shall be imposed upon any person who shall restrain another from attending as a witness, or who shall induce disobedience to a summon or refusal to be sworn by any such body or official.

Article. 151. *Resistance and disobedience to a person in authority or the agents of such person.*

The penalty of arresto mayor and a fine not exceeding 500 pesos shall be imposed upon any person who not being included in the provisions of the preceding articles shall resist or seriously disobey any person in authority, or the agents of such person, while engaged in the performance of official duties.

When the disobedience to an agent of a person in authority is not of a serious nature, the penalty of arresto menor or a fine ranging from 10 to P100 pesos shall be imposed upon the offender.

Article. 231. *Open disobedience.*

Any judicial or executive officer who shall openly refuse to execute the judgment, decision or order of any superior authority made within the scope of the jurisdiction of the latter and issued with all the legal formalities, shall suffer the penalties of arresto mayor in its medium period to prison correccional in its minimum period, temporary special disqualification in its maximum period and a fine not exceeding 1,000 pesos.

Article. 232. *Disobedience to order of superior officers, when said order was suspended by inferior officer.*

Any public officer who, having for any reason suspended the execution of the orders of his superiors, shall disobey such superiors after the latter have disapproved the suspension, shall suffer the penalties of prison correccional in its minimum and medium periods and perpetual special disqualification.

Article. 233. *Refusal of assistance.*

The penalties of arresto mayor in its medium period to prison correccional in its minimum period, perpetual special disqualification and a fine not exceeding 1,000 pesos, shall be imposed upon a public officer who, upon demand from competent authority, shall fail to lend his cooperation towards the administration of justice or other public service, if such failure shall result in serious damage to the public interest, or to a third party; otherwise, arresto mayor in its medium and maximum periods and a fine not exceeding 500 pesos shall be imposed.

RA 6770

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).

RA 6981

Section 17. Penalty for Harassment of Witness. - Any person who harasses a Witness and thereby hinders, delays, prevents or dissuades a Witness from:

- (a) attending or testifying before any judicial or quasi-judicial body or investigating authority;

(b) reporting to a law enforcement officer or judge the commission or possible commission of an offense, or a violation of conditions or probation, parole, or release pending judicial proceedings;

(c) seeking the arrest of another person in connection with the offense;

(d) causing a criminal prosecution, or a proceeding for the revocation of a parole or probation; or

(e) performing and enjoying the rights and benefits under this Act or attempts to do so, shall be fined not more than Three thousand pesos (P3,000.00) or suffer imprisonment of not less than six (6) months but not more than one (1) year, or both, and he shall also suffer the penalty of perpetual disqualification from holding public office in case of a public officer.

236. The case cited is below.

In *Posadas vs. Ombudsman* (G.R. No. 131492, 29 September 2000), certain officials of the University of the Philippines (UP) were charged for violating PD 1829 (paragraph c above). The UP officers objected to the warrantless arrest of certain students by the National Bureau of Investigation (NBI). According to the Supreme Court, the police had no ground for the warrantless arrest. The UP Officers, therefore, had a right to prevent the arrest of the students at the time because their attempted arrest was illegal. The “need to enforce the law cannot be justified by sacrificing constitutional rights.” In another case, Sen. Juan Ponce Enrile was charged under PD 1829, for allegedly accommodating Col. Gregorio Honasan by giving him food and comfort on 1 December 1989 in his house. “Knowing that Colonel Honasan is a fugitive from justice, Sen. Enrile allegedly did not do anything to have Honasan arrested or apprehended.” The Supreme Court ruled that Sen. Enrile could not be separately charged under PD 1829, as this is absorbed in the charge of rebellion already filed against Sen. Enrile.

(b) Observations on the implementation of the article

237. It was observed that section 1 (e) of PD 1829 refers to “delaying the prosecution of criminal cases by obstructing the service of process or court orders or disturbing proceedings in the fiscal's offices, in Tanodbayan, or in the courts”.

238. The reviewing experts were informed that “threats” would fall within the scope of the cited legislation. The experts were therefore of the view that the provision has been legislatively implemented.

(c) Technical assistance needs

239. The Philippines has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned; and
2. On-site assistance by an anti-corruption expert.

The Philippines provided that no form of technical assistance has been provided to date.

Article 26 Liability of legal persons

Paragraphs 1 – 4

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

(a) Summary of information relevant to reviewing the implementation of the article

240. The Philippines referred to:

- i. Section 2(d) of RA 3019, Definition of "person" in Anti-Graft Law;
- ii. Section 3(e) of RA 9160, Definition of "person" AML Law (criminal liability for legal persons).

RA 3019

Section 2(d) "Person" includes natural and juridical persons, unless the context indicates otherwise.

RA 9160

Section 3(e) "Person" refers to any natural or juridical person.

241. Regarding the definition of "juridical person", article 44 of Chapter 3 of Book I of Republic Act No. 386, as amended, otherwise known as the Civil Code of the Philippines (1949) provides: "Juridical Persons. Article 44. The following are juridical persons:

- (1) The State and its political subdivisions;
- (2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;
- (3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member. (35a)

Moreover, the definition of "person" under section 2(d) of RA 3019 includes natural and juridical persons. It does not, however, establish criminal liability as it is used in a limited context for purposes of beneficiaries.

242. The Philippines provided the following examples:

- i. There have been cases of administrative liability against companies in the area of money laundering and other violations of AMLA (i.e. *International Student Advisors 4U (ISA U4), et.al, Isagani Q. Lisaca, Arnaldo Murillo, Jason Max A. Quilona and Ma. Milagros M. Ramirez* (Officers of Wellington Insurance Co., Inc, criminal case no. SB09CRM0194), including cease and desist orders to revoke the companies' license. There have also been such cases that are corruption-related (not only money-laundering): *People v. Garcia, et.al*; criminal case no. 28107 for plunder. There have been no cases to date where criminal liability was imposed against legal persons.
- ii. Cases exist where companies have been held civilly liable for damages of the Government.
- iii. Corporate criminal liability is possible under the AMLA, as well as:
 1. RA 8799, The Securities Regulation Code: Section 73. Penalties – Any person who violates any of the provisions of this Code, or the rules and regulations

promulgated by the Commission under authority thereof, or any person who, in a registration statement filed under this Code, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall, upon conviction, suffer a fine of not less than Fifty thousand pesos (P50,000.00) nor more than Five million pesos (P5,000,000.00) or imprisonment of not less than seven (7) years nor more than twenty-one (21) years, or both in the discretion of the court. If the offender is a corporation, partnership or association or other juridical entity, the penalty may in the discretion of the court be imposed upon such juridical entity and upon the officer or officers of the corporation, partnership, association or entity responsible for the violation, and if such officer is an alien, he shall in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

2. Batas Pambansa Bilang 68, The Corporation Code: Section 144. Violations of the Code. - Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall be punished by a fine of not less than one thousand (P1,000.00) pesos but not more than ten thousand (P10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission: Provided, that such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation: Provided, further, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code.
3. Commonwealth Act No. 146, The Public Service Law, as amended: Section 13. (b) The term "public service" includes every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier, railroad, street railway, traction railway, sub-way motor vehicle, either for freight or passenger, or both with or without fixed route and whether may be its classification, freight or carrier service of any class, express service, steamboat or steamship line, pontines, ferries, and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine railways, marine repair shop, [warehouse] wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system, gas, electric light, heat and power water supply and power, petroleum, sewerage system, wire or wireless communications system, wire or wireless broadcasting stations and other similar public services: Provided, however, That a person engaged in agriculture, not otherwise a public service, who owns a motor vehicle and uses it personally and/or enters into a special contract whereby said motor vehicle is offered for hire or compensation to a third party or third parties engaged in agriculture, not itself or themselves a public service, for operation by the latter for a limited time and for a specific purpose directly connected with the cultivation of his or their farm, the transportation, processing, and marketing of agricultural products of such third party or third parties shall not be considered as operating a public service for the purposes of this Act. (c) The word "person" includes every individual, copartnership, joint-stock company or corporation, whether domestic or foreign, their lessees, trustees, or receivers, as well as any

municipality, province, city, government-owned or controlled corporation, or agency of the Government of the Philippines, and whatever other persons or entities that may own or possess or operate public services. (As amended by Com. Act 454 and RA No. 2677). Section 21. Every public service violating or failing to comply with the terms and conditions of any certificate or any orders, decisions or regulations of the Commission shall be subject to a fine of not exceeding two hundred pesos per day for every day during which such default or violation continues; and the Commission is hereby authorized and empowered to impose such fine, after due notice and hearing. The fines so imposed shall be paid to the Government of the Philippines through the Commission, and failure to pay the fine in any case within the same specified in the order or decision of the Commission shall be deemed good and sufficient reason for the suspension of the certificate of said public service until payment shall be made. Payment may also be enforced by appropriate action brought in a court of competent jurisdiction. The remedy provided in this section shall not be a bar to, or affect any other remedy provided in this Act but shall be cumulative and additional to such remedy or remedies.

- iv. In the area of procurement, the settlement of disallowances is a lengthy process that must be referred to the Officer of the Solicitor General for filing.
- v. Relevant government agencies should consider establishing criminal liability for legal persons in their respective areas.
- vi. Outside the area of money laundering, a range of administrative penalties are available. Blacklisting of companies is available under RA9184. Other administrative sanctions include revocation of licenses and monetary penalties.

243. Rule 14.1.d of the Revised Implementing Rules and Regulations (RIRRs) of the AMLA, as amended, provides for the administrative sanctions for violation of the AMLA, to wit:

Rule 14.1.d. Administrative Sanctions.

(1) After due notice and hearing, the AMLC shall, at its discretion, impose fines upon any covered institution, its officers and employees, or any person who violated any of the provisions of Republic Act No. 9160, as amended by Republic Act No. 9194, and Rules, Regulations, Order and Resolutions issued pursuant there, the fines shall be in amounts as may be determined by the Council, taking into consideration all the attendant circumstances, such as the nature and gravity of the violation or irregularity, but in no case shall such fines be less than one hundred thousand pesos (Php 100,000.00) but not to exceed five hundred thousand pesos (Php 500,000.00). The imposition of the administrative sanctions shall be without prejudice to the filing of criminal charges against the persons responsible for the violations.

244. Hereunder is a table showing the administrative sanctions imposed by the AMLC against covered institutions:

Particulars	2009	2010	2011	Total (from 2001 to 2011)
No. of Covered Institutions Penalized	4	1	1	27
Amount of Sanctions Imposed (In Philippine Pesos)	400,000.00	100,000.00	200,000.00	2,800,000.00

245. Section 14 of the AMLA, as amended, contains the following provision on the liability of legal persons:

Section 14. Penal Provisions

- (a) Penalties for the Crime of Money Laundering. The penalty of imprisonment ranging from seven (7) to fourteen (14) years and a fine of not less than Three million Philippine pesos (Php 3,000,000.00) but not more than twice the value of the monetary instrument or property involved in the offense, shall be imposed upon a person convicted under Section 4(a) of this Act.
The penalty of imprisonment from four (4) to seven (7) years and a fine of not less than One million five hundred thousand Philippine pesos (Php 1,500,000.00) but not more than Three million Philippine pesos (Php 3,000,000.00), shall be imposed upon a person convicted under Section 4(b) of this Act.
The penalty of imprisonment from six (6) months to four (4) years or a fine of not less than One hundred thousand Philippine pesos (Php 100,000.00) but not more than Five hundred thousand Philippine pesos (Php 500,000.00), or both, shall be imposed on a person convicted under Section 4(c) of this Act.
- (b) Penalties for Failure to Keep Records. The penalty of imprisonment from six (6) months to one (1) year or a fine of not less than One hundred thousand Philippine pesos (Php 100,000.00) but not more than Five hundred thousand Philippine pesos (Php 500,000.00), or both, shall be imposed on a person convicted under Section 9(b) of this Act.
- (c) Malicious Reporting. Any person who, with malice, or in bad faith, report or files a completely unwarranted or false information relative to money laundering transaction against any person shall be subject to a penalty of six (6) months to four (4) years imprisonment and a fine of not less than One hundred thousand Philippine pesos (Php 100,000.00) but not more than Five hundred thousand Philippine pesos (Php 500,000.00), at the discretion of the court: Provided, That the offender is not entitled to avail the benefits of the Probation Law.

If the offender is a corporation, association, partnership or any juridical person, the penalty shall be imposed upon the responsible officers, as the case may be, who participated in the commission of the crime or who shall have knowingly permitted or failed to prevent its commission. If the offender is a juridical person, the court may suspend or revoke its license. ...

246. To date, there has yet to be a criminal case for money laundering where the Courts have ordered the suspension or revocation of the license of a legal person (i.e., corporation, association, partnership or other juridical person). In most instances, the licenses of said legal persons were already ordered revoked by the Securities and Exchange Commission (SEC) by virtue of its power under Section 144 of the Corporation Code of the Philippines (Batas Pambansa Blg. 68). The power of the SEC to revoke the license of legal persons covers only those which are registered in the Philippines under the Corporation Code of the Philippines.

Corporation Code of the Philippines

Section 144. Violations of the Code.

Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall be punished by a fine of not less than one thousand (P1,000.00) pesos but not more than ten thousand (P10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission: Provided, That such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation: Provided, further, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code.

(b) Observations on the implementation of the article

247. The reviewing experts noted the observations above and that deportation under section 73 of RA8799 should bear in mind the requirement of UNCAC article 44. The Philippines may wish to consider whether or not the above criminal or non-criminal sanctions are effective, proportionate and dissuasive.

(c) Challenges

248. The Philippines has identified the following challenges and issues in fully implementing the article under review:

1. Inadequacy of existing normative measures (Constitution, laws, regulations, etc.).

Article 27 Participation and attempt

Paragraph 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

249. The Philippines cited:

- i. Articles 16-19 of the RPC;
- ii. Section 11 (c) of RA 6713 (instigators);
- iii. Sections 3(a) and 4(b) of the Anti-Graft Law, RA 3019.

Revised Penal Code

Art. 16. Who are criminally liable.

The following are criminally liable for grave and less grave felonies:

1. Principals.
2. Accomplices.
3. Accessories.

The following are criminally liable for light felonies:

1. Principals
2. Accomplices.

Art. 17. Principals.

The following are considered principals:

1. Those who take a direct part in the execution of the act;
2. Those who directly force or induce others to commit it;
3. Those who cooperate in the commission of the offense by another act without which it would not have been accomplished.

Art. 18. Accomplices.

Accomplices are those persons who, not being included in Art. 17, cooperate in the execution of the offense by previous or simultaneous acts.

Art. 19. Accessories.

Accessories are those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners:

1. By profiting themselves or assisting the offender to profit by the effects of the crime.
2. By concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery.
3. By harboring, concealing, or assisting in the escape of the principals of the crime, provided the accessory acts with abuse of his public functions or whenever the author of the crime is guilty of treason, parricide, murder, or an attempt to take the life of the Chief Executive, or is known to be habitually guilty of some other crime.

RA 6713

Section 11(c)

Private individuals who participate in conspiracy as co-principals, accomplices or accessories, with public officials or employees, in violation of this Act, shall be subject to the same penal liabilities as the public officials or employees and shall be tried jointly with them.

RA 3019

Section 3(a)

Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense

Section 4(b)

It shall be unlawful for any person knowingly to induce or cause any public official to commit any of the offenses defined in Section 3 hereof.

250. Examples of cases using articles 16 and 17 of RPC:

Bondoc vs. Sandiganbayan, G.R. No. 71163-65, November 9, 1990

Two (2) employees of the Central Bank — Manuel Valentino and Jesus Estacio — and nine (9) private individuals, were charged with several felonies of estafa thru falsification of public documents. Before the prosecution rested its case, the Tanodbayan filed with the Sandiganbayan another set of indictments, this time against Carlito P. Bondoc and Rogelio Vicente, also a private individual, charging them with the same crimes as principals by indispensable cooperation.

Section 4 (paragraph 3) of Presidential Decree No. 1606, as amended, provides in part that in case private individuals are charged as co-principals, accomplices or accessories with public officers or employees, including those employed in government-owned or controlled corporations, they should be tried jointly with said public officers or employees.

Whether or not compliance with this requirement is mandatory in every instance, and is indeed so essential as to cause the Sandiganbayan to lose jurisdiction over a specific criminal case in the event of its non-fulfillment, is the main issue presented by the special civil action of certiorari at bar.

The provision in question should thus be read as requiring that private individuals accused in the Sandiganbayan, together with public officers or employees, must be tried jointly with the latter unless the attendant circumstances have made impossible or impracticable such a joint trial, as in the cases at bar, in which event the trial of said private persons may proceed separately from the public officers or employees whose own trials have been concluded.

251. The cases filed in Sandiganbayan from 2009-2011 are cited below and refer only to violations of section 3(a) of RA 3019 (information provided by the Office of the Special Prosecutor):

NATURE OF OFFENSE	Filed			Revived			Total			Disposed		
	2009	2010	2011	2009	2010	2011	2009	2010	2011	2009	2010	2011
Bribery	2	0	4	0	0	0	2	0	4	1	4	3
Malversation Cases	10	61	64	7	1	7	17	62	71	69	50	110
Violation of R. A. 3019	96	100	0	12	12	0	108	112	0	132	85	198

Plunder	0	0	1	0	0	0	0	0	1	0	0	0
VRA 1379 (Forfeiture)	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	108	161	69	19	13	7	127	174	76	244	139	311

*No cases submitted from 2009-2011 relate to the provision under review.

252. Cases under sections 3(a) and 4(b):

GO vs. SANDIGANBAYAN (G.R. No. 172602 September 3, 2007)

In *Luciano v. Estrella*, the private persons who were charged with "conspiring and confederating together" with the accused public officers to have unlawfully and feloniously, on behalf of the municipal government of Makati, Rizal, entered into a contract or transaction with the JEP Enterprises, were also charged with violation of Section 4(b) of Republic Act No. 3019, for knowingly inducing or causing the above-mentioned public officials and officers to enter into the aforementioned contract or transaction.

These private individuals were acquitted for insufficiency of evidence, which simply means that the criminal liability of the public officers for violation of Section 3(g) is separate and distinct from the liability of private persons under Section 4(b) of Republic Act No. 3019. In other words, notwithstanding the allegation of conspiracy to violate Section 3(g), the liability of private individuals who participated in the transaction must be established under the appropriate provision which is Section 4(b), for knowingly inducing or causing the public officers to commit Section 3(g) where criminal intent must necessarily be proved. This is in clear recognition that Section 3(g), a *malum prohibitum*, specifically applies to public officers only.

PP vs. C. VENTURA CC 23659 VIOLATION OF SECTION 3 (A) OF REPUBLIC ACT NO. 3019

This is a case against the city mayor of Laoag Ilocos Norte which reads:

That between 26 April 1995 to 2 May 1995, or some time prior or subsequent thereto, in the City of Laoag, Philippines, and within the jurisdiction of this Honorable Court, accused Cesar A. Ventura, a high ranking public officer, being then the Mayor of said city, while in the performance of his official functions and committing the offense in relation to his office, did then and there willfully, unlawfully and criminally persuade, induce and/or influence the City Treasurer and the City Accountant to commit a violation of the rules on procurement as well as the rules prescribing review by the Sangguniang Panlalawigan of city ordinances approved by the Sangguniang Panlungsod of a component city both duly promulgated by competent authority by directing said public officials to process and release the payment to Tramarc Mercantile, Inc. of thirty (30) units of KATO self-priming pumps, Model KS-20, 1750 rpm in the amount of Seven Hundred Fifty Thousand pesos (P750,000.00) despite the absence of public bidding and despite knowledge that the city ordinance appropriating funds therefore had been disapproved by the Sangguniang Panlalawigan of Ilocos Norte."

The records of the case show that contrary to the allegations in the information, the accused did not induce and/or influence the City Treasurer and the City Accountant in any way, thus the case against accused fell and he was acquitted.

253. The statistics below are in relation to violations of section 3(a) of RA 3019. Such information was provided by the Office of the Special Prosecutor. No data was available in relation to section 11(c) of RA 6713 and section 4(b) of RA 3019.

Year	Number of Prosecutions (Informations Filed)	Pending Cases (Cumulative Data)	Convictions	Acquittals
2009	0	3	0	0
2010	0	3	0	0
2011	3	1	0	2

(b) Observations on the implementation of the article

254. The reviewing experts deemed the provision under review to have been implemented.

Article 27 Participation and attempt

Paragraphs 2 and 3

2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.

3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

255. The Philippines has partly implemented the measures of the provision, referring to the article 6 of the RPC.

Revised Penal Code

Article 6. Consummated, frustrated, and attempted felonies.

Consummated felonies as well as those which are frustrated and attempted, are punishable. A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator. There is an attempt when the offender commences the commission of a felony directly or over acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than this own spontaneous desistance.

(b) Observations on the implementation of the article

256. The reviewing experts noted that the Philippines may wish to adopt such legislative and other measures as may be necessary to cover the preparation for a corruption-related offence.

257. The national authorities informed the reviewers that the Criminal Code Committee of the DOJ is in the process of crafting a new criminal code of the Philippines. The standing proposal in the Committee is to devote a separate chapter exclusively to graft and

corruption, which was said should harmonize and integrate all existing anti-graft laws found in the existing RPC and special penal laws. It should also include amendments to existing laws based on various reform proposals, as well as UNCAC.

Article 28 Knowledge, intent and purpose as elements of an offence

Knowledge, intent or purpose required as an element of an offence established in accordance with this Convention may be inferred from objective factual circumstances.

(a) Summary of information relevant to reviewing the implementation of the article

258. The Philippines cited:

- i. Articles 4 and 217 (last paragraph) of the RPC;
- ii. RA 9194;
- iii. Section 4(a)-(c) of AMLA;
- iv. Rules 6.5 and 6.7 of RIRR;
- v. Section 4 of RA 7080 (An act defining and penalizing the crime of plunder).

259. Intent is a necessary element of the offenses defined in the RPC. Such is not always necessary in the offenses defined by special laws. For instance, the Anti-Money Laundering Act requires "knowledge" of the source of the proceeds concealed.

Revised Penal Code

Article. 4. Criminal liability.

Criminal liability shall be incurred:

1. By any person committing a felony (*delito*) although the wrongful act done be different from that which he intended.
2. By any person performing an act which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment or an account of the employment of inadequate or ineffectual means.

Article 217 (last paragraph).

The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal use. (As amended by RA 1060).

RA 9194

Section 4

(a) Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property. (b) Any person knowing that any monetary instrument or property involves the proceeds of any unlawful activity, performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraph (a) above.

(c) Any person knowing that any monetary instrument or property is required under this Act to be disclosed and filed with the Anti-Money Laundering Council (AMLC), fails to do so."

Revised Implementing Rules and Regulations Anti-Money Laundering Law

Rule 6.5.

Knowledge of the offender that any monetary instrument or property represents, involves, or relates to the proceeds of an unlawful activity or that any monetary instrument or property is required under the AMLA to be disclosed and filed with the AMLC, may be established by direct evidence or inferred from the attendant circumstances.

Rule 6.7.

No element of the unlawful activity, however, including the identity of the perpetrators and the details of the actual commission of the unlawful activity need be established by proof beyond reasonable doubt. The elements of the offense of money laundering are separate and distinct from the elements of the felony or offense constituting the unlawful activity.

RA 7080

Section 4. Rule of Evidence

For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy.

(b) Observations on the implementation of the article

260. Rule 133, sections 4 and 5 were deemed applicable.

RULE 133. WEIGHT AND SUFFICIENCY OF EVIDENCE

Section. 4. Circumstantial evidence, when sufficient

Circumstantial evidence is sufficient for conviction if:

- (a) There is more than one circumstance;
- (b) The facts from which the inferences are derived are proven; and
- (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

Section. 5. Substantial evidence

In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

261. Based on the laws cited and existing jurisprudence, the reviewing experts deemed the Philippines to have implemented the provision under review.

Article 29 Statute of limitations

Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.

(a) Summary of information relevant to reviewing the implementation of the article

262. The Philippines provided that it has partly implemented the provision under review, pursuant to:

- i. Sec 15, Article XI of the Constitution;
- ii. Articles 89-93 of the RPC;
- iii. Section 11 of RA 3019 (Anti-Graft and Corrupt Practices Act);
- iv. Section 1 (last paragraph) of Rule 110, Rules of Court;
- v. Sections 1 and 2 of Act No. 3326 (An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and to Provide when Prescription shall Begin to Run).

Philippine Constitution

Section 15, Article XI

The right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppel.

263. Laches is principally a question of inequity of permitting a claim to be enforced, this inequity being founded on some change in the condition of the property or the relation of the parties.

Four (4) elements of laches:

- (a) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made and for which the complaint seeks a remedy;
- (b) delay in asserting the complainant's rights, the complainant having had knowledge or notice, of the defendant's conduct and having been afforded an opportunity to institute a suit;
- (c) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and
- (d) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred.

It was further provided by the national authorities that this provision applies only to civil actions for recovery of ill-gotten wealth and not to criminal cases. Thus, prosecution of offenses arising from, relating, or incident to, or involving ill-gotten wealth in the said provision may be barred by prescription. (*Presidential Ad-hoc Fact Finding Committee on Behest Loans vs. Desierto*, G.R. No. 130140, Oct. 25, 1999).

Revised Penal Code

Article 91. Computation of Prescription of Offenses.

The period of prescription shall commence to run from the day on which the crime is discovered by the Offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.

The term of prescription shall not run when the offender is absent from the Philippine Archipelago.

Article 92. When and How Penalties Prescribe.

The penalties imposed by final sentence prescribe as follows:

1. Death and reclusion perpetua, in twenty years;
2. Other afflictive penalties, in fifteen years;
3. Correctional penalties, in ten years; with the exception of the penalty of *arresto mayor*, which prescribes in five years;
4. Light penalties, in one year.

Article 93. Computation of the Prescription of Penalties.

The period of prescription of penalties shall commence to run from the date when the culprit should evade the service of his sentence, and it shall be interrupted if the defendant should give himself up, be captured, should go to some foreign country with which this Government has no extradition treaty, or should commit another crime before the expiration of the period of prescription.

R.A.3019

Section 11

All offenses punishable under this Act shall prescribe in fifteen years. (As Amended by B.P.195, Sec.4)

Rule 110, Rules of Court

(last paragraph of Section 1)

The institution of the criminal action shall interrupt the running period of prescription of the offense charged unless otherwise provided in special laws. (1a)

Act 3326

Section 1.

Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) after a year for offenses punished only by a fine or by imprisonment for not more than one month, or both; (b) after four years for those punished by imprisonment for more than one month, but less than two years; (c) after eight years for those punished

by imprisonment for two years or more, but less than six years; and (d) after twelve years for any other offense punished by imprisonment for six years or more, except the crime of treason, which shall prescribe after twenty years. Violations penalized by municipal ordinances shall prescribe after two months.

Section 2.

Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceeding for its investigation and punishment.

The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

264. The Philippines provided the following examples of implementation:

- i. There is a bill pending (House Bill 00588) proposing to increase the prescriptive period for RA 3019 from 15 to 30 years. (House Bill No. 00588: AN ACT AMENDING SECTION 11 OF REPUBLIC ACT NUMBERED 3019, OTHERWISE KNOWN AS THE "ANTI-GRAFT AND CORRUPT PRACTICES ACT", BY INCREASING THE PRESCRIPTIVE PERIOD FOR ITS VIOLATION FROM FIFTEEN (15) YEARS TO THIRTY (30) YEARS);
- ii. There have been no corruption cases where the prescription period has lapsed and the SPO or prosecutors were unable to pursue charges.
- iii. In *Republic of the Philippines v. Eduardo M. Cojuanco, et al.* [G.R. No. 139930, June 26, 2012], it was declared:

Now R.A. 3019 being a special law, the 10-year prescriptive period should be computed in accordance with Section 2 of Act 3326,[18] which provides:

Section 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.

The above-mentioned section provides two rules for determining when the prescriptive period shall begin to run: first, from the day of the commission of the violation of the law, if such commission is known; and second, from its discovery, if not then known, and the institution of judicial proceedings for its investigation and punishment. [Citing *Presidential Commission on Good Government v. Desierto*, 484 Phil. 53, 60 (2004)]. [N.B. Act 3326 is entitled: An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances, and to Provide When Prescription Shall Begin to Run]; see also *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Ombudsman Aniano A. Desierto, et al.* [G.R. No. 135482, August 14, 2001]

Accordingly, prescription commences from the date of discovery and interrupted upon the institution of criminal proceedings.

(b) Observations on the implementation of the article

265. There is no statute of limitations under AMLA. Since AMLA is a special law, prescription is governed by Act No. 3326 entitled "An Act to Establish Periods of Prescription for Violations Penalized by Special Acts and Municipal Ordinances and to Provide when Prescription shall Begin to Run". The said law provides:

Section 1. Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) after a year for offenses punished only by a fine or by imprisonment for not more than one month, or both; (b) after four years for those punished by imprisonment for more than one month, but less than two years; (c) after eight years for those punished by imprisonment for two years or more, but less than six years; and (d) after twelve years for any other offense punished by imprisonment for six years or more, except the crime of treason, which shall prescribe after twenty years.

Violations penalized by municipal ordinances shall prescribe after two months.

Section 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceeding for its investigation and punishment. The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy.

266. The reviewing experts were of the view that the existing statute of limitations, also for corruption-related offences, was sufficient. Suspension of the period of prescription is provided for under articles 91 and 93 of the Penal Code.

Article 30 Prosecution, adjudication and sanctions

Paragraph 1

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

(a) Summary of information relevant to reviewing the implementation of the article

267. The Philippines cited:

- RPC;
- RA 6770 (Ombudsman Act),
- RA 6713;
- RA 3019;
- PD 1379;
- Civil Service Law;
- Special Laws

268. Sanctions are adequate to deter people from engaging in corrupt practice / acts. Plunder is not bailable and the imposable penalty is life imprisonment. It does not, however, pose to be a deterrence to the commission of the offense. (The highest official of the country was convicted of plunder). Various offenses have more severe penalties (penalties are graduated). It was further provided that the penalty for plunder is sufficiently deterrent, i.e. reclusion perpetua to death, which is proven by a combination or series of acts. (See RA 7080).

(b) Observations on the implementation of the article

269. The range of penalties was provided by the Philippines in a comprehensive table under section B. Legal system of the Philippines. It was noted by the national authorities that the penalty for malversation may be higher when the amount involved is also higher. The penalty for bribery, when qualified under article 211-A of the RPC, to wit:

Article 211-A. Qualified Bribery

If any public officer is entrusted with law enforcement and he refrains from arresting or prosecuting an offender who has committed a crime punishable by reclusion perpetua and/or death in consideration of any offer, promise, gift or present, he shall suffer the penalty for the offense which was not prosecuted. If it is the public officer who asks or demands such gift or present, he shall suffer the penalty of death.

[NB: Only reclusion perpetua may be imposed under R.A. 9346, Act Prohibiting the Imposition of Death Penalty in the Philippines.]

270. The reviewing experts noted that the death penalty would not be imposed for corruption-related offence and deemed the provision under review to have been implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraph 2

2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

271. The Philippines provided that it has partly implemented the provision under review, referring to section 2, Article XI of the 1987 Philippine Constitution (absolute immunity from suit is attached to the President during his tenure). The immunity only applies to the Office of the President for the duration of his term or during his tenure. The President is immune from criminal prosecution during his term but not from impeachment.

1987 Constitution

ARTICLE XI. ACCOUNTABILITY OF PUBLIC OFFICERS

Section 2.

The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and 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. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

272. The Philippines also cited the ZTE-NBN deal on the participation of President Gloria Arroyo in a business transaction. In the case, a broadband network was to be established pursuant to a contract to be entered into with a Chinese firm. There were allegations of bribery and overpricing.

273. The Philippines noted:

- For the calendar year 2010, a total number of 67 officials accused of various offenses were convicted by the anti-graft court. Among them are seven mayors, a former administrator, SUC president, judges, provincial prosecutors, assistant secretary and a PNP director general, among others.
- A number of criminal cases against low ranking officials and employees were prosecuted before the regular trial courts by the different prosecution bureaus and divisions.

- In 2010, a total of 190 cases were decided by these courts in the National Capital Region, Visayas, and Mindanao. Of this number, 95 or 50% resulted in conviction.
- Some cases for prosecution with the regular courts are not directly prosecuted by OMB lawyers due to lack of human resources and geographical accessibility. In such instances, where it is impossible for the OMB to directly handle these cases, DOJ prosecutors are deputized instead.

(b) Observations on the implementation of the article

274. It was noted that the Constitutional provision granting the President and others immunity from suit was removed in the 1987 Constitution. However, Presidential immunity from suit was reaffirmed by the Supreme Court in 1988. It is generally recognized that, following that precedent, the President enjoys immunity from suit during his incumbency.

275. The reviewing experts noted that immunity is only provided for as above (i.e. for the President). Pursuant to section 2, article XI of the 1987 Constitution, the experts discussed the high threshold of impeachment for the officials mentioned who have been convicted of corruption-related offences.

Article 30 Prosecution, adjudication and sanctions

Paragraph 3

3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

276. The Philippines provided that it has partly implemented the measures of the provision, referring to:

- i. Sections 1 and 5, Rule 110 of the Rules of Court;
- ii. Rule II of Administrative Order No. 07 (Rules of Procedure of the Office of the Ombudsman).

Rules of Court, Rule 110

Section 1. Institution of criminal actions

Criminal actions shall be instituted as follows:

(a) For offenses where a preliminary investigation is required pursuant to section 1 of Rule 112, by filing the complaint with the proper officer for the purpose of conducting the requisite preliminary investigation.

(b) For all other offenses, by filing the complaint or information directly with the Municipal Trial Courts and Municipal Circuit Trial Courts, or the complaint with the office of the prosecutor. In Manila and other chartered cities, the complaint shall be filed with the office of the prosecutor unless otherwise provided in their charters. The institution of the criminal action shall interrupt the running period of prescription of the offense charged unless otherwise provided in special laws. (1a)

Section 5. Who must prosecute criminal actions

All criminal actions commenced by a complaint or information shall be prosecuted under the direction and control of the prosecutor. However, in Municipal Trial Courts or Municipal Circuit Trial Courts when the prosecutor assigned thereto or to the case is not available, the offended party, any peace officer, or public officer charged with the enforcement of the law violated may prosecute the case. This authority cease upon actual intervention of the prosecutor or upon elevation of the case to the Regional Trial Court.

The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse. The offended party cannot institute criminal prosecution without including the guilty parties, if both alive, nor, in any case, if the offended party has consented to the offense or pardoned the offenders.

The offenses of seduction, abduction and acts of lasciviousness shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents or guardian, nor, in any case, if the offender has been expressly pardoned by any of them. If the offended party dies or becomes incapacitated before she can file the complaint, and she has no known parents, grandparents or guardian, the State shall initiate the criminal action in her behalf.

The offended party, even if a minor, has the right to initiate the prosecution of the offenses of seduction, abduction and acts of lasciviousness independently of her parents, grandparents, or guardian, unless she is incompetent or incapable of doing so. Where the offended party, who is a minor, fails to file the complaint, her parents, grandparents, or guardian may file the same. The right to file the action granted to parents, grandparents or guardian shall be exclusive of all other persons and shall be exercised successively in the order herein provided, except as stated in the preceding paragraph.

No criminal action for defamation which consists in the imputation of the offenses mentioned above shall be brought except at the instance of and upon complaint filed by the offended party. (5a) The prosecution for violation of special laws shall be governed by the provisions thereof. (n)

Administrative Order 07

Section 1. GROUNDS

A criminal complaint may be brought for an offense in violation of R.A. 3019, as amended, R.A. 1379, as amended,

R.A. 6713, Title VII Chapter II, Section 2 of the Revised Penal Code, and for such other offenses committed by public officers and employees in relation to office.

Section 2. EVALUATION

Upon evaluating the complaint, the investigating officer shall recommend whether it may be:

- a) dismissed outright for want of palpable merit;
- b) referred to respondent for comment;
- c) indorsed to the proper government office or agency which has jurisdiction over the case;
- d) forwarded to the appropriate office or official for fact-finding investigation;
- e) referred for administrative adjudication; or
- f) subjected to a preliminary investigation.

Section 3. PRELIMINARY INVESTIGATION; WHO MAY CONDUCT. -

Preliminary investigation may be conducted by any of the following:

- 1) Ombudsman Investigators;
- 2) Special Prosecuting Officers;
- 3) Deputized Prosecutors;
- 4) Investigating Officials authorized by law to conduct preliminary investigations; or
- 5) Lawyers in the government service, so designated by the Ombudsman.

Section 4. PROCEDURE.

Preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions:

a) If the complaint is not under oath or is based only on official reports, the investigating officer shall require the complainant or supporting witnesses to execute affidavits to substantiate the complaints.

b) After such affidavits have been secured, the investigating officer shall issue an order, attaching thereto a copy of the affidavits and other supporting documents, directing the respondent to submit, within ten (10) days from receipt thereof, his counter-affidavits and controverting evidence with proof of service thereof on the complainant. The complainant may file reply affidavits within ten (10) days after service of the counter-affidavits.

c) If the respondent does not file a counter-affidavit, the investigating officer may consider the comment filed by him, if any, as his answer to the complaint. In any event, the respondent shall have access to the evidence on record.

d) No motion to dismiss shall be allowed except for lack of jurisdiction. Neither may be motion for a bill of particulars be entertained. If respondent desires any matter in the complainant's affidavit to be clarified, the particularization thereof may be done at the time of clarificatory questioning in the manner provided in paragraph (f) of this section.

e) If the respondent cannot be served with the order mentioned in paragraph 6 hereof, or having been served, does not comply therewith, the complaint shall be deemed submitted for resolution on the basis of the evidence on record.

f) If, after the filing of the requisite affidavits and their supporting evidences, there are facts material to the case which the investigating officer may need to be clarified on, he may conduct a clarificatory hearing during which the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the witness being questioned. Where the appearance of the parties or witnesses is impracticable, the clarificatory questioning may be conducted in writing, whereby the questions desired to be asked by the investigating officer or a party shall be reduced into writing and served on the witness concerned who shall be required to answer the same in writing and under oath.

g) Upon the termination of the preliminary investigation, the investigating officer shall forward the records of the case together with his resolution to the designated authorities for their appropriate action thereon.

No information may be filed and no complaint may be dismissed without the written authority or approval of the Ombudsman in cases falling within the jurisdiction of the Sandiganbayan, or of the proper Deputy Ombudsman in all other cases.

Section. 5. CASES FALLING UNDER THE JURISDICTION OF MUNICIPAL TRIAL COURTS.

Cases falling under the jurisdiction of the Office of the Ombudsman which are cognizable by municipal trial courts, including those subject to the Rule of Summary Procedure may only be filed in court by information approved by the Ombudsman or the proper Deputy Ombudsman.

Section. 6. NOTICE TO PARTIES.

The parties shall be served with a copy of the resolution as finally approved by the Ombudsman or by the proper Deputy Ombudsman.

Section. 7. MOTION FOR RECONSIDERATION.

a) Only one (1) motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within fifteen (15) days from notice thereof with the Office of the Ombudsman, or the Deputy Ombudsman as the case may be.

b) No motion for reconsideration or reinvestigation shall be entertained after the information shall have been filed in court, except upon order of the court wherein the case was filed.

277. The Philippines also provided an example:

- i. The Office of the Special Prosecutor is the prosecution arm of the OMB and exercises jurisdiction over high ranking officials (Salary Grade 27 and above) and those public officials (below salary grade 27) who conspire with high ranking officials. It exercises prosecutorial discretion in criminal cases, in accordance with the Rules of Court and Administrative Orders of the OMB. It also has powers to enter into plea bargaining agreements.

278. Preliminary Investigation is vested in the Central OMB. If there is probable cause after preliminary investigation and the case falls within the jurisdiction of the Special Prosecutor, then the OSP shall take cognizance of the case.

(b) Observations on the implementation of the article

279. The reviewing experts were of the view that the cited legislation did not allow them to conclude that the provision under review had been implemented. However, it was noted that prosecutorial discretion in criminal cases does exist (i.e. powers to enter into plea bargaining agreements exist).

Article 30 Prosecution, adjudication and sanctions

Paragraph 4

4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

280. The Philippines referred to sections 2 and 4, Rule 114 of the Rules of Court.

Rules of Court, Rule 114

Section 2. Conditions of the bail; requirements

All kinds of bail are subject to the following conditions:

(a) The undertaking shall be effective upon approval, and unless cancelled, shall remain in force at all stages of the case until promulgation of the judgment of the Regional Trial Court, irrespective of whether the case was originally filed in or appealed to it;

(b) The accused shall appear before the proper court whenever required by the court of these Rules;

(c) The failure of the accused to appear at the trial without justification and despite due notice shall be deemed a waiver of his right to be present thereat. In such case, the trial may proceed in *absentia*; and

(d) The bondsman shall surrender the accused to the court for execution of the final judgment.

The original papers shall state the full name and address of the accused, the amount of the undertaking and the conditions herein required. Photographs (passport size) taken within the last six (6) months showing the face, left and right profiles of the accused must be attached to the bail.

(2a)

Section 4. Bail, a matter of right; exception.

All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognize as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment. (4a)

281. The following case was cited: *WINSTON MENDOZA and FE MICLAT vs. FERNANDO ALARMA and FAUSTA ALARMA* (G.R. No. 151970 May 7, 2008).

Spouses Fernando and Fausta Alarma (respondents) are the owners of an 11.7 hectare parcel of land posted as a property bond for the provisional liberty of a certain Joselito Mayo, charged with illegal possession of firearms.

When the accused failed to appear in court as directed, the trial court ordered his arrest and the confiscation of his bail bond in favor of the government. It also directed the bondsmen to produce within a period of 30 days the person of the accused and to show cause why judgment should not be entered against the bail bond.

282. Section 21, Rule 114 of the Revised Rules on Criminal Procedure was also referred to by the authorities.

Revised Rules on Criminal Procedure

Section. 21. — Forfeiture of bail.

When the presence of the accused is required by the court or these Rules, his bondsmen shall be notified to produce him before the court on a given date and time. If the accused fails to appear in person as required, his bail shall be declared forfeited and the bondsmen given thirty (30) days within which to produce their principal and to show cause why no judgment should be rendered against them for the amount of their bail. Within the said period, the bondsmen must:

- (a) produce the body of their principal or give the reason for his non-production; and
- (b) explain why the accused did not appear before the court when first required to do so.

Failing in these two requisites, a judgment shall be rendered against the bondsmen, jointly and severally, for the amount of the bail. The court shall not reduce or otherwise mitigate the liability of the bondsmen, unless the accused has been surrendered or is acquitted.

ARTICLE III. BILL OF RIGHTS

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Section 12.

1. Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

2. No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, incommunicado, or other similar forms of detention are prohibited.

3. Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.

4. The law shall provide for penal and civil sanctions for violations of this Section as well as compensation to the rehabilitation of victims of torture or similar practices, and their families.

Section 13. All persons, except those charged with offenses punishable by reclusion perpetua when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be released on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of habeas corpus is suspended. Excessive bail shall not be required.

Section 14.

1. No person shall be held to answer for a criminal offense without due process of law.

2. In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: Provided, that he has been duly notified and his failure to appear is unjustifiable.

Bail bond – Rules of Court

RULE 114. Bail

Section 1. Bail defined. — Bail is the security given for the release of a person in custody of the law, furnished by him or a bondsman, to guarantee his appearance before any court as required under the conditions hereinafter specified. Bail may be given in the form of corporate surety, property bond, cash deposit, or recognizance. (1a)

Section 2. Conditions of the bail; requirements. — All kinds of bail are subject to the following conditions:

- (a) The undertaking shall be effective upon approval, and unless cancelled, shall remain in force at all stages of the case until promulgation of the judgment of the Regional Trial Court, irrespective of whether the case was originally filed in or appealed to it;
- (b) The accused shall appear before the proper court whenever required by the court of these Rules;
- (c) The failure of the accused to appear at the trial without justification and despite due notice shall be deemed a waiver of his right to be present thereat. In such case, the trial may proceed in *absentia*; and
- (d) The bondsman shall surrender the accused to the court for execution of the final judgment.

The original papers shall state the full name and address of the accused, the amount of the undertaking and the conditions herein required. Photographs (passport size) taken within the last six (6) months showing the face, left and right profiles of the accused must be attached to the bail. (2a)

Section 3. No release or transfer except on court order or bail. — No person under detention by legal process shall be released or transferred except upon order of the court or when he is admitted to bail. (3a)

Section 4. Bail, a matter of right; exception. — All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognize as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment. (4a)

Section 5. Bail, when discretionary. — Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.

If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

- (a) That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;
- (b) That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without valid justification;
- (c) That he committed the offense while under probation, parole, or conditional pardon;
- (d) That the circumstances of his case indicate the probability of flight if released on bail; or
- (e) That there is undue risk that he may commit another crime during the pendency of the appeal.

The appellate court may, *motu proprio* or on motion of any party, review the resolution of the Regional Trial Court after notice to the adverse party in either case. (5a)

Section 6. Capital offense defined. — A capital offense is an offense which, under the law existing at the time of its commission and of the application for admission to bail, may be punished with death. (6a)

Section 7. Capital offense of an offense punishable by reclusion perpetua or life imprisonment, not bailable. — No person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life

imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution. (7a)

Section 8. Burden of proof in bail application. — At the hearing of an application for bail filed by a person who is in custody for the commission of an offense punishable by death, *reclusion perpetua*, or life imprisonment, the prosecution has the burden of showing that evidence of guilt is strong. The evidence presented during the bail hearing shall be considered automatically reproduced at the trial, but upon motion of either party, the court may recall any witness for additional examination unless the latter is dead, outside the Philippines, or otherwise unable to testify. (8a)

Section 9. Amount of bail; guidelines. — The judge who issued the warrant or granted the application shall fix a reasonable amount of bail considering primarily, but not limited to, the following factors:

- (a) Financial ability of the accused to give bail;
- (b) Nature and circumstances of the offense;
- (c) Penalty for the offense charged;
- (d) Character and reputation of the accused;
- (e) Age and health of the accused;
- (f) Weight of the evidence against the accused;
- (g) Probability of the accused appearing at the trial;
- (h) Forfeiture of other bail;
- (i) The fact that accused was a fugitive from justice when arrested; and
- (j) Pendency of other cases where the accused is on bail.

Excessive bail shall not be required. (9a)

Section 10. Corporate surety.

Any domestic or foreign corporation, licensed as a surety in accordance with law and currently authorized to act as such, may provide bail by a bond subscribed jointly by the accused and an officer of the corporation duly authorized by its board of directors. (10a)

Section 11. Property bond, how posted.

A property bond is an undertaking constituted as lien on the real property given as security for the amount of the bail. Within ten (10) days after the approval of the bond, the accused shall cause the annotation of the lien on the certificate of title on file with the Register of Deeds if the land is registered, or if unregistered, in the Registration Book on the space provided therefor, in the Registry of Deeds for the province or city where the land lies, and on the corresponding tax declaration in the office of the provincial, city and municipal assessor concerned.

Within the same period, the accused shall submit to the court his compliance and his failure to do so shall be sufficient cause for the cancellation of the property bond and his re-arrest and detention. (11a)

Section 12. Qualifications of sureties in property bond.

The qualification of sureties in a property bond shall be as follows:

- (a) Each must be a resident owner of real estate within the Philippines;

(b) Where there is only one surety, his real estate must be worth at least the amount of the undertaking;

(c) If there are two or more sureties, each may justify in an amount less than that expressed in the undertaking but the aggregate of the justified sums must be equivalent to the whole amount of bail demanded.

In all cases, every surety must be worth the amount specified in his own undertaking over and above all just debts, obligations and properties exempt from execution. (12a)

Section 13. Justification of sureties.

Every surety shall justify by affidavit taken before the judge that he possesses the qualifications prescribed in the preceding section. He shall describe the property given as security, stating the nature of his title, its encumbrances, the number and amount of other bails entered into by him and still undischarged, and his other liabilities. The court may examine the sureties upon oath concerning their sufficiency in such manner as it may deem proper. No bail shall be approved unless the surety is qualified. (13a)

Section 14. Deposit of cash as bail.

The accused or any person acting in his behalf may deposit in cash with the nearest collector or internal revenue or provincial, city, or municipal treasurer the amount of bail fixed by the court, or recommended by the prosecutor who investigated or filed the case. Upon submission of a proper certificate of deposit and a written undertaking showing compliance with the requirements of section 2 of this Rule, the accused shall be discharged from custody. The money deposited shall be considered as bail and applied to the payment of fine and costs while the excess, if any, shall be returned to the accused or to whoever made the deposit. (14a)

Section 15. Recognizance.

Whenever allowed by law or these Rules, the court may release a person in custody to his own recognizance or that of a responsible person. (15a)

Section 16. Bail, when not required; reduced bail or recognizance.

No bail shall be required when the law or these Rules so provide.

When a person has been in custody for a period equal to or more than the possible maximum imprisonment prescribe for the offense charged, he shall be released immediately, without prejudice to the continuation of the trial or the proceedings on appeal. If the maximum penalty to which the accused may be sentenced is *destierro*, he shall be released after thirty (30) days of preventive imprisonment.

A person in custody for a period equal to or more than the minimum of the principal penalty prescribed for the offense charged, without application of the Indeterminate Sentence Law or any modifying circumstance, shall be released on a reduced bail or on his own recognizance, at the discretion of the court. (16a)

Section 17. Bail, where filed.

(a) Bail in the amount fixed may be filed with the court where the case is pending, or in the absence or unavailability of the judge thereof, with any regional trial judge, metropolitan trial judge, municipal trial judge, or municipal circuit trial judge in the province, city, or municipality. If the accused is arrested in a province, city, or municipality other than where the case is pending, bail may also be filed with any regional trial court of said place, or if no judge thereof is available, with any metropolitan trial judge, municipal trial judge, or municipal circuit trial judge therein.

(b) Where the grant of bail is a matter of discretion, or the accused seeks to be released on recognizance, the application may only be filed in the court where the case is pending, whether on preliminary investigation, trial, or on appeal.

(c) Any person in custody who is not yet charged in court may apply for bail with any court in the province, city, or municipality where he is held. (17a)

Section 18. Notice of application to prosecutor.

In the application for bail under section 8 of this Rule, the court must give reasonable notice of the hearing to the prosecutor or require him to submit his recommendation. (18a)

Section 19. Release on bail.

The accused must be discharged upon approval of the bail by the judge with whom it was filed in accordance with section 17 of this Rule.

Whenever bail is filed with a court other than where the case is pending, the judge who accepted the bail shall forward it, together with the order of release and other supporting papers, to the court where the case is pending, which may, for good reason, require a different one to be filed. (19a)

Section 20. Increase or reduction of bail.

After the accused is admitted to bail, the court may, upon good cause, either increase or reduce its amount. When increased, the accused may be committed to custody if he does not give bail in the increased amount within a reasonable period. An accused held to answer a criminal charge, who is released without bail upon filing of the complaint or information, may, at any subsequent stage of the proceedings and whenever a strong showing of guilt appears to the court, be required to give bail in the amount fixed, or in lieu thereof, committed to custody. (20a)

Section 21. Forfeiture of bond.

When the presence of the accused is required by the court or these Rules, his bondsmen shall be notified to produce him before the court on a given date and time. If the accused fails to appear in person as required, his bail shall be declared forfeited and the bondsmen given thirty (30) days within which to produce their principal and to show cause why no judgment should be rendered against them for the amount of their bail. Within the said period, the bondsmen must:

- (a) produce the body of their principal or give the reason for his non-production; and
- (b) explain why the accused did not appear before the court when first required to do so.

Failing in these two requisites, a judgment shall be rendered against the bondsmen, jointly and severally, for the amount of the bail. The court shall not reduce or otherwise mitigate the liability of the bondsmen, unless the accused has been surrendered or is acquitted. (21a)

Section 22. Cancellation of bail.

Upon application of the bondsmen, with due notice to the prosecutor, the bail may be cancelled upon surrender of the accused or proof of his death.

The bail shall be deemed automatically cancelled upon acquittal of the accused, dismissal of the case, or execution of the judgment of conviction.

In all instances, the cancellation shall be without prejudice to any liability on the bond. (22a)

Section 23. Arrest of accused out on bail.

For the purpose of surrendering the accused, the bondsmen may arrest him or, upon written authority endorsed on a certified copy of the undertaking, cause him to be arrested by a police officer or any other person of suitable age and discretion.

An accused released on bail may be re-arrested without the necessity of a warrant if he attempts to depart from the Philippines without permission of the court where the case is pending. (23a)

Section 24. No bail after final judgment; exception.

No bail shall be allowed after the judgment of conviction has become final. If before such finality, the accused has applied for probation, he may be allowed temporary liberty under his bail. When no bail was filed or the accused is incapable of filing one, the court may allow his release on recognizance to the custody of a responsible member of the community. In no case shall bail be allowed after the accused has commenced to serve sentence. (24a)

Section 25. Court supervision of detainees.

The court shall exercise supervision over all persons in custody for the purpose of eliminating unnecessary detention. The executive judges of the Regional Trial Courts shall conduct monthly personal inspections of provincial, city, and municipal jails and their prisoners within their respective jurisdictions. They shall ascertain the number of detainees, inquire on their proper accommodation and health and examine the condition of the jail facilities. They shall order the segregation of sexes and of minors from adults, ensure the observance of the right of detainees to confer privately with counsel, and strive to eliminate conditions inimical to the detainees.

In cities and municipalities to be specified by the Supreme Court, the municipal trial judges or municipal circuit trial judges shall conduct monthly personal inspections of the municipal jails in their respective municipalities and submit a report to the executive judge of the Regional Trial Court having jurisdiction therein.

A monthly report of such visitation shall be submitted by the executive judges to the Court Administrator which shall state the total number of detainees, the names of those held for more than thirty (30) days, the duration of detention, the crime charged, the status of the case, the cause for detention, and other pertinent information. (25a)

Section 26. Bail not a bar to objections on illegal arrest, lack of or irregular preliminary investigation. — An application for or admission to bail shall not bar the accused from challenging the validity of his arrest or the legality of the warrant issued therefor, or from assailing the regularity or questioning the absence of a preliminary investigation of the charge against him, provided that he raises them before entering his plea. The court shall resolve the matter as early as practicable but not later than the start of the trial of the case.

(b) Observations on the implementation of the article

283. The Department of Justice confirmed that the need to ensure the presence of the defendant would be taken into account when imposing conditions on release pending trial. Corruption-related offences are generally bailable offences with the exception of offences under the Plunder Act (RA 7080), which are above the 50 million pesos threshold that are not bailable.

284. The reviewing experts were therefore deemed the provision under review to have been legislatively implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraph 5

5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.

(a) Summary of information relevant to reviewing the implementation of the article

285. The Philippines provided that it has partly implemented the provision under review, referring to:

- i. Sections 5 and 9, Rule 114 of the Rules of Court;
- ii. Article 89, and 94-99 of the RPC.

PD 968 (ESTABLISHING A PROBATION SYSTEM, APPROPRIATING FUNDS THEREFOR AND FOR OTHER PURPOSES)

RESOLUTION NO. 24-4-10 of the Board of Pardons and Parole, "RE: Amending and Repealing Certain Rules and Sections of the Rules on Parole and Amended Guidelines for Recommending Executive Clemency of the 2006 Revise Manual of the Board of Pardons and Parole."

Rules of Court, Rule 114

Section 5. Bail, when discretionary.

Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.

If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accused, of the following or other similar circumstances:

- (a) That he is a recidivist, quasi-recidivist, or habitual delinquent, or has committed the crime aggravated by the circumstance of reiteration;
- (b) That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without valid justification;
- (c) That he committed the offense while under probation, parole, or conditional pardon;
- (d) That the circumstances of his case indicate the probability of flight if released on bail; or
- (e) That there is undue risk that he may commit another crime during the pendency of the appeal.

The appellate court may, *motu proprio* or on motion of any party, review the resolution of the Regional Trial Court after notice to the adverse party in either case. (5a)

Section 9. Amount of bail; guidelines.

The judge who issued the warrant or granted the application shall fix a reasonable amount of bail considering primarily, but not limited to, the following factors:

- (a) Financial ability of the accused to give bail;
- (b) Nature and circumstances of the offense;
- (c) Penalty for the offense charged;
- (d) Character and reputation of the accused;
- (e) Age and health of the accused;
- (f) Weight of the evidence against the accused;
- (g) Probability of the accused appearing at the trial;
- (h) Forfeiture of other bail;
- (i) The fact that accused was a fugitive from justice when arrested; and
- (j) Pendency of other cases where the accused is on bail.

Excessive bail shall not be required. (9a)

Revised Penal Code

Article. 89. How criminal liability is totally extinguished.

Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties and as to pecuniary penalties, liability therefore is extinguished only when the death of the offender occurs before final judgment.
2. By service of the sentence;
3. By amnesty, which completely extinguishes the penalty and all its effects;
4. By absolute pardon;
5. By prescription of the crime;
6. By prescription of the penalty;
7. By the marriage of the offended woman, as provided in Article 344 of this Code.

Article. 94. *Partial Extinction of criminal liability.*

Criminal liability is extinguished partially:

1. By conditional pardon;
2. By commutation of the sentence; and
3. For good conduct allowances which the culprit may earn while he is serving his sentence.

Article. 95. *Obligation incurred by person granted conditional pardon.*

Any person who has been granted conditional pardon shall incur the obligation of complying strictly with the conditions imposed therein otherwise, his non-compliance with any of the conditions specified shall result in the revocation of the pardon and the provisions of Article 159 shall be applied to him.

Article. 96. *Effect of commutation of sentence.*

The commutation of the original sentence for another of a different length and nature shall have the legal effect of substituting the latter in the place of the former.

Article. 97. *Allowance for good conduct.*

The good conduct of any prisoner in any penal institution shall entitle him to the following deductions from the period of his sentence:

1. During the first two years of his imprisonment, he shall be allowed a deduction of five days for each month of good behavior;
2. During the third to the fifth year, inclusive, of his imprisonment, he shall be allowed a deduction of eight days for each month of good behavior;
3. During the following years until the tenth year, inclusive, of his imprisonment, he shall be allowed a deduction of ten days for each month of good behavior; and
4. During the eleventh and successive years of his imprisonment, he shall be allowed a deduction of fifteen days for each month of good behavior.

Article. 98. *Special time allowance for loyalty.*

A deduction of one-fifth of the period of his sentence shall be granted to any prisoner who, having evaded the service of his sentence under the circumstances mentioned in Article 58 of this Code, gives himself up to the authorities within 48 hours following the issuance of a proclamation announcing the passing away of the calamity or catastrophe to in said article.

Article. 99. *Who grants time allowances.*

Whenever lawfully justified, the Director of Prisons shall grant allowances for good conduct. Such allowances once granted shall not be revoked.

(b) Observations on the implementation of the article

286. There have been cases where defendants convicted of plunder (a capital offence) were pardoned by the President. The grant of executive clemency should be revisited to ensure that grants of executive clemency do not create a situation of impunity, noting that the granting of pardon is an executive act which is political in nature.

287. The reviewing experts deemed the provision under review to have been legislatively implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraph 6

6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.

(a) Summary of information relevant to reviewing the implementation of the article

288. The Philippines cited:

- i. Articles 210 and 211 of the RPC;
- ii. Sections 60 and 63, Chapter 4, Title Two, Book I of RA No. 7160 (Local Government Code of 1991);
- iii. Section 13 of RA 3019 (Anti-Graft and Corrupt Practices Act).

Revised Penal Code

Article 210. Direct bribery

Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of prision mayor in its medium and maximum periods and a fine [of not less than the value of the gift and] not less than three times the value of the gift in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.

If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of prision correccional, in its medium period and a fine of not less than twice the value of such gift.

If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of prision correccional in its maximum period and a fine [of not less than the value of the gift and] not less than three times the value of such gift.

In addition to the penalties provided in the preceding paragraphs, the culprit shall suffer the penalty of special temporary disqualification.

The provisions contained in the preceding paragraphs shall be made applicable to assessors, arbitrators, appraisal and claim commissioners, experts or any other persons performing public duties. (As amended by Batas Pambansa Blg. 872, June 10, 1985).

Article 211. Indirect bribery

The penalties of prision correccional in its medium and maximum periods, and public censure shall be imposed upon any public officer who shall accept gifts offered to him by reason of his office. (As amended by Batas Pambansa Blg. 872, June 10, 1985).

RA 7160

Section 60. Grounds for Disciplinary Actions

An elective local official may be disciplined, suspended, or removed from office on any of the following grounds:

- (a) Disloyalty to the Republic of the Philippines;
- (b) Culpable violation of the Constitution;
- (c) Dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty;
- (d) Commission of any offense involving moral turpitude or an offense punishable by at least prision mayor;
- (e) Abuse of authority;
- (f) Unauthorized absence for fifteen (15) consecutive working days, except in the case of members of the sangguniang panlalawigan, sangguniang panlungsod, sangguniang bayan, and sangguniang barangay;
- (g) Application for, or acquisition of, foreign citizenship or residence or the status of an immigrant of another country; and
- (h) Such other grounds as may be provided in this Code and other laws.

An elective local official may be removed from office on the grounds enumerated above by order of the proper court.

Section 63. Preventive Suspension-

- (a) Preventive suspension may be imposed:
 - (1) By the President, if the respondent is an elective official of a province, a highly urbanized or an independent component city;
 - (2) By the governor, if the respondent is an elective official of a component city or municipality; or

(3) By the mayor, if the respondent is an elective official of the barangay.

(b) Preventive suspension may be imposed at any time after the issues are joined, when the evidence of guilt is strong, and given the gravity of the offense, there is great probability that the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence: Provided, That, any single preventive suspension of local elective officials shall not extend beyond sixty (60) days: Provided, further, That in the event that several administrative cases are filed against an elective official, he cannot be preventively suspended for more than ninety (90) days within a single year on the same ground or grounds existing and known at the time of the first suspension.

(c) Upon expiration of the preventive suspension, the suspended elective official shall be deemed reinstated in office without prejudice to the continuation of the proceedings against him, which shall be terminated within one hundred twenty (120) days from the time he was formally notified of the case against him. However, if the delay in the proceedings of the case is due to his fault, neglect, or request, other than the appeal duly filed, the duration of such delay shall not be counted in computing the time of termination of the case.

(d) Any abuse of the exercise of the power of preventive suspension shall be penalized as abuse of authority.

RA 3019

Section 13. *Suspension and loss of benefits*

Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

Administrative Code of 1987

Section 51. *Preventive Suspension*

The proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.

Civil Service Law

Section 34. *Preventive Suspension*

The President of the Philippines may suspend any chief or assistant chief of a bureau or office and in the absence of special provision, any other officer appointed by him, pending an investigation of the charges against such officer or pending an investigation of his bureau or office. With the approval of the proper Head of Department, the chief of a bureau or office may likewise preventively suspend any subordinate officer or employee in his bureau or under his authority pending an investigation, if the charge against such officer or employee involves dishonestly, oppression or grave misconduct, or neglect in the performance of duty, or if there are strong reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.

Ombudsman Act (RA 6770)

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.

(b) Observations on the implementation of the article

289. The reviewing experts were of the view that the provision under review has been implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraph 7

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(b) Holding office in an enterprise owned in whole or in part by the State.

(a) Summary of information relevant to reviewing the implementation of the article

290. The Philippines cited:

- i. Articles 25, 30, 31, and 40 – 42 of the RPC;
- ii. Section 9 of the Anti-Graft Law;
- iii. Sections 12 and 68 of the Election Law;
- iv. Section 14 (2nd last paragraph) of AMLA;
- v. Section 13 of RA 3019 (Anti-Graft and Corrupt Practices Act).

Revised Penal Code

Article 25. Penalties which may be imposed

The penalties which may be imposed according to this Code, and their different classes, are those included in the following:

Scale

Principal Penalties

Capital punishment:

Death [NB: abolished].

Afflictive penalties:

Reclusion perpetua,

Reclusion temporal,

Perpetual or temporary absolute disqualification,

Perpetual or temporary special disqualification,

Prision mayor.

Correctional penalties:

Prision correccional,

Arresto mayor,

Suspension,

Destierro.

Light penalties:

Arresto menor,

Public censure.

Penalties common to the three preceding classes:

Fine, and

Bond to keep the peace.

Accessory Penalties:

Perpetual or temporary absolute disqualification,
Perpetual or temporary special disqualification,
Suspension from public office, the right to vote and be voted for, the profession or calling.
Civil interdiction,
Indemnification,
Forfeiture or confiscation of instruments and proceeds of the offense,
Payment of costs.

Article 87. Destierro

Any person sentenced to destierro shall not be permitted to enter the place or places designated in the sentence, nor within the radius therein specified, which shall be not more than 250 and not less than 25 kilometers from the place designated.

Article 30. Effects of the penalties of perpetual or temporary absolute disqualification.

The penalties of perpetual or temporary absolute disqualification for public office shall produce the following effects:

1. The deprivation of the public offices and employments which the offender may have held even if conferred by popular election.
2. The deprivation of the right to vote in any election for any popular office or to be elected to such office.
3. The disqualification for the offices or public employments and for the exercise of any of the rights mentioned.

In case of temporary disqualification, such disqualification as is comprised in paragraphs 2 and 3 of this article shall last during the term of the sentence.

4. The loss of all rights to retirement pay or other pension for any office formerly held.

Article 31. Effect of the penalties of perpetual or temporary special disqualification

The penalties of perpetual or temporal special disqualification for public office, profession or calling shall produce the following effects:

1. The deprivation of the office, employment, profession or calling affected;
2. The disqualification for holding similar offices or employments either perpetually or during the term of the sentence according to the extent of such disqualification.

Article 40. Death; Its accessory penalties

The death penalty, when it is not executed by reason of commutation or pardon shall carry with it that of perpetual absolute disqualification and that of civil interdiction during thirty years following the date sentence, unless such accessory penalties have been expressly remitted in the pardon.

Article 41. Reclusion perpetua and reclusion temporal; Their accessory penalties

The penalties of reclusion perpetua and reclusion temporal shall carry with them that of civil interdiction for life or during the period of the sentence as the case may be, and that of perpetual absolute disqualification which the offender shall suffer even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

Article 42. Prision mayor; Its accessory penalties

The penalty of prision mayor shall carry with it that of temporary absolute disqualification and that of perpetual special disqualification from the right of suffrage which the offender shall suffer although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

Anti-Graft and Corrupt Practices Act (RA No. 3019)

Section 9. Penalties for violations.

(a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than one year nor more than ten years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income. xxx

Omnibus Election Code

Section. 12. Disqualifications

Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty. This disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified.

Section 68. Disqualifications

Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, subparagraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant to a foreign country shall not be qualified to run for any elective office under this Code, unless said person has waived his status as permanent resident or immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

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Section 14. Penal Provisions

If the offender is a corporation, association, partnership or any juridical person, the penalty shall be imposed upon the responsible officers, as the case may be, who participated in the commission of the crime or who shall have knowingly permitted or failed to prevent its commission. If the offender is a juridical person, the court may suspend or revoke its license. If the offender is an alien, he shall, in addition to the penalties herein prescribed, be deported without further proceedings after serving the penalties herein prescribed. If the offender is a public official or employee, he shall, in addition to the penalties prescribed herein, suffer perpetual or temporary absolute disqualification from office, as the case may be.

RA 3019

Section 13. Suspension and loss of benefits. Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended from office.

Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

291. The Philippines also noted that, practically, all convictions in the Sandiganbayan carry with them the penalty of disqualification from holding public office, in conjunction with other accessory penalties. For example, convicted attorneys may be disbarred from practice. The number of disqualifications is the same as those convicted of corruption.

292. Two cases were cited. Firstly, CIVIL SERVICE COMMISSION vs. PEROCHO JR. (A.M. No. P-05-1985 July 26, 2007). Mr. Perocho, Jr., was appointed as Clerk III at the RTC, Branch 161, Pasig City. In support of his appointment, he submitted his Personal Data Sheet (PDS) wherein he stated that he passed the Career Service Professional Examination conducted by the Civil Service Commission knowing fully well that it was not true, because he did not pass the said exam. Later on, a formal charge for Dishonesty and Grave Misconduct was issued against Mr. Perocho, after it was deduced from the fact finding investigation conducted by the Civil Service Commission that he submitted a spurious certificate of eligibility and made a false entry in his Personal Data Sheet. The Civil Service Commission, and subsequently the Court, found Santos Enrie P. Perocho, Jr., Process Server, Regional Trial Court, Branch 161, Office of the Clerk of Court,

Mandaluyong City, guilty of DISHONESTY. He was DISMISSED from the service with forfeiture of retirement and other benefits except accrued leave credits and with perpetual disqualification from re-employment in any government-owned and controlled corporation.

293. Secondly, DE LA CRUZ vs. DEPARTMENT OF EDUCATION, CULTURE AND SPORTS, et al. (G.R. No. 146739 January 16, 2004). In a letter-complaint, the Civil Service Commission Abra Field Office, disclosed to the Department of Education, Culture, and Sports-Cordillera Administrative Region (DECS-CAR), alleged mismanagement and supposed violations of Civil Service Laws at the Bangued East District of the DECS Division of Abra by Helen Hernandez, herein petitioner Luzviminda de la Cruz, Charito Turqueza, and Eugene Belarmino. After the required hearings, the said committee, in its Investigation Report, found sufficient grounds that the respondent wilfully, unlawfully and intentionally cooperated with Mrs. Helen Hernandez, the District Supervisor of Bangued East District in soliciting, accepting and receiving sums of money for their personal use ranging from P1,000.00 to [P]20,000.00 from several persons as considerations for permanent appointments, promotions, transfers and similar favors in violation of the provisions of the Civil Service Rules and Regulations and other related laws. The Commission, in Resolution No. 990558 dated March 3, 1999, found petitioner guilty of dishonesty and grave misconduct and ordered her dismissal from the service with all the accessory penalties of perpetual disqualification from holding public office and from taking any government examinations.

(b) Observations on the implementation of the article

294. It was confirmed by the CSC that the disqualification of deprivation from holding public office under the RPC and RA 3019 also covers disqualification from holding office in an enterprise owned or controlled by the State. The reviewing experts therefore deemed the provisions under review to have been legislatively implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraph 8

8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.

(a) Summary of information relevant to reviewing the implementation of the article

295. The Philippines provided that it has partly implemented the provision under review, and referred to sections 52-58 of the CSC Uniform Rules on Administrative Cases in the Civil Service.

CSC Uniform Rules on Administrative Cases in the Civil Service

Section 52. Classification of Offenses.

Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following are grave offenses with their corresponding penalties:

1. Dishonesty
1st offense - Dismissal
2. Gross Neglect of Duty
1st offense - Dismissal
3. Grave Misconduct

- 1st offense - Dismissal
4. Being Notoriously Undesirable
1st offense - Dismissal
5. Conviction of a crime involving moral turpitude
1st offense - Dismissal
6. Falsification of official document
1st offense - Dismissal
7. Physical or mental incapacity or disability due to immoral or vicious habits
1st offense - Dismissal
8. Engaging directly or indirectly in partisan political activities by one holding non-political office
1st offense - Dismissal
9. Receiving for personal use of a fee, gift or other valuable thing in the course of official duties or in connection therewith when such fee, gift or other valuable thing is given by any person in the hope or expectation of receiving a favor or better treatment than that accorded to other persons, or committing acts punishable under the anti-graft laws.
1st offense - Dismissal
10. Contracting loans of money or other property from persons with whom the office of the employee has business relations.
1st offense - Dismissal
11. Soliciting or accepting directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value which in the course of his official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of his office. The propriety or impropriety of the foregoing shall be determined by its value, kinship, or relationship between giver and receiver and the motivation. A thing of monetary value is one which is evidently or manifestly excessive by its very nature.
1st offense - Dismissal
12. Nepotism
1st offense - Dismissal
13. Disloyalty to the Republic of the Philippines and to the Filipino people
1st offense - Dismissal
14. Oppression
1st offense - Suspension (6 mos. 1 day to 1 year)
2nd offense - Dismissal
15. Disgraceful and immoral conduct
1st offense - Suspension (6 mos. 1 day to 1 year)
2nd offense - Dismissal
16. Inefficiency and incompetence in the performance of official duties
1st offense - Suspension (6 mos. 1 day to 1 year)
2nd offense - Dismissal
17. Frequent unauthorized absences, or tardiness in reporting for duty, loafing or frequent unauthorized absences from duty during regular office hours
1st offense - Suspension (6 mos. 1 day to 1 year)
2nd offense - Dismissal
18. Refusal to perform official duty
1st offense - Suspension (6 mos. 1 day to 1 year)
2nd offense - Dismissal
19. Gross insubordination
1st offense - Suspension (6 mos. 1 day to 1 year)
2nd offense - Dismissal
20. Conduct prejudicial to the best interest of the service
1st offense - Suspension (6 mos. 1 day to 1 year)
2nd offense - Dismissal
21. Directly or indirectly having financial and material interest in any transaction requiring the approval of his office. Financial and material interest is defined as pecuniary or proprietary interest by which a person will gain or lose something.
1st offense - Suspension (6 mos. 1 day to 1 year)
2nd offense - Dismissal
22. Owning, controlling, managing or accepting employment as officer, employee, consultant, counsel, broker, agent, trustee, or nominee in any private enterprise regulated, supervised or licensed by his office, unless expressly allowed by law.

1st offense - Suspension (6 mos. 1 day to 1 year)

2nd offense - Dismissal

23. Disclosing or misusing confidential or classified information officially known to him by reason of his office and not made available to the public, to further his private interests or give undue advantage to anyone, or to prejudice the public interest.

1st offense - Suspension (6 mos. 1 day to 1 year)

2nd offense - Dismissal

24. Obtaining or using any statement filed under the Code of Conduct and Ethical Standards for Public Officials and Employees for any purpose contrary to morals or public policy or any commercial purpose other than by news and communications media for dissemination to the general public.

1st offense - Suspension (6 mos. 1 day to 1 year)

2nd offense - Dismissal

25. Recommending any person to any position in a private enterprise which has a regular or pending official transaction with his office, unless such recommendation or referral is mandated by (1) law, or (2) international agreements, commitment and obligation, or as part of the function of his office.

1st offense - Suspension (6 mos. 1 day to 1 year)

2nd offense - Dismissal

B. The following are less grave offenses with the corresponding penalties:

1. Simple Neglect of Duty

1st Offense - Suspension 1 mo. 1 day to 6 mos.

2nd Offense - Dismissal

2. Simple Misconduct

1st Offense - Suspension 1 mo. 1 day to 6 mos.

2nd Offense - Dismissal

3. Gross Discourtesy in the course of official duties

1st Offense - Suspension 1 mo. 1 day to 6 mos.

2nd Offense - Dismissal

4. Violation of existing Civil Service Law and rules of serious nature

1st Offense - Suspension 1 mo. 1 day to 6 mos.

2nd Offense - Dismissal

5. Insubordination

1st Offense - Suspension 1 mo. 1 day to 6 mos.

2nd Offense - Dismissal

6. Habitual Drunkenness

1st Offense - Suspension 1 mo. 1 day to 6 mos.

2nd Offense - Dismissal

7. Unfair discrimination in rendering public service due to party affiliation or preference.

1st Offense - Suspension 1 mo. 1 day to 6 mos.

2nd Offense - Dismissal

8. Failure to file sworn statements of assets, liabilities and net worth, and disclosure of business interest and financial connections including those of their spouses and unmarried children under eighteen (18) years of age living in their households.

1st Offense - Suspension 1 mo. 1 day to 6 mos.

2nd Offense - Dismissal

9. Failure to resign from his position in the private business enterprise within thirty (30) days from assumption of public office when conflict of interest arises, and/or failure to divest himself of his shareholdings or interest in private business enterprise within sixty (60) days from assumption of public office when conflict of interest arises; Provided, however, that for those who are already in the service and conflict of interest arises, the official or employee must either resign or divest himself of said interest within the periods hereinabove; provided, reckoned from the date when the conflict of interest had arisen.

1st Offense - Suspension 1 mo. 1 day to 6 mos.

2nd Offense - Dismissal

C. The following are Light Offenses with corresponding penalties:

1. Discourtesy in the course of official duties

1st Offense - Reprimand

2nd Offense - Suspension 1 -30 days

3rd Offense - Dismissal

2. Improper or unauthorized solicitation of contributions from subordinate employees and by teachers or school officials from school children

1st Offense - Reprimand

2nd Offense - Suspension 1 -30 days

3rd Offense - Dismissal

3. Violation of reasonable office rules and regulations

1st Offense - Reprimand

2nd Offense - Suspension 1-30 days

3rd Offense - Dismissal

4. Frequent unauthorized tardiness (Habitual Tardiness)

1st Offense - Reprimand

2nd Offense - Suspension 1-30 days

3rd Offense - Dismissal

5. Gambling prohibited by law

1st Offense - Reprimand

2nd Offense - Suspension 1 -30 days

3rd Offense - Dismissal

6. Refusal to render overtime service

1st Offense - Reprimand

2nd Offense - Suspension 1 -30 days

3rd Offense - Dismissal

7. Disgraceful, immoral or dishonest conduct prior to entering the service

1st Offense - Reprimand

2nd Offense - Suspension 1-30 days

3rd Offense - Dismissal

8. Borrowing money by superior officers from subordinates

1st Offense - Reprimand

2nd Offense - Suspension 1 -30 days

3rd Offense - Dismissal

9. Lending money at usurious rates of interest.

1st Offense - Reprimand

2nd Offense - Suspension 1 -30 days

3rd Offense - Dismissal

10. Willful failure to pay just debts or willful failure to pay taxes due to the government

1st Offense - Reprimand

2nd Offense - Suspension 1 -30 days

3rd Offense - Dismissal

The term "just debts" shall apply only to:

1. Claims adjudicated by a court of law, or

2. Claims the existence and justness of which are admitted by the debtor.

11. Lobbying for personal interest or gain in legislative halls and offices without authority

1st Offense - Reprimand

2nd Offense - Suspension 1-30 days

3rd Offense - Dismissal

12. Promoting the sale of tickets in behalf of private enterprises that are not intended for charitable or public welfare purposes and even in the latter cases, if there is no prior authority

1st Offense - Reprimand

2nd Offense - Suspension 1-30 days

3rd Offense - Dismissal

13. Failure to act promptly on letters and request within fifteen (15) days from receipt, except as otherwise provided in the rules implementing the Code of Conduct and Ethical Standards for Public Officials and Employees

1st Offense - Reprimand

2nd Offense - Suspension 1 -30 days

3rd Offense - Dismissal

14. Failure to process documents and complete action on documents and papers within a reasonable time from preparation thereof, except as otherwise provided in the rules implementing the Code of Conduct and Ethical Standards for Public Officials and Employees

1st Offense - Reprimand

2nd Offense - Suspension 1-30 days

3rd Offense - Dismissal

15. Failure to attend to anyone who wants to avail himself of the services of the office, or act promptly and expeditiously on public transactions

1st Offense - Reprimand

2nd Offense - Suspension 1 -30 days

3rd Offense - Dismissal

16. Engaging in private practice of his profession unless authorized by the Constitution, law or regulation, provided that such practice will not conflict with his official functions.

1st Offense - Reprimand

2nd Offense - Suspension 1-30 days

3rd Offense - Dismissal

17. Pursuit of private business, vocation or profession without the permission required by Civil Service rules and regulations

1st Offense - Reprimand

2nd Offense - Suspension 1-30 days

3rd Offense - Dismissal

Section 53. Extenuating, Mitigating, Aggravating, or Alternative Circumstances.

In the determination of the penalties to be imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the offense shall be considered.

The following circumstances shall be appreciated:

- a. Physical illness
- b. Good faith
- c. Taking undue advantage of official position
- d. Taking undue advantage of subordinate
- e. Undue disclosure of confidential information
- f. Use of government property in the commission of the offense
- g. Habituality
- h. Offense is committed during office hours and within the premises of the office or building
- i. Employment of fraudulent means to commit or conceal the offense
- j. Length of service in the government
- k. Education, or
- l. Other analogous circumstances

Nevertheless, in the appreciation thereof, the same must be invoked or pleaded by the proper party, otherwise, said circumstances shall not be considered in the imposition of the proper penalty. The Commission, however, in the interest of substantial justice may take and consider these circumstances.

Section 54. Manner of Imposition.

When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

- a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.
- b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.
- c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.
- d. Where aggravating and mitigating circumstances are present, paragraph [a] shall be applied where there are more mitigating circumstances present; paragraph [b] shall be applied when the circumstances equally offset each other; and paragraph [c] shall be applied when there are more aggravating circumstances.

Section 55. Penalty for the Most Serious Offense.

If the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge or count and the rest shall be considered as aggravating circumstances.

Section 56. Duration and effect of administrative penalties

The following rules shall govern in the imposition of administrative penalties:

a. The penalty of dismissal shall result in the permanent separation of the respondent from the service, with or without prejudice to criminal or civil liability.

b. The penalty of transfer shall carry with it the sanction that failure on the part of the respondent to seek transfer to another office within a period of not less than ninety (90) days, he shall be considered resigned. The penalty of transfer may be imposed with a condition that the respondent shall be barred from holding a position involving property or money responsibility.

c. The penalty of demotion shall include reduction in rank, or salary, or both.

d. The penalty of suspension shall result in the temporary cessation of work for a period not exceeding one (1) year.

Suspension of one day or more shall be considered a gap in the continuity of service. During the period of suspension, respondent shall not be entitled to all money benefits including leave credits.

e. The penalty of fine shall be in an amount not exceeding six (6) months salary of respondent. The computation thereof shall be based on the salary rate of the respondent when the decision becomes final and executory.

f. The penalty of reprimand or censure shall not carry with it any accessory penalty nor result in the temporary cessation of work.

Section 57. Administrative Disabilities/Accessories to Administrative Penalties.

a. Cancellation of eligibility

b. Forfeiture of retirement benefits

c. Disqualification for reinstatement or reemployment

d. Disqualification for promotion

e. Bar from taking any Civil Service examination

Section 58. Administrative Disabilities Inherent in Certain Penalties.

a. The penalty of dismissal shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service, unless otherwise provided in the decision.

b. The penalty of transfer shall carry with it disqualification for promotion for a period of six (6) months from the date respondent reports to the new position or station.

c. The penalty of demotion shall carry with it disqualification for promotion at the rate of two (2) months for every step or one (1) month for every range of salary by which he was demoted to be computed from the date respondent reports to the new position or station.

d. The penalty of suspension shall carry with it disqualification for promotion corresponding to the period of suspension.

e. The penalty of fine shall carry with it disqualification for promotion for a period twice the number of days he was fined.

f. The penalty of fine shall be paid to the agency imposing the same, computed on the basis of respondent's salary at the time the decision becomes final and executory.

g. The following are the Guidelines for the payment of fine:

1. Fines shall be paid within a period not exceeding one year reckoned from the date the decision/resolution becomes final and executory.

2. Fine may be paid in equal monthly installments subject to the following schedule of payment prescribed below:

a. Fine equivalent to one (1) month salary shall be paid within two (2) months;

b. Fine equivalent to two (2) months salary shall be paid within four (4) months;

c. Fine equivalent to three (3) months salary shall be paid within six (6) months;

d. Fine equivalent to four (4) months salary shall be paid within eight (8) months;

e. Fine equivalent to five (5) months salary shall be paid within ten (10) months;

f. Fine equivalent to six (6) months salary shall be paid within twelve (12) months;

3. Should the respondent fail to pay in full the fine within the prescribed period, he shall be deemed to have failed to serve the penalty imposed, hence, the disqualification for promotion shall remain in effect until such time that the fine is fully paid.

h. The penalty of reprimand shall not carry with it any of the accessory penalties.

i. A warning or admonition shall not be considered a penalty.

(b) Observations on the implementation of the article

296. The reviewing experts deemed the provision under review to have been legislatively implemented.

Article 30 Prosecution, adjudication and sanctions

Paragraphs 9 and 10

9. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

297. The Philippines cited section 51 of the CSC Uniform Rules on Administrative Cases in the Civil Service.

CSC Uniform Rules on Administrative Cases in the Civil Service
Section 51. Recommendation for an Executive Clemency.

In meritorious cases and upon recommendation of the Commission, the President may commute or remove administrative penalties or disabilities imposed upon officers or employees in disciplinary cases, subject to such terms and conditions as he may impose in the interest of the service.

For this purpose, a petition for a favorable recommendation for the grant of executive clemency may be filed by a dismissed or disciplined employee with the Commission Proper upon submission of the following:

- a. certified true copy of the decision in the disciplinary case with a favorable recommendation by the disciplining authority;
- b. certification from reputable members of the community where he resides to the effect that he has become a useful member thereof;
- c. proof of non-pendency of an appeal/petition for review relative to his disciplinary case before any court/tribunal; and
- d. proof of payment of Three Hundred (P300.00) Pesos.

298. The BJMP is implementing its literacy program for prisoners through an Alternative Learning System (ALS) for the reason that proper education holds the key to change their criminal ways.

299. There is also an assiduous skills enhancement and livelihood programme designed to provide a means of livelihood as well as the integration of inter-faith program and behavioural shaping tools for inmates through the Therapeutic Community Modality Program (TCMP) in preparation for their future reintegration to the mainstream of society upon release.

300. The launching of the e-Dalaw System in the jail, an electronic visitation system, made it possible for inmates' relatives to virtually visit on the web which simply recognizes that distance is not a hindrance to reaching out to loved ones, friends and relatives.

301. The Directorate for Inmates Welfare and Development (DIWD) assisted the implementation and funding of appropriate projects in jails.

302. The efforts for a detainees' voting process had also advanced jail management services in its struggle for human rights preservation.

(b) Observations on the implementation of the article

303. The Department of Justice provided the reviewing experts with statistics regarding the rate at which offenders who partake in reintegration programmes reoffend. In 2010, 16% who entered the programmes reoffended. However, this percentage did not relate to corruption-related offences.

(c) Challenges

304. The Philippines have identified the following challenge and issue in fully implementing the article under review:

1. Limited resources for implementation (e.g. human/financial/other).

The absence of financial incentives discourages retired public officials from serving as State witnesses. Some government agencies do not provide funding to their officials to testify in corruption cases.

(d) Technical assistance needs

305. The Philippines has indicated that the following form of technical assistance, if available, would assist it in better implementing the article under review:

1. Capacity-building programmes.

This form of technical assistance has not been provided to the Philippines to date.

Article 31 Freezing, seizure and confiscation

Paragraphs 1 and 2

1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

(a) Summary of information relevant to reviewing the implementation of the article

306. The Philippines cited the AMLA. Republic Act No. 10167 amended sections 10 and 11 of the AMLA.

Republic Act No. 10167, amending the AMLA

Section 10. Freezing of Monetary Instrument or Property

Upon verified ex parte petition by the AMLC and after determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity as defined in Section 3(i) hereof, the Court of Appeals may issue a freeze order, which shall be effective immediately. The freeze order shall be for a period of twenty (20) days unless extended by the court. In any case, the court should act

on the petition to freeze within twenty-four (24) hours from filing of the petition. If the application is filed a day before a nonworking day, the computation of the twenty-four (24)-hour period shall exclude the nonworking days.”

“A person whose account has been frozen may file a motion to lift the freeze order and the court must resolve this motion before the expiration of the twenty (20)-day original freeze order.”

“No court shall issue a temporary restraining order or a writ of injunction against any freeze order, except the Supreme Court.

Section 11. Authority to Inquire into Bank Deposits

Notwithstanding the provisions of Republic Act No. 1405, as amended; Republic Act No. 6426, as amended; Republic Act No. 8791; and other laws, the AMLC may inquire into or examine any particular deposit or investment, including related accounts, with any banking institution or non-bank financial institution upon order of any competent court based on an ex parte application in cases of violations of this Act, when it has been established that there is probable cause that the deposits or investments, including related accounts involved, are related to an unlawful activity as defined in Section 3(i) hereof or a money laundering offense under Section 4 hereof; except that no court order shall be required in cases involving activities defined in Section 3(i)(1), (2), and (12) hereof, and felonies or offenses of a nature similar to those mentioned in Section 3(i)(1), (2), and (12), which are Punishable under the penal laws of other countries, and terrorism and conspiracy to commit terrorism as defined and penalized under Republic Act No. 9372.”

“The Court of Appeals shall act on the application to inquire into or examine any deposit or investment with any banking institution or non-bank financial institution within twenty-four (24) hours from filing of the application.”

“To ensure compliance with this Act, the Bangko Sentral ng Pilipinas may, in the course of a periodic or special examination, check the compliance of a Covered institution with the requirements of the AMLA and its implementing rules and regulations.”

“For purposes of this section, ‘related accounts’ shall refer to accounts, the funds and sources of which originated from and/or are materially linked to the monetary instrument(s) or property(ies) subject of the freeze order(s).”

“A court order ex parte must first be obtained before the AMLC can inquire into these related Accounts: Provided, That the procedure for the ex parte application of the ex parte court order for the principal account shall be the same with that of the related accounts.”

“The authority to inquire into or examine the main account and the related accounts shall comply with the requirements of Article III, Sections 2 and 3 of the 1987 Constitution, which are hereby incorporated by reference.”

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Section 12. Forfeiture Provisions

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

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

c) **Payment in Lieu of Forfeiture** - Where the court has issued an order of forfeiture of the monetary instrument or property subject of a money laundering offense defined under Section 4, and said order cannot be enforced because any particular monetary instrument or property cannot, with due diligence, be located, or it has been substantially altered, destroyed, diminished in value or otherwise rendered worthless by any act or omission, directly or indirectly, attributable to the offender, or it has been concealed, removed, converted or otherwise transferred to prevent the same from being found or to avoid forfeiture thereof, or it is located outside the Philippines or has been placed or brought outside the jurisdiction of the court, or it has been commingled with other monetary instruments or property belonging to either the offender himself or a third person or entity, thereby rendering the same difficult to identify or be segregated for purposes of forfeiture, the court may, instead of enforcing the order of forfeiture of the monetary instrument or property or part thereof or interest therein, accordingly order the convicted offender to pay an

amount equal to the value of said monetary instrument or property. This provision shall apply in both civil and criminal forfeiture."

307. Funds and other assets laundered are considered as "proceeds" defined in Rule 3.f of the Revised Implementing Rules and Regulations of the AMLA, as amended: The same provision states that:

Rule 3.f. 'Proceeds' refers to an amount derived or realized from an unlawful activity. It includes:

- i. All materials results, profits, effects and any amount realized from any unlawful activity;
- ii. All monetary, financial or economic means, devices, documents, papers or things used in or having any relation to any unlawful activity; and
- iii. All moneys, expenditures, payments, disbursement, costs, outlays, charges, accounts, refunds and other similar items for the financing, operations, and maintenance of any unlawful activity."

308. The Rule of Procedure in Cases of Civil Forfeiture, Asset Preservation and Freezing (The Rule on Civil Forfeiture) (A.M. No. 05-11-04-SC) issued by the Philippine Supreme Court provides an enumeration of the assets which may be subject of an Asset Preservation Order in a Petition for Civil Forfeiture, including a definition of the term, "Proceeds" similar to the provision of the RIRR as stated above. The said provisions of The Rule on Civil Forfeiture states as follows:

SECTION 18. Assets subject to preservation order.

(a) Monetary instrument. - The term "monetary instrument" includes:

- (1) Coins or currency of legal tender of the Philippines or of any other country;
- (2) Credit instruments, including bank deposits, financial interest, royalties, commissions and other intangible personal property;
- (3) Drafts, checks and notes;
- (4) Stocks or shares, or an interest therein, of any corporation or company;
- (5) An interest in any corporation, partnership, joint venture or any other similar association or organization for profit or otherwise;
- (6) Securities or negotiable instruments, bonds, commercial papers, deposit certificates, trust certificates, custodial receipts or deposit substitute instruments, trading orders, transaction tickets and confirmations of sale or investments and money market instruments;
- (7) Contracts or policies of insurance, life or non-life, and contracts of suretyship; and
- (8) Other similar instruments where title thereto passes to another by assignment, endorsement or delivery;

(b) Property. - The term "property" refers to:

(1) Personal property, including proceeds derived there from, traceable to any unlawful activity as defined in Section 3(i) of Republic Act No. 9160, as amended by Republic Act No. 9194, includes but is not limited to:

- (i) Cash;
- (ii) Jewelry, precious metals, and other similar items;
- (iii) Works of art such as paintings, sculptures, antiques, treasures and other similar precious objects;
- (iv) Perishable goods; and
- (v) Vehicles, vessels or aircraft, or any other similar conveyance.

(2) Personal property, used as instrumentalities in the commission of any unlawful activity defined in Section 3(i) of Republic Act No. 9160, as amended by Republic Act No. 9194, such as:

- (i) Computers, servers and other electronic information and communication systems; and
- (ii) Any conveyance, including any vehicle, vessel and aircraft.

(3) Real estate, improvements constructed or crops growing thereon, or any interest therein, standing upon the record of the registry of deeds of the province in the name of the party against whom the asset preservation order is issued, or not appearing at all upon such records, or belonging to the party against whom the asset preservation order is issued and held by any other person, or standing on the records of the registry of deeds in the name of any other person, which are:

(i) derived from, or traceable to, any unlawful activity defined in Section 3(i) of Republic Act No. 9160, as amended by Republic Act No. 9194; or

(ii) used as an instrumentality in the commission of any unlawful activity as defined in Section 3(i) of Republic Act No. 9160, as amended by Republic Act No. 9194.

(c) Proceeds. - The term 'proceeds' refers to an amount derived or realized from an unlawful activity, which includes, but is not limited to:

- (1) All material results, profits, effects and any amount realized from any unlawful activity;
- (2) All monetary, financial or economic means, devices, documents, papers or things used in or having any relation to any unlawful activity; and
- (3) All moneys, expenditures, payments, disbursements, costs, outlays, charges, accounts, refunds and other similar items for the financing, operations and maintenance of any unlawful activity."

309. Under the RIRRs of the AMLA, as amended, the AMLC may file a Petition for the Issuance of a Freeze Order against the proceeds of money laundering, including the related web of accounts used in the money laundering activity, for eventual confiscation through a Petition for Civil Forfeiture. The pertinent provisions of the RIRRs are as follows:

Rule 10.1. When the AMLC may apply for the freezing of any monetary instrument or property.

(a) After an investigation conducted by the AMLC and upon determination that probable cause exists that a monetary instrument or property is in any way related to an unlawful activity as defined under Section 3(i), the AMLC may file an ex-parte application before the Court of Appeals for the issuance of a Freeze Order on any monetary instrument or property subject thereof prior to the institution or in the course of, the criminal proceedings involving the unlawful activity to which said monetary instrument or property is any way related.

(b) Considering the intricate and diverse web of related and interlocking accounts pertaining to the monetary instrument(s) or property(ies) that any person may create in the different covered institutions, their branches and/or other units, the AMLC may apply to the Court of Appeals for the freezing not only of the monetary instruments or properties in the names of the reported -owner(s)/holder(s), and monetary instruments or properties named in the application of the AMLC but also all other related web of accounts pertaining to the other monetary instruments and properties, the funds and sources of which originated from or are related to the monetary instrument(s) or property(ies) subject of the freeze order(s).

Rule 10.4. Definition of Related Web of Accounts. -

Related Web of Accounts pertaining to the money instrument or property subject of the Freeze Order" is defined as those accounts, the funds and sources of which originated from and/or materially linked to the monetary instrument(s) or property(ies) subject of the freeze order(s).

Upon receipt of the freeze order issued by the Court of Appeals and upon verification by the covered institution that the related web of accounts originated from and/or are materially linked to the monetary instrument or property subject of the freeze order, the covered institution shall freeze these related web of accounts wherever these funds may be found.

The return of the covered institution as required under Rule 10.3.c shall include the fact of such freezing and an explanation as to the grounds for the identification of the related web of accounts."

310. The Revised Implementing Rules and Regulations (RIRRs) of the AMLA, as amended contains the following provisions on Civil Forfeiture, to wit:

Rule 12.1 Authority to Institute Civil Forfeiture Proceedings.

The AMLC is authorized to institute civil forfeiture proceedings and all other remedial proceedings through the Office of the Solicitor General.

Rule 12.2 When Civil Forfeiture May be Applied.

When there is a suspicious transaction report or covered transaction report deemed suspicious after investigation by the AMLC, and the court has, in a petition filed for the purpose, ordered the seizure of any monetary instrument or property, in whole or in part, directly or indirectly, related to said report, the Revised Rules of Court on civil forfeiture shall apply."

311. The Philippines also provided the following examples of implementation:

Acting on the Petitions for the Issuance of a Freeze Order filed by the Anti-Money laundering Council (AMLC) (Philippine FIU), the Court of Appeals ordered the freezing

of funds and other assets in the aggregate amount of Php415,551,895.29 in three (3) cases involving the unlawful activity of Plunder (Large-scale Corruption).

Funds and other assets in another Plunder case in the aggregate amount of Php89,198,163.79 have also been recently forfeited in favour of the Philippine Government. Two (2) Petitions for Civil Forfeiture involving violations of the Anti-Graft and Corrupt Practices Act in the total amount of Php8,517,678.59 are currently pending execution before the Regional Trial Court while another Civil Forfeiture case for violation of the same Act involving funds of Php512,867.46 is currently pending trial.

312. The Philippines also provided the statistical data:

Total number of Petitions for Freeze Order filed before the Court of Appeals (as of 31 August 2011):

	No. of Cases
Expired Freeze Orders	42
Active Freeze Orders	13
Total	55

313. Acting on the Petitions filed by the AMLC, the Court of Appeals has ordered the freezing of funds and other assets in the aggregate amount of Php415,551,895.29 in three (3) cases involving the unlawful activity of Plunder (Large-scale Corruption).

Total number of Petitions for Civil Forfeiture filed before the Regional Trial Court (as of 31 August 2011):

Unlawful Activity	No. of Cases
Decided Civil Forfeiture Actions	
Executed	12
Pending Execution	10
Ongoing Civil Forfeiture Actions	23
Total	45

314. Funds and other assets in one plunder case in the aggregate amount of Php89,198,163.79 have been recently forfeited in favour of the Philippine Government. Two (2) Petitions for Civil Forfeiture involving violations of the Anti-Graft and Corrupt Practices Act in the total amount of Php8,517,678.59 are currently pending execution before the Regional Trial Court while another Civil Forfeiture case for violation of the same Act involving funds in the total amount of Php512,867.46 is currently pending trial.

Summary of the number of Petitions for Freeze Order and Petitions for Civil Forfeiture filed from 2008 to August 2011:

	2008	2009	2010	2011 (January to August)
Petitions for Freeze Orders Filed Before the Court of Appeal	13	9	4	10
Petitions for Civil Forfeiture Filed	2	9	6	-

Before the Regional Trial Court				
Total	15	18	10	10

Properties Subject of Pending Freeze Order as of 31 August 2011

Cash and other Monetary Instruments	PhP	311,877,639.78
Value of Insurance Policies		11,068,985.00
Value of Shares of Stock		-
Estimated value of Real Estate		4,070,000.00
Subtotal	PhP	336,424,624.78
Foreign Denominations (in Philippines Pesos)		
US Dollars @ 42.5070	PhP	130,675,778.58
Hong Kong Dollars @ 5.4539		-
Japanese Yen @ 0.5545		-
Euro @ 613971		355,249.15
UK Pounds @ 69.2737		434,046.14
Subtotal	PhP	131,465,073.87
Total amount Subject of Freeze Order (in Philippines Pesos)	PhP	467,889,698.65

Properties Subject of Pending Civil Forfeiture Cases as of 31 August 2011

Cash and other Monetary Instruments	PhP	427,330,144.07
Value of Insurance Policies		81,958,523.23
Value of Shares of Stock		-
Estimated value of Real Estate		129,084,914.55
Estimated Value of Motor Vehicles		17,797,000.00
Subtotal	PhP	656,170,581.85
Foreign Denominations (in Philippines Pesos)		
US Dollars @ 42.5070	PhP	30,177,024.69
Hong Kong Dollars @ 5.4539		8,040,028.23
Japanese Yen @ 0.5545		2,384,242.54
Euro @ 613971		67,700.74
UK Pounds @ 69.2737		-
Subtotal	PhP	40,668,996.20
Total amount Subject of Freeze Order (in Philippines Pesos)	PhP	696,839,578.05

Total Amount subject of Petitions for Freeze Order and Petitions for Civil Forfeiture filed per year from 2008 to 2011:

Petitions of Freeze Order filed before the Court of Appeals	
2008	23,793,367.91
2009	1,094,583,897.43

2010	13,306,243.61
2011 (January to August)	387,710,710.62
Petitions for Civil Forfeiture filed before the Regional Trial Court	
2008	29,999,465.88
2009	1,001,935,961.97
2010	41,594,297.12
2011 (January to August)	-

(b) Observations on the implementation of the article

315. Section 10 of AMLA refers to “any monetary instrument or property [that] is in any way related”. In considering whether this includes the “proceeds of crime...or property the value of which corresponds to that of such proceeds” as provided for by the subparagraph 1 (a) of UNCAC article 31, section 12(c) (“the court may, instead of enforcing the order of forfeiture of the monetary instrument or property or part thereof or interest therein, accordingly order the convicted offender to pay an amount equal to the value of said monetary instrument or property”) and 18, and Rule 3.f (definition of “proceeds”) were deemed relevant. With respect to subparagraph 1 (b) of UNCAC article 31, Rule 3.f (ii) referred to proceeds as including “All monetary, financial or economic means, devices, documents, papers or things used in or having any relation to any unlawful act” and was deemed implemented.

316. The AMLC confirmed that “property, equipment or other instrumentalities... destined for use in” corruption-related offences would be covered under the definition of “proceeds” (rule 3.f). Moreover, it was provided that other than the “freezing” of any item included above for the purpose of eventual confiscation, “tracing” the proceeds of crime would also be covered by the Rule on Civil Forfeiture. Moreover, the AMLC is empowered to conduct investigations under section 7 of the AMLA as amended, and to inquire into bank deposits when it has been established that there is probable cause that the deposits or investments are related to an unlawful activity. Such investigation and inquiry necessarily includes “identification” and “tracing” the proceeds of crime. Under section 7 of the AMLA, as amended by R.A. 10365, the AMLC may apply before the Court of Appeals for the freezing of any monetary instrument or property alleged to be laundered, proceeds from, or instrumentalities used in or intended for use in any unlawful activity.

Article 31 Freezing, seizure and confiscation

Paragraph 3

3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

317. The Philippines provided that it has partly implemented the provision under review and referred to the Rule of Procedure in Civil Forfeiture, Asset Preservation and Freezing (The Rule on Civil Forfeiture) (A.M. No. 05-11-04-SC) issued by the Philippine Supreme

Court provides the duty of a covered institution or government agency upon receipt of a Freeze Order, to wit:

Section. 55. Duty of respondent, covered institution or government agency upon receipt of freeze order.

Upon receipt of a copy of the freeze order, the respondent, covered institution or government agency shall immediately desist from and not allow any transaction, withdrawal, deposit, transfer, removal, conversion, other movement or concealment of the account representing, involving or relating to the subject monetary instrument, property, proceeds or its related web of accounts.

318. The Rule on Civil Forfeiture also provides for the duty of a covered institution or government agency upon receipt of an Asset Preservation Order as follows:

Section. 15. Duties of covered institution and government agencies upon receipt of asset preservation order.

Upon receipt of notice of an asset preservation order, the covered institution or government agency shall immediately preserve the subject monetary instrument, property or proceeds in accordance with the order of the court and shall forthwith furnish a copy of the notice of the asset preservation order upon the owner or holder of the subject monetary instrument, property, or proceeds.

319. Under the Section 21 of the Rule on Civil Forfeiture, the court may designate a Receiver to administer the monetary instrument, property or proceeds subject of an asset preservation order in certain instances. The said provision states:

SECTION 21. Designation of Receiver.

Upon verified motion, the court may order any person in control or possession of the monetary instrument, property, or proceeds to turn over the same to a receiver appointed by the court under such terms and conditions as the court may deem proper in the following instances:

- (a) When it appears that the party applying for the appointment of a receiver has an interest in the property or fund and that such property or fund is in danger of being lost, removed or materially injured;
- (b) When it appears that the property is in danger of being wasted or dissipated or materially injured;
- (c) After judgment, to preserve the property during the pendency of an appeal, or to dispose of it according to the judgment or to aid execution when the execution has been returned unsatisfied or the judgment obligor refuses to apply his property in satisfaction of the judgment, or otherwise to carry the judgment into effect; and
- (d) Whenever in other cases it appears that the appointment of a receiver is the most convenient and feasible means of administering or disposing of the property in litigation."

320. Further, Section 32 of the Rule of Civil Forfeiture provides the disposition of the funds and properties forfeited as follows:

Section. 32. Judgment.

The court shall render judgment within thirty days from submission of the case for resolution. It shall grant the petition if there is preponderance of evidence in favor of the petitioner and declare the monetary instrument, property, or proceeds forfeited to the State, or in appropriate cases, order the respondent to pay an amount equal to the value of the monetary instrument or property and adjudge such other reliefs as may be warranted."

321. The Philippines also provided the following examples of implementation:

- Acting on the Petitions for the Issuance of a Freeze Order filed by the Anti-Money Laundering Council (AMLC) (Philippine FIU), the Court of Appeals ordered the freezing of funds and other assets in the aggregate amount of Php415,551,895.29

in three (3) cases involving the unlawful activity of Plunder (Large-scale Corruption).

- Funds and other assets in another Plunder case in the aggregate amount of Php89,198,163.79 have also been recently forfeited in favour of the Philippine Government. Two (2) Petitions for Civil Forfeiture involving violations of the Anti-Graft and Corrupt Practices Act in the total amount of Php8,517,678.59 are currently pending execution before the Regional Trial Court while another Civil Forfeiture case for violation of the same Act involving funds of Php512,867.46 is currently pending trial.

(b) Observations on the implementation of the article

322. The reviewers deemed the provision under review to have been legislatively implemented in light of section 21 of the Rule on Civil Forfeiture.

Article 31 Freezing, seizure and confiscation

Paragraphs 4 - 6

4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

(a) Summary of information relevant to reviewing the implementation of the article

323. The relevant provisions were deemed to be section 12(c) of the AMLA on payment in lieu of forfeiture (which addresses converted, transferred and comingled property, among others). “Proceeds” is defined in section 18(c) of the Rule of Procedure in Civil Forfeiture, Asset Preservation and Freezing and rule 3.f of the Revised Implementing Rules and Regulations of the AMLA, which addresses paragraph 6 of the UNCAC article 31. Rules 10.1 and 10.4 under RIRPs provide for freezing of related property.

(b) Observations on the implementation of the article

324. The reviewing experts were of the view that the UNCAC provisions have been legislatively implemented.

Article 31 Freezing, seizure and confiscation

Paragraph 7

7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial

records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

325. The Philippines provided that it has partly implemented the provision under review and referred to AMLA.

Section. 11. Authority to Inquire into Bank Deposits

Notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non-bank financial institution upon order of any competent court in cases of violation of this Act, when it has been established that there is probable cause that the deposits or investments are related to an unlawful activity as defined in Section 3(i) hereof or a money laundering offense under Section 4 hereof, except that no court order shall be required in cases involving unlawful activities defined in Sections 3(i)(1), (2) and (12).

“To ensure compliance with this Act, the Bangko Sentral ng Pilipinas (BSP) may inquire into or examine any deposit or investment with any banking institution or non-bank financial institution when the examination is made in the course of a periodic or special examination, in accordance with the rules of examination of the BSP.”

326. The Revised Implementing Rules and Regulations (RIRRs) of the AMLA, as amended, contains the following provisions on the authority of the Anti-Money Laundering Council (AMLC) (Philippine FIU) to inquire into bank deposits without a court order:

Rule 11.2. Authority to Inquire into Bank Deposits without Court Order.

The AMLC may inquire into or examine deposits and investments with any banking institution or non-bank financial institution and their subsidiaries and affiliates without a court order where any of the following unlawful activities are involved:

- (a) Kidnapping for ransom under Article 267 of Act No. 3815, otherwise known as the Revised Penal Code, as amended;
- (b) Sections 4, 5, 6, 8, 9, 10, 12, 13, 14, 15, and 16 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002;
- (c) Hijacking and other violations under Republic Act No. 6235; destructive arson and murder, as defined under the Revised Penal code, as amended, including those perpetrated by terrorists against non-combatant persons and similar targets.”

327. Under the RIRRs of the AMLA, as amended, the AMLC may file a Petition for the Issuance of a Freeze Order against the proceeds of money laundering, including the related web of accounts used in the money laundering activity, for eventual confiscation through a Petition for Civil Forfeiture. The pertinent provisions of the RIRRs are as follows:

Rule 10.1. When the AMLC may apply for the freezing of any monetary instrument or property.

- (a) After an investigation conducted by the AMLC and upon determination that probable cause exists that a monetary instrument or property is in any way related to an unlawful activity as defined under Section 3(i), the AMLC may file an ex-parte application before the Court of Appeals for the issuance of a Freeze Order on any monetary instrument or property subject thereof prior to the institution or in the course of, the criminal proceedings involving the unlawful activity to which said monetary instrument or property is any way related.
- (b) Considering the intricate and diverse web of related and interlocking accounts pertaining to the monetary instrument(s) or property(ies) that any person may create in the different covered institutions, their branches and/or other units, the AMLC may apply to the Court of Appeals for the freezing not only of the monetary instruments or properties in the names of the reported - owner(s)/holder(s), and monetary instruments or properties named in the application of the AMLC but also all other related web of accounts pertaining to the other monetary instruments and

properties, the funds and sources of which originated from or are related to the monetary instrument(s) or property(ies) subject of the freeze order(s).

Rule 10.4 . Definition of Related Web of Accounts. -

Related Web of Accounts pertaining to the money instrument or property subject of the Freeze Order" is defined as those accounts, the funds and sources of which originated from and/or materially linked to the monetary instrument(s) or property(ies) subject of the freeze order(s).

"Upon receipt of the freeze order issued by the Court of Appeals and upon verification by the covered institution that the related web of accounts originated from and/or are materially linked to the monetary instrument or property subject of the freeze order, the covered institution shall freeze these related web of accounts wherever these funds may be found.

"The return of the covered institution as required under Rule 10.3.c shall include the fact of such freezing and an explanation as to the grounds for the identification of the related web of accounts."

328. The Philippines also provided the examples of implementation:

- As of 31 August 2011, a total of forty-six (46) cases for Applications for Bank Inquiry have been decided by the Regional Trial Court (RTC) in favor of the AMLC. Three (3) of these cases involved plunder, while four (4) cases involved violations of the Anti-Graft and Corrupt Practices Act.
- In relation to the pending cases for Application of Bank Inquiry a total of eight (8) cases are currently pending trial before the RTC. One (1) case involves Plunder while another case involves violations of the Anti-Graft and Corrupt Practices Act.

(b) Observations on the implementation of the article

329. The reviewing experts noted that section 11 (authority to inquire into bank deposits) of the AMLA was amended by R.A. No. 10167, effective as of 6 July 2012. It was confirmed by the AMLC that the act of "inquiring" was deemed the same as "bank, financial or commercial records be[ing] made available or seized".

(c) Successes and good practices

330. The reviewing experts deemed the inquiry/ investigative power of the FIU to be a good practice, as it provides for the body to effectively carry out its functions. However, such functions are exclusive to the FIU and cooperation with it is essential for other law enforcement authorities to have access to financial records.

Article 31 Freezing, seizure and confiscation

Paragraph 8

8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

331. The Philippines referred to Section 12(b) of AMLA, which provides that "any offender or any other person claiming an interest therein may apply, by verified petition,

for a declaration that the same legitimately belongs to him and for segregation or exclusion of the monetary instrument or property corresponding thereto”. Moreover, section 12 of the Rules of Civil Forfeiture provides that “the respondent may for good cause show why the provisional asset preservation order should be lifted”, and section 17 is cited below.

332. The Rule on Civil Forfeiture provides the following grounds for the discharge of an Asset Preservation Order, to wit:

Section 17. Grounds for the discharge of asset preservation order

The respondent or the party, whose personal or real property has been preserved pursuant to an asset preservation order, may raise in a motion or in the comment or opposition the grounds for its discharge.

For this purpose, the motion, comment or opposition shall:

- (a) identify the specific property sought to be discharged;
- (b) state the respondent's interest in such property; and
- (c) be subscribed under oath.

The following grounds for the discharge of the asset preservation order may be raised:

- (a) The order was improperly or irregularly issued or enforced;
- (b) Any of the material allegations in the petition, or any of the contents of any attachment to the petition thereto, or its verification, is false; and
- (c) The specific personal or real property ordered preserved is not in any manner connected with the alleged unlawful activity as defined in Section 3(i) of Republic Act No. 9160, as amended by Republic Act No. 9194.

333. The Philippines also provided the following examples of implementation:

- Acting on the Petitions for the Issuance of a Freeze Order filed by the Anti-Money laundering Council (AMLC) (Philippine FIU), the Court of Appeals ordered the freezing of funds and other assets in the aggregate amount of Php415,551,895.29 in three (3) cases involving the unlawful activity of Plunder (Large-scale Corruption).
- Funds and other assets in another Plunder case in the aggregate amount of Php89,198,163.79 have also been recently forfeited in favour of the Philippine Government. Two (2) Petitions for Civil Forfeiture involving violations of the Anti-Graft and Corrupt Practices Act in the total amount of Php8,517,678.59 are currently pending execution before the Regional Trial Court while another Civil Forfeiture case for violation of the same Act involving funds of Php512,867.46 is currently pending trial.

In the following cases, the respondents filed a motion to lift the freeze order issued by the court:

Republic vs. Cloribel – graft and corruption, motion denied;
Republic vs. Ongpin – graft and corruption, motion granted;
Republic vs. Ampatuan – plunder, motion granted.

(b) Observations on the implementation of the article

334. The reviewing experts did not deem the cited cases to illustrate the implementation of the UNCAC provision. The experts also noted that the cited legislation is permissive and does not establish an obligation for the defendant to demonstrate the lawful origin.

Article 31 Freezing, seizure and confiscation

Paragraphs 9 and 10

9. *The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

10. *Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.*

(a) Summary of information relevant to reviewing the implementation of the article

335. The Rule of Procedure in Civil Forfeiture, Asset Preservation and Freezing (The Rule on Civil Forfeiture) (A.M. No. 05-11-04-SC) issued by the Philippine Supreme Court provides:

SECTION 35. Notice to File Claims

Where the court has issued an order of forfeiture of the monetary instrument or property in a civil forfeiture petition for any money laundering offense defined under Section 4 of Republic Act No. 9160, as amended, any person who has not been impeded nor intervened claiming an interest therein may apply, by verified petition, for a declaration that the same legitimately belongs to him and for segregation or exclusion of the monetary instrument or property corresponding thereto. The verified petition shall be filed with the court which rendered the order of forfeiture within fifteen days from the date of finality of the order of forfeiture, in default of which the said order shall be executory and bar all other claims."

336. The Philippines also provided the following examples of implementation:

- In two (2) civil forfeiture cases involving Kidnapping for Ransom, the heirs of the victims of the said unlawful activity filed Third Party Claims against the funds in the bank accounts ordered by the Regional Trial Court as forfeited in favor of the AMLC. The AMLC did not oppose the Third-Party Claims and the heirs of the victims were able to recover funds totaling Php2,401,568.50.

(b) Observations on the implementation of the article

337. Reference was also made to section 17 on the grounds for the discharge of an asset preservation order under the Rule on Civil Forfeiture.

338. The reviewing experts noted that section 35 of the Rule of Procedure of Civil Forfeiture, Asset Preservation and Freezing may provide for the rights of bona fide third parties to the extent that "any person...may apply...for a declaration that the same legitimately belongs to him...". The national authorities subsequently confirmed that the term "any person" is broad enough to include bona fide third parties, especially underscoring that the person referred to in section 35 should prove that the property belongs to him.

(c) Technical assistance needs

339. The Philippines indicated that the following form of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/ lessons learned.

This form of technical assistance has not been provided to the Philippines to date.

Article 32 Protection of witnesses, experts and victims

Paragraphs 1 and 2

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, *inter alia*, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.

(a) Summary of information relevant to reviewing the implementation of the article

340. The Philippines cited:

- Sections 3 and 8 of RA 6981: Witness Protection, Security and Benefit Act
- DOJ Rules on Witness Protection Program;
- Am No. 004-07 SC, 15 December 2000, Rule on Examination of a Child witness.

RA 6981

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.

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.

A.M. No. 004-07 SC (15 December 2000, Rule on Examination of a Child Witness)

Section 1. *Applicability of the Rule.*

Unless otherwise provided, this Rule shall govern the examination of child witnesses who are victims of crime, accused of a crime, and witnesses to crime. It shall apply in all criminal proceedings and non-criminal proceedings involving child witnesses.

Section 4. *Definitions*

(a) A “child witness” is any person who at the time of giving testimony is below the age of eighteen (18) years. In child abuse cases, a child includes one over eighteen (18) years but is found by the court as unable to fully take care of himself or protect himself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.

(g) “Best interests of the child” means the totality of the circumstances and conditions as are most congenial to the survival, protection, and feelings of security of the child and most encouraging to his physical, psychological, and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the child.

Section 5. *Guardian ad litem*

(a) The court may appoint a guardian ad litem for a child who is a victim of, accused of, or a witness to a crime to promote the best interests of the child. In making the appointment, the court shall consider the background of the guardian ad litem and his familiarity with the judicial process, social service programs, and child development, giving preference to the parents of the child, if qualified. The guardian ad litem may be a member of the Philippine Bar. A person who is a witness in any proceeding involving the child cannot be appointed as a guardian ad litem.

Section 8. *Examination of a child witness*

The examination of a child witness presented in a hearing or any proceeding shall be done in open court. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally.

The party who presents a child witness or the guardian ad litem of such child witness may, however, move the court to allow him to testify in the manner provided in this Rule.

(a) xxx[P]hysical protection of such persons, xxx relocating xxx non-disclosure or limitations on the disclosure of information xxx identity and whereabouts xxx.

(b) xxx[G]ive testimony in a manner that ensures the safety of such persons, xxx communications technology xxx video or other adequate means.

A.M. No. 004-07 SC (15 December 2000, Rule on Examination of a Child Witness)

Section 25. *Live-link television testimony in criminal cases where the child is a victim or a witness*

(a) The prosecutor, counsel or the guardian ad litem may apply for an order that the testimony of the child be taken in a room outside the courtroom and be televised to the courtroom by live-link television.

Before the guardian ad litem applies for an order under this section, he shall consult the prosecutor or counsel and shall defer to the judgment of the prosecutor or counsel regarding the necessity of applying for an order. In case the guardian ad litem is convinced that the decision of the prosecutor or counsel not to apply will cause the child serious emotional trauma, he himself may apply for the order.

The person seeking such an order shall apply at least five (5) days before the trial date, unless the court finds on the record that the need for such an order was not reasonably foreseeable.

(b) The court may motu proprio hear and determine, with notice to the parties, the need for taking the testimony of the child through live-link television.

(c) The judge may question the child in chambers, or in some comfortable place other than the courtroom, in the presence of the support person, guardian ad litem, prosecutor, and counsel for the parties. The questions of the judge shall not be related to the issues at trial but to the feelings of the child about testifying in the courtroom.

(d) The judge may exclude any person, including the accused, whose presence or conduct causes fear to the child.

(e) The court shall issue an order granting or denying the use of live-link television and stating the reasons therefore. It shall consider the following factors:

- (1) The age and level of development of the child;
- (2) His physical and mental health, including any mental or physical disability;
- (3) Any physical, emotional, or psychological injury experienced by him;
- (4) The nature of the alleged abuse;

- (5) Any threats against the child;
 - (6) His relationship with the accused or adverse party;
 - (7) His reaction to any prior encounters with the accused in court or elsewhere;
 - (8) His reaction prior to trial when the topic of testifying was discussed with him by parents or professionals;
 - (9) Specific symptoms of stress exhibited by the child in the days prior to testifying;
 - (10) Testimony of expert or lay witnesses;
 - (11) The custodial situation of the child and the attitude of the members of his family regarding the events about which he will testify; and
 - (12) Other relevant factors, such as court atmosphere and formalities of court procedure.
- (f) The court may order that the testimony of the child be taken by live-link television if there is a substantial likelihood that the child would suffer trauma from testifying in the presence of the accused, his counsel or the prosecutor as the case may be. The trauma must be of a kind which would impair the completeness or truthfulness of the testimony of the child.

(g) If the court orders the taking of testimony by live-link television:

(1) The child shall testify in a room separate from the courtroom in the presence of the guardian ad litem; one or both of his support persons; the facilitator and interpreter, if any; a court officer appointed by the court; persons necessary to operate the closed-circuit television equipment; and other persons whose presence are determined by the court to be necessary to the welfare and well-being of the child;

(2) The judge, prosecutor, accused, and counsel for the parties shall be in the courtroom. The testimony of the child shall be transmitted by live-link television into the courtroom for viewing and hearing by the judge, prosecutor, counsel for the parties, accused, victim, and the public unless excluded.

(3) If it is necessary for the child to identify the accused at trial, the court may allow the child to enter the courtroom for the limited purpose of identifying the accused, or the court may allow the child to identify the accused by observing the image of the latter on a television monitor.

(4) The court may set other conditions and limitations on the taking of the testimony that it finds just and appropriate, taking into consideration the best interests of the child.

(h) The testimony of the child shall be preserved on videotape, digital disc, or other similar devices which shall be made part of the court record and shall be subject to a protective order as provided in section 31(b).

Section 26. Screens, one-way mirrors, and other devices to shield child from accused

(a) The prosecutor or the guardian ad litem may apply for an order that the chair of the child or that a screen or other device be placed in the courtroom in such a manner that the child cannot see the accused while testifying. Before the guardian ad litem applies for an order under this section, he shall consult with the prosecutor or counsel subject to the second and third paragraphs of section 25(a) of this Rule. The court shall issue an order stating the reasons and describing the approved courtroom arrangement.

(b) If the court grants an application to shield the child from the accused while testifying in the courtroom, the courtroom shall be arranged to enable the accused to view the child.

Section 27. Videotaped deposition

(a) The prosecutor, counsel, or guardian ad litem may apply for an order that a deposition be taken of the testimony of the child and that it be recorded and preserved on videotape. Before the guardian ad litem applies for an order under this section, he shall consult with the prosecutor or counsel subject to the second and third paragraphs of section 25(a).

(b) If the court finds that the child will not be able to testify in open court at trial, it shall issue an order that the deposition of the child be taken and preserved by videotape.

(c) The judge shall preside at the videotaped deposition of a child. Objections to deposition testimony or evidence, or parts thereof, and the grounds for the objection shall be stated and shall be ruled upon at the time of the taking of the deposition. The other persons who may be permitted to be present at the proceeding are:

- (1) The prosecutor;
- (2) The defense counsel;
- (3) The guardian ad litem;
- (4) The accused, subject to sub-section (e);
- (5) Other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child;

- (6) One or both of his support persons, the facilitator and interpreter, if any;
- (7) The court stenographer; and
- (8) Persons necessary to operate the videotape equipment.

(d) The rights of the accused during trial, especially the right to counsel and to confront and cross-examine the child, shall not be violated during the deposition.

(e) If the order of the court is based on evidence that the child is unable to testify in the physical presence of the accused, the court may direct the latter to be excluded from the room in which the deposition is conducted. In case of exclusion of the accused, the court shall order that the testimony of the child be taken by live-link television in accordance with section 25 of this Rule. If the accused is excluded from the deposition, it is not necessary that the child be able to view an image of the accused.

(f) The videotaped deposition shall be preserved and stenographically recorded. The videotape and the stenographic notes shall be transmitted to the clerk of the court where the case is pending for safekeeping and shall be made a part of the record.

(g) The court may set other conditions on the taking of the deposition that it finds just and appropriate, taking into consideration the best interests of the child, the constitutional rights of the accused, and other relevant factors.

(h) The videotaped deposition and stenographic notes shall be subject to a protective order as provided in section 31(b).

(i) If, at the time of trial, the court finds that the child is unable to testify for a reason stated in section 25(f) of this Rule, or is unavailable for any reason described in section 4(c), Rule 23 of the 1997 Rules of Civil Procedure, the court may admit into evidence the videotaped deposition of the child in lieu of his testimony at the trial. The court shall issue an order stating the reasons therefore.

(j) After the original videotaping but before or during trial, any party may file any motion for additional videotaping on the ground of newly discovered evidence. The court may order an additional videotaped deposition to receive the newly discovered evidence.

Section 28. Hearsay exception in child abuse cases

A statement made by a child describing any act or attempted act of child abuse, not otherwise admissible under the hearsay rule, may be admitted in evidence in any criminal or non-criminal proceeding subject to the following rules:

(a) Before such hearsay statement may be admitted, its proponent shall make known to the adverse party the intention to offer such statement and its particulars to provide him a fair opportunity to object. If the child is available, the court shall, upon motion of the adverse party, require the child to be present at the presentation of the hearsay statement for cross-examination by the adverse party. When the child is unavailable, the fact of such circumstance must be proved by the proponent.

(b) In ruling on the admissibility of such hearsay statement, the court shall consider the time, content and circumstances thereof which provide sufficient indicia of reliability. It shall consider the following factors:

- (1) Whether there is a motive to lie;
- (2) The general character of the declarant child;
- (3) Whether more than one person heard the statement;
- (4) Whether the statement was spontaneous;
- (5) The timing of the statement and the relationship between the declarant child and witness;
- (6) Cross-examination could not show the lack of knowledge of the declarant child;
- (7) The possibility of faulty recollection of the declarant child is remote; and
- (8) The circumstances surrounding the statement are such that there is no reason to suppose the declarant child misrepresented the involvement of the accused.

(c) The child witness shall be considered unavailable under the following situations:

- (1) Is deceased, suffers from physical infirmity, lack of memory, mental illness, or will be exposed to severe psychological injury; or
- (2) Is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means.

(d) When the child witness is unavailable, his hearsay testimony shall be admitted only if corroborated by other admissible evidence.

Section 29. Admissibility of videotaped and audiotaped in-depth investigative or disclosure interviews in child abuse cases

The court may admit videotape and audiotape in-depth investigative or disclosure interviews as evidence, under the following conditions:

(a) The child witness is unable to testify in court on grounds and under conditions established under section 28 (c).

(b) The interview of the child was conducted by duly trained members of a multidisciplinary team or representatives of law enforcement or child protective services in situations where child abuse is suspected so as to determine whether child abuse occurred.

(c) The party offering the videotape or audiotape must prove that:

(1) the videotape or audiotape discloses the identity of all individuals present and at all times includes their images and voices;

(2) the statement was not made in response to questioning calculated to lead the child to make a particular statement or is clearly shown to be the statement of the child and not the product of improper suggestion;

(3) the videotape and audiotape machine or device was capable of recording testimony;

(4) the person operating the device was competent to operate it;

(5) the videotape or audiotape is authentic and correct; and

(6) it has been duly preserved.

The individual conducting the interview of the child shall be available at trial for examination by any party. Before the videotape or audiotape is offered in evidence, all parties shall be afforded an opportunity to view or listen to it and shall be furnished a copy of a written transcript of the proceedings.

The fact that an investigative interview is not videotaped or audiotaped as required by this section shall not by itself constitute a basis to exclude from evidence out-of-court statements or testimony of the child. It may, however, be considered in determining the reliability of the statements of the child describing abuse.

Section 30. Sexual abuse shield rule

(a) Inadmissible evidence.- The following evidence is not admissible in any criminal proceeding involving alleged child sexual abuse:

(1) Evidence offered to prove that the alleged victim engaged in other sexual behavior; and

(2) Evidence offered to prove the sexual predisposition of the alleged victim.

(b) Exception.- Evidence of specific instances of sexual behavior by the alleged victim to prove that a person other than the accused was the source of semen, injury, or other physical evidence shall be admissible.

A party intending to offer such evidence must:

(1) File a written motion at least fifteen (15) days before trial, specifically describing the evidence and stating the purpose for which it is offered, unless the court, for good cause, requires a different time for filing or permits filing during trial; and

(2) Serve the motion on all parties and the guardian ad litem at least three (3) days before the hearing of the motion.

Before admitting such evidence, the court must conduct a hearing in chambers and afford the child, his guardian ad litem, the parties, and their counsel a right to attend and be heard. The motion and the record of the hearing must be sealed and remain under seal and protected by a protective order set forth in section 31(b). The child shall not be required to testify at the hearing in chambers except with his consent.

Section 31. Protection of privacy and safety

(a) *Confidentiality of records.*- Any record regarding a child shall be confidential and kept under seal. Except upon written request and order of the court, a record shall only be released to the following:

(1) Members of the court staff for administrative use;

(2) The prosecuting attorney;

(3) Defense counsel;

(4) The guardian ad litem;

(5) Agents of investigating law enforcement agencies; and

(6) Other persons as determined by the court.

(b) *Protective order.*- Any videotape or audiotape of a child that is part of the court record shall be under a protective order that provides as follows:

(1) Tapes may be viewed only by parties, their counsel, their expert witness, and the guardian ad litem.

(2) No tape, or any portion thereof, shall be divulged by any person mentioned in sub-section (a) to any other person, except as necessary for the trial.

(3) No person shall be granted access to the tape, its transcription or any part thereof unless he signs a written affirmation that he has received and read a copy of the protective order; that he submits to the jurisdiction of the court with respect to the protective order; and that in case of violation thereof, he will be subject to the contempt power of the court.

(4) Each of the tape cassettes and transcripts thereof made available to the parties, their counsel, and respective agents shall bear the following cautionary notice:

“This object or document and the contents thereof are subject to a protective order issued by the court in (case title) , (case number) .

They shall not be examined, inspected, read, viewed, or copied by any person, or disclosed to any person, except as provided in the protective order. No additional copies of the tape or any of its portion shall be made, given, sold, or shown to any person without prior court order. Any person violating such protective order is subject to the contempt power of the court and other penalties prescribed by law.”

(5) No tape shall be given, loaned, sold, or shown to any person except as ordered by the court.

(6) Within thirty (30) days from receipt, all copies of the tape and any transcripts thereof shall be returned to the clerk of court for safekeeping unless the period is extended by the court on motion of a party.

(7) This protective order shall remain in full force and effect until further order of the court.

(c) *Additional protective orders.*- The court may, motu proprio or on motion of any party, the child, his parents, legal guardian, or the guardian ad litem, issue additional orders to protect the privacy of the child.

(d) *Publication of identity contemptuous.*- Whoever publishes or causes to be published in any format the name, address, telephone number, school, or other identifying information of a child who is or is alleged to be a victim or accused of a crime or a witness thereof, or an immediate family of the child shall be liable to the contempt power of the court.

(e) *Physical safety of child; exclusion of evidence.*- A child has a right at any court proceeding not to testify regarding personal identifying information, including his name, address, telephone number, school, and other information that could endanger his physical safety or his family. The court may, however, require the child to testify regarding personal identifying information in the interest of justice.

(f) *Destruction of videotapes and audiotapes.*- Any videotape or audiotape of a child produced under the provisions of this Rule or otherwise made part of the court record shall be destroyed after five (5) years have elapsed from the date of entry of judgment.

(g) *Records of youthful offender.*- Where a youthful offender has been charged before any city or provincial prosecutor or before any municipal judge and the charges have been ordered dropped, all the records of the case shall be considered as privileged and may not be disclosed directly or indirectly to anyone for any purpose whatsoever.

Where a youthful offender has been charged and the court acquits him, or dismisses the case or commits him to an institution and subsequently releases him pursuant to Chapter 3 of P. D. No. 603, all the records of his case shall also be considered as privileged and may not be disclosed directly or indirectly to anyone except to determine if a defendant may have his sentence suspended under Article 192 of P. D. No. 603 or if he may be granted probation under the provisions of P. D. No. 968 or to enforce his civil liability, if said liability has been imposed in the criminal action. The youthful offender concerned shall not be held under any provision of law to be guilty of perjury or of concealment or misrepresentation by reason of his failure to acknowledge the case or recite any fact related thereto in response to any inquiry made to him for any purpose.

“Records” within the meaning of this sub-section shall include those which may be in the files of the National Bureau of Investigation and with any police department or government agency which may have been involved in the case. (Art. 200, P. D. No. 603)

341. Below are the salient points of the pending bill strengthening the witness protection, security and benefit program, amending for that purpose Republic Act No. 6981, otherwise known as the “Witness Protection, Security and Benefit Act” and providing additional funds therefore.

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

- 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.

(b) Observations on the implementation of the article

342. During the country visit, the reviewing experts were informed by the Department of Justice that in 2009, 493 people were admitted to the Witness Protection, Security and Benefit Programme; in 2010, 465 people and in 2011, 514. It was noted that this statistic related to the Programme, as a whole, and has not included witnesses for corruption-related offences to date.
343. The Supreme Court Administrator informed the experts that the Rules of the Court provide for testimony through non-“face-to-face” means (i.e. video link).
344. It was noted that a bill is pending before the Senate to strengthen the Witness Protection, Security and Benefit Programme (House Bill 5714 – approved on third reading; pending in the Senate). It was provided that this would extend benefits to relatives, as well as public officials, including law enforcement officers.
345. The experts noted that a witness would be protected if s/he is admitted to the Witness Protection, Security and Benefit Programme or falls under a vulnerable category (i.e. children) as protected for by the law (namely, s/he satisfies the requirements of RA No.

6981). For this reason, the experts recommended that the Philippines extend the Programme to other witnesses (i.e. law enforcement officers as proposed for in the Bill) and provide for general provisions (not merely those covered by the Witness Protection, Security and Benefit Programme or vulnerable groups) that include appropriate measures to provide effective protection when giving testimony for witnesses, their relatives and persons close to them (i.e. physical).

(c) Successes and good practices

346. The reviewing experts deemed the Witness Protection, Security and Benefit Programme to be a good practice both in law and in practice. They welcomed the extended inclusion of other witnesses (i.e. law enforcement) and additional benefits as provided for in the House Bill 5714.

Article 32 Protection of witnesses, experts and victims

Paragraph 3

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

347. RA 6981 provides that a witness (including his family) is entitled to relocation and/or change of personal identity at the expense of the Programme after completion of his/ her testimony. The national authorities further provided that this would depend on the circumstances of the case, influence and resources of the accused.

(b) Observations on the implementation of the article

348. RA 6981 provides for the relocation of persons nationally. However, as noted above, in extremely meritorious cases, to be determined by the Secretary of Justice and upon request of the witness, s/he may be relocated abroad. No agreements or arrangements with other States have been entered into by the Philippines for this purpose. The reviewing experts therefore recommended that the Philippines consider entering into such agreements or arrangements.

Article 32 Protection of witnesses, experts and victims

Paragraphs 4 and 5

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

(a) Summary of information relevant to reviewing the implementation of the article

349. RA 6981 provides that in any case where a witness is admitted into the Witness Protection Program, the tribunal or authority should ensure speedy trial and impose penalties on persons who harass such a witness.

(b) Observations on the implementation of the article

350. It was provided by the Philippine authorities that victims insofar as they are witnesses are not automatically covered by the Witness Protection, Security and Benefit Programme. As provided above, such a victim would need to be admitted to the Programme (satisfying the statutory requirements of section 3 of the RA 6981) before they might be included.
351. The authorities stated that victims may be presented as witnesses to establish the damages incurred (i.e. moral, exemplary). However, no specific measures were cited that would enable the views and concerns of victims to be presented and considered during the criminal process.

Article 33 Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

352. RA 6981 is titled the Witness Protection, Security, and Benefit Act.
353. The Senate Bill 2860 of March 2012, which provides for protection, security and benefits of whistleblowers, has been favorably recommended by the Senate Committees on Justice and Human Rights, and Finance. A counterpart bill in the lower house, House Bill No. 2922, is also pending. The said bills, however, have not been passed into law.
354. The salient provisions are as follows.

“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.

Before a person is provided protection as a whistleblower 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.

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.

(b) Observations on the implementation of the article

355. Assuming that Senate Bill 2860 passes into law, the reviewers deemed the Bill to legislatively cover the provision under review, and further recommended that sufficient resources be provided for its effective implementation.

(c) Challenges

356. The Philippines has identified the following challenges and issues in fully implementing the article under review:

- a. Limited resources for implementation (e.g. human/financial/other); There is a need to increase the budget of law enforcement agencies.
- b. Other issues: Jun Lozada was considered the whistleblower in the controversial ZTE-NBN deal, which allegedly involved the participation of a COMELEC Commissioner and the former first gentleman. Although his allegations caused investigations regarding the transaction, and the eventual cancellation of the contract, he faced more than a dozen cases. This example shows the need to provide more protection and security to whistleblowers, to encourage more to come out.

(d) Technical assistance needs

357. The Philippines has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Legal advice;
2. Capacity-building programmes for authorities responsible for establishing and managing protection programmes for reporting persons;

3. Other: Assistance required consists mostly of financial resources, as the biggest challenge for this aspect is financial constraints experienced by the law enforcement agencies.

None of these forms of technical assistance has been provided to the Philippines to date.

Article 34 Consequences of acts of corruption

With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.

(a) Summary of information relevant to reviewing the implementation of the article

358. The Philippines cited:

- i. Section 65 of Republic Act 9184 (Government Procurement Reform Act);
- ii. Civil Code provision on nullification of contracts (on vices of consent), i.e. when the Supreme Court annulled the Mega Pacific contract with the COMELEC;
- iii. PD 1445 (annulment of contract) -- Government Auditing Code (COA's power to disallow anomalous contracts)

RA 9184

Section 65. Offenses and Penalties

(a) Without prejudice to the provisions of Republic Act No. 3019, otherwise known as the "Anti-Graft and Corrupt Practice Act" and other penal laws, public officers who commit any of the following acts shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day, but not more than fifteen (15) years:

1. Open any sealed Bid including but not limited to Bids that may have been submitted through the electronic system and any and all documents required to be sealed or divulging their contents, prior to the appointed time for the public opening of Bids or other documents.

2. Delaying, without justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and awarding of contracts beyond the prescribed periods of Bids or other documents.

3. Unduly influencing or exerting undue pressure on any member of the BAC or any officer or employee of the procuring entity to take a particular bidder.

4. Splitting of contracts which exceed procedural purchase limits and competitive bidding.

5. When the head of the agency abuses the exercise of his power to reject any and all bids as mentioned under Section 41 of this Act with manifest preference to any bidder who is closely related to him in accordance with Section 47 of this Act.

When any of the foregoing acts is done in collusion with private individuals, the private individuals shall likewise be liable for the offense.

In addition, the public officer involved shall also suffer the penalty of temporary disqualification from public office, while the private individual shall be permanently disqualified from transacting business with the government.

(b) Private individuals who commit any of the following acts, including any public officer, who conspires with them, shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years:

1. When two or more bidders agree and submit different Bids as if they were bona fide, when they knew that one or more of them was so much higher than the other that it could not be honestly accepted and that the contract will surely be awarded to the pre-arranged lowest Bid.

2. When a bidder maliciously submits different Bids through two or more persons, corporations, partnerships or any other business entity in which he has interest of create the appearance of competition that does not in fact exist so as to be adjudged as the winning bidder.

3. When two or more bidders enter into an agreement which call upon one to refrain from bidding for Procurement contracts, or which call for withdrawal of bids already submitted, or which are otherwise intended to secure as undue advantage to any one of them.

4. When a bidder, by himself or in connivance with others, employ schemes which tend to restrain the natural rivalry of the parties or operates to stifle or suppress competition and thus produce a result disadvantageous to the public.

In addition, the persons involved shall also suffer the penalty of temporary or perpetual disqualification from public office and be permanently disqualified from transacting business with the government.

(c) Private individuals who commit any of the following acts, and any public officer conspiring with them, shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but more than fifteen (15) years:

1. Submit eligibility requirements of whatever kind and nature that contain false information or falsified documents calculated to influence the outcome of the eligibility screening process or conceal such information in the eligibility requirements when the information will lead to a declaration of ineligibility from participating in public bidding.

2. Submit Bidding Documents of whatever kind and nature than contain false information or falsified documents or conceal such information in the Bidding Documents, in order to influence the outcome of the public bidding.

3. Participate in a public bidding using the name of another or allow another to use one's name for the purpose of participating in a public bidding.

4. Withdraw a Bid, after it shall have qualified as the Lowest Calculated Bid/Highest Rated Bid, or to accept and award, without just cause or for the purpose of forcing the Procuring Entity to award the contract to another bidder. This shall include the non-submission of requirements such as, but not limited to, performance security, preparatory to the final award of the contract.

(d) When the bidder is a juridical entity, criminal liability and the accessory penalties shall be imposed on its directors, officers or employees who actually commit any of the foregoing acts.

359. The Philippines also provided the examples of implementation:

- In January 2004, the Supreme Court declared as void the Php1.3billion contract between COMELEC and Mega Pacific Consortium for the acquisition of ballot counting machines because of clear violation of law and jurisprudence, and reckless disregard of COMELEC's own bidding rules and procedure.
- In 2 October 2007, former President Gloria Macapagal-Arroyo cancelled the US\$329.5 million national broadband network (NBN) project with China's ZTE amidst controversy and allegations of corruption involving then COMELEC Chairman Abalos.
- In the case of *Agan v PIATCO* G.R. 155001, 5 May 2003, the last part of the decision stated as follows. "In sum, this Court rules that in view of the absence of the requisite financial capacity of the Paircargo Consortium, predecessor of respondent PIATCO, the award by the PBAC of the contract for the construction, operation and maintenance of the NAIA IPT III is null and void. Further, considering that the 1997 Concession Agreement contains material and substantial amendments, which amendments had the effect of converting the 1997 Concession Agreement into an entirely different agreement from the contract bid upon, the 1997 Concession Agreement is similarly null and void for being contrary to public policy. The provisions under Sections 4.04(b) and (c) in relation to Section 1.06 of the 1997 Concession Agreement and Section 4.04(c) in relation to Section 1.06 of the ARCA, which constitute a direct government guarantee expressly prohibited by, among others, the BOT Law and its Implementing Rules and Regulations are also null and void. The Supplements, being accessory contracts to the ARCA, are likewise null and void."

(b) Observations on the implementation of the article

360. The reviewing experts were of the view that the required legislation was not cited. However, based on the cases provided, the UNCAC article would most likely be implemented based on other legislation (i.e. laws on procurement, Civil Code). It was subsequently provided that article 45 of the RPC may be applied to consequences of corruption. However, this would not apply to a third person not liable for the offence.

RPC

Article 45. Confiscation and forfeiture of the proceeds or instruments of the crime

Every penalty imposed for the commission of a felony shall carry with it the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed. Such proceeds and instruments or tools shall be confiscated and forfeited in favor of the Government, unless they be the property of a third person not liable for the offense, but those articles which are not subject of lawful commerce shall be destroyed.

(c) Challenges

361. The Philippines have identified the following challenges and issues in fully implementing the article under review:

1. Limited capacity (e.g. human/technological/institution/other);
2. Limited resources for implementation (e.g. human/financial/other).

There has been difficulty with respect to the disbursements eventually disallowed or declared illegal.

Specifically, there have been issues encountered with respect to the execution of judgments which involve disallowances of contracts. There are instances when even if there has been a disallowance of a contract, the money already disbursed was not recovered.

(d) Technical assistance needs

362. The Philippines have indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

- a. Summary of good practices/lessons learned;
- b. Development of an action plan for implementation.

None of these forms of technical assistance has been provided to the Philippines to date.

Article 35 Compensation for damage

Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.

(a) Summary of information relevant to reviewing the implementation of the article

363. The Philippines cited:
i. RA 3019;

- ii. Civil Code provisions on torts and damages (articles 2176-2180);
- iii. □RPC provision on civil aspect of a criminal case (RPC, articles 100,101, 104);
- iv. Sec 12 AMLA (filing of third party claim in civil forfeiture);
- v. RA 1379 (Forfeiture of ill-gotten wealth).

R.A. 3019, Anti-Graft and Corrupt Practices Act

Section 9. Penalties for violations.

(a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than one year nor more than ten years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

Any complaining party at whose complaint the criminal prosecution was initiated shall, in case of conviction of the accused, be entitled to recover in the criminal action with priority over the forfeiture in favor of the Government, the amount of money or the thing he may have given to the accused, or the value of such thing.

Civil Code of the Philippines (Torts and Damages)

Article 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Article 20. Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

Article 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.

Article 27. Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken.

CHAPTER 2. QUASI-DELICTS

Article 2176.

Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter. (1902a)

Article 2177.

Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant. (n)

Revised Penal Code

Article 100. Civil liability of a person guilty of felony.

Every person criminally liable for a felony is also civilly liable.

Chapter Two. WHAT CIVIL LIABILITY INCLUDES

Article 104. What is included in civil liability

The civil liability established in Articles 100, 101, 102, and 103 of this Code includes:

1. Restitution;
2. Reparation of the damage caused;
3. Indemnification for consequential damages.

364. No statistics were deemed relevant to the UNCAC article under review.

(b) Observations on the implementation of the article

365. The reviewing experts noted that “person”, as provided for above, includes a natural and/or legal person. The provision under review was deemed to have been legislatively implemented.

Article 36 Specialized authorities

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

(a) Summary of information relevant to reviewing the implementation of the article

366. The Philippines cited:

- RA 6770;
- AM - MOA No. 46-2007 on IDR dated Dec. 05, 2004;
- PCGG Law;
- NBI Anti-Graft and Corruption Division (DOJ);
- EO 259, series of 2003, creating RIPS (DOF).

RA 6770

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 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 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 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.

RA 6770

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 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 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 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 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. Officials 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 terminate 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. Preventive 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 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) inefficiently performed or otherwise objectionable.

(2) The Office 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 therefore. 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 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 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 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.

AMLA

Section 7. Creation of Anti-Money Laundering Council (AMLC)

The Anti-Money Laundering Council is hereby created and shall be composed of the Governor of the Bangko Sentral ng Pilipinas as chairman, the Commissioner of the Insurance Commission and the Chairman of the Securities and Exchange Commission as members. The AMLC shall act unanimously in the discharge of its functions as defined hereunder:

- (1) to require and receive covered transaction reports from covered institutions;
- (2) to issue orders addressed to the appropriate Supervising Authority or the covered institution to determine the true identity of the owner of any monetary instrument or property subject of a covered transaction report or request for assistance from a foreign State, or believed by the Council, on the basis of substantial evidence, to be, in whole or in part, wherever located, representing, involving, or related to, directly or indirectly, in any manner or by any means, the proceeds of an unlawful activity;
- (3) to institute civil forfeiture proceedings and all other remedial proceedings through the Office of the Solicitor General;
- (4) to cause the filing of complaints with the Department of Justice or the Ombudsman for the prosecution of money laundering offenses;
- (5) to initiate investigations of covered transactions, money laundering activities and other violations of this Act;
- (6) to freeze any monetary instrument or property alleged to be proceeds of any unlawful activity;
- (7) to implement such measures as may be necessary and justified under this Act to counteract money laundering;
- (8) to receive and take action in respect of, any request from foreign states for assistance in their own anti-money laundering operations provided in this Act;
- (9) to develop educational programs on the pernicious effects of money laundering, the methods and techniques used in money laundering, the viable means of preventing money laundering and the effective ways of prosecuting and punishing offenders; and
- (10) to enlist the assistance of any branch, department, bureau, office, agency or instrumentality of the government, including government-owned and -controlled corporations, in undertaking any and all anti-money laundering operations, which may include the use of its personnel, facilities and resources for the more resolute prevention, detection and investigation of money laundering offenses and prosecution of offenders.

Section 8. Creation of a Secretariat

The AMLC is hereby authorized to establish a secretariat to be headed by an Executive Director who shall be appointed by the Council for a term of five (5) years. He must be a member of the Philippine Bar, at least thirty-five (35) years of age and of good moral character, unquestionable integrity and known probity. All members of the Secretariat must have served for at least five (5) years either in the Insurance Commission, the Securities and Exchange Commission or the Bangko Sentral ng Pilipinas (BSP) and shall hold full-time permanent positions within the BSP.

367. The Monetary Board of the BSP, in its Resolution No. 227 dated 18 February 2010, approved the reorganization of the AMLC Secretariat. This reorganization was aimed at: (i) a more effective performance by the AMLC Secretariat of its mandate under RA No. 9160, as amended; (ii) a greater capacity to perform specialized functions as specifically mandated; and (iii) full compliance with the recommendations of the Joint World Bank-Asia Pacific Group (WB-APG) Assessment Team, as adopted by the APG on Money Laundering.
368. Prior to the reorganization, the AMLC Secretariat had a total of 66 positions and now 109 positions. To date, 102 positions have already been filled; the remaining 7 positions are expected to be filled within the year.
369. The additional positions created under the reorganization were filled with personnel who had a law enforcement background, such as those from the National Bureau of

Investigation (NBI), Philippine National Police (PNP), Philippine Drug Enforcement Authority (PDEA), the Bangko Sentral ng Pilipinas (with regulatory experience), the Office of the Solicitor General (OSG) and from the public and private sectors (with good credentials and extensive experience in the fields of law and information technology).

370. A Presidential Anti-Organized Crime Commission was established, whose functions include combating graft domestically. The Commission is comprised of PNP- Directorate for Operations, the Anti-Money Laundering Council (AMLC), the Philippine Drug Enforcement Agency (PDEA), the Bureau of Immigration (BI) and the Philippine Retirement Authority. The Department of Foreign Affairs and the Central Bank of the Philippines (BSP) have also signified their intention to become members. Due to PDEA's membership in the Presidential Anti-Organized Crime Commission, its mandate and operations are extended to fighting corruption on the domestic level.
371. PDEA has an existing Memoranda of Agreement or Understanding (MOAs or MOUs) with other law enforcement agencies, including foreign counterparts for the exchange of information on drug related offences. These MOAs or MOUs on the sharing of intelligence information and administrative coordination on the identification of corruption offences are yet to be utilized.
372. PDEA has signed an MOU with Indonesia covering international criminal cooperation and attended conferences relevant to communication, procedures and legal aspects on interdiction and paper network. United States-Drug Enforcement Agency supported the creation of an inter-agency network system composed of the Bureau of Customs, Philippine Coastguard and Bureau of Immigration. It provided facilities, databases, computers and servers which are strategically spread-out nationwide and allow for international information-sharing. It also includes inter-agency airport facilities.
373. The PDEA Manual of Anti-Illegal Drug Operations refers to drug offences in particular, but also outlines the process for financial investigations on anti-money laundering in coordination with the AMLC. Moreover, under its mandate, the PDEA has the authority to recommend to the Department of Justice the forfeiture of properties and other assets of persons and/or corporations found to be violating the provisions of the Comprehensive Dangerous Drugs Act of 2002 RA 9165 (Section 84(g)) and in accordance with the pertinent provisions of the Anti-Money Laundering Act of 2001.

REPUBLIC ACT NO. 9165, dated June 7, 2002

AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES
Section 84. Powers and Duties of the PDEA. - The PDEA shall:

...

(g) Recommend to the DOJ the forfeiture of properties and other assets of persons and/or corporations found to be violating the provisions of this Act and in accordance with the pertinent provisions of the Anti-Money-Laundering Act of 2001;

PDEA Manual of Anti-Illegal Drug Operations

...

CHAPTER VI SPECIFIC RULES

Section 1. Coverage. - This policy covers the procedures in the following anti-drug operations:

...

8. Financial Investigation

....

Section 8. Financial Investigation

1. During the intelligence/surveillance phase of the anti-drug operations, PDEA operating units must also gather information on possible money laundering activities of target personalities and their cohorts/accomplices.
2. Operating units must check/examine the financial records of the suspect/s which includes, among others, the following:
 - a. Bank accounts records (Bank statements, deposit slips, encashed checks, credit card monthly billings, debit/credit memos, wire transfers, cashier's checks, FX sold);
 - b. Business records (Articles of Incorporation/By-Laws, board meeting minutes, stock record books);
 - c. Deed of conveyances (Deed of Sale, Deed of Donation, Deed of Transfer, etc.);
 - d. TCTs, ORs/CRs of vehicles;
 - e. Payment of bills, purchase of materials, stock certificates; and
 - f. Anything that will show that the money went into financial institutions or where money went/ spent.
3. PDEA operating units through the PDEA Anti-Money Laundering Desk (PDEA AMLD) under the POS may seek the assistance of the Anti-Money Laundering Council (AMLC) for financial information or detection of money laundering activities of drug personalities to prove collaboration and conspiracy of people in a drug case.
4. PDEA operating units through the PDEA AMLD may also request the AMLC to conduct a financial investigation against target drug personalities for possible filing of money laundering case and/or strengthen the drug cases that will be filed against the suspect.
5. The request for assistance from the PDEA shall be in writing addressed to the AMLC. It shall disclose the reason for the request and the purpose for which the information will be used and sufficient information to enable the AMLC to act accordingly.
6. The PDEA shall furnish the AMLC with any criminal information, reports, documents, information or other evidence that would support an AMLC finding of the existence of probable cause justifying the conduct of a bank inquiry/examination, the filing of a petition for a freeze order or action for civil forfeiture.
7. Upon finding probable cause for money laundering offense, the PDEA operating unit through the PDEA Anti-Money Laundering Desk shall request the AMLC to file a petition to freeze or institute a civil forfeiture action on any monetary instrument, property or proceeds representing drug-related activities. Freezing and forfeiture of illegal drug related assets shall be done pursuant to the AMLA, as amended, and the Rule of Procedure in Cases of Civil Forfeiture, Asset Preservation and Freezing of Monetary Instrument, Property, or Proceeds Representing, Involving, or Relating to an Unlawful Activity or Money Laundering Offense under Republic Act No. 9160, as amended (AM No. SC. 05-11-04-SC). The information that will be provided by the AMLC shall be strictly confidential. It is subject to official secrecy and the same confidentiality provisions, as provided by the AMLA, as amended, and its Revised Implementing Rules and Regulations.

374. The pending Bills were also highlighted:

- a. An NBI Modernization Bill is pending with Congress which redefines the mandate of NBI and possibly includes UNCAC compliance;
- b. HJR 0002: Joint Resolution Expressing the Approval by both Houses of Congress of the Philippine National Police Reorganization Plan, pursuant to RA 8551, entitled, "An Act Providing for the Reform and Reorganization of the Philippine National Police and for other purposes, amending certain provisions of the RA 6975, entitled, "An Act Establishing the Philippine National Police Under a Reorganized Department of Interior and Local Government and for Other Purposes (Status: under deliberation by the Committee on Public Order and Safety);
- c. HJR 0013: Joint Resolution Expressing the Approval by Both Houses of Congress of the Revised Reorganization Plan of the Philippine National Police, pursuant to RA 8551, entitled, "An Act Providing for the Reform and Reorganization of the Philippine National Police and for Other Purposes, Amending Certain Provisions of the RA 6975, entitled, "An Act Establishing the Philippine National Police Under a Reorganized Department of Interior and

Local Government and for Other Purposes" (Status: under deliberation by the Committee on Public Order and Safety);

- d. HB00385: An Act Reorganizing and Modernizing the National Bureau of Investigation, Providing Necessary Funds Therefore and For Other Purposes (Status: pending before the Committee on Appropriations).

375. The Philippines also provided the examples of implementation:

- The OMB, PCGG and NBI (Anti-Graft and Corruption Division) are the main entities dedicated to combating corruption through law enforcement. The Revenue Integrity Protection Service (RIPS) is the anti-corruption arm of the DOF mandated to investigate allegations of corruption in the said Department.
- The OMB, Presidential Commission on Good Government (PCGG) and NBI (Anti-Graft and Corruption Division) are the main entities dedicated to combating corruption more generally.
- The OMB is an independent body with fiscal autonomy, created by the Constitution, whose head is removable only by impeachment. However, the OMB and PCGG are not law enforcement agencies. On the other hand, while the NBI Anti-Graft and Corruption Division is engaged in law enforcement, it is not independent being under the administrative supervision of the Department of Justice, which in turn is under the control of the Office of the President.

(b) Observations on the implementation of the article

The Office of the Ombudsman

376. The OMB has, *inter alia*, the following powers, functions and duties:

- 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 his primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases (*Sec. 15(1) R.A. No. 6770; see also Sec. 13(1), Article XI, 1987 Constitution*). However, it can also prosecute criminal cases involving public officials and employees before the regular courts (p. 2, *Setting a New Direction*, OMB, 2011 Annual Report);
- 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 (*Sec. 15(2) R.A. No. 6770; Sec 13(2) Article XI, 1987 Constitution*);
- Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents (*Sec. 15(5), R.A. No.6770; see also Sec. 13(5), Article XI, 1987 Constitution*);

- 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 (*Sec 15(8), R.A. No. 6770*).
377. The Constitutional guarantees insulating the Office from political influence and interference include the following organic provisions:
- giving the Ombudsman and his Deputies, whose appointments need no Congressional confirmation, the rank of chairman and members, respectively, of a Constitutional Commission;
 - providing them with fixed term contracts of Office during which their salaries cannot be diminished;
 - removable from Office only by impeachment; and
 - making it an independent office enjoying fiscal autonomy.
378. It was provided that 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 13, R.A. No. 6770; see also Section 12 Article XI of the 1987 Constitution*).
379. 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 (*Sec. 15, R.A. No. 6770*).
380. The reviewing experts noted that under section 20(4) of the RA 6770, the OMB may not conduct the necessary investigation of any administrative act or omission complained of, if it believes that the complainant has no sufficient personal interest in the subject matter of the grievance. This was of initial concern to the reviewers, because it prohibits OMB from investigating the complaints of citizens who report such incidents and could discourage citizens from filing reports that may be in the public interest. However, it was subsequently provided by the national authorities that section 20(4) does not contemplate such complaints to involve corruption-related offences and merely involve grievances. Section 1, Rule IV (Procedure in Grievances/Request for Assistance) of Ombudsman Administrative Order No. 07, dated April 10, 1990 (Rules of Procedure of the Office of the Ombudsman) defines grievance as a “complaint seeking redress or relief concerning an act or omission of public official or employee, office or agency alleged to be unreasonable, unfair, oppressive, discriminatory, improper or inefficient, and which does not necessarily amount to a criminal or administrative offense”.
381. The OMB provided that they are mandated to act on any complaint in any form i.e. anonymous. Based on this, a fact-finding investigation would be conducted by the OMB’s Field Investigation Office (with the sole function of gathering evidence) and if there is sufficient evidence to warrant an investigation, then the OMB would become the complainant. It was further provided by the national authorities that this was needed to qualify investigators-complainants to serve as witnesses and competently testify based on personal knowledge, which is within the power granted to the Ombudsman by the Constitution and RA 6770 (especially, section 15(1)).

382. Pursuant to section 21 of RA 6770, the OMB's mandate is limited only to the executive branch of Government. Thus, the Office does not have disciplinary authority over Members of Congress and the Judiciary. However, the OMB provided that their mandate encompasses all branches of Government, pursuant to jurisprudence.
383. Section 22 of the RA 6770 limits the OMB to only investigate "any serious misconduct" (i.e. high threshold) for 5 sets of Governmental officials: the President; Vice President; Members (Justices) of the Supreme Court; Members of the Constitutional Commissions; and the Ombudsman. Nonetheless, the OMB provided that they have the mandate to consider an act or omission by a public official which is simple or grave in nature.
384. It was noted that pursuant to section 23(2) of the RA 6770, the OMB may refer certain complaints to the proper disciplinary authority without any verification or clarification. However, it was clarified by the national authorities that this is only true for non-corruption-related offences where complaints involve a violation of civil service rules (i.e. tardiness, absenteeism, discourtesy).
385. Regarding any investigation under this Act, the Ombudsman may only enter and inspect Government premises, but not private property. It was stated by the OMB that, pursuant to section 15 of the RA 6770, the OMB can request the Police to investigate private premises, as they themselves do not have the mandate. The experts questioned how a corruption-related matter involving the Police might be investigated where it is required to search or inspect private premises. It was provided that the Police would still need to conduct such a search or investigation. It was therefore noted that the Philippines may wish to extend the mandate of the OMB to also include private premises under section 23(2) of the RA 6770.
386. Pursuant to section 26 of RA 6770, the OMB shall only inquire into acts or omissions as received from reports or complaints. However, as provided for above, the OMB noted that, in practice, they are also able to take proactive measures (i.e. own initiative, informants) or referrals may be taken.
387. It was noted that the OMB, pursuant to section 13 of the RA 6770, can only seek a Court order to obtain bank records through the AMLC. It does not have the power to seek such an order directly. The experts therefore recommended that the OMB, in order to effectively carry out its functions, should have access to all relevant data and information, even where it is deemed confidential (i.e. tax, custom records) and access to bank records.
388. The experts noted the limitations associated with section 28 of the RA 6770 and referred to the Memorandum of Agreement between the OMB and the Department of Justice (DOJ) as of 12 March 2012. The reviewers were informed that it was entered into in order to enhance and fortify mutual partnership and to further give life and meaning to the policy thrust of the Office and its 8 Point Priorities for 2011-2018 particularly, on matters of Enforced Monitoring of Referred Cases. Thus, complaints and cases that are denominated as non-corruption e.g. cases of physical injuries, oral defamation, grave threats, and/or those cognizable by other forums shall be referred to the proper forum for appropriate action. Likewise, criminal cases referred to the National Prosecution Service of the DOJ shall be monitored until their final disposition in court. It may also be proper

to stress that by entering into the MOA with the DOJ, the Ombudsman is not bargaining away, so to speak, its jurisdiction, which is conferred by law or will to ever compromise its mandate. Indeed, the OMB has full and complete administrative disciplinary authority over all Government officials and employees (elective and appointive) except those who may be removed only by way of impeachment or over Members of Congress and the Judiciary. Its constitutional command is enshrined in the Constitution (Section 12, Article XI, 1987 Constitution) and the law (Section 16, R.A. 6770). In the Memorandum in sections 4, “The Prosecutor General or provincial/ city prosecutors shall resolve cases referred by the OMB to the DOJ for preliminary investigation without need of approval from the OMB” and 12 “The OMB shall provide complete contact details of all witnesses in case referred to the DOJ for prosecution”. In light of this, the experts considered that an ordinary citizen who submitted a complaint to the OMB because of his/her trust in the independency of the Office might find his or her complaint, in the form of a preliminary investigation/ prosecution, being addressed by the DOJ.

389. The OMB does not have the mandate to consider private sector parties or individuals, except private individuals who have acted in conspiracy with public officials.
390. It was further noted that under the forfeiture law (RA No. 1379, An Act Declaring Forfeiture in Favor of the State any Property Found to Have Been Unlawfully Acquired By any Public Officer or Employee and Providing for the Proceedings Therefore), a matter cannot be filed before Court one year prior to a general election; of particular relevance is section 2 on filing a petition. The proposed amendment includes the abolishment of this, which the experts support.
391. It was provided by the OMB that it holds regular and ongoing trainings, which are also funded by development partners. Moreover, officers from the OMB are currently assigned in some agencies of priority, but this practice is currently under review.
392. During the country visit, the experts were also informed of bills pending before Parliament. Some of these were deemed positive, *inter alia*, including:
- “Enable the Office of the Ombudsman to issue *subpoena* and *subpoena duces tecum*, during the preliminary investigation in order to look in bank records even prior to the filing of a case before the court” (to be included in RA 6770; SBN 1447 Sen. Zubiri);
 - “*Motu proprio*, issue freeze order to unlawfully acquired assets for six months (add No. 12 Section 15)” (as above);
 - “Section 38. Fiscal Autonomy – The Office of the Ombudsman shall enjoy fiscal autonomy” (to amend section 38 of RA 6770; H.B. 02159 Rep. Nograles);
 - “Amending Section 8, par. (C) of R.A. 6713 as follows...
(6) The respective public officer, office, or agency entrusted by this Act with the custody of the statements [of assets, liabilities and net worth and the disclosure of business interested and financial connections] filed by all Constitutional and national elective officials, Senators, and Congressmen, and Justices of the Supreme Court shall make electronic copies of the same available on the websites of their respective offices or agencies within thirty (30) calendar days from the time they were filed as required by law.
(7) The electronic copies of all such statements shall be kept available on the websites of the respective public officer, office, or agency for at least three (3) years from the time they are uploaded” (H.B. 2827 Reprs. Bello and Bag-ao).

393. Regarding the pending bills cited below that were the individual proposals of sponsor legislators, still subject to deliberations by the Congress, there were also are few concerns raised by the experts regarding the following amendments, *inter alia*:

- 1) New section 21 in R.A. 6770: OMB “shall have power to cause the filing of...information against and prosecute the officials over which it has disciplinary authority...without preliminary investigation...”;
- 2) Section 31 in RA 6670: OMB “may designate private lawyers to act as investigators and/or prosecutors...Nature of services: Shall be pro bono”;
- 3) “The informer who gives vital information supported by competent evidence which accounts for or materially aids in the recovery or forfeiture of ill-gotten wealth as defined under RA 1379 and RA 7080 shall be entitled to a reward of twenty-five percentum (25%) of the total value of the property actually recovered” (SBN 422 Sen. Trillanes). The experts observed that 25% could lead to a significant reward for a single informer;
- 4) “This measure shall provide a mechanism wherein 30% of the value of forfeited assets shall be used as funding for the Office of the Ombudsman that will assist the continued progress of cases and help in effectively performing its functions and responsibilities” (SBN 2389 Sen. Estrada). It was questioned by the experts why only the OMB should be allowed to benefit from such assets.

It was subsequently provided by the OMB that the first two amendments (1 and 2) cited above will not be included in the draft bill being prepared by the Ombudsman Legislative Liaison Team (OLLT). Moreover, amendment number 3 is a stand-alone bill and not an amendment to RA 6770. OLLT has not yet considered this bill in its discussions.

394. In its 2011 Annual Report, OMB received a total number of 16,987 new complaints, up by 30% from the 2010 figure of 13,057. In 2011, a total of 5,079 complaints and reports were referred for fact-finding investigation. The total workload of cases for fact-finding is 12,157. More than a quarter of these involve high-ranking officials. Some 3,727 fact-finding investigations were completed in 2011, which is 31% of the total workload. About 12% of these investigations resulted in the filing of criminal and/or administrative cases against the subject of investigation. A total of 4,558 new cases were referred for preliminary investigation in addition to the cases carried over from previous years. More than half of these cases involve low-ranking officials. The preliminary investigation of 4,819 cases was completed by 2011. About 30% of these cases resulted in the criminal indictment in court of one or more respondents. In 155 cases, the recommended action is the filing of criminal information with the Sandiganbayan; in 1,315 cases, the recommendation is to file information with the regular trial courts. The rest were either dismissed (69%), or closed and terminated/ referred to other government agencies for appropriate action (1%).

395. A total of 469 criminal matters were filed in 2011 for various offences against high-ranking officials and their cohorts before the Sandiganbayan. These brought to 2,443 the number of criminal cases being prosecuted in 2011 by the Office of the Special Prosecutor. The anti-graft court promulgated its decision or resolution in 412 cases, 342 of which underwent full blown trial or were finally disposed. Of this number, 114 cases resulted in the conviction of one or more accused (including guilty pleas), thus, posting a conviction rate of 33.3%. The rest were dismissed or resulted in acquittal. Most of these cases are either for violation of R.A. 3019 (Anti-Graft and Corrupt Practices Act) or malversation of public funds or property.

396. A total of 84 persons were convicted; 36 were high-ranking officials, 46 were low-ranking officials and employees, and 2 were private individuals. Most of the convicted public officials were appointive (65%); others were elective (35%), mostly municipal elected officials. The most number of convicted accused were municipal mayors (29%) and police officers (12%).

397. In 2011, the OMB through its Prosecution Bureaus in the central and area offices, prosecuted a total of 2,626 criminal cases before the Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trials Courts involving low ranking officials and employees of Government agencies. Of this number, 131 have been decided and resolved. The conviction rate was 62.6%. Most of the cases with conviction were for malversation of public funds or property. Others are for violation of RA 6713 and other titles of the RPC.

398. It was noted by the reviewing experts that conflict of interest and divestment is covered by Rule IX of the Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees. However, it appears limited in its definition of when a conflict of interest occurs. The experts therefore recommended that conflict of interest be broadly defined.

Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees

Rule IX. Conflict of Interest and Divestment

Section 1.

(a) An official or employee shall avoid conflict of interest at all times.

(b) Conflict of interest occurs:

(1) When the official or employee is:

(a) a substantial stockholder; or

(b) a member of the Board of Directors; or

(c) an officer of the corporation; or

(d) an owner or has substantial interest in a business; or

(e) a partner in a partnership; and

(2) The interest of such corporation or business, or his rights or duties therein, are opposed to or affected by the faithful performance of official duty.

(c) A substantial stockholder is any person who owns, directly or indirectly, shares of stock sufficient to elect a director of a corporation. This term shall also apply to the parties to a voting trust.

(d) A voting trust means an agreement in writing between one or more stockholders of a stock corporation for the purpose of conferring upon a trustee or trustees the right to vote and other rights pertaining to the shares for certain periods and subject to such other conditions provided for in the Corporation Law.

Section 2.

(a) When a conflict of interest arises, the official or employee involved shall resign from his position in any private business enterprise within thirty (30) days from his assumption of office and/or divest himself of his share-holdings or interests within sixty (60) days from such assumption. For those who are already in the service, and conflict of interest arises, the officer or employee must resign from his position in the private business enterprise and/or divest himself of his shareholdings or interests within the periods herein-above provided, reckoned from the date when the conflict of interest had arisen. The same rule shall apply where the public official or employee is a partner in a partnership.

(b) If the conditions in Section 1 (b) concur, divestment shall be mandatory for any official or employee even if he has resigned from his position in any private business enterprise.

(c) Divestment shall be to a person or persons other than his spouse and relatives within the fourth civil degree of consanguinity or affinity.

(d) The requirements for divestment shall not apply to those specifically authorized by law and those who serve the government in an honorary capacity nor to laborers and casual or temporary workers.

Anti-Money Laundering Council

399. The AMLC was established on 15 December 2005 and has law enforcement powers under the AMLA (i.e. the power to investigate, but not powers of arrest except in circumstances of citizens' arrest / red-handedness). It has functions beyond an FIU – as a hybrid body – also to investigate money-laundering activities and other offences under the AMLA. It carries out: financial analysis/ investigation; criminal investigation under the AMLA, i.e. for failure to report an STR (a criminal offence punishable by 4 years imprisonment) and breach of confidentiality of an STR (which is a crime); file petitions to freeze assets; and carry out civil forfeiture of frozen bank accounts and other assets (non-conviction based forfeiture), which can be done based on the preponderance of evidence. When a money-laundering matter is probable, it is filed with the OMB (for Government officials) or the Department of Justice (in other cases); if this is elevated to the Courts, AMLA works side-by-side the prosecutors when requested. Numerous civil forfeiture judgments have been granted and none have been lost to date. AMLA also conducts inquiries into bank deposits and investments of financial and non-bank institutions where there is probable link to a predicate or money-laundering offence. With recent amendments of AMLA, AMLC now has the authority to inquire into bank deposits through a court order ex parte (since 6 July 2012, it can look into an account without the knowledge of the account owner). It has further entered into MOUs with other agencies, including the OMB, Bureau of Revenue, Department of Justice, and Bureau of Customs and Civil Aviation of the Philippines. AMLC also conducts trainings for interested agencies to enhance their AML/CFT knowledge.

Civil Service Commission

400. The Civil Service Commission (CSC) is the central human resources agency of the Philippines. Its mandates, as enshrined in the Constitution, are to establish a career service by promoting morale, efficiency and integrity. Regarding anti-corruption measures, the CSC relies on the Anti-Red Tape Act and RA 6713 (Code). The CSC has working links with civil society and other stakeholders. Executive Order No. 292 provides further mandates, i.e. that public office is a public trust and personnel functions shall be decentralized, delegating the corresponding authority to the departments, offices and agencies where such functions can be effectively performed. CSC can hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments. This function is also shared with the OMB. However, only the CSC has the power to review decisions and actions of its office and of the agencies attached to it. The matter can then be brought by the CSC to the Courts. EO No. 292 also provides that officials and employees who fail to comply with such decisions, orders or rulings shall be liable for contempt. Moreover, the CSC can subpoena documents, if so required. In 2010, there have been 12 cases under RA 6713 (filed to the CSC's Office of Legal Affairs), which dropped to 3 cases in 2011. The CSC has a hotline but this has not been used and also no anonymous complaints were received since 2010. The Public Assistance and Information Office tends to receive complaints involving the civil service, which are referred to CSC. It has concurrent disciplinary jurisdiction (exception Presidential appointees, but including 3rd level officials (i.e. directors) with salary grade level 25 and up. If it does not have jurisdiction, the matter will be referred to the OMB.

Presidential Commission on Good Government

401. The Presidential Commission on Good Government (PCGG) was established pursuant to Executive Order No. 1, dated 28 February 1986. The Commission was charged with the

task of assisting the President in regard to (a) the recovery of ill-gotten wealth accumulated by former President Marcos, (b) the investigation of such cases of graft and corruption “as the President may assign to the Commission from time to time”, and (c) “the adoption of safeguards to ensure that the above practices shall not be repeated in any manner under the new government, and the institution of adequate measures to prevent the occurrence of corruption” (section 2, Order). The Commission also has the power and authority to, *inter alia*, conduct investigations as may be necessary to accomplish and carry out the purposes of the Order. Executive Order No. 2, dated 12 March 1986 focuses on the funds, moneys, assets and properties illegally acquired or misappropriated by former President Marcos, Mrs. Imedla Romualdez Marcos, their close subordinates, business associates, dummies, agents or nominees.

Anti-Graft Division

402. The Anti-Graft Division (15 people, 5 agents and support staff), under the National Bureau of Investigation (NBI), was established in 1936. In 1990, it became an independent Division. Further, in October 2010, it became a specialized Division that handles corruption-related offences, focusing on embezzlement and illicit enrichment (unexplained wealth). It liaises predominately with the Police (especially in the provinces) and the OMB. It can initiate an investigation, but this would need to be cleared by the NBI or Department of Justice. It receives complaints (i.e. hotline) and referrals from civil society or informants. After approval has been granted, the Division has the power to investigate matters. The Division can obtain a search warrant, but there would be a time delay to receiving such a warrant. In order to obtain or freeze bank records, the Division would also need to go through AMLC (but through a different NBI Division). If there is sufficient evidence, NBI would transfer the matter to the Department of Justice (for cases involving persons at the salary grade above 27) or OMB (if the salary is below grade 27 or in exceptional cases). The Division will only be informed that the matter has been referred.

403. In 2009, the Division received 49 complaints that were corruption-related (3 related to embezzlement and 5 on bribery); in 2010, 42 were received (1 on illicit enrichment, 1 on embezzlement and 2 on bribery); in 2011, 43 were received (2 on illicit enrichment, 4 on embezzlement and 4 on bribery).

The Police

404. In 2009-2011, 192 cases on anti-graft and corrupt practices of persons in uniform were investigated. The Police may also refer matters to other Government agencies if they have the mandate (i.e. AMLC). If the matter is investigated by the Police and there is sufficient evidence, then depending on the salary grade of that person, the matter would be referred to the State Prosecutor or OMB to prosecute the matter. The Internal Affairs Service would deal with corruption-related matters concerning Police Officers (either by complaint, referral or own initiative). Administrative sanctions can be imposed, but if there is a criminal aspect, then it would need to be referred to the Department of Justice or OMB.

405. If there is a request to search private premises from the OMB (through section 13 of RA6773), the Police has the power to carry out this function, but has not done so to date. The NBI is the law enforcement authority that has investigated corruption-related matters

on behalf of the OMB. It would collaborate with the Police where required and obtain the necessary search warrants.

Philippine Center for Transnational Crime

406. The Philippine Center for Transnational Crime (PCTC) was established according to EO No. 62. It has the following functions, namely: the establishment of a centralized database (use of information and communication technologies) among Government agencies on, *inter alia*, money laundering, financing and other crimes that have an impact on the stability and security of the country. Corruption-related offences are within the ambit of EO No. 62, namely the latter. It was provided that one role of the PCTC is to work toward enhancing coordination for a whole of Government approach. PCTC further serves as the INTERPOL contact agency in the Philippines, and it also provide investigative assistance. Monthly meetings are held with 23 agency members under the umbrella of law enforcement on INTERPOL-related matters. As the mandate on corruption-related offences is relatively new for PCTC, no matters have been considered to date. If there were such a matter, it would be referred to the competent authorities.

Revenue Integrity Protection Service

407. The Revenue Integrity Protection Service (RIPS) is the anti-corruption arm of the Department of Finance mandated to investigate allegations of corruption in the said Department. It carries out lifestyle checks on the Department's officials. It further empowers the Department to file cases for illicit enrichment against public officials and employees of revenue generating agencies.

Office of the Supreme Court Administrator

408. The Office of the Supreme Court Administrator conducts administrative supervision over all judges and court personnel in the Philippines. There are approximately 2,000 judges and 20,000 court personnel. It has the authority to impose administrative sanctions for misconduct, including immorality and unbecoming conduct, up to a maximum penalty involving dismissal and disqualification. It also reviews income and asset declarations filed by judges which can be used to conduct lifestyle checks where a relevant suspicion arises. The Office further conducts financial and judicial audits of Courts.

Recommendations

409. In light of the above, the reviewing experts recommended the following:
- a. In order to overcome the challenges of inter-agency coordination, a competent anti-corruption authority be granted the necessary law enforcement and prosecutorial powers to carry out their functions effectively and without an undue influence in the private and public sectors;
 - b. This above authority be given a clear legislative mandate and need not rely on jurisprudence or memoranda;
 - c. Provide the appropriate resources and training to the above authority to carry out its functions in the whole of the Philippines.
410. Other specific recommendations relate to the observations made above.

(c) Successes and good practices

411. The reviewing experts deemed the incentives and rewards system to be a good practice and referred to Rule V in the Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees.

Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees

Rule V. Incentive and Rewards System

Section 1.

Incentives and rewards shall be granted officials and employees who have demonstrated exemplary service and conduct on the basis of their observance of the norms of conduct laid down in Section 4 of the Code namely:

(a) *Commitment to public interest* - Officials and employees shall always uphold the public interest over personal interest. All government resources and powers and powers of their respective departments, offices and agencies must be employed and used efficiently, effectively, honestly and economically, particularly to avoid wastage in public funds and revenues.

(b) *Professionalism* - Officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and dedication to duty.

They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.

(c) *Justness and sincerity* - Officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. They shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest. They shall not dispense or extend undue favors on account of their office to their relatives, whether by consanguinity or affinity, except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs.

(d) *Political neutrality* - Officials and employees shall provide service to everyone without unfair discrimination regardless of party affiliation or preference.

(e) *Responsiveness to the public* - Officials and employees shall extend prompt, courteous, and adequate service to the public. Unless otherwise provided by law or when required by the public interest, officials and employees shall provide information on their policies and procedures in clear and understandable language, ensure openness of information, public consultations and hearings whenever appropriate, encourage suggestions, simplify and systematize policy, rules and procedures, avoid red tape and develop an understanding and appreciation of the socio-economic conditions prevailing in the country, especially in the depressed rural and urban areas.

(f) *Nationalism and patriotism* - Officials and employees shall at all times be loyal to the Republic and to the Filipino people, promote the use of locally produced goods, resources and technology and encourage appreciation and pride of country and people. They shall endeavor to maintain and defend Philippine sovereignty against foreign intrusion.

(g) *Commitment to democracy* - Officials and employees shall commit themselves to the democratic way of life and values, maintain the principle of public accountability and manifest by deeds the supremacy of civilian authority over the military. They shall at all times uphold the Constitution and put loyalty to country above loyalty to persons or party.

(h) *Simple living* - Officials and employees and their families shall lead modest lives appropriate to their positions and income. They shall not indulge in extravagant or ostentatious display of wealth in any form.

Section 2.

The following criteria shall be considered in the conferment of awards:

(a) Years of service;

(b) Quality and consistency of performance;

(c) Obscurity of the position;

(d) Level of salary;

(e) Unique and exemplary quality of achievement;

(f) Risk or temptation inherent in the work; and

(g) Any similar circumstances or considerations in favor of the particular awardee.

Section 3.

Incentives and rewards to government officials and employees of the year may take the form of any of the following, as may be determined by the Committee on Awards established under the Code:

- (a) Bonuses; or
- (b) Citations; or
- (c) Directorships in government-owned or controlled corporations; or
- (d) Local and foreign scholarship grants; or
- (e) Paid vacations; and
- (f) Automatic promotion to the next higher position suitable to his qualifications and with commensurate salary; provided, that if there is no next higher position or it is not vacant, said position shall be included in the next budget of the office;

except when the creation of a new position will result in distortion in the organizational structure of the department, office or agency. Where there is no next higher position immediately available, a salary increase equivalent to the next higher position shall be given and incorporated in the base pay. When a new position is created, that which is vacated shall be deemed abolished.

The grants of awards shall be governed by the merit and fitness principle.

Section 4.

(a) The system shall be administered by a Committee on Awards for Outstanding Public Officials and Employees composed of:

- (1) Ombudsman Co-Chairman
- (2) Chairman CSC Co-Chairman
- (3) Chairman COA Member
- (4) Two (2) Government Members Employees to be Appointed By the President

(b) For this purpose, the Committee shall perform the following functions and responsibilities:

- (1) Conduct a periodic, continuing review of performance of officials and employees in all department, offices and agencies;
- (2) Establish a system of annual incentives and rewards to the end that due recognition is given to officials and employees of outstanding merit on the basis of standards set forth in Section 2, Rule V hereof;
- (3) Determine the form of rewards to be granted;
- (4) Formulate and adopt its own rules to govern the conduct of its activities, which shall include guidelines for evaluating nominees, the mechanism for recognizing the awardees in public ceremonies and the creation of subcommittees;

In the evaluation of nominees, the Committee may be assisted by technical experts selected from the government and the private sectors.

Section 5. The Civil Service Commission shall provide secretariat services to the Committee.

Section 6. Nothing herein provided shall inhibit any department, office or agency from instituting its own rewards program in addition to those provided by, but not inconsistent with these Rules.

Section 7. The budget to cover all expenses in the implementation of this Rule shall be incorporated in the appropriation of the Civil Service Commission.

412. Another good practice was that the Sandiganbayan has jurisdiction to hear matters involving high ranking public officials (i.e. salary level of 27 grade or above).

(d) Challenges

413. The Philippines have identified the following challenge and issue in fully implementing the article under review:

- 1. Limited capacity (e.g. human/technological/institution/other);
- 2. Limited resources;
- 3. Other: lack of information and data; no general record keeping/ case management system.

(e) Technical assistance needs

414. The Philippines have indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:
- a. Good practices and lessons learned;
 - b. Other assistance: Training is needed for these agencies on anti-corruption investigative techniques to carry out their functions and mandates more effectively;
 - c. Other: Development of a case management system that is used by all corruption-related authorities and collection of data; tailor-made technical trainings.

No technical assistance of this kind has been provided to the Philippines to date.

Article 37 Cooperation with law enforcement authorities

Paragraph 1

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

(a) Summary of information relevant to reviewing the implementation of the article

415. The Philippines cited:
- RA 6981 (Witness Protection, Security and Benefit Act): Sections 3, 8, 12;
 - Rule 119 of the Rules of Court: Section 17;
 - Presidential Decree 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): Sections 1-3;
 - RA 6770 (Ombudsman Act): Section 17.

Rule 119 of the Rules of Court

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)

PD 749

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 his accomplice for such gift or bribe-giving; and Provided, finally, that the following conditions concur:

1. The information must refer to consummated violations of any of the above-mentioned 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 or criminal, against said informant or witness.

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.

RA 6770

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.

416. A bill has been introduced (Senate Bill No. 187) to strengthen the Witness Protection Act to provide additional rights and benefits, including free medical treatment, hospitalization and medicines for any injury or illness incurred or suffered because of witness duty or while in the safe house in any private or public hospital clinic or institution at the expense of the program. Also, in case of death or permanent incapacity, the witness' 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. House Bill 00419 would provide

protection and awards to persons who disclose conduct constituting graft and corruption and to witnesses for the prosecution thereof.

417. No statistics were available.

(b) Observations on the implementation of the article

418. The reviewing experts deemed the provision under review to have been implemented.

Article 37 Cooperation with law enforcement authorities

Paragraph 2

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

419. The Philippines cited:

- i. Article 13 (g) of the RPC;
- ii. Rule 116 (Arraignment and Plea) of the Rules of Court;
- iii. Section 11 of RA 6770 (Ombudsman Act).

Revised Penal Code

Article 13. Mitigating circumstances

The following are mitigating circumstances:

g. That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution.

Rules of Court

Rule 116

Section 1. Arraignment and plea; how made

(a) The accused must be arraigned before the court where the complaint or information was filed or assigned for trial. The arraignment shall be made in open court by the judge or clerk by furnishing the accused with a copy of the complaint or information, reading the same in the language or dialect known to him, and asking him whether he pleads guilty or not guilty. The prosecution may call at the trial witnesses other than those named in the complaint or information.

(b) The accused must be present at the arraignment and must personally enter his plea. Both arraignment and plea shall be made of record, but failure to do so shall not affect the validity of the proceedings.

(c) When the accused refuses to plead or makes a conditional plea, a plea of not guilty shall be entered for him. (1a)

(d) When the accused pleads guilty but presents exculpatory evidence, his plea shall be deemed withdrawn and a plea of not guilty shall be entered for him. (n)

(e) When the accused is under preventive detention, his case shall be raffled and its records transmitted to the judge to whom the case was raffled within three (3) days from the filing of the information or complaint. The accused shall be arraigned within ten (10) days from the date of the raffle. The pre-trial conference of his case shall be held within ten (10) days after arraignment. (n)

(f) The private offended party shall be required to appear at the arraignment for purposes of plea bargaining, determination of civil liability, and other matters requiring his presence. In case of failure of the offended party to appear despite due notice, the court may allow the accused to enter a plea of guilty to a lesser offense which is necessarily included in the offense charged with the conformity of the trial prosecutor alone. (cir. 1-89)

(g) Unless a shorter period is provided by special law or Supreme Court circular, the arraignment shall be held within thirty (30) days from the date the court acquires jurisdiction over the

person of the accused. The time of the pendency of a motion to quash or for a bill of particulars or other causes justifying suspension of the arraignment shall be excluded in computing the period. (sec. 2, cir. 38-98)

Section 2. *Plea of guilty to a lesser offense*

At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary. (sec. 4, circ. 38-98)

Section 3. *Plea of guilty to capital offense; reception of evidence*

When the accused pleads guilty to a capital offense, the court shall conduct a searching inquiry into the voluntariness and full comprehension of the consequences of his plea and require the prosecution to prove his guilt and the precise degree of culpability. The accused may present evidence in his behalf. (3a)

Section 4. *Plea of guilty to non-capital offense; reception of evidence, discretionary*

When the accused pleads guilty to a non-capital offense, the court may receive evidence from the parties to determine the penalty to be imposed. (4)

Section 5. *Withdrawal of improvident plea of guilty*

At any time before the judgment of conviction becomes final, the court may permit an improvident plea of guilty to be withdrawn and be substituted by a plea of not guilty. (5)

Section 6. *Duty of court to inform accused of his right to counsel*

Before arraignment, the court shall inform the accused of his right to counsel and ask him if he desires to have one. Unless the accused is allowed to defend himself in person or has employed a counsel of his choice, the court must assign a counsel *de officio* to defend him. (6a)

Section 7. *Appointment of counsel de officio*

The court, considering the gravity of the offense and the difficulty of the questions that may arise, shall appoint as counsel *de officio* only such members of the bar in good standing who, by reason of their experience and ability, can competently defend the accused. But in localities where such members of the bar are not available, the court may appoint any person, resident of the province and of good repute for probity and ability, to defend the accused. (7a)

Section 8. *Time for counsel de officio to prepare for arraignment*

Whenever a counsel *de officio* is appointed by the court to defend the accused at the arraignment, he shall be given a reasonable time to consult with the accused as to his plea before proceeding with the arraignment. (8)

Section 9. *Bill of particulars*

The accused may, before arraignment, move for a bill of particulars to enable him properly to plead and to prepare for trial. The motion shall specify the alleged defects of the complaint or information and the details desired. (10a)

Section 10. *Production or inspection of material evidence in possession of prosecution*

Upon motion of the accused showing good cause and with notice to the parties, the court, in order to prevent surprise, suppression, or alteration, may order the prosecution to produce and permit the inspection and copying or photographing of any written statement given by the complainant and other witnesses in any investigation of the offense conducted by the prosecution or other investigating officers, as well as any designated documents, papers, books, accounts, letters, photographs, objects or tangible things not otherwise privileged, which constitute or contain evidence material to any matter involved in the case and which are in the possession or under the control of the prosecution, police, or other law investigating agencies. (11a)

Section 11. *Suspension of arraignment*

Upon motion by the proper party, the arraignment shall be suspended in the following cases:

(a) The accused appears to be suffering from an unsound mental condition which effectively renders him unable to fully understand the charge against him and to plead intelligently thereto. In such case, the court shall order his mental examination and, if necessary, his confinement for such purpose;

(b) There exists a prejudicial question; and

(c) A petition for review of the resolution of the prosecutor is pending at either the Department of Justice, or the Office of the President; *provided*, that the period of suspension shall not exceed sixty (60) days counted from the filing of the petition with the reviewing office. (12a)

RA 6670

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.

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

(b) To enter into plea bargaining agreements; and

420. No cases were available.

(b) Observations on the implementation of the article

421. The reviewing experts deemed the provision under review to have been legislatively implemented.

Article 37 Cooperation with law enforcement authorities

Paragraph 3

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

422. The Philippines cited:

- i. RA 6770 (Ombudsman Act): Section 17;
- ii. Presidential Decree 749: Section 1.

423. The Philippines also provided an example of implementation:

- Immunity from prosecution is afforded as necessary in corruption cases upon application of the cooperating defendant. There was a tax scam case before Sandiganbayan in which an accused applied for this and was granted witness protection. Immunity was given in exchange for his testimony.

(b) Observations on the implementation of the article

424. During the country visit, the Department of Justice informed the reviewing experts of a plunder case involving an ex-President in which an official (a money collector) was granted immunity because he provided substantial cooperation in the case (section 17, RA 6770). The ex-President was convicted.

425. The reviewing experts deemed the provision under review to have been implemented.

Article 37 Cooperation with law enforcement authorities

Paragraph 4

4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

426. Witness protection measures under the Witness Protection Act (RA 6981) are also applicable to cooperating defendants or collaborators in crime, under section 10 of the said Act.

RA 6981

Section 10. State Witness. - Any person who has participated in the commission of a crime and desires to be a witness for the State, can apply and, if qualified as determined in this Act and by the Department, shall be admitted into the Program whenever the following circumstances are present:

- (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) there is absolute necessity for his testimony;
- (c) there is no other direct evidence available for the proper prosecution of the offense committed;
- (d) his testimony can be substantially corroborated on its material points;
- (e) he does not appear to be most guilty; and
- (f) he has not at any time been convicted of any crime involving moral turpitude.

An accused discharged from an information or criminal complaint by the court in order that he may be a State Witness pursuant to Section 9 and 10 of Rule 119 of the Revised Rules of Court may upon his petition be admitted to the Program if he complies with the other requirements of this Act. Nothing in this Act shall prevent the discharge of an accused, so that he can be used as a State Witness under Rule 119 of the Revised Rules of Court.

(b) Observations on the implementation of the article

427. It was noted that such persons insofar as they are witnesses are not automatically covered by the Witness Protection, Security and Benefit Programme. As provided above, such a person would need to be admitted to the Programme (section 3 of the RA 6981) before they can be included.

Article 37 Cooperation with law enforcement authorities

Paragraph 5

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

428. While no such arrangements have been made to date, there is nothing in Philippine law or practice that would prohibit the Philippines from entering into such an arrangement.

(b) Observations on the implementation of the article

429. The reviewing experts noted that there is nothing that precludes the Philippines from entering into agreements or arrangements as provided for in the provision under review.

Article 38 Cooperation between national authorities

Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:

(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or

(b) Providing, upon request, to the latter authorities all necessary information

(a) Summary of information relevant to reviewing the implementation of the article

430. The Philippines provided that it has partly implemented the provision under review and referred to:

- RPC - duty to report/knowingly conceal commission of a crime;
- RA 6770: Section 15(5).

431. The Philippines also provided examples of implementation:

- Information and documents in aid of legislation are provided to public officials asked to testify before Congress.
- The National Law Enforcement Coordinating Committee comprises of 57 agencies engaged in law enforcement, legal and regulatory activities. Subcommittee on AML/CFT meets regularly to discuss issues and invites non-members in Government to participate. An MOU between AMLC and OMB exists on information sharing and technical coordination, as well as between COA and OMB.
- Inter-Agency Anti-Graft Coordinating Council comprised of DOJ, Department of Budget and Management, DOF, NBI, CSC, OMB, COA and ODESLA meets regularly.
- The Multi-Sectoral Anti-Corruption (MSACC) which includes representatives from relevant government agencies, the private sector and civil society organizations, meets regularly to discuss policy coordination and other issues related to the fight against corruption.

(b) Observations on the implementation of the article

432. Given the numerous provinces of the Philippines and that the Police has the reach required to, in particular, investigate corruption-related matters in such provinces, their cooperation with other national authorities has been deemed crucial.

433. During the country visit, the reviewing experts were informed of various memoranda of agreement (MOU) existing between Government agencies. Notably, there is an MOU between the OMB and DOJ for the “creation of a taskforce to be known as OMB-DOJ

task force per region”. Specifically, “[a] task force shall be created in every region specifically to handle and prosecute Ombudsman cases filed in every court within its region. This is essential in order to ensure that Ombudsman cases are handled by selected prosecutors with specialized trial advocacy skills. Furthermore, it may facilitate the expeditious disposition of Ombudsman cases and shall further address the various concerns identified in the DOJ prosecutors capability-building seminar-workshops”. The procedures are that “[t]he area offices of the Ombudsman through its records division shall transmit/endorse all case documents directly to the city/provincial prosecutor’s office and shall furnish the Regional State Prosecutor’s Office of the information, resolution and endorsement of the case... The City/Provincial Prosecutor shall immediately cause the filing of the case with the regular court and directly assign the case to the member of the Task Force”.

434. Another MOU is between AMLC and OMB. The objective and scope of the cooperation is that “[t]he parties shall promote and encourage cooperation and coordination to effectively prevent, control, detect and investigate unlawful activities under Section 3(i) of the AMLA, as amended, especially when committed by public officials and/or employees, including private individuals who may have conspired with them and money laundering activities related thereto in the Philippines; [t]he parties shall likewise endeavor to cooperate in the areas of information exchange and capacity building to enhance the capability of both parties in addressing money laundering concerns”.

435. The experts therefore recommended that the Philippines consider enhancing its cooperation through ad hoc arrangements, in particular to ensure that public officials and authorities cooperate sufficiently in criminal investigations and prosecutions.

(c) Challenges

436. The Philippines identified the following challenge and issue in fully implementing the article under review:

1. Other: the absence of financial incentives discourages retired public officials from serving as State witnesses. Some government agencies do not provide funding to their officials to testify in corruption cases.

Article 39 Cooperation between national authorities and the private sector

Paragraph 1

1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

437. The Philippines cited the AMLA, which provides that institutions from the financial sector (e.g., banks, securities companies, insurance companies, etc.) submit covered and suspicious transaction reports to the AMLC:

Section. 9. Prevention of Money Laundering; Customer Identification Requirements and Record Keeping.

(c) **Reporting of Covered and Suspicious Transactions.** - Covered institutions shall report to the AMLC all covered transactions and suspicious transactions within five (5) working days from occurrence thereof, unless the Supervising Authority prescribes a longer period not exceeding ten (10) working days. Should a transaction be determined to be both a covered transaction and a suspicious transaction, the covered institution shall be required to report the same as a suspicious transaction.

438. When reporting covered or suspicious transactions to the AMLC, such institutions and their officers and employees shall not be deemed to have violated Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791 and other similar laws, but are prohibited from communicating, directly or indirectly, in any manner or by any means, to any person, the fact that a covered or suspicious transaction report was made, the contents thereof, or any other information in relation thereto. Neither may such reporting be published or aired in any manner or form by the mass media, electronic mail, or other similar devices. In case of violation thereof, the concerned officer and employee of the covered institution and media shall be held criminally liable. However, no administrative, criminal or civil proceedings, shall lie against any person for having made a covered or suspicious transaction report in the regular performance of his duties in good faith, whether or not such reporting results are in any criminal prosecution under this Act or any other law.
439. In addition, the AMLC may enlist the assistance of the private sector under section 7(7) of the AMLA, as amended, which authorizes the AMLC to implement measures to counteract money laundering:

Section 7. Creation of Anti-Money Laundering Council (AMLC)

The Anti-Money Laundering Council is hereby created and shall be composed of the Governor of the Bangko Sentral ng Pilipinas as chairman, the Commissioner of the Insurance Commission and the Chairman of the Securities and Exchange Commission as members. The AMLC shall act unanimously in the discharge of its functions as defined hereunder:

(7) to implement such measures as may be necessary and justified under this Act to counteract money laundering;"

440. The Philippines also provided examples of implementation.
- The Financial Sector Liaison Committee (FSLC) is the private counterpart of the National Law Enforcement Coordinating Committee, and it is composed of industry associations, including compliance officers' associations in areas of banking, insurance, and securities. In this Liaison Committee, regulators such as the Central Bank, Insurance Commission and SEC are represented. It serves as a forum for cooperation, including exchange of financial and other material information. It is also a venue for airing grievances, issues and concerns as well as challenges, technical and other needs and to voice recommendations. In particular, complaints, evidence and suspicions of corruption can be raised by representatives of the private sector in the meetings of this Committee. An atmosphere of trust exists between law enforcement and the representatives of the private sector.
 - The National Anti-Corruption Programme of Action serves as a coherent framework for the harmonization of anti-corruption initiatives by concentrating efforts on certain aspects of governance, pooling resources and serving as a venue for continuous dialog and collaboration as well as gaining commitments from the Executive, Legislature and Judiciary as well as Constitutional bodies, local Government, the business sector, civil society and academic institutions.

(b) Observations on the implementation of the article

441. The reviewing experts deemed the provision under review to have been implemented.

Article 39 Cooperation between national authorities and the private sector

Paragraph 2

2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

442. The Philippines cited the Whistleblower Protection and the Laurel Law:

- Whistleblower Protection, commonly known as R.A. No. 6981, an Act providing for a witness protection, security and benefit program and for other purpose;
- Laurel Law, commonly known as R.A. No. 6036, An Act Providing that Bail shall not, with certain exceptions, be required in cases of violations of Municipal or City Ordinances and in criminal offenses when the prescribed penalty for such offenses is not higher than arresto mayor and/or a fine of two thousand pesos or both.

443. The Philippines provided examples of implementation:

- Reporting mechanisms:
 - The DOF Website provides for all persons to provide any reports on complaints as well as commendations. This allows for anonymous reporting;
 - The COA internet website allows for the reporting acts of misuse and corruption, and allows for anonymous reporting;
 - Most Government agencies have anonymous hotlines (24-7);
 - The OMB and CSC have a duty to act on all complaints received;
 - Anti-Red Tape Act requires all public agencies to post anti-fixers campaign materials (including contact details for reporting).
- A reward system is in place that would promote the reporting of acts of corruption.
- OMB confidentiality rules (internal rules) apply to protect premature disclosure of pending cases, including the identity of reporting persons.

(b) Observations on the implementation of the article

444. The reviewers deemed the provision under review to have been implemented.

Article 40 Bank secrecy

Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.

(a) Summary of information relevant to reviewing the implementation of the article

445. The Philippines provided that it has partly implemented the provision under review.

446. In the Philippines, the amended AMLA provides exceptions to bank deposit secrecy rules:

- AMLC can require banks and other financial institutions to submit identity-documents submitted by their customers. Under the AMLA, as amended, banks and other financial institutions are required to file covered and suspicious transaction reports of their customers.
- AMLC may inquire into any particular bank deposit or bank investment without a court order where the predicate crime is kidnapping for ransom, a narcotics or terrorism crime. However, in corruption cases a court order is needed (as per the bank deposit secrecy law).
- To ensure compliance with the AMLA, as amended, Central Bank investigators may inquire into and have full access to bank deposit or investment accounts without a court order and without regard to nature of predicate offence, as per the rules of examination of the Central Bank.
- When reporting covered or suspicious transactions to the AMLC, such institutions and their officers and employees are not deemed to have violated the bank secrecy laws of the Philippines (e.g., Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791 and other similar laws).

447. Bank deposit secrecy covers also foreign currency deposits, not only Philippine currency. In such cases, written permission of the depositor is not needed.

448. In criminal cases, including anti-corruption cases by the OMB, prosecutors and investigators rely on AMLC for purposes of getting access to bank records and deposit information. Materials are provided by AMLC through information sharing agreements or *sua sponte*, during the fact-finding and preliminary investigation stage. In court proceedings, the OSP may move the court for a subpoena duces tecum requesting access to the bank.

449. The COA can request Government agencies to produce bank records in their possession for audit purposes, pursuant to PD 1445.

450. Salaried officials (under RA 6713, Code of Conduct) are required to sign a waiver of bank secrecy rules to allow access to their bank records. This applies to all government officials and employees upon entry into Government service, including incumbents.

451. The Philippines also provided examples of implementation:

- As of 31 August 2011, a total of forty-six (46) cases for Applications for Bank Inquiry have been decided by the Regional Trial Court (RTC) in favor of the AMLC.
- Three (3) of these cases involved Plunder while four (4) cases involved violations of the Anti-Graft and Corrupt Practices Act.

- In relation to the pending cases for Application of Bank Inquiry a total of eight (8) cases are currently pending trial before the RTC. One (1) case involves Plunder while another case involves violations of the Anti-Graft and Corrupt Practices Act.

452. The Philippines also provided the following statistics.

Bank inquiry – Total: 108 Cases

1. Without Court Order – Total: 54 cases

Unlawful Activity	No. of Cases
Drug Trafficking	23
Kidnapping for Ransom	9
Terrorism-Related	21
Murder	1
Total	54

2. With Court Order – Total: 54 cases

Unlawful Activity	No. of Cases
Decided by the Regional Trial Court (RTC)	46
Pending before the RTC	8
Total	54

453. The Philippines also outlined the following steps for full implementation:

- An amendment to the OMB Act had been introduced previously which would have allowed full access to bank records, although that bill has been since withdrawn.
- The OMB is considering creating a legislative liaison team to focus on the need to strengthen the Ombudsman Charter especially regarding the authority of the OMB to inquire into bank deposits.
- The Congress must amend further the AMLA by enacting House Bill No. 4275 and Senate Bill No. 2484 into law to authorize the AMLC to conduct Bank Inquiry ex-parte.

(b) Observations on the implementation of the article

454. The reviewing experts deemed the provision under review to have been partially implemented. AMLC has the only direct power to request a Court order to have access to bank records and deposit information. For example, the OMB relies on section 13 of the RA 6770 to obtain such information through the AMLC. The experts therefore recommended that the privileges given to the AMLC be extended to other anti-corruption-related authorities.

(c) Challenges

455. The Philippines identified the following challenge and issue in fully implementing the article under review:

1. Specificities in its legal system.

456. An amendment to the OMB Act had been introduced previously which would have allowed full access to bank records, although the Bill has since been withdrawn. OMB is considering creating a legislative liaison team to focus on the need to strengthen the Ombudsman Charter especially regarding the authority of the OMB to inquire into bank deposits. Congress must amend further the AMLA by enacting House Bill No. 4275 and Senate Bill No. 2484 into law to authorize the AMLC to conduct bank inquiries ex-parte.

457. There is a need to overrule, by way of legislation, the Supreme Court's decision in Marquez, which held that in order for the OMB to conduct an in camera inspection, certain prerequisites must have been met and that section 11 of the Ombudsman Act (allowing access to bank records) is not in effect.

(d) Technical assistance needs

458. The Philippines indicated that the following form of technical assistance, if available, would assist it in better implementing the article under review:

1. Legislative drafting.

This form of technical assistance has not been provided to the Philippines to date.

Article 41 Criminal record

Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

459. Previous convictions in another State cannot be introduced in evidence in domestic criminal proceedings against a defendant, unless the good moral character of the defendant is an issue.

460. The good moral character may only be raised by the accused as a defense, in which case, evidence of reduced convictions even in foreign jurisdictions may be raised.

(b) Observations on the implementation of the article

461. The Philippines is a signatory to various mutual legal assistance treaties in criminal matters, wherein the request for criminal records is part of the scope of application of such treaties (e.g. Korea [Article I(4)]; Swiss Confederation [Article I(2)]; Hong Kong [Article I(1)]; Spain [Article I(2)]; China [Article I(2)]; Australia [Article I(3)]; United States of America [Article I(1)], etc.).

462. The reviewing experts were advised that the good moral character of a defendant would come into question with respect to a corruption-related offence. For this reason, the criminal record of such a person would be admissible. The Philippines would rely on its MLA treaties or ad hoc requests to obtain such records.

463. The experts were of the view that the UNCAC provision has been legislatively implemented.

Article 42 Jurisdiction

Subparagraph 1 (a)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(a) Summary of information relevant to reviewing the implementation of the article

464. The Philippines cited article 2 of the RPC, which also applies to offences under UNCAC.

Revised Penal Code

Article 2. Application of its provisions

Except as provided in the treaties and laws of preferential treatment, the provisions of this Code shall be enforced not only within the Philippine Archipelago, including its atmosphere, its interior waters and maritime zone, but also outside of its jurisdiction. ...

(b) Observations on the implementation of the article

465. The reviewing experts deemed the provision under review to have been legislatively implemented.

Article 42 Jurisdiction

Subparagraph 1 (b)

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

(a) Summary of information relevant to reviewing the implementation of the article

466. The Philippines cited article 2 of the RPC.

Revised Penal Code

Article 2. Application of its provisions

Except as provided in the treaties and laws of preferential application, the provisions of this Code shall be enforced not only within the Philippine Archipelago, including its atmosphere, its interior waters and maritime zone, but also outside of its jurisdiction, against those who:

1. Should commit an offense while on a Philippine ship or airship.

(b) Observations on the implementation of the article

467. The reviewing experts deemed the provision under review to have been legislatively implemented.

Article 42 Jurisdiction

Subparagraphs 2 (a) and (b)

2. *Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

(a) *The offence is committed against a national of that State Party; or*

(b) *The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

(a) Summary of information relevant to reviewing the implementation of the article

468. The Philippines has not implemented the provision under review. Domestic investigations and prosecutions are hampered in cases where offences are committed against nationals and the evidence is located outside the country.

469. The Philippines follows the principle of territoriality. Thus, there would be no jurisdiction over crimes committed by or against nationals that are not within the territory of the Philippines. If the national is located in the Philippines or the offense is linked to the Philippines, there would be jurisdiction over the case when it is committed against the national.

(b) Observations on the implementation of the article

470. The reviewers noted the difficulties highlighted by the Philippines and recommended that the Philippines provide for the active and passive personality principles. It was subsequently provided by the national authorities that the DOJ-led Criminal Code Committee sought the approval of Congress to revise Book I of the RPC to include within the Philippine jurisdiction the passive personality principle, as long as certain criterion are met.

Article 42 Jurisdiction

Subparagraph 2 (c)

2. *Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

(c) *The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or*

(a) Summary of information relevant to reviewing the implementation of the article

471. So long as an element of the money laundering offence is committed in the Philippines, jurisdiction is established, even if the launderer is outside the country (e.g., if proceeds were laundered to or transacted in the Philippines). Jurisdiction also extends to those who facilitate money laundering, either by direct participation or through

conspiracy, even if the facilitation is committed outside the jurisdiction, so long as there is a connection to the offence in the Philippines.

472. If the predicate offence occurred in the Philippines, while the money laundering activities occurred outside the country (transaction of criminal proceeds), jurisdiction over the money laundering offence can still be established.

473. There have been no cases against those who facilitate money laundering outside the Philippines to date.

(b) Observations on the implementation of the article

474. It was confirmed by the AMLC that if the predicate offence were outside the territory of the Philippines, while the money laundering offence occurred in its territory, the Philippines would also have jurisdiction.

Article 42 Jurisdiction

Subparagraph 2 (d)

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(d) The offence is committed against the State Party.

(a) Summary of information relevant to reviewing the implementation of the article

475. General principles of criminal law establish jurisdiction when criminal offences are conducted against the Philippines. Article 2 of the RPC is cited below.

Revised Penal Code

Article. 2. Application of its provisions.

Except as provided in the treaties and laws of preferential application, the provisions of this Code shall be enforced not only within the Philippine Archipelago, including its atmosphere, its interior waters and maritime zone, but also outside of its jurisdiction, against those who:

1. Should commit an offense while on a Philippine ship or airship
2. Should forge or counterfeit any coin or currency note of the Philippine Islands or obligations and securities issued by the Government of the Philippine Islands;
3. Should be liable for acts connected with the introduction into these islands of the obligations and securities mentioned in the presiding number;
4. While being public officers or employees, should commit an offense in the exercise of their functions; or
5. Should commit any of the crimes against national security and the law of nations, defined in Title One of Book Two of this Code.

(b) Observations on the implementation of the article

476. The reviewing experts deemed the provision under review to have been legislatively implemented.

Article 42 Jurisdiction

Paragraph 3

3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

(a) Summary of information relevant to reviewing the implementation of the article

477. The Philippines does extradite (and has extradited) its nationals in corruption cases.

478. An Order of extradition of a national for offences committed in Hong Kong has been issued by the Regional Trial Court and is pending appeal.

(b) Observations on the implementation of the article

479. During the country visit, it was confirmed by the Department of Justice that Philippine nationals can be extradited, but dual criminality would need to be complied with and conditions would be attached (e.g. for offences punishable by death, that the death penalty would not be imposed, and even if imposed, will not be carried out).

480. Under existing treaties (as described under article 44 below), extradition of a Filipino national is one of the discretionary grounds for refusing a request for extradition, with the exception of the extradition treaties with India, the United Kingdom and the United States which contain an explicit provision to the effect that extradition shall not be refused on the ground that the person sought is a citizen of the Requested State.

Article 42 Jurisdiction

Paragraph 4

4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.

(a) Summary of information relevant to reviewing the implementation of the article

481. Under existing treaties, the obligation to ‘extradite or prosecute’ only applies if extradition is refused on the sole ground that the person requested to be extradited is a national of the requested State. Thus, the Philippines has an obligation to prosecute only if the extradition request is refused on the sole ground that the person requested is a Filipino national.

482. There have been no cases to date.

(b) Observations on the implementation of the article

483. The reviewing experts noted that dual criminality is required for extradition. It was noted that nothing precludes the Philippines from extraditing its own nationals. However, if the person in question was not extradited, then the Philippines would assume jurisdiction under the *aut dedere aut judicare* principle (‘extradite or prosecute’).

Article 42 Jurisdiction

Paragraph 5

5. *If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.*

(a) Summary of information relevant to reviewing the implementation of the article

484. In *Garcia, et al.*, there was full cooperation and exchange of information with U.S. authorities where it came to the attention of the Philippine authorities that proceedings were underway in the United States. The identity of suspects, their associates and members of their family were provided. Financial information was given by the other jurisdictions.

(b) Observations on the implementation of the article

485. The reviewing experts deemed the provision under review to have been implemented.

(c) Successes and good practices

486. The reviewers deemed it a success that the Philippine authorities, when it came to their attention that similar proceedings were ongoing overseas, fully cooperated with other States and exchanged information.

Article 42 Jurisdiction

Paragraph 6

6. *Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.*

(a) Summary of information relevant to reviewing the implementation of the article

487. The Philippines cited section 2, RPC. Article 2 of Act No. 3815 otherwise known as the RPC of the Philippines (December 8, 1930) provides:

Revised Penal Code

Article. 2. *Application of its provisions.*

Except as provided in the treaties and laws of preferential application, the provisions of this Code shall be enforced not only within the Philippine Archipelago, including its atmosphere, its interior waters and maritime zone, but also outside of its jurisdiction, against those who:

1. Should commit an offense while on a Philippine ship or airship
2. Should forge or counterfeit any coin or currency note of the Philippine Islands or obligations and securities issued by the Government of the Philippine Islands;
3. Should be liable for acts connected with the introduction into these islands of the obligations and securities mentioned in the presiding number;
4. While being public officers or employees, should commit an offense in the exercise of their functions; or
5. Should commit any of the crimes against national security and the law of nations, defined in Title One of Book Two of this Code.

(b) Observations on the implementation of the article

488. The reviewing experts deemed the provision under review to have been implemented.

(c) Challenges

489. The Philippines identified the following challenge and issue in fully implementing the article under review:

1. Specificities in our legal system.

The issue of the application of jurisdiction in extradition cases committed outside the country has not yet been tested in court, including the location of evidence outside. It is not clear whether jurisdiction would be exercised.

Chapter IV. International cooperation

Article 44 Extradition

General information related to Extradition

490. Pursuant to section 3 of P.D. No. 1069 (cited below), extradition may be granted only pursuant to a treaty or convention, and with view to, among others: “(a) A criminal investigation instituted by authorities of the requesting state or government charging the accused with an offense punishable under the laws both of the requesting state or government and the Republic of the Philippines by imprisonment or other form of deprivation of liberty for a period stipulated in the relevant extradition treaty or convention”.

491. Under section 13 of the law, “(T)he provisions of the Rules of Court governing appeal in criminal cases in the Court of Appeals shall apply in appeal in Extradition cases”.

492. Under P.D. No. 1069, the Secretary of Foreign Affairs (SFA) has the first opportunity to make a determination on whether the request for extradition complies with the requirements of the law and the relevant treaty, such as the submission of the original or authenticated copy of the decision or sentence imposed upon the accused; or the criminal charge and the warrant of arrest; a recital of the acts for which extradition is requested, containing the name and identity of the accused; his whereabouts in the Philippines; the acts or omissions complained of; the time and place of the commission of the offense/s; the text of the applicable law or a statement of the contents; and such other documents or information in support thereof. The determination by the SFA is done by the Office of the Legal Affairs (DFA-OLA). Once all of these are complied with, the request and supporting documents are forwarded to the Secretary of Justice who shall then designate a panel of attorneys (state counsels) to handle the extradition case.

493. It is the State Counsels of the Office of the Chief State Counsel (Legal Staff) of the DOJ who evaluate the request for extradition prior to the preparation of the petition for extradition. If the request is made pursuant to the applicable extradition treaty, the panel of state counsels will, on behalf of the requesting state, prepare the petition for extradition and then file the same with the Regional Trial Court (RTC) of Manila for hearing. It has

been the practice of the Department of Justice, as authorized representative of the petitioner Requesting State, to request for the arrest of the person subject of the request for extradition upon the filing of the extradition petition. The judge shall then issue a warrant of arrest if, in the court's opinion, the immediate arrest and temporary detention of the accused will best serve the ends of justice.

494. The relevant provisions are set forth below:

Provisions of P.D. No. 1069:

SEC. 3. Aims of Extradition. - Extradition may be granted only pursuant to a treaty or convention, and with a view to:

(a) A criminal investigation instituted by authorities of the requesting state or government charging the accused with an offense punishable under the laws both of the requesting state or government and the Republic of the Philippines by imprisonment or other form of deprivation of liberty for a period stipulated in the relevant extradition treaty or convention; or

(b) The execution of a prison sentence imposed by a court of the requesting state or government, with such duration as that stipulated in the relevant extradition treaty or convention, to be served in the jurisdiction of and as a punishment for an offense committed by the accused within the territorial jurisdiction of the requesting state or government.

SEC. 4. Request: By whom made; Requirements. -

(1) Any foreign state or government with which the Republic of the Philippines has entered into extradition treaty or convention, and only when the relevant treaty or convention, remains in force, may request for the extradition of any accused who is or suspected of being in the territorial jurisdiction of the Philippines.

(2) The request shall be made by the Foreign Diplomat of the requesting state or government, addressed to the Secretary of Foreign Affairs, and shall be accompanied by:

(a) The original or an authentic copy of either -

(1) the decision or sentence imposed upon the accused by the court of the requesting state or government; or

(2) the criminal charge and the warrant of arrest issued by the authority of the requesting state or government having jurisdiction of the matter or some other instruments having the equivalent legal force.

(b) A recital of the acts for which extradition is requested, with the fullest particulars as to the name and identity of the accused, his whereabouts in the Philippines, if known, the acts or omissions complained of, and the time and place of the commission of these acts;

(c) The text of the applicable law or a statement of the contents of said law, and the designation or description of the offense by the law, sufficient for evaluation of the request; and

(d) Such other documents or information in support of the request.

SEC. 5. Duty of Secretary of Foreign Affairs; Referral of Requests: Filing of Petition. -

(1) Unless it appears to the Secretary of Foreign Affairs that the request fails to meet the requirements of this law and the relevant treaty or convention, he shall forward the request together with the related documents to the Secretary of Justice, who shall immediately designate and authorize an attorney in his office to take charge of the case.

(2) The attorney so designated shall file a written petition with the proper Court of First Instance of the province or city having jurisdiction of the place, with a prayer that the court take the request under consideration, and shall attach to the petition all related documents. The filing of the petition and the service of the summons to the accused shall be free from the payment of docket and sheriff's fees.

(3) The Court of First Instance with which the petition shall have been filed shall have and continue to have the exclusive power to hear and decide the case, regardless of the subsequent whereabouts of the accused, or the change or changes of his place of residence.

Paragraph 1

1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the

requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

495. Presidential Decree No. 1069 (Philippine Extradition Law), which was issued by then President Ferdinand E. Marcos in 1977, prescribes the procedure for the extradition of persons who have committed crimes in a foreign country, i.e., it provides for the procedure when the Philippines is the Requested State.

496. Under section 3 of P.D. No. 1069, extradition may be granted only pursuant to a treaty or convention. It also requires the existence of dual criminality before extradition may be granted.

497. The Philippines has signed thirteen (13) bilateral extradition treaties with the following countries:

1. Australia
2. Canada
3. China
4. Hong Kong Special Administrative Region (HKSAR)
5. India*
6. Indonesia
7. Republic of Korea
8. Micronesia
9. Spain*
10. Switzerland
11. Thailand
12. United Kingdom*
13. United States of America

* The concurrence of the Philippine Senate to the ratification of the extradition treaties with India, Spain and the United Kingdom was not yet obtained and hence said treaties are not yet in force.

498. The majority of the bilateral extradition treaties adopt the “Non-List Double Criminality Approach”. Thus, for as long as the underlying conduct of the offense is punishable under the laws of both contracting parties and the penalty imposed for the offense is imprisonment for at least one (1) year or, in some treaties, more than a year, the offense is an extraditable offense.

499. On the other hand, the treaties with Indonesia, Thailand and HKSAR follow the “List Double Criminality Approach” in that they provide a list of extraditable offenses. In those treaties, extradition may also be granted at the discretion of the Requested Party in respect of any other crimes for which it can be granted according to the laws of both Contracting Parties.

500. The following mandatory offenses under the Convention have the following counterpart under existing Philippine laws:

- UNCAC (Art. 15, Bribery of National Public Officials)
Philippine Laws

- Art. 212, RPC Corruption of Public Officials
- Art. 210, RPC Direct Bribery
- UNCAC (Art. 17, Embezzlement, misappropriation or other diversion of property by a public official)
Philippine Laws
 - Art. 217, RPC Malversation of public funds or property
- UNCAC (Art. 23, Laundering of proceeds of crime)
Philippine Laws
 - R.A. 9160, as amended by R.A. 9194 Anti-Money Laundering Act of 2001, as amended
- UNCAC (Art. 25, Obstruction of justice)
Philippine Laws
 - R.A. No. 1829 Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders

All of the above-mentioned offenses are punishable with imprisonment of more than one (1) year and are, therefore, extraditable offenses. Malversation, bribery, corruption and graft are listed as extraditable offenses under the PH-Indonesia and PH-Thailand extradition treaties, while offenses against the laws relating to corruption, including bribery, secret commissions, and breach of trust are extraditable offenses under the PH-HKSAR Agreement for the Surrender of Accused and Convicted Persons.

To the extent that the Philippines has not criminalized all UNCAC offences, such as bribery of foreign public officials and officials of public international organizations (UNCAC article 16), those offences are not extraditable under Philippine law.

501. The Philippine Department of Justice provided the following statistics relating to extradition:

Corruption-related:

From 2009-2012:

Extradition requests received: one request from South Korea.

Extradition requests made: one request in a plunder case to the US (pending).

Non-corruption related:

2012: 3 requests received, none made

2011: 4 requests received, none made

2010: 5 requests received, none made.

No requests for extradition involving corruption offenses have been refused to date.

502. In the case of “In the matter of Petition for the Surrender of Juan Antonio Muñoz to the Hong Kong Special Administrative Region, Government of Hong Kong Special Administrative Region, represented by the Philippine Department of Justice, Petitioner” (RTC Manila, Branch 8, Case No. 99-95733), involving a request received from the HKSAR for the surrender of a Filipino national, the Regional Trial Court (RTC) of Manila, in its November 28, 2006 decision, granted the petition for the extradition of the respondent, in consonance with the rule on dual criminality.

In its decision (page 24), the RTC sustained the position of the Department of Justice, on behalf of the HKSAR, that “the conduct constituting the charge of ‘accepting an advantage as an agent’ under section 9(1)(a) of the Prevention of Bribery Ordinance, Cap 201 is analogous to the acts penalized under section 3(b) and (h) of the Anti-Graft and Corrupt Practices Act (RA 3019), as amended. On the other hand, the controlling act constituting the charge of ‘conspiracy to defraud’, which is the act of dishonesty committed by the respondent by making false representations to Mocatta Hong Kong, is analogous to the conduct penalized under article 15(2) (a) of the RPC (Estafa through False Pretenses), as amended. ... Thus, the offenses charged against respondent Muñoz in the HKSAR met the dual criminality requirement and hence, the accused is extraditable. Accordingly, the facts charged in the petition subjects Muñoz to extradition.” Muñoz challenged this decision of the RTC. The case is still with the Court of Appeals for resolution.

503. The Philippines also outlined the steps for full implementation of the provision under review.

To fully implement the provision under review, the Philippines should criminalize bribery of foreign public officials and officials of public international organizations, as required under article 16 of the Convention.

(b) Observations on the implementation of the article and good practices

504. The Philippines has implemented the measures of the provision. It was positively noted that the Philippines has reportedly not refused any requests for extradition to date.

Article 44 Extradition

Paragraph 2

2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.

(a) Summary of information relevant to reviewing the implementation of the article

505. The Philippines has not implemented the measures of the provision.

506. Presidential Decree No. 1069 (*Philippine Extradition Law*) expressly requires the existence of dual criminality before extradition may be granted. As such, the Philippines has made a declaration that it cannot consider the Convention as a legal basis for cooperation on extradition with other States.

507. The Philippines also outlined the steps for full implementation of the provision under review.

Subject to compliance with domestic legal processes, the Philippines is considering the amendment of its declaration so that it can use the Convention as a basis for extradition provided that there is dual criminality.

(b) Observations on the implementation of the article

508. The reviewers welcome indications by the Philippines that it may consider amending its declaration to use the Convention as a legal basis for extradition in the future provided dual criminality is satisfied.

Article 44 Extradition

Paragraph 3

3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.

(a) Summary of information relevant to reviewing the implementation of the article

509. The Philippines has partly implemented the measures of the provision.

510. Five (Canada, China, Korea, Spain and the United States) of the thirteen treaties contain provisions that allow the Philippines to grant extradition in cases where the request includes separate offenses, some of which are not extraditable by reason of their period of imprisonment, provided that all the other requirements of extradition are met. It applies not only to corruption cases but to other offenses as well.

511. The Philippines provided a matrix summarizing the relevant provisions of its extradition treaties in regard to this provision (see Annex 1).

512. Concerning examples of implementation of the provision under review, the Philippines noted that no request has been received which would necessitate the application of this provision.

513. To fully implement the provision under review, the Philippines should criminalize bribery of foreign public officials and officials of public international organizations, as required under article 16 of the Convention.

(b) Observations on the implementation of the article

514. The provision is partly implemented in light of the information provided.

Article 44 Extradition

Paragraph 4

4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.

(a) Summary of information relevant to reviewing the implementation of the article

515. The Philippines has partly implemented the measures of the provision.
516. Given the minimum period of imprisonment required for an offense to be extraditable, all mandatory offenses of the UNCAC are extraditable offenses under existing and future extradition treaties. However, to the extent that the Philippines has not criminalized all UNCAC offences, such as bribery of foreign public officials and officials of public international organizations (UNCAC article 16), those offences are not extraditable under Philippine law.
517. Under existing extradition treaties, extraditable offenses are those offenses punishable with imprisonment of at least one (1) year. Considering that acts of corruption are punishable with imprisonment of more than one (1) year, it is assured that offenses established under the UNCAC, once criminalized under domestic law, are extraditable offenses even in future extradition treaties.
518. In accordance with article 44, Paragraph 6 of the Convention, the Philippines made a declaration that “dual criminality is required under its Extradition Law and the Philippines therefore cannot consider the Convention as legal basis for cooperation on extradition with other States”. However, subject to compliance with domestic legal processes, the Philippines is considering the amendment of its declaration, so that it can use the Convention as a basis for extradition provided that dual criminality is satisfied.
519. The Philippines provided a matrix summarizing the relevant provisions of its extradition treaties in regard to this provision (see Annex 1).
520. The Philippines provided an example of the implementation of this provision. Under article 5 (Refusal of Surrender), paragraph (1)(a) of the PH-HKSAR Agreement for the Surrender of Accused and Convicted Persons, a person shall not be surrendered if the requested Party has substantial grounds for believing that the offence of which that person is accused or was convicted is an offence of a political character.

In the case of “In the matter of Petition for the Surrender of Juan Antonio Muñoz to the Hong Kong Special Administrative Region, Government of Hong Kong Special Administrative Region, represented by the Philippine Department of Justice, Petitioner” (RTC Manila, Branch 8, Case No. 99-95733), involving a request received from the HKSAR for the surrender of a Filipino national, the Regional Trial Court (RTC) of Manila, in its November 28, 2006 Decision, sustained the position of the Department of Justice, on behalf of the HKSAR, that “the conduct constituting the charge of ‘accepting an advantage as an agent’ under section 9(1)(a) of the Prevention of Bribery Ordinance, Cap 201 is analogous to the acts penalized under section 3(b) and (h) of the Anti-Graft and Corrupt Practices Act (RA 3019), as amended. ... Thus, ... respondent Muñoz ... is extraditable. Accordingly, the facts charged in the petition subjects Muñoz to extradition.” Muñoz challenged this decision of the RTC. The case is still with the Court of Appeals for resolution.

521. The Philippine Constitution does not recognize political offences. Section 18 (1) provides that “No person shall be detained solely by reason of his political beliefs and aspirations.” Moreover, the majority of extradition treaties provide that extraditable offenses are those that are punishable with imprisonment of more than one (1) year. The

treaties with Indonesia, Thailand and HKSAR establish a list approach and provide that malversation, bribery, corruption and graft, among others, are extraditable offenses.

(b) Observations on the implementation of the article

522. The Philippines has implemented the provision in light of the minimum period of imprisonment for UNCAC offences in the existing treaties. However, to the extent that the Philippines has not criminalized all UNCAC offences, those offences are not extraditable under Philippine law. Moreover, the political offence exception is not applicable as the Philippines does not recognize the Convention as a legal basis for extradition.

Article 44 Extradition

Paragraph 5

5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

523. The Philippines has made a declaration that it cannot consider the Convention as a legal basis for cooperation on extradition with other States. However, subject to compliance with domestic legal processes, the Philippines is considering the amendment of its declaration, so that it can use the Convention as a basis for extradition provided that dual criminality is satisfied.

(b) Observations on the implementation of the article

524. The provision is not currently implemented. The Philippines is encouraged to consider using the Convention as a legal basis for extradition and to amend its declaration in this regard.

Article 44 Extradition

Subparagraph 6

6. A State Party that makes extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

(a) Summary of information relevant to reviewing the implementation of the article

525. All of the treaty partners of the Philippines are State parties to the Convention.
526. Since the Philippines became a State party to the Convention in 2006, it has concluded an extradition treaty with the United Kingdom.
527. The Philippines has made a declaration that it cannot consider the Convention as a legal basis for cooperation on extradition with other States. However, subject to compliance with domestic legal processes, the Philippines is considering the amendment of its declaration, so that it can use the Convention as a basis for extradition provided that dual criminality is satisfied.
528. The Philippines also provided an example of implementation:

In the case of “*In the matter of Petition for the Surrender of Juan Antonio Muñoz to the Hong Kong Special Administrative Region, Government of Hong Kong Special Administrative Region, represented by the Philippine Department of Justice, Petitioner*” (RTC Manila, Branch 8, Case No. 99-95733), involving a request received from the HKSAR for the surrender of a Filipino national, the Regional Trial Court (RTC) of Manila, in its November 28, 2006 decision, granted the petition for the extradition of the respondent, in consonance with the rule on dual criminality. In its decision (page 24), the RTC sustained the position of the Department of Justice, on behalf of the HKSAR, that “the conduct constituting the charge of ‘accepting an advantage as an agent’ under *section 9(1)(a) of the Prevention of Bribery Ordinance, Cap 201* is analogous to the acts penalized under *section 3(b) and (h) of the Anti-Graft and Corrupt Practices Act (RA 3019)*, as amended. On the other hand, the controlling act constituting the charge of ‘conspiracy to defraud’, which is the act of dishonesty committed by the respondent by making false representations to Mocatta Hong Kong, is analogous to the conduct penalized under *article 15(2) (a) of the Revised Penal Code (Estafa through False Pretenses)*, as amended. ... Thus, the offenses charged against respondent Muñoz in the HKSAR met the dual criminality requirement and hence, the accused is extraditable. Accordingly, the facts charged in the petition subjects Muñoz to extradition.” Muñoz challenged this decision of the RTC. The case is still with the Court of Appeals for resolution.

(b) Observations on the implementation of the article

529. The provision is adequately implemented.

Article 44 Extradition

Paragraph 7

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

(a) Summary of information relevant to reviewing the implementation of the article

530. The provision does not apply, since the Philippines makes extradition conditional on the existence of a treaty or convention.

Article 44 Extradition

Paragraph 8

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

(a) Summary of information relevant to reviewing the implementation of the article

531. The general conditions for extradition are set forth in sections 3-5 of P.D. No. 1069 (quoted above), while the specific minimum penalty requirements as well as the mandatory and discretionary grounds for refusing a request for extradition are provided for in existing treaties.

532. The Philippines provided a matrix summarizing the relevant provisions of its extradition treaties in regard to this provision (see Annex 1).

533. The Philippines noted that no requests for extradition involving corruption offenses have been refused.

(b) Observations on the implementation of the article

534. The provision is implemented.

Article 44 Extradition

Paragraph 9

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

(a) Summary of information relevant to reviewing the implementation of the article

535. Reference is made to the following law as evidence of implementation of the provision:

Provisions of P.D. No. 1069.

SEC. 5. Duty of Secretary of Foreign Affairs; Referral of Requests; Filing of Petition. –

(1) Unless it appears to the Secretary of Foreign Affairs that the request fails to meet the requirements of this law and the relevant treaty or convention, he shall forward the request together with the related documents to the Secretary of Justice, who shall immediately designate and authorize an attorney in his office to take charge of the case.

(2) The attorney so designated shall file a written petition with the proper Court of First Instance of the province or city having jurisdiction of the place, with a prayer that the court take the request under consideration, and shall attach to the petition all related documents. The filing of the petition and the service of the summons to the accused shall be free from the payment of docket and sheriff's fees.

(3) The Court of First Instance with which the petition shall have been filed shall have and continue to have the exclusive power to hear and decide the case, regardless of the subsequent whereabouts of the accused, or the change or changes of his place of residence.

SEC. 6. Issuance of Summons; Temporary Arrest; Hearing, Service of Notices. –

(1) Immediately upon receipt of the petition, the presiding judge of the court shall, as soon as practicable, summon the accused to appear and to answer the petition on the day and hour fixed in the order. We (sic) may issue a warrant for the immediate arrest of the accused which may be served any where within the Philippines if it appears to the presiding judge that the immediate arrest and temporary detention of the accused will best serve the ends of justice. Upon receipt of the answer, or should the accused after having received the summons fail to answer within the time fixed, the presiding judge shall hear the case or set another date for the hearing thereof.

(2) The order and notice as well as a copy of the warrant of arrest, if issued, shall be promptly served each upon the accused and the attorney having charge of the case.

SEC. 9. Nature and Conduct of Proceedings. - (1) In the hearing, the provisions of the Rules of Court insofar as practicable and not inconsistent with the summary nature of the proceedings, shall apply to extradition cases, and the hearing shall be conducted in such a manner as to arrive at a fair and speedy disposition of the case.

(2) Sworn statements offered in evidence at the hearing of any extradition case shall be received and admitted as evidence if properly and legally authenticated by the principal diplomatic or consular officer of the Republic of the Philippines residing in the requesting state.

SEC. 10. Decision. - Upon conclusion of the hearing, the court shall render a decision granting the extradition, and giving his reasons therefore upon showing of the existence of a prima facie case. Otherwise, it shall dismiss the petition.

SEC. 11. Service of Decision. - The decision of the court shall be promptly served on the accused if he was not present at the reading thereof, and the clerk of court shall immediately forward two copies thereof to the Secretary of Foreign Affairs through the Department of Justice.

536. The Philippines provided a matrix summarizing the relevant provisions of its extradition treaties in regard to this provision (see Annex 1).

537. The Philippines also provided an example of implementation: the case of *Wright vs. Court of Appeals* (235 SCRA 341, 350 [1994])

...
“Clearly, a close reading of the provisions of the Treaty previously cited, which are relevant to our determination of the validity of the extradition order, reveals that the trial court committed no error in ordering the petitioner's extradition. Conformably with article 2, section 2 of the said Treaty, the crimes for which the petitioner was charged and for which warrants for his arrest were issued in Australia were undeniably offenses in the Requesting State at the time they were alleged to have been committed. From its examination of the charges against the petitioner, the trial court correctly determined that the corresponding offenses under our penal laws are articles 315(2) and 183 of the Revised Penal Code on swindling/estafa and false testimony/perjury, respectively.

The provisions of article 6 of the said Treaty pertaining to the documents required for extradition are sufficiently clear and require no interpretation. The warrant for the arrest of an individual or a copy thereof, a statement of each and every offense and a statement of the acts and omissions which were alleged against the person in respect of each offense are sufficient to show that a person is wanted for prosecution under the said article. All of these documentary requirements were dully submitted to the trial court in its proceedings *a quo*. For purposes of compliance with the provisions of the Treaty, the signature and official seal of the Attorney-General of Australia were sufficient to authenticate all the documents annexed to the Statement of the Acts and Omissions, including the statement itself. In conformity with the provisions of article 7 of the Treaty, the appropriate documents and annexes were signed by "an officer in or of the Requesting State," "sealed with . . . (a) public seal of the Requesting State or of a Minister of State, or of a Department or officer of the Government of the

Requesting State," and "certified by a diplomatic or consular officer of the Requesting (sic) State accredited to the Requested (sic) State." The last requirement was accomplished by the certification made by the Philippine Consular Officer in Canberra, Australia.

...

The length of time required to dispose of a particular extradition request largely depends on whether the person sought decides to voluntarily return to the Requesting State or to challenge the petition for extradition in court. Where the person sought to be extradited does not contest the extradition proceedings in court, the extradition can be completed within two (2) to three (3) months from the time the Order of Extradition issued by the court became final and executory. If the order of extradition is contested, the earliest resolution of the case, from the trial court to the Court of Appeals and the Supreme Court, is five (5) years.”

(b) Observations on the implementation of the article

538. The provision is adequately implemented.

Article 44 Extradition

Paragraph 10

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

(a) Summary of information relevant to reviewing the implementation of the article

539. The Philippines has implemented the measures of the provision, referring to P.D. No. 1069.

540. The person sought to be extradited may be provisionally arrested pending receipt of the formal request for extradition as long as it can be proved that there is urgency in the provisional arrest such as when the subject person is a flight risk. In this case, the Department of Justice, upon evaluation of the request for provisional arrest, shall thereafter indorse the request to the INTERPOL Division of the National Bureau of Investigation (NBI), the DOJ’s investigation arm, which office shall then, file an ex-parte application for the issuance of a provisional warrant of arrest before the RTC. Upon receipt and evaluation of the formal request for extradition, the State Counsels assigned shall thereafter file the corresponding petition for extradition before the RTC.

541. Upon conclusion of the extradition hearing, the RTC shall render a decision granting the extradition, with the reasons therefor upon showing of the existence of a prima facie case (or probable cause in existing treaties). Otherwise, the petition for extradition shall be dismissed.

Provisions of P.D. No. 1069

SEC. 6. Issuance of Summons; Temporary Arrest; Hearing, Service of Notices. –

(1) Immediately upon receipt of the petition, the presiding judge of the court shall, as soon as practicable, summon the accused to appear and to answer the petition on the day and hour fixed in the order. We (sic) may issue a warrant for the immediate arrest of the accused which may be served any where within

the Philippines if it appears to the presiding judge that the immediate arrest and temporary detention of the accused will best serve the ends of justice. Upon receipt of the answer, or should the accused after having received the summons fail to answer within the time fixed, the presiding judge shall hear the case or set another date for the hearing thereof.

(2) The order and notice as well as a copy of the warrant of arrest, if issued, shall be promptly served each upon the accused and the attorney having charge of the case.

SEC. 20. Provisional Arrest. - (a) In case of urgency, the requesting state may, pursuant to the relevant treaty or convention and while the same remains in force; request for the provisional arrest of the accused, pending receipt of the request for extradition made in accordance with Section 4 of this Decree.

(b) A request for provisional arrest shall be sent to the Director of the National Bureau of Investigation, Manila, either through the diplomatic channels or direct by post or telegraph.

(c) The Director of the National Bureau of Investigation or any official acting on his behalf shall upon receipt of the request immediately secure a warrant for the provisional arrest of the accused from the presiding judge of the Court of First Instance of the province or city having jurisdiction of the place, who shall issue the warrant for the provisional arrest of the accused. The Director of the National Bureau of Investigation through the Secretary of Foreign Affairs shall inform the requesting state of the result of its request.

(d) If within a period of 20 days after the provisional arrest the Secretary of Foreign Affairs has not received the request for extradition and the documents mentioned in Section 4 of this Decree, the accused shall be released from custody.

(e) Release from provisional arrest shall not prejudice re-arrest and extradition of the accused if a request for extradition is received subsequently in accordance with the relevant treaty of convention.

542. The Philippines provided a matrix summarizing the relevant provisions of its extradition treaties in regard to this provision (see Annex 1).

543. The Philippines also provided an example of implementation: the case of *Cuevas vs. Muñoz* (348 SCRA 542, 552, 553 [2000]).

Muñoz was charged at the HKSAR for seven (7) counts of accepting an advantage as an agent and seven (7) counts of conspiracy to defraud. The HKSAR requested for his provisional arrest pending submission of the formal request for his surrender pursuant to the PH-HKSAR Agreement for the Surrender of Accused and Convicted Persons.

The Supreme Court, in ruling the validity of the provisional arrest, held:

“ ...

Nothing in existing treaties or Philippine legislation defines the meaning of “urgency” as used in the context of a request for provisional arrest. Using reasonable standards of interpretation, however, the Supreme Court ruled that “urgency” connotes such conditions relating to the nature of the offense charged and the personality of the prospective extraditee which would make him susceptible to the inclination to flee or escape from the jurisdiction if he were to learn about the impending request for his extradition and/or likely to destroy the evidence pertinent to the said request or his eventual prosecution and without which the latter could not proceed.

...

The gravity of the imposable penalty upon an accused is a factor to consider in determining the likelihood that the accused will abscond if allowed provisional liberty. It is, after all, but human to fear a lengthy, if not a lifetime, incarceration.

...

The fact that Muñoz did not flee despite the investigations being conducted by the Central Bank and the NBI nor when the warrant for his arrest was issued by the Hong Kong ICAC is not a guarantee that he will not flee now that proceedings for his extradition are well on the way. ...”

In addition, in its March 19, 2001 Resolution involving the same case, the Supreme Court clarified:

...

“The issue that merits clarification, ... , *i.e.*, whether the municipal law (P.D. No. 1069), which provides only a twenty (20) day period for provisional arrest absent a formal request for extradition, prevails over the international agreement, (RP-Hong Kong Agreement) which allows a period of forty-five (45) days for the same, in case of conflict.

...

Under the doctrine of incorporation, rules of international law form part of the law of the land and no further legislative action is needed to make such rules applicable in the domestic sphere. A treaty shall be interpreted in good faith under the rule of *pacta sunt servanda*, in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purposes.

...

The fact that international law has been made part of the law of the land does not pertain to or imply the primacy of international law over national or municipal law in the municipal sphere. The doctrine of incorporation, as applied in most countries, decrees that the rules of international law are given equal standing with, but are not superior to, national legislative enactments. Accordingly, the *principle lex posterior derogate priori* takes effect - a treaty may repeal a statute and a statute may repeal a treaty. Where a treaty and a statute are on an equality, a new treaty prevails over an earlier statute, but it is also the case that a new statute prevails over a treaty.

...

Clearly, the forty-five (45) day period set forth under the treaty (RP-Hong Kong Agreement for the Surrender of Accused and Convicted Persons) prevails over the twenty (20) day period set by the statute (P.D. No. 1069), the treaty having been entered into force on June 20, 1997 as against the statute or municipal law (P.D. No. 1069) which was enacted on January 13, 1977.”

(b) Observations on the implementation of the article

544. The provision is implemented.

Article 44 Extradition

Paragraph 11

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

545. Under existing treaties, extradition of a Filipino national is one of the discretionary grounds for refusing a request for extradition, with the exception of the extradition treaties with India, the United Kingdom and the United States which contain an explicit provision

to the effect that extradition shall not be refused on the ground that the person sought is a citizen of the Requested State.

546. Treaties where extradition of nationals is a discretionary ground for refusing a request for extradition contain a provision consistent with the principle of *aut dedere, aut judicare* (extradite or prosecute).

547. To date, the Philippines has not refused a request for extradition on the sole basis that the person sought to be extradited is its own national.

548. The Philippines provided a matrix summarizing the relevant provisions of its extradition treaties in regard to this provision (see Annex 1).

(b) Observations on the implementation of the article

549. The provision is implemented.

Article 44 Extradition

Paragraph 12

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

(a) Summary of information relevant to reviewing the implementation of the article

550. Under existing treaties, extradition of a Filipino national is one of the discretionary grounds for refusing a request for extradition, with the exception of the extradition treaties with India, the United Kingdom and the United States which contain an explicit provision to the effect that extradition shall not be refused on the ground that the person sought is a citizen of the Requested State.

551. To date, the Philippines not refused a request for extradition on the sole basis that the person sought to be extradited is its own national. Moreover, P.D. No. 1069 and the existing treaties do not impose as a condition for the extradition of Filipino nationals that the service of sentence, in case of conviction, be in the Philippines.

(b) Observations on the implementation of the article

552. Philippine law does not provide for conditional extradition of nationals.

Article 44 Extradition

Paragraph 13

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

(a) Summary of information relevant to reviewing the implementation of the article

553. The Philippines has not denied a request for extradition on the sole ground that the person sought is a national of the Philippines.

554. Under existing treaties, extradition of a Filipino national is one of the discretionary grounds for refusing a request for extradition, with the exception of the extradition treaties with India, the United Kingdom and the United States which contain an explicit provision to the effect that extradition shall not be refused on the ground that the person sought is a citizen of the Requested State.

555. There is no domestic law which would authorize the enforcement in the Philippines of a sentence imposed under the domestic law of a foreign State.

(b) Observations on the implementation of the article

556. The Philippines has had no experience in the application of this provision and it would not consider the enforcement of the sentence imposed under foreign law under these circumstances.

Article 44 Extradition

Paragraph 14

14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

(a) Summary of information relevant to reviewing the implementation of the article

557. The Philippines has implemented the measures of the provision, referring to provisions of P.D. No. 1069.

558. The person sought to be extradited may challenge an order (other than the Order granting his extradition) of the Regional Trial Court acting as an extradition court even up to the Supreme Court. Moreover, under section 13 of P.D. No. 1069, “(T)he provisions of the Rules of Court governing appeal in criminal cases in the Court of Appeals shall apply in appeal in Extradition cases”.

559. Once the order of the Court granting the petition for the extradition of the person sought becomes final and executory, the extraditee shall be placed at the disposal of the authorities of the Requesting State or Government, after consultation with the authorities of the Requesting State or Government.

SEC. 7. Appointment of Counsel de Officio. - If on the date set for the hearing the accused does not have a legal counsel, the presiding judge shall appoint any law practitioner residing within his territorial jurisdiction as counsel de officio for the accused to assist him in the hearing.

(1) The hearing shall be public unless the accused requests, with leave of court, that it be conducted in chamber.

(2) The attorney having charge of the case may upon request represent the requesting state or government throughout the proceedings. The requesting state or government may, however, retain private counsel to represent it for a particular extradition case.

(3) Should the accused fail to appear on the date set for hearing, or if he is not under detention, the court shall forthwith issue a warrant for his arrest which may be served upon the accused anywhere in the Philippines.

SEC. 9. Nature and Conduct of Proceedings. - (1) In the hearing, the provisions of the Rules of Court insofar as practicable and not inconsistent with the summary nature of the proceedings, shall apply to extradition cases, and the hearing shall be conducted in such a manner as to arrive at a fair and speedy disposition of the case.

...

SEC. 10. Decision. - Upon conclusion of the hearing, the court shall render a decision granting the extradition, and giving his reasons therefore upon showing of the existence of a prima facie case. Otherwise, it shall dismiss the petition.

SEC. 11. Service of Decision. - The decision of the court shall be promptly served on the accused if he was not present at the reading thereof, and the clerk of the court shall immediately forward two copies thereof to the Secretary of Foreign Affairs through the Department of Justice.

SEC. 12. Appeal by Accused; Stay of Execution. -

(1) The accused may, within 10 days from receipt of the decision of the Court of First Instance granting extradition, appeal to the Court of Appeals, whose decision in extradition cases shall be final and immediately executory.

(2) The appeal shall stay the execution of the decision of the Court of First Instance.

SEC. 13. Application of Rules of Court. - The provisions of the Rules of Court governing appeal in criminal cases in the Court of Appeals shall apply in appeal in Extradition cases, except that the parties may file typewritten or mimeograph copies of their brief within 15 days from receipt of notice to file such briefs.

560. The Philippines also provided an example of implementation: the case of *Government of the United States of America vs. Purganan* (389 SCRA 623 [2002])

“...

Extradition proceedings should be conducted with all deliberate speed to determine compliance with the Extradition Treaty and Law; and, while safeguarding basic individual rights, to avoid the legalistic contortions, delays and “over-due process” every step of the way, lest these summary extradition proceedings become not only inutile but also sources of international embarrassment due to our inability to comply in good faith with a treaty partner’s simple request to return a fugitive.

...

In the absence of any provision - in the Constitution, the law or the treaty - expressly guaranteeing the right to bail in extradition proceedings, adopting the practice of not granting them bail, as a general rule, would be a step towards deterring fugitives from coming to the Philippines to hide from or evade their prosecutors.

...

To best serve the ends of justice, after a potential extradite has been arrested or placed under the custody of the law, bail may be applied for and granted as an exception, only upon a clear and convincing showing (1) that, once granted bail, the applicant will not be a flight risk or a danger to the community; and (2) that there exist special, humanitarian

and compelling circumstances including, as a matter of reciprocity, those cited by the highest court in the requesting state when it grants provisional liberty in extradition cases therein.”

However, in 2007, the Supreme Court, in *Government of Hong Kong Special Administrative Region, represented by the Philippine Department of Justice v. Hon. Felixberto T. Olalia, Jr. and Juan Antonio Muñoz* (521 SCRA 470, 481, 482, 486, 487 [2007]), held:

“ ...

The modern trend in public international law is the primacy placed on the worth of the individual person and the sanctity of human rights. ...

In other words, the Philippine authorities are under obligation to make available to every person under detention such remedies which safeguard their fundamental right to liberty. These remedies include the right to be admitted to bail. While this Court in *Purganan* limited the exercise of the right to bail to criminal proceedings, however, in the light of various international treaties giving recognition and protection to human rights, particularly the right to life and liberty, a reexamination of this Court’s ruling in *Purganan* is in order.

...

While our extradition law does not provide for the grant of bail to an extraditee, however, there is no provision prohibiting him or her from filing a motion for bail, a right to due process under the Constitution.

...

An extradition proceeding being *sui generis*, the standard of proof required in granting or denying bail can neither be the proof beyond reasonable doubt in criminal cases nor the standard of proof of preponderance of evidence in civil cases. While administrative in character, the standard of substantial evidence used in administrative cases cannot likewise apply given the object of extradition law which is to prevent the prospective extraditee from fleeing our jurisdiction. In his Separate Opinion in *Purganan*, then Associate Justice, now Chief Justice Reynato S. Puno, proposed that a new standard which he termed “clear and convincing evidence” should be used in granting bail in extradition cases. ...The potential extraditee must prove by “clear and convincing evidence” that he is not a flight risk and will abide with all the orders and processes of the extradition court.”

(b) Observations on the implementation of the article

561. The provision is implemented.

Article 44 Extradition

Paragraph 15

15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person’s sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person’s position for any one of these reasons.

(a) Summary of information relevant to reviewing the implementation of the article

562. This mandatory ground for denying a request for extradition is present in all bilateral extradition treaties, with the exception of India, Indonesia, Thailand and the United States. Notwithstanding the absence of said provision in the four (4) treaties mentioned, this provision will be considered, whenever necessary, by the Department of Justice in evaluating requests for extradition, considering that the Philippines has acceded to the 1951 Convention and 1967 Protocol relating to the Status of Refugees.

563. Under the Refugee Convention, a state party is obligated not to return an asylum seeker to his or her country of origin if it is established that said individual has a well-founded fear of persecution on the ground of race, religion, nationality, political opinion or membership of a particular group and that owing to such fear, said person is unable or unwilling to return to his or her country of origin. A refugee status determination is being conducted by the Office of the Chief State Counsel (Legal Staff) of the Department of Justice, the same office which is in charge of the negotiation and implementation of treaties on extradition, mutual legal assistance and transfer of sentenced persons.

564. The Philippines provided a matrix summarizing the relevant provisions of its extradition treaties in regard to this provision (see Annex 1).

565. The Philippines has not received a request for extradition which would require the application of this provision.

(b) Observations on the implementation of the article

566. The provision is partially implemented, as there are some exceptions in the extradition treaties of Thailand and the USA. No extradition cases have been refused on such grounds.

567. Although the Philippines has stated that it will consider discriminatory grounds, whenever necessary, in evaluating extradition requests, the reviewers were of the view that the Philippines should consider amending its extradition treaties in line with the provision under review.

Article 44 Extradition

Paragraph 16

16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

568. The extradition treaties with HKSAR, India, Korea and Spain expressly provide that offenses which involve fiscal matters are extraditable offenses, while the treaty with Switzerland makes this a discretionary ground for refusing a request for extradition.

569. Regarding the other treaties which do not contain provisions on fiscal matters, it is understood that said offenses are considered as extraditable offenses provided that dual

criminality and the other requirements of the treaty are complied with, because fiscal matters are not listed as offences that are not extraditable.

570. The Philippines provided a matrix summarizing the relevant provisions of its extradition treaties in regard to this provision (see Annex 1).

571. The Philippines has not received an extradition request where the extraditable offense involved fiscal matters.

(b) Observations on the implementation of the article

572. The provision is partially implemented, since the Switzerland bilateral extradition treaty provides for discretionary refusal of extradition in cases involving fiscal matters. The Philippines should consider amending the said treaty.

Article 44 Extradition

Paragraph 17

17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

(a) Summary of information relevant to reviewing the implementation of the article

573. With the exception of the extradition treaties with Indonesia and Thailand, which were the first two (2) treaties entered into by the Philippines, all of the remaining treaties contain a provision on “Consultation or Additional Information”, which facilitates the evaluation of an extradition request.

574. Even in the absence of an express provision on Consultations in the extradition treaties with Indonesia and Thailand, being the first two (2) extradition treaties entered into by the Philippines, it has been the DOJ’s practice to inform its treaty partners if there are additional documents that must be submitted to comply with the provisions of the treaty before refusing extradition.

575. The Philippines provided a matrix summarizing the relevant provisions of its extradition treaties in regard to this provision (see Annex 1).

576. The Philippines also provided an example of implementation. It reported that as a matter of practice, the DOJ, in evaluating an extradition request, consults with the requesting State party through meetings or exchange of correspondence if there are identified gaps needed to be addressed, such as incomplete documentation.

577. In providing examples of cases and illustrations of relevant exchanges, the Philippines reported that the majority of requests for extradition received by the Philippines come from the United States. Because of this, there are regular consultations held between the Office of the Chief State Counsel (Legal Staff) of the DOJ, which is the office handling requests for extradition, and the U.S. DOJ Attaché assigned to the U.S. Embassy in

Manila where matters such as a need for additional documents and updates on the status of extradition cases pending in Philippine courts are discussed, among others.

(b) Observations on the implementation of the article

578. The provision is partially implemented in law, since the two bilateral treaties with Indonesia and Thailand do not conform with the provision under review. The Philippines should consider amending the extradition treaties with Indonesia and Thailand. However, the reviewers noted that the template for extradition treaties has evolved to include a measure on consultation and the provision under review appears to be implemented as a matter of practice.

Article 44 Extradition

Paragraph 18

18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

(a) Summary of information relevant to reviewing the implementation of the article

579. The Philippines has implemented the provision. As referred to above, it has concluded thirteen (13) bilateral extradition treaties, are of which are State parties to the Convention.

(b) Observations on the implementation of the article

580. The provision is implemented.

(c) Challenges related to article 44

581. The Philippines identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency co-ordination: a need for the judiciary and courts to be familiar with extradition procedure to hear relevant cases.
2. Inadequacy of existing implementing normative measures (laws, regulations etc.).
3. Limited capacity (e.g. human/technological/institution/other; please specify).

(d) Technical assistance needs related to article 44

582. The Philippines (Office of the Chief State Counsel (Legal Staff) of the Department of Justice, which is the lead agency in the negotiations and implementation of treaties on extradition and mutual legal assistance) indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Capacity-building programmes for authorities responsible for international cooperation in criminal matters. We are amending Philippine extradition law to make it more compliant with treaty obligations, such as terrorism conventions, UNTOC and UNCAC.
2. Multi-disciplinary training of those involved in the extradition process, especially judges training through judicial academy.

The Philippines have received the following technical assistance from the UNODC-Terrorism Prevention Branch:

In February 2010, the DOJ, with assistance from the UNODC-Terrorism Prevention Branch, held a Workshop on the Proposed Amendments to the Philippine Extradition Law. Said Workshop was a continuation of the November 2006 Workshop on Extradition and Procedures on Terrorist Cases which was also funded by the UNODC. The 2010 Workshop was designed to serve as venue to revisit the existing Philippine Extradition Law and to identify which provisions should be amended towards a more effective extradition regime, consistent with the country's treaty obligations under the various international legal instruments such as the various UN conventions against Terrorism, UNTOC and the UNCAC.

Article 45 Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.

(a) Summary of information relevant to reviewing the implementation of the article

583. The Philippines is in compliance of the provision.
584. The Philippines has signed four (4) Transfer of Sentenced Persons Agreements (TSPA) with Canada, Hong Kong Special Administrative Region, Spain and Thailand. However, the TSPA with Canada (2003) is not yet in force pending concurrence by the Philippine Senate to its ratification.
585. The implementation of the TSPAs is governed by Department Circular No. 90 (*Prescribing Rules in the Implementation of the Transfer of Sentenced Persons Agreements*) issued on 06 December 2010 by Justice Secretary Leila M. de Lima. The existence of dual criminality is one of the requirements in all of the TSPAs signed by the Philippines.
586. The Philippines provided a matrix summarizing the relevant provisions of its treaties on transfer of sentenced persons (see Annex 1).
587. The Philippines also provided an example of implementation: Mr. Francisco Juan Gonzalez Larrañaga, a.k.a., "Paco" Larrañaga was the first prisoner to be transferred under any of the country's existing TSPAs. He was found guilty of the Special Complex Crime of Kidnapping and Serious Illegal Detention with Homicide and Rape and Simple Kidnapping and Serious Illegal Detention and was sentenced to suffer the penalties of death by lethal injection and *reclusion perpetua* for the special complex crime of kidnapping and serious illegal detention with homicide and rape and simple kidnapping and serious illegal detention, respectively. However, with the passage of Republic Act No. 9346 (*An Act Prohibiting the Imposition of Death Penalty in the Philippines*), the penalty of death by lethal injection was deemed commuted to *Reclusion Perpetua*". The penalty of *reclusion perpetua* "shall be from twenty (20) years and one (1) day to forty (40) years".

After complying with the requirements of the PH-Spain TSPA, Mr. Larrañaga was turned over to the Spanish INTERPOL by the Philippine NBI-INTERPOL in October 2009 and was subsequently transferred to Spain to serve the remainder of his sentence.

(b) Observations on the implementation of the article

588. The provision is implemented.

(c) Challenges related to article 45

589. The Philippines identified the following challenges and issues in fully implementing the article under review:

1. Specificities in our legal system.
2. Competing priorities.
3. Limited capacity (e.g. human/technological/institutional).
4. Limited resources for implementation (e.g. human/financial).

(d) Technical assistance needs related to article 45

590. The Philippines indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned.
2. Capacity-building programmes for authorities responsible for international cooperation in criminal matters.

None of these forms of technical assistance has been provided to the Philippines to date.

Article 46 Mutual legal assistance

General information related to Mutual Legal Assistance

591. The reviewing experts observed that the Philippines does not have a stand-alone Mutual Legal Assistance Law or a general legal basis (outside of MLATs, reciprocity and limited provisions in its AMLA) on which to provide and request mutual legal assistance. Relevant provisions are found in the AMLA, which, however, is only applicable to MLA requests involving money laundering offences, even in cases where the underlying predicate offence involves corruption. It is recommended, in the context of its ongoing legal reforms, that the Philippines consider enacting an MLA law or a section in the Rules of Criminal Procedure addressing mutual legal assistance in line with the Convention. In this regard it was reported that the Department of Justice engaged in consultations in February 2012 to draft a law on mutual legal assistance.

592. The Anti-Money Laundering Act (AMLA), as amended, allows the Anti-Money Laundering Council (AMLC) to extend mutual legal assistance to a foreign State. sections 7 and 13 of the AMLA set out the powers of the AMLC and relevant provisions on mutual legal assistance involving anti-money laundering cases:

SEC. 7. Creation of Anti-Money Laundering Council (AMLC).

The Anti-Money Laundering Council is hereby created and shall be composed of the Governor of the Bangko Sentral ng Pilipinas as chairman, the Commissioner of the Insurance Commission and the Chairman

of the Securities and Exchange Commission as members. The AMLC shall act unanimously in the discharge of its functions as defined hereunder:

- (1) to require and receive covered transaction reports from covered institutions;
- (2) to issue orders addressed to the appropriate Supervising Authority or the covered institution to determine the true identity of the owner of any monetary instrument or property subject of a covered transaction report or request for assistance from a foreign State, or believed by the Council, on the basis of substantial evidence, to be, in whole or in part, wherever located, representing, involving, or related to, directly or indirectly, in any manner or by any means, the proceeds of an unlawful activity;
- (3) to institute civil forfeiture proceedings and all other remedial proceedings through the Office of the Solicitor General;
- (4) to cause the filing of complaints with the Department of Justice or the Ombudsman for the prosecution of money laundering offenses;
- (5) to initiate investigations of covered transactions, money laundering activities and other violations of this Act;
- (6) to freeze any monetary instrument or property alleged to be proceeds of any unlawful activity;
- (7) to implement such measures as may be necessary and justified under this Act to counteract money laundering;
- (8) to receive and take action in respect of, any request from foreign states for assistance in their own anti-money laundering operations provided in this Act;
- (9) to develop educational programs on the pernicious effects of money laundering, the methods and techniques used in money laundering, the viable means of preventing money laundering and the effective ways of prosecuting and punishing offenders; and
- (10) to enlist the assistance of any branch, department, bureau, office, agency or instrumentality of the government, including government-owned and -controlled corporations, in undertaking any and all anti-money laundering operations, which may include the use of its personnel, facilities and resources for the more resolute prevention, detection and investigation of money laundering offenses and prosecution of offenders.

SEC. 13. Mutual Assistance among States.

(a) Request for Assistance from a Foreign State. - Where a foreign State makes a request for assistance in the investigation or prosecution of a money laundering offense, the AMLC may execute the request or refuse to execute the same and inform the foreign State of any valid reason for not executing the request or for delaying the execution thereof. The principles of mutuality and reciprocity shall, for this purpose, be at all times recognized.

(b) Powers of the AMLC to Act on a Request for Assistance from a Foreign State. - The AMLC may execute a request for assistance Foreign State. - The AMLC may execute a request for assistance from a foreign State by: (1) tracking down, freezing, restraining and seizing assets alleged to be proceeds of any unlawful activity under the procedures laid down in this Act; (2) giving information needed by the foreign State within the procedures laid down in this Act; and

(3) applying for an order of forfeiture of any monetary instrument or property in the court: Provided, That the court shall not issue such an order unless the application is accompanied by an authenticated copy of the order of a court in the requesting State ordering the forfeiture of said monetary instrument or property of a person who has been convicted of a money laundering offense in the requesting State, and a certification or an affidavit of a competent officer of the requesting State stating that the conviction and the order of forfeiture are final and that no further appeal lies in respect of either.

(c) Obtaining Assistance from Foreign States. - The AMLC may make a request to any foreign State for assistance in (1) tracking down, freezing, restraining and seizing assets alleged to be proceeds of any unlawful activity; (2) obtaining information that it needs relating to any covered transaction, money laundering offense or any other matter directly or indirectly related thereto; (3) to the extent allowed by the law of the foreign State, applying with the proper court therein for an order to enter any premises belonging to or in the possession or control of, any or all of the persons named in said request, and/or search any or all such persons named therein and/or remove any document, material or object named in said request: Provided, That the documents accompanying the request in support of the application have been duly authenticated in accordance with the applicable law or regulation of the foreign State; and (4) applying for an order of forfeiture of any monetary instrument or property in the proper court in the foreign State: Provided, That the request is accompanied by an authenticated copy of the order of the regional trial court ordering the forfeiture of said monetary instrument or property of a convicted offender and an affidavit of the clerk of court stating that the conviction and the order of forfeiture are final and that no further appeal lies in respect of either.

(d) Limitations on Requests for Mutual Assistance. - The AMLC may refuse to comply with any request for assistance where the action sought by the request is likely to prejudice the national interest of the Philippines unless there is a treaty between the Philippines and the requesting State relating to the provision of assistance in relation to money laundering offenses.

...

Paragraph 1

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

(a) Summary of information relevant to reviewing the implementation of the article

593. The Philippines provides mutual legal assistance in criminal matters to other States using as bases, among others, the provisions of existing bilateral and regional Mutual Legal Assistance Treaties (MLATs) as well as the “mini-MLATs” contained in the various United Nations Conventions to which the Philippines is a State party. Mutual legal assistance may also be provided pursuant to Republic Act No. 9160 (Anti-Money Laundering Act of 2001), as amended by R.A. No. 9194.

The Philippines has signed eight (8) bilateral MLATs with the following countries:

1. Australia
2. China*
3. Hong Kong Special Administrative Region (HKSAR)
4. Republic of Korea
5. Spain
6. Switzerland
7. United Kingdom*
8. United States of America.

* The concurrence of the Philippine Senate to the ratification of the MLATs with China and the United Kingdom has not been obtained and hence said treaties are not yet in force.

594. The Philippines is also a State party to the Treaty on Mutual Legal Assistance in Criminal Matters loosely called the “ASEAN MLAT”. Said MLAT is effective among the ASEAN Member States, with the exception of Thailand, which has yet to deposit its instrument of ratification to the said Treaty.

595. The Philippines provided the following statistics on the number of MLA requests made and received (as of 3 August 2012):

Total requests received/made by AMLC (includes both requests through DOJ under MLATs and direct FIU-to-FIU/Egmont requests):

AMLC Requests for MLA received from foreign States:

2009: 83

2010: 87

2011: 106

Total (from 2001-2011): 604

AMLC Requests for MLA made to foreign States:

2009: 29

2010: 117
2011: 37
Total (from 2001-2011): 359

Of the total above, the following requests were received/made by AMLC through DOJ under MLATs:

AMLC Requests received from foreign States through DOJ through MLATs:

2009: 5
2010: 3
2011: 5

AMLC Requests made to foreign States through DOJ through MLATs:

2009: -
2010: -
2011: 1

Note: Direct FIU-to-FIU requests and requests through Egmont are listed under UNCAC article 48.

Statistics provided by the Department of Justice (Total numbers include the ones received/made by AMLC above):

2012: received 32 requests (3 related to corruption)
2011: received 54 requests (1 related to corruption)
2010: received 39 requests (none related to corruption).

2012: 0 requests made
2011: 4 requests made (1 related to corruption)
2010: 2 requests made (1 related to corruption)

Statistics provided by the OMB:

The Office of the Ombudsman has received one (1) request for mutual legal assistance in a money laundering case, which it is in the process of referring to AMLC for execution, and has made no outgoing requests.

596. Although the absence of dual criminality is a discretionary ground for refusing MLA under certain MLATs, in practice the Philippines does not decline requests for mutual legal assistance, be they treaty or non-treaty based, on the ground of absence of dual criminality. The Philippines has never denied a request for mutual legal assistance.

597. Under the MLATs, assistance may be granted in connection with the prevention, investigation and prosecution of criminal offenses in general and proceedings related to criminal matters. The scope of the MLATs are so broad that they would include specifically offenses established under the Convention.

598. For non-treaty based requests for legal assistance, assistance may be granted on the basis of reciprocity, provided that the request for assistance does not involve coercive action. Moreover, the request must contain a Reciprocity Undertaking or an assurance from the requesting State that a similar request for assistance by the Philippines will likewise be granted. It was explained that a request that “does not involve coercive

action” means that the request could be executed without having to file an application or petition in court.

599. In addition, the AMLA, as amended, allows the Anti-Money Laundering Council (AMLC), the country’s Financial Intelligence Unit (FIU), to extend mutual legal assistance to foreign States, as described in paragraph 2 below.

600. The Philippines provided copies of relevant treaties on mutual legal assistance (scanned copies of MLATs).

601. The Philippines also provided an example of implementation. In 2005, the HKDOJ, pursuant to the PH-Hong Kong Special Administrative Region (HKSAR) MLAT, requested assistance from the Philippines to obtain evidence to be used in the criminal prosecution of certain Chinese nationals for the offense of “conspiracy for an agent to accept advantages” contrary HKSAR’s Prevention of Bribery Ordinance, among others. In the execution of the request for assistance, it was requested by the HKDOJ that the testimony of the witnesses be reduced to writing, the documents produced in evidence be marked for identification, and the deposition be certified and sealed in accordance with Chapter 525 of the Mutual Legal Assistance in Criminal Matters Ordinance of the HKSAR to be admissible in the HKSAR. It was also requested that the entire proceedings be videotaped and audio-recorded and for there to be a twenty-four (24) hour transcript service to enable the witnesses to sign their testimony after making the necessary corrections, if any, on the transcript of stenographic notes. The Philippines explained that it complied with the HKSAR request.

602. In 2003, the AMLC was able to remit to the United Kingdom funds laundered in the Philippines which were related to a fraud case committed in the United Kingdom. The total amount remitted to the UK was approximately US\$730,000. The assistance was rendered under section 13 of the Anti-Money Laundering Act, as amended, which allows the Anti-Money Laundering Council (AMLC), the country’s Financial Intelligence Unit (FIU), to extend mutual legal assistance to foreign states.

603. In 2004, the AMLC was also able to remit to the United States, funds laundered in the Philippines which were related to murder and insurance fraud. The total amount remitted to the US in relation to the said case was approximately US\$110,000.

(b) Observations on the implementation of the article

604. The Philippines appears to be able to render a wide range of mutual legal assistance in accordance with the provision under review.

Article 46 Mutual legal assistance

Paragraph 2

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

605. The provisions of the MLATs and the AMLA are broad enough so as to include offenses for which a legal person may be held liable.

606. MLATs are entered into to provide assistance to the contracting parties in connection with the prevention, investigation and prosecution of criminal offenses and in proceedings related to criminal matters without making any qualification as to whether the crime being investigated is committed by natural or juridical/legal persons. Moreover, under section 14 of the AMLA, the criminal liability of legal persons is recognized for purposes of money laundering.

607. The Philippines provided the following examples of implementation.

In 2003, the AMLC was able to remit to the United Kingdom funds laundered in the Philippines which were related to a certain fraud case committed in the United Kingdom. The total amount remitted to the UK was approximately US\$730,000. It was explained that two legal persons (corporations), which were established to launder funds that were fraudulently obtained from a British company, were involved in the case.

(b) Observations on the implementation of the article

608. The provision is implemented.

Article 46 Mutual legal assistance

Subparagraph 3 (a) to (i)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

(a) Summary of information relevant to reviewing the implementation of the article

609. The Anti-Money Laundering Act (AMLA), as amended, allows the Anti-Money Laundering Council (AMLC) to extend mutual legal assistance to a foreign State in accordance with section 13 of the AMLA, quoted above.

610. The Philippines provided examples of implementation in cases not involving corruption where Philippine law enforcement officers were transferred to other countries to testify in criminal cases.

Regarding outgoing requests, in 2009 the PH DOJ transmitted to the USDOJ pursuant to the PH-US MLAT, the request of the OMB for the appearance before the Sandiganbayan (Anti-Graft Court) of a former attaché, Immigration and Customs Enforcement (ICE), US Department of Homeland Security at the US Embassy in Manila, and the production of the documents that will support the statements made by said attaché in his letter to the former Ombudsman in 2005.

In 2010, the PH DOJ transmitted to the HKDOJ the clearances from the National Bureau of Investigation and the certifications issued by the Bureau of Immigration on the travel records of a respondent who is being investigated in HKSAR for manslaughter.

(b) Observations on the implementation of the article

611. The provision is implemented.

Article 46 Mutual legal assistance

Subparagraph 3 (j) to (k)

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;

(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

612. The Philippines has implemented the measures of the provision. Aside from the provisions of existing MLATs, section 13 of the AMLA empowers the AMLC to track down, freeze, restrain and seize assets alleged to be proceeds of any unlawful activity in responding to mutual legal assistance requests. It can also apply for an order of forfeiture of any monetary instrument or property in court.

613. The Philippines also provided the following examples of implementation.

In connection with the petition for forfeiture pending before the Sandiganbayan (Anti-Graft Court) filed against a former General of the Armed Forces of the Philippines and his family, the PH DOJ, in 2009, transmitted to the USDOJ pursuant to the PH-US MLAT, the request of the OMB for the return to the Philippines of the proceeds from the sale of the forfeited asset of the said former General and his family in the US.

In April 2011, the amount of \$132,000 was turned over to the Philippines, through Justice Secretary Leila M. de Lima, by the U.S. Government, through U.S. Ambassador to the Philippines, Harry K. Thomas, Jr. Said amount represents the “profits after sale” of the forfeited property in the U.S. Said transfer is the first-ever return of proceeds of crime, and specifically corruption proceeds, in an asset forfeiture case pursuant to the PH-US MLAT.

In 2010, the PH DOJ transmitted to the USDOJ pursuant to the PH-US MLAT, the request of the OMB for the return to the Philippines of the \$100,000 which the sons of a former General, who used to be a Comptroller of the Armed Forces of the Philippines, attempted to smuggle to the US. Said amount was seized by the US Immigration and Customs Enforcement (ICE) agents and later forfeited to the US. In January 2012, the said amount was turned-over to the Philippines, through Ombudsman Conchita Carpio-Morales, by the US Government, through U.S. Ambassador to the Philippines, Harry K. Thomas, Jr. In 2003, the AMLC was able to remit to the United Kingdom (UK), funds laundered in the Philippines which were related to a certain fraud case committed in the UK. The total amount remitted to the UK was approximately US\$730,000.

In 2004, the AMLC was also able to remit to the United States, funds laundered in the Philippines which were related to murder and insurance fraud. The total amount remitted to the US in relation to the said case was approximately US\$110,000.

(b) Observations on the implementation of the article

614. The provision is implemented.

Article 46 Mutual legal assistance

Paragraph 4

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

615. This provision on spontaneous information is present in the PH-Switzerland and PH-United Kingdom MLAT.

616. In addition, the Anti-Money Laundering Act (AMLA), as amended, allows the Anti-Money Laundering Council (AMLC) to extend mutual legal assistance to a foreign State in accordance with section 13 of the AMLA, quoted in paragraph 2 above.

617. The Philippines regularly provides information spontaneously to assist other agencies abroad in conducting relevant investigations. For example, in one case the AMLC became aware during an investigation of suspicious and potentially illegal financial transactions in the USA by a Philippine couple. AMLC provided the relevant information to the US FBI on its own initiative, and the US pursued the investigation. The AMLC provided the reviewers with copies of several letters that evidenced the spontaneous sharing of information by AMLC of material financial information relevant to foreign government agencies.

(b) Observations on the implementation of the article

618. The provision is implemented.

Article 46 Mutual legal assistance

Paragraph 5

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

619. The provisions on “Confidentiality and Limitations on Use” are present in existing bilateral MLATs.

620. There has been one case where issues surrounding a request for confidentiality arose in practice, and the fact was communicated to the requesting State.

(b) Observations on the implementation of the article

621. The provision is implemented.

Article 46 Mutual legal assistance

Paragraph 8

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

(a) Summary of information relevant to reviewing the implementation of the article

622. The Anti-Money Laundering Act (AMLA), as amended, allows the Anti-Money Laundering Council (AMLC) to extend mutual legal assistance to a foreign State in accordance with section 13 of the AMLA, quoted in paragraph 2 above.

623. Section 11 of the AMLA, as amended and quoted in the introduction to this report, also provides for the authority of the AMLC to inquire into or examine a particular deposit or investment with any banking institution or non-bank financial institution without violating bank secrecy laws.

624. The Philippines provided the following examples of implementation.

In 2003, the AMLC was able to remit to the United Kingdom funds laundered in the Philippines which were related to a certain fraud case committed in the United Kingdom. The total amount remitted to the UK was approximately US\$730,000.

In 2004, the AMLC was also able to remit to the United States, funds laundered in the Philippines which were related to murder and insurance fraud. The total amount remitted to the US in relation to the said case was approximately US\$110,000.

(b) Observations on the implementation of the article

625. The provision is implemented.

Article 46 Mutual legal assistance

Subparagraph 9 (a)

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

(a) Summary of information relevant to reviewing the implementation of the article

626. The Philippines has implemented the measures of the provision in practice, referring to section 13 AMLA. Dual criminality is not a requirement for providing assistance to foreign States under section 13 of the AMLA, as amended.

627. The existing bilateral MLATs also do not require the existence of dual criminality before a request for legal assistance can be granted. However, the absence of dual criminality is a discretionary ground for the refusal of a request for assistance under the RP-Australia, RP-Korea and RP-China MLATs. Dual criminality is required under the “ASEAN MLAT” but assistance may still be provided if permitted under the domestic laws of the Requested State. In practice, the Philippines does not decline requests for mutual legal assistance, be they treaty or non-treaty based, on the ground of absence of dual criminality. The Philippines has never denied a request on the grounds of absence of dual criminality.

(b) Observations on the implementation of the article

628. The provision is implemented as a matter of practice.

Article 46 Mutual legal assistance

Subparagraph 9 (b)

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

(a) Summary of information relevant to reviewing the implementation of the article

629. The Philippines has implemented the measures of the provision in practice.

630. In practice, the Philippines does not decline requests for mutual legal assistance, be they treaty or non-treaty based, on the ground of absence of dual criminality. Dual criminality is also not a requirement for providing assistance to foreign States under section 13 of the AMLA, as amended.

(b) Observations on the implementation of the article

631. The provision is implemented in practice.

Article 46 Mutual legal assistance

Subparagraph 9 (c)

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

(a) Summary of information relevant to reviewing the implementation of the article

632. In practice, the Philippines does not decline requests for mutual legal assistance, be they treaty or non-treaty based, on the ground of absence of dual criminality. Dual criminality is also not a requirement for providing assistance to foreign States under section 13 of the AMLA, as amended.

633. The number of incoming and outgoing requests for mutual legal assistance is provided above.

634. The Philippines also provided examples of implementation.

In 2003, the AMLC was able to remit to the United Kingdom (UK), funds laundered in the Philippines which were related to a certain fraud case committed in the UK. The total amount remitted to the UK was approximately US\$730,000.00.

In 2004, the AMLC was also able to remit to the United States, funds laundered in the Philippines which were related to murder and insurance fraud. The total amount remitted to the US in relation to the said case was approximately US\$110,000.

(b) Observations on the implementation of the article

635. The provision is implemented as a matter of practice.

Article 46 Mutual legal assistance

Paragraph 10

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or

judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

(a) Summary of information relevant to reviewing the implementation of the article

636. The “Transfer of Detained Person Provision” is present in existing MLATs.

637. The Philippines has not received a request for mutual legal assistance which requires the application of this provision. As far as sending a prisoner overseas to assist in an investigation or proceeding, the Philippines has also not done any initiative relative to this or received a foreign prisoner.

638. The Philippine National Police observes guidelines on information sharing. Information will be shared with the requesting State with the approval of the concerned government agency.

(b) Observations on the implementation of the article

639. The provision is implemented.

Article 46 Mutual legal assistance

Paragraph 11

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

640. The “Transfer of Detained Persons Provision” is present in existing MLATs.

641. The Philippines has not received a request for mutual legal assistance which requires the application of this provision.

(b) Observations on the implementation of the article

642. The provision is implemented.

Article 46 Mutual legal assistance

Paragraph 12

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

(a) Summary of information relevant to reviewing the implementation of the article

643. This “Safe Conduct” provision is present in existing MLATs.

644. The Philippines has not received a request for mutual legal assistance which requires the application of this provision.

(b) Observations on the implementation of the article

645. The provision is implemented.

Article 46 Mutual legal assistance

Paragraph 13

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

(a) Summary of information relevant to reviewing the implementation of the article

646. The Philippines has implemented the measures of the provision. The Department of Justice, through the Office of the Chief State Counsel (Legal Staff), is the Central Authority under existing MLATs.

647. The Philippines made the following declaration⁴ at the time of the deposit of its instrument of ratification:

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

The Department of Justice
Padre Faura Street, Manila, Philippines

In the absence of a bilateral treaty, the Central Authority shall be:
Office of the Ombudsman
Agham Road, Diliman, Quezon City, Philippines

The acceptable language for requests for mutual assistance is English.”

648. It was explained that the OMB has received only one (1) request for mutual legal assistance and has the authority to execute requests received in the absence of a bilateral treaty independently of the Department of Justice.

649. By way of example, the Philippines also reported that all treaty-based requests for mutual legal assistance, whether the Philippines is the requesting or requested State, are coursed through the Department of Justice, through the Office of the Chief State Counsel (Legal Staff), as the Central Authority under existing MLATs.

(b) Observations on the implementation of the article

650. The Philippines has implemented the provision and made the relevant notification to the United Nations (<http://treaties.un.org/doc/Treaties/2003/12/20031209%2002-50%20PM/Related%20Documents/CN.1277.2006-Eng.pdf>).

Article 46 Mutual legal assistance

Paragraph 14

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.

(a) Summary of information relevant to reviewing the implementation of the article

⁴ <http://treaties.un.org/doc/Treaties/2003/12/20031209%2002-50%20PM/Related%20Documents/CN.1277.2006-Eng.pdf>

651. The Philippines made a declaration at the time of the deposit of its instrument of ratification that “(T)he acceptable language for requests for mutual assistance is English”.

652. The Philippines also provided examples of implementation.

The United States, pursuant to the PH-US MLAT, requested assistance for the service of *subpoena* and *subpoena duces tecum* to witnesses and production of documents, in connection with the case pending before the US District Court for the Northern District of Texas.

A request for assistance was received from Germany, where the Philippines has no MLAT, for a more detailed information of the proceedings conducted in the Philippines, as well as the transmittal of the investigation records of the case, involving a German national suspect of a murder case. Said documents will be used in the criminal investigation being conducted by the Germany’s Department of Public Prosecution.

It was also requested that the Police Officers of the Murder Squad of Munich be allowed to contact the suspect and witnesses in the Philippines and for the investigation results and exhibits to be made available to them.

All requests were made in the English language.

(b) Observations on the implementation of the article

653. The provision is implemented.

Article 46 Mutual legal assistance

Paragraphs 15 and 16

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

(a) Summary of information relevant to reviewing the implementation of the article

654. These provisions are present in the MLATs of the Philippines.

655. The Philippines also provided an example of implementation.

In 2005, the HKDOJ, pursuant to the PH-Hong Kong Special Administrative Region (HKSAR) MLAT, requested assistance to obtain evidence to be used in the criminal prosecution of certain Chinese nationals for the offense of “conspiracy for an agent to accept advantages” contrary HKSAR’s Prevention of Bribery Ordinance, among others. In the execution of the request for assistance, it was requested by the HKDOJ that the testimony of the witnesses be reduced into writing, the documents produced in evidence be marked for identification, and the deposition be certified and sealed in accordance with Chapter 225 of the Mutual Legal Assistance in Criminal Matters Ordinance of the HKSAR to be admissible in the HKSAR. It was also requested that the entire proceedings be videotaped and audio-recorded and for there to be a twenty-four (24) hour transcript service to enable the witnesses to sign their testimony after making the necessary corrections, if any, on the transcript of stenographic notes.

(b) Observations on the implementation of the article

656. The provision is implemented.

Article 46 Mutual legal assistance

Paragraph 17

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

(a) Summary of information relevant to reviewing the implementation of the article

657. This provision is present in the MLATs of the Philippines.

658. To date, the execution of requests for MLA received by the Philippines have only required procedures within the confines of domestic law. In practice, the Philippines does not decline requests for mutual legal assistance, be they treaty or non-treaty based, on the ground of absence of dual criminality.

659. The Philippines also provided an example of implementation.

In 2005, the HKDOJ, pursuant to the PH-Hong Kong Special Administrative Region (HKSAR) MLAT, requested assistance to obtain evidence to be used in the criminal prosecution of certain Chinese nationals for the offense of “conspiracy for an agent to accept advantages” contrary HKSAR’s Prevention of Bribery Ordinance, among others. In the execution of the request for assistance, it was requested by the HKDOJ that the testimony of the witnesses be reduced into writing, the documents produced in evidence be marked for identification, and the deposition be certified and sealed in accordance with Chapter 225 of the Mutual Legal Assistance in Criminal Matters Ordinance of the HKSAR to be admissible in the HKSAR. It was also requested that the entire proceedings be videotaped and audio-recorded and for there to be a twenty-four (24) hour transcript service to enable the witnesses to sign their testimony after making the necessary corrections, if any, on the transcript of stenographic notes.

(b) Observations on the implementation of the article

660. The provision is implemented.

Article 46 Mutual legal assistance

Paragraph 18

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

661. This provision is present in the MLATs of the Philippines.

662. The Philippines has not received a request for mutual legal assistance which requires the application of this provision.

(b) Observations on the implementation of the article

663. The provision is implemented.

Article 46 Mutual legal assistance

Paragraph 19

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

(a) Summary of information relevant to reviewing the implementation of the article

664. The provision on “Limitations on Use” is present in the MLATs of the Philippines.

665. The Philippines also reported that in practice it is standard for the Philippines to include in its transmittal letter to the requesting State a paragraph consistent with the “Limitations on Use” article of the MLAT being invoked. This also applies to non-treaty based requests for mutual legal assistance.

666. It was reported that in one case not related to corruption offences, the Philippines received a request for assistance where the an issue arose regarding the referenced provision, and the requesting State was informed accordingly.

(b) Observations on the implementation of the article

667. The provision is implemented.

Article 46 Mutual legal assistance

Paragraph 20

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

668. The provisions on “Confidentiality and Limitations on Use” are present in existing Bilateral MLATs.

669. The Philippines also provided an examples of implementation. The Philippines, pursuant to the PH-HKSAR MLAT, received a request for certified copies of documents. The HKDOJ requested that the matter be kept confidential. In the PH DOJ’s transmittal letters to the relevant agencies having custody over the documents, it was explicitly provided that the matter be kept confidential, so as not to prejudice the current investigation being conducted by the Government of HKSAR.

(b) Observations on the implementation of the article

670. The provision is implemented.

Article 46 Mutual legal assistance

Paragraph 21

21. Mutual legal assistance may be refused:

- (a) If the request is not made in conformity with the provisions of this article;*
- (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*
- (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation;*
- (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

(a) Summary of information relevant to reviewing the implementation of the article

671. The MLATs with China, Republic of Korea, Switzerland, Spain and the United States provide as a discretionary ground for refusing a request for assistance the fact that the “execution of the request is likely to prejudice its sovereignty, security, ordre public or

other essential interests”. On the other hand, the MLATs with Australia and Hong Kong provide such as a mandatory ground for refusal.

672. The Philippines has not received a request for MLA which requires the application of this provision. So far, no request for mutual legal assistance by the Philippines has been refused on any of these grounds.

673. The Philippines has never refused a request for mutual legal assistance.

(b) Observations on the implementation of the article and good practices

674. The provision is implemented. It was positively noted that the Philippines has reportedly not refused any requests for MLA to date.

Article 46 Mutual legal assistance

Paragraph 22

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

(a) Summary of information relevant to reviewing the implementation of the article

675. The provision on “Limitations on Assistance” are present in nearly all MLATs of the Philippines. Only the MLAT with Switzerland provides that a request for assistance may be refused if the request concerns a fiscal offence. The HKSAR MLAT provides that assistance may be granted in connection with offences against a law related to taxation, customs duties, foreign exchange control or other revenue matters but not in connection with non-criminal proceedings relating thereto.

676. The Philippines has not yet received a request for mutual legal assistance which requires the application of this provision.

(b) Observations on the implementation of the article

677. The provision is not implemented with respect to the Switzerland MLAT, unless the case involves a money laundering offence under the AMLA. It is recommended that the Philippines consider amending the existing MLAT with Switzerland in this regard.

Article 46 Mutual legal assistance

Paragraph 23

23. Reasons shall be given for any refusal of mutual legal assistance.

(a) Summary of information relevant to reviewing the implementation of the article

678. This provision is present in MLATs of the Philippines.

679. The Philippines has never refused a request for mutual legal assistance.

(b) Observations on the implementation of the article

680. The provision is implemented.

Article 46 Mutual legal assistance

Paragraph 24

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

(a) Summary of information relevant to reviewing the implementation of the article

681. This provision on the “Execution of Request” is present in all MLATs.

682. The length of time between the receipt and the execution of the request largely depends on the nature or complexity of the request for assistance. It was explained that requests involving the production of documents are executed within a minimum time period of two weeks, while other requests may take a minimum of one month. In executing requests, the DOJ takes into account the urgency of the request and endeavours to honour the preferences of the requesting State with regard to the timeframe to be observed.

(b) Observations on the implementation of the article

683. The provision is implemented.

Article 46 Mutual legal assistance

Paragraph 25

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

(a) Summary of information relevant to reviewing the implementation of the article

684. This provision on the “Execution of Request” is present in all MLATs.

685. It has been the practice of the Philippines to consult with the requesting State before refusing or postponing a request for assistance. The Philippines has not received any request that requires the application of this provision.

(b) Observations on the implementation of the article

686. The provision is implemented.

Article 46 Mutual legal assistance

Paragraph 26

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

(a) Summary of information relevant to reviewing the implementation of the article

687. The provision on “Limitations of Assistance” is present in all MLATs.

688. It has been the practice of the Philippines to consult with the requesting State before refusing a request for assistance. The Philippines has never denied a request for mutual legal assistance.

689. By way of example in a money laundering case, the Department of Justice advised the requesting State that more information to link the individuals that were the subject of a request and the alleged offence was required. After consultation with the AMLC, the requesting State was advised to amend or resubmit the request. The request was accordingly withdrawn and was still pending at the time of the country visit.

(b) Observations on the implementation of the article

690. The provision is implemented.

Article 46 Mutual legal assistance

Paragraph 27

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

(a) Summary of information relevant to reviewing the implementation of the article

691. This “Safe Conduct” provision is present in existing MLATs.

692. The Philippines has not yet received any request that requires the application of this provision.

(b) Observations on the implementation of the article

693. The provision is implemented.

Article 46 Mutual legal assistance

Paragraph 28

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

(a) Summary of information relevant to reviewing the implementation of the article

694. This provision on cost is present in all MLATs. Under existing MLATs, it is the requested State which shoulders the costs for executing the request for assistance except in cases provided in the MLATs.

695. The Philippines provided an example.

In 2005, the HKDOJ, pursuant to the PH-Hong Kong Special Administrative Region (HKSAR) MLAT, requested assistance to obtain evidence to be used in the criminal prosecution of certain Chinese nationals for the offense of “conspiracy for an agent to accept advantages” contrary HKSAR’s Prevention of Bribery Ordinance, among others. It was requested that the entire proceedings be videotaped and audio-recorded and for there to be a twenty-four (24) hour transcript service to enable the witnesses to sign their testimony after making the necessary corrections, if any, on the transcript of stenographic notes. The cost of the transcript of the audio recording of the proceedings taken before the Philippine court were initially covered by the Philippine DOJ with the understanding that the amount will be reimbursed by the Independent Commission Against Corruption (ICAC).

(b) Observations on the implementation of the article

696. The provision is implemented.

Article 46 Mutual legal assistance

Subparagraph 29 (a)

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(a) Summary of information relevant to reviewing the implementation of the article

697. This provision on Records of Government Agencies exist in all MLATs.

698. The DOJ endorses the request to the appropriate agency having custody of the documents requested. Upon receipt of the documents from said agency, the documents are thereafter transmitted to the requesting State.

699. Pursuant to the PH-US MLAT, a request for SEC Certificate of Incorporation or Non-Registration was made in connection with the investigation conducted on certain individuals. The Philippines provided the requested information.

(b) Observations on the implementation of the article

700. The provision is implemented.

Article 46 Mutual legal assistance

Subparagraph 29 (b)

29. The requested State Party:

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

(a) Summary of information relevant to reviewing the implementation of the article

701. The Philippines has not received a request involving the application of this provision.

(b) Observations on the implementation of the article

702. The provision appears to be implemented, although there has been no experience in this regard.

Article 46 Mutual legal assistance

Paragraph 30

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

(a) Summary of information relevant to reviewing the implementation of the article

703. As noted in paragraph 1, the Philippines has signed eight (8) bilateral MLATs and is a State party to the Treaty on Mutual Legal Assistance on Criminal Matters (“ASEAN MLAT”).

(b) Observations on the implementation of the article

704. The provision is implemented.

(c) Technical assistance needs related to article 46

705. The Philippines indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Other assistance: Technical assistance in the drafting of a national legislation on mutual legal assistance in criminal matters.

The Philippines did not report whether any of these forms of technical assistance has been provided to date.

Article 47 Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

(a) Summary of information relevant to reviewing the implementation of the article

706. The Philippines has not implemented the measures of the provision.

707. There is nothing in Philippine law or practice that would allow or prohibit the Philippines from transferring criminal proceedings as provided in the provision under review.

708. There have been no cases to date of either a transfer from or a transfer to the Philippines. The Supreme Court would decide the matter when it arises.

(b) Observations on the implementation of the article

709. The provision is not implemented.

Article 48 Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.

(a) Summary of information relevant to reviewing the implementation of the article

710. The Philippines has partly implemented the measures of the article. Most of the cited measures relate to anti-money laundering and INTERPOL activities, as well as agreements on direct law enforcement cooperation to combat transnational crime.

711. As a member of the Egmont Group of Financial Intelligence Units (FIUs), the AMLC can provide information to other Egmont Group Member-FIUs, spontaneously or upon request, for intelligence purposes through the Egmont Secure Web (ESW). The AMLC can also exchange information with other FIUs by virtue of a Memorandum of Understanding (MOU) concerning cooperation in transnational investigation and prosecution of persons involved in money laundering activities, including the laundering of proceeds derived from acts of corruption. The AMLC provided the reviewers with copies of several letters that evidenced the spontaneous sharing of information by AMLC of material financial information relevant to foreign government agencies.

712. The AMLC coordinates closely with FIUs, including the provision of investigative leads for purposes of filing cases. The MOUs of AMLC with counterpart institutions proscribe the extent of financial information that can be exchanged. On 18 December 2003, the President of the Philippines issued a Special Authority designating and authorizing the Executive Director of the AMLC Secretariat to conclude, sign, execute and deliver, for and in behalf of the Republic of the Philippines, Memoranda of Understanding between the AMLC and other FIUs.

To date, the AMLC has executed thirty-six (36) MOUs with the following FIUs:

- 1) U.S. Financial Crimes Enforcement Network (FinCEN);
- 2) Australian Transaction Reports and Analysis Centre (AUSTRAC);

- 3) Financial Transactions Reports Analysis Centre (FINTRAC) of Canada;
- 4) Indonesian Financial Transaction Reports and Analysis Center (INTRAC);
- 5) Bank Negara Malaysia;
- 6) Money Laundering Prevention Office of Taiwan;
- 7) FIU of Peru;
- 8) The National Criminal Intelligence Service, Financial Unit of Sweden;
- 9) Korean Financial Intelligence Unit;
- 10) The Anti-Money Laundering Office (AMLO) of Thailand;
- 11) FIU of Palau;
- 12) FIU of India;
- 13) Japan Financial Intelligence Center (JAFIC);
- 14) The General Inspector for Financial Information of Poland;
- 15) The State Committee for Financial Monitoring of Ukraine;
- 16) Cook Islands;
- 17) Netherlands FIU;
- 18) FIU of Mexico;
- 19) Bangladeshi FIU;
- 20) FU of Bermuda;
- 21) FIU of Portugal;
- 22) Nigerian FIU;
- 23) FIU of United Arab Emirates;
- 24) FIU of Sri Lanka;
- 25) Macau Special Administrative Region FIU;
- 26) San Marino FIU;
- 27) Solomon Islands FIU;
- 28) Fiji FIU;
- 29) Luxembourg;
- 30) Belgium;
- 31) Malawi;
- 32) Lebanon;
- 33) Mongolia;
- 34) Finland;
- 35) Russia; and
- 36) Papua New Guinea.

713. In its Resolution No. 59, Series of 2006, the AMLC authorized the Executive Director of the AMLC Secretariat to furnish upon request or spontaneously, available information that may be relevant to an analysis or investigation of financial transactions and other relevant information on persons or companies involved in possible money laundering activities, including acts of corruption. Under the provisions of the aforesaid AMLC Resolution, information may be provided to the following:

- a) Member FIUs of the Egmont Group;
- b) FIUs, whether or not members of the Egmont Group, which have an existing MOU with the AMLC; and
- c) Domestic law enforcement and other concerned government agencies which have an existing MOA with the AMLC.

714. The AMLC database of suspicious and covered transactions is used to identify transactions related to unlawful activities, including corruption. Requests from FIUs are received through the website of the Egmont Secure Web (ESW) with 170 member FIUs

which regularly conduct meetings. The Philippines has received and sent requests through the ESW from/to other FIUs in cases involving corruption and plunder.

715. AMLC provided the following statistics on MLA requests received/made (FIU-to-FIU and through Egmont):

Total requests received/made by AMLC (FIU-to-FIU through Egmont Secure Web):

AMLC Requests received from foreign States through ESW:

2009: 52

2010: 59

2011: 76

AMLC Requests made to foreign States through ESW:

2009: 29

2010: 117

2011: 29

Total requests received/made by AMLC (other than through Egmont Secure Web):

AMLC Requests received from foreign States:

2009: 26

2010: 25

2011: 25

AMLC Requests made to foreign States:

2009: -

2010: -

2011: 7

716. By virtue of an existing Memorandum of Agreement, the AMLC also extends assistance through the Philippine Center for Transnational Crime (PCTC) as the contact agency in INTERPOL cases. PCTC is a coordinating agency that receives Red Notices from international law enforcement offices and circulates them for execution by the relevant law enforcement agencies. Executive Order No. 62, the PCTC is mandated, among others, to “to establish, through the use of modern information and telecommunications technology, a shared central database among government agencies for information on criminals, methodologies, arrests and convictions on the following transnational crimes:

- Illicit trafficking of narcotic drugs and psychotropic substances;
- Money laundering;
- Terrorism;
- Arms Smuggling;
- Trafficking in Persons;
- Piracy; and
- Other crimes that have an impact on the stability and security of the country.” In accordance with Executive Order No. 62 (paragraph 1.2) and Executive Order No. 35, corruption offences are included in the last category and fall within the ambit of transnational criminal cases handled by PCTC.

717. **Presidential Memorandum Circular No. 92 (15 February 1993)** designated the Philippine National Police (PNP) as INTERPOL NCB for the Philippines. The NCB serves as the designated contact point in each country for international police liaison with the various law enforcement departments in the country and the NCBs in other countries requiring assistance with overseas investigations.

718. The Philippines has entered into Agreements which provide for the exchange of information and cooperation, including the following:

1. PH-China MOU on Cooperation in Combating Transnational Crime (2001), which covers money laundering and provides for "intelligence exchange", "exchange of public records and documents" and "exchange of relevant knowledge and expertise" between their interior Ministries.
2. PH-Australia MOU on Cooperation in Combating Transnational Crime (2003), which covers money laundering and provides for "intelligence exchange", "exchange of public records and documents" and "exchange of relevant knowledge and expertise" between the PH Interior Ministry and the Australian Justice and Customs Ministry.
3. Agreement on Cooperation between the Government of the Republic of the Philippines and the Government of the Kingdom of Thailand on the Prevention and Fight against Criminal Activities
4. PH-New Zealand Arrangement on Law Enforcement Cooperation to Combat Transnational Crime (2007), which covers money laundering and provides for "exchange of information, intelligence, evidence, public records and/or documents" between PH's National Law Enforcement Coordinating Committee and New Zealand's Police Commissioner.
5. PH-Indonesia-Malaysia Tripartite Agreement on Information Exchange and Establishing of Communication Procedures (2002) which covers money laundering.
6. PN-Indonesia National Police MOU on Cooperation in Preventing and Combating Transnational Crimes and Capacity Building (2011) which covers money laundering and provides for "exchange of intelligence information".
7. Memorandum of Understanding between the Ministry of Police of the State of Israel and the Department of the Interior and Local Government of the Republic of the Philippines.
8. Protocol between the Philippine Center on Transnational Crime, the Philippine National Police, the National Bureau of Investigation, and the Australian Federal Police on the Program to Develop Capabilities in the area of Combating Transnational Crime-Terrorism

Similar Agreements are under negotiation with India, Russia, Vietnam, Thailand, Turkey, USA, Qatar, Pakistan, and Chile.

719. PNP promotes the exchange of personnel with foreign counterparts. The PNP attaché system is in active duty from the intelligence community. The duties of police attaché or officers are intelligence exchange, law enforcement liaison and anti-corruption initiatives. When a police attaché is not available the Philippines Armed Forces attachés or personnel are used. PNP also conducts exchange of personnel for trainings relevant to transnational crime and best practices. PNP has placed attachés in Malaysia, China, Egypt, Pakistan, the USA and China, and has received attachés from Singapore, Japan, Korea, China, the USA and Australia. PNP also maintains "desks" for general criminal cases involving Japan, Korea and China. Provisions on the exchange of information and personnel between competent authorities are also contained in existing law enforcement MOUs, including the

MOUs mentioned above with the State of Israel and the People's Republic of China on Cooperation in Combating Transnational Crime (section 2).

720. PCTC uses the Global Communication System of INTERPOL, a database linked to 188 countries. Further information on the system and INTERPOL was provided as follows:

INTERPOL NCB MANILA

"I-24/7 Expansion" Project

The Interpol's highly secure Global Communication System or I-24/7

This project aims to realize the full potential of the I-24/7 Network in delivering services to front line law enforcement agencies by making databases available to them. The PCTC acts as the gateway to I-24/7 for the members of NCB-Manila and National Law Enforcement Coordinating Committee (NALECC)-Sub Committee on International Law Enforcement Cooperation (SCILEC). In October 2005, the Presidential Anti-Organized Crime Commission became the first member to connect to the local hub. To date, the Bureau of Immigration (BI), Philippine Retirement Authority (PRA), PNP-Directorate for Operations, Anti-Money Laundering Council (AMLC) and the Philippine Drug Enforcement Agency (PDEA) are already on board. The Department of Foreign Affairs (DFA) and Central Bank of the Philippines, Bangko Sentral ng Pilipinas (BSP) have also signified their intention to be part of the network.

"Lost Passport" Project

The Interpol "Lost Passport" Project is primarily designed to sustain the Philippine Government's initiatives against human trafficking and terrorism. It aims to deter the use of lost, stolen or cancelled passports by criminals in pursuit of their illegal activities. Under this project, the NCB-Manila uploads into the Interpol's Stolen and Lost Travel Document (SLTD) database information on lost, stolen or cancelled passports provided monthly by the DFA. Since 2007 the PCTC has uploaded approximately 73,723, as of June 2008 records of lost passports from the DFA to the Interpol database.

"Visa Check" Project

The Interpol "Visa Check" Project is designed to assist the Bureau of Immigration (BI) and the Department of Foreign Affairs (DFA) in exercising better control over the vetting process for foreigners who are trying to secure a visa to enter the Philippines.

Under this project, the DFA, upon receipt of an application for a visa, requests the Interpol NCB-Manila to conduct a derogatory record check on the applicant through its ASF (Automated Search Facility) Nominal Database. Results on any matches or "hits" will be immediately forwarded to the DFA. As of December 2008, the Center acted on 9,913 requests for cross-checking the visa of foreigners using the I-24/7.

"Red Notice" Project

An Interpol "Red Notice" is one of seven (7) Interpol notices used to assist the international law enforcement community in investigating and solving cases. Basically, an Interpol "Red Notice" is an international request seeking the arrest or provisional arrest of wanted persons with a view to extradition based on an arrest warrant. In order to facilitate the issuance of an Interpol "Red Notice", the following are required:

- Request from complainant/concerned agency
- Valid/outstanding warrant of arrest
- Information/Complaint
- Identity Documents (e.g. passport, birth certificates, locally issued clearances, etc.)
- Photograph(s)
- Fingerprint card

Once the fugitive is located, the country where the fugitive is, informs the requesting country the location of the wanted person (for prosecution or service of sentence). The NCB then requests its Department of Justice (DOJ) for the issuance of the "Request for Provisional Arrest". Once the fugitive is arrested, the DOJ will then formally request for an extradition.

The judicial authority in a country receiving a notice decides if the wanted person should be provisionally arrested. On the other hand, the requesting country will be informed that the wanted person has been provisionally arrested and that an extradition process can begin. It will also have an assurance that the person concerned will be detained for an adequate length of time.

The Interpol "Red Notice" Project aims to disseminate to NALECC-SCILEC member agencies Interpol notices for those fugitives suspected of having entered the Philippine jurisdiction and form a concerted

effort in their apprehension. The Interpol "Red Notice" Project also enables the other SCILEC member agencies to recommend to the Interpol NCB-Manila the issuance of Interpol "Red Notices" to fugitives of justice/wanted persons known or suspected to have fled the country to escape prosecution and/or evade service of sentence.

INTERPOL UPDATE

Law Enforcement Agencies Trained on INTERPOL MIND/FIND:

The INTERPOL National Central Bureau (NCB)-Manila conducted training courses on the Mobile INTERPOL Network Database/Fixed INTERPOL Network Database (MIND/FIND) for law enforcement agencies. On February 19, 2009, the NCB Manila team held a one-day orientation for personnel of the Office for Transportation Security (OTS). As a result, OTS agreed to connect to the I-24/7 system in order to have firsthand access to relevant data on transportation security.

On March 12, 2009, the NCB Manila team also conducted the MIND/FIND course for intelligence personnel and supervisors of the Bureau of Immigration (BI), so that they can fully appreciate the system, considering the BI's already existing connectivity. Last December 2008, the BI took a giant step toward making the country safer from threats posed by foreign terrorists and wanted criminals by integrating its computer database with the INTERPOL I-24/7.

The most recent training conducted by the team was for the Anti-Money Laundering Council (AMLC) at the Executive Business Center, BSP Complex, Manila on July 30, 2009.

INTERPOL

Interpol is the world's largest international police organization, with 188 member countries. Created in 1923, it facilitates cross-border law enforcement cooperation, supports and assists all organizations, authorities' and services whose mission is to prevent or combat international crime. Interpol aims to facilitate international police/law enforcement cooperation even where diplomatic relations do not exist between particular countries. Action is taken within the limits of existing law in different countries and in the spirit of the Universal Declaration of Human Rights. Interpol's constitution prohibits any intervention or activities of a political, military, religious or racial character.

INTERPOL Structure, General Assembly

As defined in Article 5 of its Constitution, Interpol comprises the following:

- General Assembly - National Central Bureaus
- Executive Committee
- Advisers
- General Secretariat

The General Assembly and the Executive Committee form the organization's Governance.

The General Secretariat is located in Lyon, France. It operates 24 hours a day, 365 days a year and is run by the Secretary General. Officials from more than 80 countries work side-by-side in any of the organization's four official languages: Arabic, English, French and Spanish. The Secretariat has six regional offices; in Argentina, Cote d'Ivoire, El Salvador, Kenya, Thailand and Zimbabwe, and a liaison office at the United Nations in New York.

National Central Bureaus:

Each Interpol member country maintains a National Central Bureau staffed by national law enforcement officers. The NCB is the designated contact point for the General Secretariat, regional offices and other member countries requiring assistance with overseas investigations and the location and apprehension of fugitives.

National Central Bureau (NCB)-Manila

Mission: To serve as the liaison Office and main coordinating body for international police cooperation representing all law enforcement agencies in the Philippines.

Background: The Interpol NCB-Manila traces its beginnings to 1961, when the Philippines became a member of the ICPO (International Criminal Police Organization) - Interpol, with the National Bureau of Investigation (NBI) as its focal point. Since then, the Interpol NCB-Manila has undergone changes, which enabled it to confront the challenges of the times. In one of the Interpol General Assembly meetings, it was decided that respective NCBs shall be handled by the Member State's controlling body of the Criminal Police Organization in order for it to perform its undertakings with authority.

The NCB-Manila is uniquely structured because of its inter-agency composition. At present, the NCB has 21 member agencies, with the Chief, PNP as Chairman in his capacity as the Chairman of the NALECC, and the Philippine Center on Transnational Crime (PCTC) as its Secretariat.

Functions: in order to accomplish its mission, Interpol NCB-Manila performs the following functions:

- Monitors and coordinates activities of all law enforcement agencies relative to transnational crime committed against or affecting the Philippines;
- Maintains records and minutes of all its meetings;
- Operates and maintains an Operations Center as the focal point for international cooperation on transnational crime for all law enforcement agencies in the Philippines; and
- Acts as a Sub-Committee of the NALECC in the monitoring of crimes and activities that threatens national security.

INTERPOL NCB-Manila Secretariat

On May 31, 1993, the Interpol NCB-Manila Secretariat was established to ensure the smooth operations of the NCB, with the Director for Operations of the PNP as its Head. On May 7, 1999, Executive Order No. 100 entitled "Strengthening the operational, administrative and information support system of the Philippine Center on Transnational Crime (PCTC)" was issued by His Excellency President Joseph Ejercito Estrada. Pursuant to this EO, the Interpol NCB-Manila Secretariat was transferred to the PCTC.

The duties of the NCB-Manila Secretariat are as follows:

- Coordinate all activities of the Interpol NCB-Manila;
- Record and keep minutes of all meetings of the NCB;
- Gather and compile all information requirements of the NCB; and
- Perform such other duties as maybe directed by the Chairman.

National Law Enforcement Coordinating Committee (NALECC)-Sub-Committee on International Law Enforcement Cooperation (SCILEC)

To monitor its activities and resolve any conflict which may arise between/among government agencies providing international police cooperation services, the Interpol NCB-Manila was designated to comprise the NALECC's Sub-Committee or Interpol Matters (SCIM).

The Commissioner of the Economic Intelligence and Investigation Bureau chaired the NALECC-SCIM from 1993 until the Bureau's dissolution in 1999. On March 26, 2000, the Sub-Committee chairmanship was transferred to the PCTC pursuant to NALECC Resolution No. 02-2000. Later in August 2007, the NALECC-SCIM was renamed as the NALECC-Sub Committee on International Law Enforcement Cooperation (SCILEC), purposively to enhance its relationship and lateral coordination with local agencies and to strengthen its capability to meet the challenges of time. On 17 September 2008, the SCILEC was again awarded as the Best NALECC Sub-Committee for the third time, the first was in 2001 and then in 2007, in its efforts in fighting criminality.

721. By way of examples of implementation, the Philippines reported that PNP and AMLC systems are being implemented to fight money laundering at the international level. CIDG Cybercrime division maintains a database. Moreover, PNP operates an automated fingerprint information system and a facial composite sketch system.
722. No examples were given of cooperation by the Office of the Ombudsman in the fight against corruption at the international level.
723. To fully implement of the provision under review, it was explained that the following steps should be taken:
- a. For the Office of the Ombudsman to officially communicate to foreign counterparts that it tends to have sharing of intelligence and good practices in combating corruption offences in both the civilian and the law enforcement agencies (like the police).
 - b. Thereafter, the Office of the Ombudsman should host a conference on strengthening regional partnerships to combat corruption offences in Asia and invite participants from anti-corruption bodies and offices in other countries.
 - c. During the conference, Philippine agencies like the PDEA, NBI, PNP, AMLC, etc. would link and engage with the foreign counterparts on anti-corruption activities and practices and conclude with them agreements for further collaboration and cooperation, including MOUs for the sharing of information and good practices and assistance in combating corruption offences.

d. Assistance and cooperation can be done through letters rogatory, MOUs, extradition, or executive agreements.

(b) Observations on the implementation of the article

724. The Philippines has partly implemented the measures of the provision. Most of the cited measures relate to anti-money laundering and INTERPOL activities, as well as agreements on direct law enforcement cooperation to combat transnational crime. Further efforts to strengthen direct law enforcement cooperation among relevant agencies, particularly by the Office of the Ombudsman, would enhance the effectiveness of international cooperation efforts.

(c) Challenges related to article 48

725. The Philippines identified the following challenges and issues in fully implementing the article under review:

1. Competing priorities: anti-corruption measures may compete with respective mandates of government agencies or entail additional efforts/taskings. It will involve funding and personnel requirements. PNP reported that one broad structural reform that might be considered is the consolidation of all anti-corruption bodies under one agency to address the problem of lack of coordination and diffusion of powers, responsibilities and accountabilities in the fight against corruption. A single window anti-corruption approach can be adopted.
2. Limited capacity: there is no dedicated division in the PNP for anti-corruption cases. PCTC reiterated the need to incorporate this outcome in the Ombudsman Bill.
3. Other issues: Lack of information on the organization and activities of organized crime and lack of direct cooperation with international law enforcement agencies.

(d) Technical assistance needs related to article 48

726. The Philippines indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Capacity-building programmes for authorities responsible for cross-border law enforcement;
2. Set-up and management of databases/information-sharing systems: establishment of one central information portal for all law enforcement agencies; public information sharing system among agencies; and for the public.
3. Development of an action plan for implementation.

The Philippines has received the following forms of technical assistance:

- UNODC supports the CBT facilities and equipment of DEA;
- The PDEA has received support from US-DEA and JIATFW for trainings and infrastructure development. On trainings, the US government through its International Law Enforcement Academy (ILEA) based in Bangkok, Thailand caters training to PDEA personnel in anti-corruption course. One example of this is the “Public Integrity Investigation Course” held last July 9-13, 2012, which provided training on cases build-up against public officials or officers engage in graft and corruption using investigative techniques and modern equipment. Members of the US Federal Bureau of Investigations were the resource persons. In relation to the cooperation between the PDEA and the US-

DEA on anti-corruption, the latter provided training on “Public Integrity Investigation Course” held last July 9-13, 2012, where one participant from PDEA was a beneficiary.

- The EU supports the EPJUST project of the law enforcement agencies, DILG and the Office of the Ombudsman. PNP has received trainings and technical assistance relevant to EPJUST.
- The AMLC has received technical assistance and trainings from the US FINCEN, which included the development of a database and enhanced monitoring system in coordination with the BOC.

Article 49 Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

(a) Summary of information relevant to reviewing the implementation of the article

727. The Philippines has partly implemented the measures of the provision.

728. AMLC conducts joint investigations in money laundering cases domestically and shares information with relevant counterparts on the international level, though these forms of international cooperation may be ad hoc in nature and do not always take the form of a formal task force established particularly for the gathering of information in relation to a certain money laundering case. AMLC gave an example of a case involving a domestic joint investigation among AMLC, the Philippine National Police’s Anti-Kidnapping Group (PNP-AKG) and the Philippine Military, as well as information exchange (including CCTV surveillance and other information) with foreign law enforcement authorities, which led to the apprehension of suspects and filing of charges on kidnapping for ransom and money laundering. The case was successfully resolved.

729. Examples of ad-hoc practices in joint-investigations in the absence of agreements include:

1. Garcia Case – collaborative effort among AMLC, the Office of the Ombudsman and US FBI. The case involved tracking down and freezing the funds of Maj. Gen. Carlos Garcia and members of his immediate family, including his condominium unit located in Trump Plaza, Park Avenue, New York, USA.
2. Romualdez case of Swiss accounts – collaboration involving AMLC, the Office of the Ombudsman, the Department of Justice and the US FBI.
3. Eurogen case OMB with DFA and Russian Federation Authorities.
4. Other examples include the AMLC cases cited above where funds were returned to the United Kingdom and the United States. Parallel investigations with the pertinent law enforcement agencies of the said jurisdictions were conducted.

730. Further, the Philippines reported that the Philippine National Police has in the past conducted joint investigations with the Royal Malaysia Police in a terrorism-related case.

(b) Observations on the implementation of the article

731. The Philippines has partly implemented the measures of the provision through joint investigations principally in the area of anti-money laundering.

Article 50 Special investigative techniques

1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.

(a) Summary of information relevant to reviewing the implementation of the article

732. The Philippines has partly implemented the measures of the provision.

733. NBI has employed special investigative techniques in corruption cases. Also, the Philippines has experience using controlled delivery in drug related cases, including at the international level, but not in anti-corruption cases. The case of Marvin Sia is an example of the use of controlled delivery between the PDEA and its foreign counterparts in a drug case. However, controlled delivery has not been utilized in corruption cases at the international level because as of now, intelligence information sharing in corruption cases has not been explored.

734. The Philippine National Police Manual for Investigation contains relevant measures. For example, section 11.1 sets out the general procedure in the conduct of surveillance and section 11.2 establishes checklists in the conduct of surveillance operations.

735. Law enforcement agencies explained that a court order is needed to conduct special investigative techniques under Rule 126 of the Rules of Court. It was reported that a court order is issued on the basis of probable cause and can generally be obtained within one day. The admissibility of evidence derived from special investigative techniques generally depends on the legality of the technique conducted. Such evidence is admissible in criminal proceedings once properly authenticated in accordance with Rule 132 of the

Rules of Court. Wiretapping is not permitted under the Philippine Anti-Wiretapping Law R.A. No. 4200.

RULE 126

SEARCH AND SEIZURE

Sec. 4. Requisites for issuing search warrant.

A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witness he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

Rule 132

B. AUTHENTICATION AND PROOF OF DOCUMENTS

SEC. 19. Classes of documents.

For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

- (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
- (b) Documents acknowledged before a notary public except last wills and testaments; and
- (c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private. (20a)

SEC. 20. Proof of private document.

Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

- (a) By anyone who saw the document executed or written; or
- (b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be. (21a)

SEC. 21. When evidence of authenticity of private document not necessary.

Where a private document is more than thirty years old, is produced from a custody in which it would naturally be found if genuine, and is unblemished by any alterations or circumstances of suspicion, no other evidence of its authenticity need be given. (22a)

SEC. 22. How genuineness of handwriting proved.

The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge. (23a)

SEC. 23. Public documents as evidence.

Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter. (24a)

SEC. 24. Proof of official record.

The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. (25a)

SEC. 25. What attestation of copy must state.

Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be.

The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.(26a)

SEC. 26. Irremovability of public record.

Any public record, an official copy of which is admissible in evidence, must not be removed from the office in which it is kept, except upon order of a court where the inspection of the record is essential to the just determination of a pending case.(27a)

SEC. 27. Public record of a private document.

An authorized public record of a private document may be proved by the original record, or by a copy thereof, attested by the legal custodian of the record, with an appropriate certificate that such officer has the custody .(28a)

SEC. 28. Proof of lack of record.

A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry.(29)

SEC. 29. How judicial record impeached.

Any judicial record may be impeached by evidence of: (a) want of jurisdiction in the court or judicial officer, (b) collusion between the parties, or (c) fraud in the party offering the record, in respect to the proceedings.(30a)

SEC. 30. Proof of notarial documents.

Every instrument duly acknowledged or proved and certified as provided by law, may be presented in evidence without further proof, the certificate of acknowledgment being prima facie evidence of the execution of the instrument or document involved.(31a)

SEC. 31. Alterations in document, how to explain.

The party producing a document as genuine which has been altered and appears to have been altered after its execution, in a part material to the question in dispute, must account for the alteration. He may show that the alteration was made by another, without his concurrence, or was made with the consent of the parties affected by it, or was otherwise properly or innocently made, or that the alteration did not change the meaning or language of the instrument. If he fails to do that, the document shall not be admissible in evidence.(32a)

SEC. 32. Seal.

There shall be no difference between sealed and unsealed private documents insofar as their admissibility as evidence is concerned.(33a)

SEC. 33. Documentary evidence in an unofficial language.

Documents written in an unofficial language shall not be admitted as evidence, unless accompanied with a translation into English or Filipino. To avoid interruption of proceedings, parties or their attorneys are directed to have such translation prepared before trial.(34a)

(b) Observations on the implementation of the article

736. The Philippines has partly implemented the measures of the provision, although there has been little experience using special investigative techniques in corruption cases. The technical assistance requested by the Philippines is very comprehensive and the reviewers have asked the relevant law enforcement authorities that the requests should be prioritized. The Philippines could consider amending the Anti-Wiretapping Law to permit the use of wiretapping in corruption cases.

(c) Challenges related to article 50

737. The Philippines identified the following challenges and issues in fully implementing the article under review:

1. Inter-agency co-ordination: PNP reported that agency procedures to be followed inhibit the fast execution of cases involving special investigative techniques. It was explained that this could easily be enhanced if there was a body actively providing service for this purpose, like the Office of the Ombudsman, since the deactivation of the Presidential Anti-Graft Commission (PAGC), which was then a good venue for inter-agency coordination;
2. Specificities in the legal system: It was reported that the Anti-Wiretapping Law should be amended to permit the use of wiretapping in corruption cases.
3. Competing priorities: It was reported that PNP is a general law enforcement agency and that corruption is one of many serious crimes it is mandated to counter. Moreover, combating corruption offences at the international level using special investigative techniques with foreign counterparts has not been explored by the Philippines.
4. Limited capacity: NBI reported that training to promote the qualification of agents to handle complex cases (e.g., as lawyers and certified public accountants) and additional staff at the Deputy Director level to handle information technology are required. PNP has no specific unit specialized in anti-graft and corruption cases and reported that training of personnel on anti-corruption activities is a major requirement. It was explained that at the national level there are two programmes of the defunct Presidential Anti-Graft Commission that directly address capacity building against graft and corruption in every government organization: the Moral Renewal Action Plan (which focuses on persons) and the Integrity Development Action Plan (IDAP) (which focuses on strengthening the systems' resistance against corruption). They complement each other in combating graft and corrupt practices in the government.
5. Limited resources for implementation: PNP reported that it is building a cybercrime office to gather electronic evidence in corruption cases, but that resources for fighting cybercrime are limited.
6. Limited awareness of state-of-the-art special investigative techniques: PNP reported on limited awareness of modern corruption investigative techniques, which are only being used by the Criminal Investigation division.

(d) Technical assistance needs related to article 50

738. The Philippines indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

1. Summary of good practices/lessons learned on the use of investigative techniques and the creation/operation of a specialized unit on anti-corruption in the police;
2. On-site assistance by a relevant expert;
3. Capacity-building programmes for authorities responsible for designing and managing the use of special investigative techniques;
4. Development of an action plan for implementation;
5. Model agreement(s)/ arrangement (s);
6. Legal advice with respect to amending the Anti-Wiretapping Law;
7. Capacity-building programmes for authorities responsible for international cooperation in criminal/investigative matters.

The Philippines has received the following technical assistance on special investigative techniques:

- a. USAID has assisted the Office of the Ombudsman

- b. UNODC supports the CBT facilities and equipment of PDEA mainly in drug-related cases
- c. U.S. Joint Interagency Task Force West (JIATFW) is working with PNP to build a database for indexing of fingerprints and a database for ballistics
- d. US-DEA has assisted PDEA mainly in drug-related cases.

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ANNEX 1 – Summary of treaties on extradition and transfer of sentenced persons

Chapter IV: Article 44 (Extradition), para. 3

<p><i>Article 44</i> <i>Extradition</i></p>	<p>PH - AUSTRALIA</p>	<p>PH – CANADA</p>	<p>PH - CHINA</p>	<p>PH – HONG KONG SPECIAL ADMINISTRATIVE REGION</p>
<p>3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.</p>		<p><i>Article 2</i> EXTRADITABLE OFFENCES</p> <p>1. For the purpose of this Treaty, extradition shall be granted for acts or omissions which are punishable under the laws of both Contracting States by imprisonment or other deprivation of liberty for a maximum period of at least one (1) year or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty, extradition shall be granted only if a period of at least six (6) months of the penalty remains to be</p>	<p><i>Article 2</i> EXTRADITABLE OFFENSES</p> <p>(a) An offense shall be an extraditable offense if it is punishable under the laws of both Parties by imprisonment for a period of more than one year, or by a more severe penalty.</p> <p>(b) Where extradition is requested for the purpose of carrying out a sentence, a further requirement shall be that in the case of a period of imprisonment, at least six months remain to be served.</p> <p style="text-align: center;">x x x</p>	

		served. x x x		
		4. If the request for extradition relates to a number of offences, each of which is punishable under the laws of both States, but some of which do not meet the other requirements of paragraph 1, the Requested State may also grant extradition for such offences.	4. If extradition has been granted for an extraditable offense, it shall also be granted for any other offense specified in the request, even if the latter offense is punishable by less than one year's imprisonment, provided that all other requirements of extradition are met.	

Article 44 <i>Extradition</i>	PH – INDIA	PH – INDONESIA	PH – KOREA	PH - MICRONESIA
3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.			<p>ARTICLE 2 Extraditable Offences</p> <p>(1) For the purposes of this Treaty, extraditable offences are offences however described which are punishable under the laws of both Contracting Parties by deprivation of liberty for a maximum period of at least one year or by a more severe penalty.</p>	

			<p>(2) Where the request for extradition relates to a person sentenced to deprivation of liberty by a court of the Requesting Party for any extraditable offence, extradition shall be granted only if a period of at least six (6) months in the sentence remains to be served.</p> <p>x x x</p>	
			<p>7. If the request for extradition relates to a number of offences, each of which is punishable under the laws of both Contracting Parties, but some of which do not meet the other requirements of paragraphs 1 and 2 of this Article, the Requested Party may grant extradition for such offences provided that the person is to be extradited for at least one extraditable offence.</p>	

Article 44 Extradition	PH – SPAIN	PH - SWITZERLAND	RP - THAILAND	RP – UNITED KINGDOM
3. If the request for	<i>Article 2</i>			

<p>extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.</p>	<p>Extraditable Offences</p> <p>(1) For the purpose of this Treaty, extradition shall be granted for acts or omissions which are punishable under the laws of both Contracting Parties by imprisonment or other deprivation of liberty for a maximum period of at least one year or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty, extradition shall be granted only if a period of at least six months of the penalty remains to be served.</p> <p>x x x</p>			
	<p>4. If the request for extradition relates to a number of offences, each of which is punishable under the laws of both Contracting Parties, but</p>			

	some of which do not meet the other requirements of paragraph 1, the Requested State may also grant extradition for such offences.			
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Article 44 <i>Extradition</i>	PH – USA			
3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.	<p>ARTICLE 2 EXTRADITABLE OFFENSES</p> <p>(a) An offense shall be an extraditable offense if it is punishable under the laws in both Contracting Parties by deprivation of liberty for a period of more than one year, or by a more severe penalty.</p> <p>x x x</p>			
	5. If extradition has been granted for an extraditable offense, it shall also be granted for any other offense specified in the request, even if the latter offense is punishable by less than one year's			

	deprivation of liberty, provided that all other requirements of extradition are met.			
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Chapter IV: Article 44 (Extradition), para. 4

Article 44 Extradition	PH - AUSTRALIA	PH – CANADA	PH - CHINA	PH – HONG KONG SPECIAL ADMINISTRATIVE REGION
<p>4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political</p>		<p><i>Article 2</i> EXTRADITABLE OFFENCES</p> <p>2. For the purpose of this Treaty, extradition shall be granted for acts or omissions which are punishable under the laws of both Contracting States by imprisonment or other deprivation of liberty for a maximum period of at least one (1) year or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment</p>	<p><i>Article 2</i> EXTRADITABLE OFFENSES</p> <p>(c) An offense shall be an extraditable offense if it is punishable under the laws of both Parties by imprisonment for a period of more than one year, or by a more severe penalty.</p> <p>(d) Where extradition is requested for the purpose of carrying out a sentence, a further requirement shall be that in the case of a period of imprisonment, at least six months remain to be served.</p>	

offence.		or other deprivation of liberty, extradition shall be granted only if a period of at least six (6) months of the penalty remains to be served. x x x	x x x	
		4. If the request for extradition relates to a number of offences, each of which is punishable under the laws of both States, but some of which do not meet the other requirements of paragraph 1, the Requested State may also grant extradition for such offences.	4. If extradition has been granted for an extraditable offense, it shall also be granted for any other offense specified in the request, even if the latter offense is punishable by less than one year's imprisonment, provided that all other requirements of extradition are met.	

Article 44 Extradition	PH – INDIA	PH – INDONESIA	PH – KOREA	PH - MICRONESIA
3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences			ARTICLE 2 Extraditable Offences (3) For the purposes of this Treaty, extraditable offences are offences however described which are punishable under the laws of both Contracting Parties by deprivation of	

<p>established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.</p>			<p>liberty for a maximum period of at least one year or by a more severe penalty.</p> <p>(4) Where the request for extradition relates to a person sentenced to deprivation of liberty by a court of the Requesting Party for any extraditable offence, extradition shall be granted only if a period of at least six (6) months in the sentence remains to be served.</p> <p>x x x</p>	
			<p>7. If the request for extradition relates to a number of offences, each of which is punishable under the laws of both Contracting Parties, but some of which do not meet the other requirements of paragraphs 1 and 2 of this Article, the Requested Party may grant extradition for such offences provided that the person is to be extradited for at least one extraditable offence.</p>	

Article 44 Extradition	PH – SPAIN	PH - SWITZERLAND	RP - THAILAND	RP – UNITED KINGDOM
<p>3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.</p>	<p><i>Article 2</i> Extraditable Offences</p> <p>(2) For the purpose of this Treaty, extradition shall be granted for acts or omissions which are punishable under the laws of both Contracting Parties by imprisonment or other deprivation of liberty for a maximum period of at least one year or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty, extradition shall be granted only if a period of at least six months of the penalty remains to be served.</p> <p style="text-align: center;">x x x</p>			

	<p>4. If the request for extradition relates to a number of offences, each of which is punishable under the laws of both Contracting Parties, but some of which do not meet the other requirements of paragraph 1, the Requested State may also grant extradition for such offences.</p>			
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Article 44 <i>Extradition</i>	PH – USA			
<p>3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.</p>	<p>ARTICLE 2 EXTRADITABLE OFFENSES</p> <p>(b) An offense shall be an extraditable offense if it is punishable under the laws in both Contracting Parties by deprivation of liberty for a period of more than one year, or by a more severe penalty.</p> <p>x x x</p>			
	5. If extradition has been			

	<p>granted for an extraditable offense, it shall also be granted for any other offense specified in the request, even if the latter offense is punishable by less than one year's deprivation of liberty, provided that all other requirements of extradition are met.</p>			
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Chapter IV: Article 44 (Extradition), para. 8

Article 44 Extradition	PH - AUSTRALIA	PH – CANADA	PH - CHINA	PH – HONG KONG SPECIAL ADMINISTRATIVE REGION
<p>8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.</p>	<p><i>Article 2</i> EXTRADITABLE OFFENCES</p> <p>3. For the purposes of this Treaty, extraditable offences are offences which are punishable under the laws of both Contracting States by imprisonment for a period of at least one (1) year, or by a more severe penalty. Where the request for extradition relates to a person convicted of such</p>	<p><i>Article 2</i> EXTRADITABLE OFFENCES</p> <p>4. For the purpose of this Treaty, extradition shall be granted for acts or omissions which are punishable under the laws of both Contracting States by imprisonment or other deprivation of liberty for a maximum period of at least one (1) year or by a more severe penalty. Where the request for extradition</p>	<p><i>Article 2</i> EXTRADITABLE OFFENSES</p> <p>(e) An offense shall be an extraditable offense if it is punishable under the laws of both Parties by imprisonment for a period of more than one year, or by a more severe penalty.</p> <p>(f) Where extradition is requested for the purpose of carrying out a sentence, a further</p>	

	<p>an offence who is wanted for the enforcement of a sentence of imprisonment, extradition shall be granted only if a period of at least six (6) months imprisonment remains to be served.</p>	<p>relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty, extradition shall be granted only if a period of at least six (6) months of the penalty remains to be served.</p> <p style="text-align: center;">x x x</p>	<p>requirement shall be that in the case of a period of imprisonment, at least six months remain to be served.</p> <p style="text-align: center;">x x x</p>	
		<p>4. If the request for extradition relates to a number of offences, each of which is punishable under the laws of both States, but some of which do not meet the other requirements of paragraph 1, the Requested State may also grant extradition for such offences.</p>	<p>4. If extradition has been granted for an extraditable offense, it shall also be granted for any other offense specified in the request, even if the latter offense is punishable by less than one year's imprisonment, provided that all other requirements of extradition are met.</p>	

Article 44 Extradition	PH – INDIA	PH – INDONESIA	PH – KOREA	PH - MICRONESIA
<p>8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or</p>			<p>ARTICLE 2 Extraditable Offences</p> <p>(5) For the purposes of this Treaty, extraditable</p>	

<p>by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.</p>			<p>offences are offences however described which are punishable under the laws of both Contracting Parties by deprivation of liberty for a maximum period of at least one year or by a more severe penalty.</p> <p>(6) Where the request for extradition relates to a person sentenced to deprivation of liberty by a court of the Requesting Party for any extraditable offence, extradition shall be granted only if a period of at least six (6) months in the sentence remains to be served.</p> <p style="text-align: center;">x x x</p>	
			<p>7. If the request for extradition relates to a number of offences, each of which is punishable under the laws of both Contracting Parties, but some of which do not meet the other requirements of paragraphs 1 and 2 of this Article, the Requested Party may grant extradition for such offences provided that the person is to be</p>	

			extradited for at least one extraditable offence.	
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Article 44 Extradition	PH – SPAIN	PH - SWITZERLAND	RP - THAILAND	RP – UNITED KINGDOM
<p>8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.</p>	<p><i>Article 2</i> Extraditable Offences</p> <p>(3) For the purpose of this Treaty, extradition shall be granted for acts or omissions which are punishable under the laws of both Contracting Parties by imprisonment or other deprivation of liberty for a maximum period of at least one year or by a more severe penalty. Where the request for extradition relates to a person convicted of such an offence who is wanted for the enforcement of a sentence of imprisonment or other deprivation of liberty, extradition shall be granted only if a period of at least six months of the penalty remains to be served.</p>			

	x x x			
	<p>4. If the request for extradition relates to a number of offences, each of which is punishable under the laws of both Contracting Parties, but some of which do not meet the other requirements of paragraph 1, the Requested State may also grant extradition for such offences.</p>			

Article 44 <i>Extradition</i>	PH – USA			
<p>8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.</p>	<p style="text-align: center;">ARTICLE 2 EXTRADITABLE OFFENSES</p> <p>(c) An offense shall be an extraditable offense if it is punishable under the laws in both Contracting Parties by deprivation of liberty for a period of more than one year, or by a more severe penalty.</p> <p style="text-align: center;">x x x</p>			

	<p>5. If extradition has been granted for an extraditable offense, it shall also be granted for any other offense specified in the request, even if the latter offense is punishable by less than one year's deprivation of liberty, provided that all other requirements of extradition are met.</p>			
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Chapter IV: Article 44 (Extradition), para. 9

<p>Article 44 <i>Extradition</i></p>	<p>PH - AUSTRALIA</p>	<p>PH – CANADA</p>	<p>PH - CHINA</p>	<p>PH – HONG KONG SPECIAL ADMINISTRATIVE REGION</p>
<p>9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.</p>	<p><i>Article 6</i> EXTRADITION PROCEDURE AND REQUIRED DOCUMENTS</p> <p>(1) A request for extradition shall be made in writing and shall be communicated through the diplomatic channel. All documents submitted in support of a request for extradition shall be duly</p>	<p><i>Article 7</i> PRESENTATION OF A REQUEST AND DOCUMENTS TO BE SUBMITTED</p> <p>x x x</p> <p>3. All documents submitted in support of a request for extradition and appearing to have been certified, signed or issued by a judicial or other public official of the Requesting</p>	<p>ARTICLE 7 THE REQUEST AND SUPPORTING DOCUMENTS</p> <p>(a) A request for extradition and related documents shall be conveyed through diplomatic channels.</p> <p>x x x</p>	<p>ARTICLE 8 THE REQUEST AND SUPPORTING DOCUMENTS</p> <p>1. Requests for surrender and related documents shall be conveyed through the appropriate authority as may be notified from time to time by one Party to the</p>

	<p>authenticated in accordance with Article 7. x x x</p>	<p>State shall be admitted in extradition proceedings in the Requested State without proof of the signature or of the official character of the person appearing to have signed them.</p>		<p>other. x x x</p>
	<p><i>Article 7</i> AUTHENTICATION OF SUPPORTING DOCUMENTS</p> <p>Documents shall be admitted in extradition proceedings if duly authenticated. A document is duly authenticated for the purpose of this Treaty if it purports to be:</p>	<p>4. No authentication or further certification of documents submitted in support of the request for extradition shall be required, except sworn statements offered in support of a request from Canada, which must be authenticated by the principal diplomatic or consular officer of the Republic of the Philippines in Canada.</p>	<p>ARTICLE 8 AUTHENTICATION</p> <p>(1) Any document that, in accordance with Article 7 and Article 11 of this Treaty, accompanies a request for extradition shall be admitted in evidence, if authenticated, in any proceedings for the extradition in the territory of the requested Party.</p> <p>(2) A document is authenticated for the purpose of this Treaty if:</p>	<p>ARTICLE 9 AUTHENTICATION</p> <p>1. Any document that, in accordance with Article 8 of this Agreement, accompanies a request for surrender shall be admitted in evidence, if authenticated, in any proceedings in the jurisdiction of the requested Party.</p> <p>2. A document is authenticated for the purposes of this Agreement if:</p>

	(1) signed or certified by a Judge, Magistrate or other officer in or of the Requesting State; and		(1) signed or certified by a judge or other officer of the requesting Party, or sealed with an official seal of the competent authority of the requesting Party; and	(1) it purports to be signed or certified by a judge, magistrate or other officer authorized by the requesting Party; and
	(2) verified by oath or affirmation or sealed with an official or public seal of the Requesting State or of a Minister of State, or of a Department or officer of the Government of the Requesting State; and			
	(3) certified by a diplomatic or consular officer of the Requested State accredited to the Requesting State.		(2) certified by a diplomatic or consular officer of the requested Party accredited to the requesting Party.	(2) it purports to be sealed with an official or public seal of the requesting Party or of an officer of the requesting Party.

Article 44 Extradition	PH – INDIA	PH – INDONESIA	PH – KOREA	PH - MICRONESIA
9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and	Article 8 Extradition Procedures	ARTICLE XVII Request and Supporting Documents	ARTICLE 8 Extradition Procedure and Required Documents	ARTICLE 5 THE REQUEST AND SUPPORTING DOCUMENTS

<p>to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.</p>	<p>a) The request for extradition under this Treaty shall be made through the diplomatic channels.</p> <p style="text-align: center;">x x x</p>	<p>1. A request for extradition shall be in writing and sent in Indonesia to the Minister of Justice, and in the Philippines to the Secretary of Justice, through the diplomatic channels.</p> <p style="text-align: center;">x x x</p>	<p>a. The request for extradition shall be made in writing. All documents submitted in support of a request for extradition shall be authenticated in accordance with Article 10.</p> <p style="text-align: center;">x x x</p>	<p>1. A request for extradition shall be made in writing and shall be communicated through diplomatic channel. All documents submitted in support of a request for extradition shall be authenticated in accordance with Article 6.</p> <p style="text-align: center;">x x x</p>
	<p style="text-align: center;">Article 11 Evidence</p> <p>1. The authorities of the Requested State shall admit as evidence, in any proceedings for extradition, if duly authenticated, any statement made under oath or by way of affirmation, any warrant and any certificate or judicial document stating the fact of a conviction. A document is duly authenticated for the purpose of this Treaty if it purports to be:</p>		<p style="text-align: center;">ARTICLE 10 Authentication of Supporting Documents</p> <p>1. A document that, in accordance with Article 8, accompanies a request for extradition shall be admitted in evidence, if authenticated, in any extradition proceedings in the territory of the Requested Party.</p>	<p style="text-align: center;">ARTICLE 6 AUTHENTICATION OF SUPPORTING DOCUMENTS</p> <p>Documents shall be admitted in extradition proceedings if duly authenticated. A document is duly authenticated for the purpose of this Treaty if it purports to be:</p>
	<p>b) signed or certified by a Judge, Magistrate or other authorized officer in or of the</p>		<p>2. A document is authenticated for the purposes of this Treaty, if it purports to be signed or</p>	<p>(a) Signed or certified by a Judge, Magistrate or other officer in or of the Requesting State; and</p>

	Requesting State;		certified by a competent officer of the Requesting Party.	
	c) verified by oath or affirmation or sealed with an official or public seal of the Requesting State or of a Minister of State, or of a Department or officer of the Government of the Requesting State; and			(b) Verified by oath or affirmation or sealed with an official or public seal of the Requesting State or of a Minister of State, or of a Department or officer of the Government, of the Requesting State; and
	d) certified by a diplomatic or consular officer of the Requested State accredited to the Requesting State.			c. Certified by a diplomatic or consular officer of the Requested State accredited to the Requesting State.

Article 44 Extradition	PH – SPAIN	PH - SWITZERLAND	RP - THAILAND	RP – UNITED KINGDOM
9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any	ARTICLE 7 Presentation of a Request and Documents to be Submitted (4) Requests for extradition	ARTICLE 4 The Request and Supporting Documents	ARTICLE XVI Request and Supporting Documents	ARTICLE 6 EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS 1. All requests for

<p>offence to which this article applies.</p>	<p>and all other documents shall be sent through diplomatic channels.</p> <p style="text-align: center;">x x x</p>	<p>1. A request for extradition shall be made in writing and shall be communicated through diplomatic channel. All documents submitted in support of a request for extradition shall be authenticated in accordance with Article 5.</p> <p style="text-align: center;">x x x</p>	<p>1. A request for extradition shall be in writing and sent in Thailand to the Minister of Interior, and in the Philippines to the Minister of Justice, through the diplomatic channels.</p> <p style="text-align: center;">x x x</p>	<p>extradition shall be submitted through the diplomatic channel.</p> <p style="text-align: center;">x x x</p>
	<p>5. All documents submitted in support of a request for extradition, which have been certified, signed or issued by a judicial or other competent authority of the Requesting State, shall be admitted in extradition proceedings in the Requested State without proof of the signature or of the official character of the person having signed them.</p>	<p style="text-align: center;">ARTICLE 5 AUTHENTICATION OF SUPPORTING DOCUMENTS</p> <p>(a) A document that, in accordance with Article 4, accompanies a request for extradition shall be admitted, if authenticated in any extradition proceedings in the Requested State.</p>		<p style="text-align: center;">x x x</p> <p>5. The documents which accompany an extradition request shall be received and admitted as evidence in extradition proceedings if:</p>
		<p>(b) A document is authenticated for the</p>		<p>(1) they are certified by the principal diplomatic</p>

		purposes of this Treaty if it is signed or certified by a Judge, Magistrate or officer in or of the Requesting State.		or consular officer of the Requesting State resident in the Requested State; or (2) they are certified or authenticated in any other manner accepted by the law of the Requested State.
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Article 44 <i>Extradition</i>	PH – USA			
9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.	<p>ARTICLE 7 EXTRADITION PROCEDURES AND REQUIRED DOCUMENTS</p> <p>(a) All requests for extradition shall be submitted through the diplomatic channel.</p> <p>x x x</p>			
	5. The documents which accompany an extradition request shall be received and admitted as evidence in extradition proceedings if:			
	(1) they are certified			

	by the principal diplomatic or consular officer of the Requested State resident in the Requesting State; or			
	(2) they are certified or authenticated in any other manner accepted by the law of the Requested State.			

Chapter IV: Article 44 (Extradition), para. 10

Article 44 Extradition	PH - AUSTRALIA	PH – CANADA	PH - CHINA	PH – HONG KONG SPECIAL ADMINISTRATIVE REGION
10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition	<p><i>Article 9</i> PROVISIONAL ARREST</p> <p>(1) Where the laws of the Requested State so allow, in case of urgency, a Contracting State may apply by means of the facilities of the International Criminal Police Organization (INTERPOL) or by other means for the provisional arrest of the person sought. The application may be transmitted by post or</p>	<p><i>Article 9</i> PROVISIONAL ARREST</p> <p>(1) In case of urgency, the Requesting State may apply, in writing, through the International Criminal Police Organization (INTERPOL) or to the competent authorities of the Requested State for the provisional arrest of the person sought pending the presentation of the request for extradition.</p>	<p>ARTICLE 10 PROVISIONAL ARREST</p> <p>1. In case of urgency, a Party may request the provisional arrest of the person sought pending presentation of the request for extradition. A request for provisional arrest may be transmitted through the diplomatic channels or directly between the Department of Justice of the Republic of the Philippines and the</p>	<p>ARTICLE 11 PROVISIONAL ARREST</p> <p>1. In urgent cases, the person sought may, in accordance with the law of the requested Party, be provisionally arrested on the application of the requesting Party. The application for provisional arrest shall contain an indication of intention to request the surrender of the person sought and the text of a warrant of arrest</p>

proceedings.	telegraph or by any other means affording a record in writing.		Ministry of Public Security of the People's Republic of China.	or a judgement of conviction against that person, a statement of the penalty for that offence, and such other information, if any, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person sought convicted, within the jurisdiction of the requested Party.
				2. An application for provisional arrest may be forwarded through the same channels as a request for surrender or through the International Criminal Police Organization (INTERPOL).
	(2) The application for provisional arrest shall contain a description of the person sought, a statement that extradition is to be requested through the diplomatic channel, a statement of the existence of one of the documents mentioned in paragraph 2 of Article 6 authorizing the apprehension of the person, a statement of the	(2) The application for provisional arrest shall be accompanied by a copy of the court decision or warrant of arrest, a description of the offense, when and where it was committed and the details of the identity of the person sought, and shall contain a statement that an extradition request will be made subsequently.	2. The application for provisional arrest shall contain: 1. a description of the person sought; 2. the location of the person sought, if known; 3. a brief statement of the facts of the case, including, if possible, the	

	<p>punishment that can be, or has been, imposed for the offence and, if requested by the Requested State, a concise statement of the acts of omissions alleged to constitute the offence.</p>		<p>time and location of the offense;</p> <p>4. the text of the laws violated;</p> <p>5. a statement of the existence of a warrant of arrest or judgment of conviction against the person sought, accompanied by a copy of the warrant of arrest or copy of judgment of conviction; and</p> <p>6. a statement that a request for extradition for the person sought will follow.</p>	
	<p>(3) On receipt of an application for provisional arrest the Requested State shall, subject to its laws, take the necessary steps to secure the arrest of the person sought and the Requesting State shall be promptly notified of the result of its request.</p>	<p>(3) On receipt of such an application for provisional arrest, the Requested State shall take the necessary steps to secure the arrest of the person sought and the Requesting State shall be promptly notified of the result of its application.</p>		
	<p>(4) A person arrested upon application for provisional arrest may be</p>	<p>(4) A person arrested upon such application shall be released from</p>	<p>3. The provisional arrest of the person sought shall be terminated upon</p>	<p>3. The provisional arrest of the person sought shall be terminated upon</p>

	<p>set at liberty upon the expiration of forty-five (45) days from the date of that person's arrest if a request for extradition has not been received.</p>	<p>custody upon the expiration of forty-five days from the date of that person's arrest if a request for that person's extradition, supported by the documents specified in Article 7, has not been received. In such case, the Requested State shall notify the Requesting State as soon as possible.</p>	<p>the expiration of thirty days from the date of arrest if the request for extradition has not been received, unless the requesting Party can justify continued provisional arrest of the person sought in which case the period of provisional arrest shall be terminated upon the expiration of a reasonable time not being more than a further fifteen days. This provision shall not prevent the re-arrest or extradition of the person sought if the request for his extradition is received subsequently.</p>	<p>the expiration of forty-five days from the date of arrest if the request for surrender has not been received, unless the requesting Party can justify continued provisional arrest of the person sought in which case the period of provisional arrest shall be terminated upon the expiration of a reasonable time not being more than a further fifteen days. This provision shall not prevent the re-arrest or surrender of the person sought if the request for the person's surrender is received subsequently.</p>
	<p>(5) The release of a person pursuant to paragraph 4 of this Article shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.</p>	<p>(5) The release of a person pursuant to paragraph 4 of this Article shall not prevent the institution or continuation of proceedings with a view to extraditing the person sought if the request and the supporting documents are received subsequently.</p>		

<p>Article 44 <i>Extradition</i></p>	<p>PH – INDIA</p>	<p>PH – INDONESIA</p>	<p>PH – KOREA</p>	<p>PH – MICRONESIA</p>
<p>10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.</p>	<p>Article 9 Provisional Arrest</p> <p>1. In urgent cases the person sought may, in accordance with the law of the Requested State, be provisionally arrested on the application of the competent authorities of the Requesting State. The application shall contain an indication of intention to request the extradition of that person and shall be accompanied by a copy of the judgment of conviction or warrant of arrest, as the case may be, a description of the offence, when and where it was committed and the details of the identity of the person sought.</p>	<p>ARTICLE XI Provisional Arrest</p> <p>(6) In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law.</p>	<p>ARTICLE 11 Provisional Arrest</p> <p>1. In case of urgency, either Contracting Party may request the provisional arrest of the person sought pending the presentation of the request for extradition through the diplomatic channel. The application may be transmitted by post or telegraph or by any other means affording a record in writing.</p>	<p>ARTICLE 8 PROVISIONAL ARREST</p> <p>(a) In case of urgency, a Contracting State may apply by means of the facilities of the International Criminal Police Organization (INTERPOL) or by other means for the provisional arrest of the person sought. The application may be transmitted by post or telegraph or by any other means affording a record in writing coursed through diplomatic channel.</p>
		<p>(7) The request for provisional arrest shall state that the</p>	<p>2. The application shall contain a description of the person sought, a</p>	<p>(b) The application for provisional arrest shall contain a description of the</p>

		documents mentioned in Article XVII exist and that it is intended to send a request for extradition. It shall also state for what crime extradition will be requested and when and where such crime was committed and shall so far as possible give a description of the person sought.	statement that extradition is to be requested through the diplomatic channel, a statement of the existence of the relevant documents mentioned in paragraph 3 or paragraph 4 of Article 8 authorizing the apprehension of the person, a statement of the penalty that can be imposed or has been imposed for the offence and, if requested by the Requested Party, a concise statement of the conduct alleged to constitute the offence.	person sought, a statement that extradition is to be requested through diplomatic channel, a statement of the existence of one of the documents mentioned in paragraph 2 of Article 5 authorizing the apprehension of the person, a short description of the acts of omissions alleged to constitute the offence, and a statement of the penalty that can be, or has been imposed for the offence.
	2. The request for provisional arrest may be made through diplomatic channels or directly between the Department of Justice of the Philippines and the Ministry of Home Affairs of India or through the International Criminal Police Organization (INTERPOL) by any means acceptable to the Requested State, such as post, telegraph or facsimile machine, etc..	3. A request for provisional arrest shall be sent in Indonesia, to the National Central Bureau (N.C.B.) Indonesian Interpol, and in the Philippines to the National Bureau of Investigation, either through the diplomatic channels or direct by post or telegraph or through the International Criminal Police Organization (INTERPOL).		

		<p>4. The requesting authority shall be informed without delay of the result of its request.</p>	<p>(c) On receipt of such application, the Requested Party shall take the necessary steps to secure the arrest of the person claimed and the Requesting Party shall be promptly notified of the result of its request.</p>	<p>3. On receipt of an application for provisional arrest the Requested State shall, subject to its laws, take necessary steps to secure the arrest of the person sought and the Requesting State shall be promptly notified of the result of its request.</p>
	<p>5. A person arrested upon such an application shall be set at liberty upon the expiration of 60 days from the date of his arrest if the request for his extradition is not received by the Ministry/Department of Foreign Affairs of the Requested State. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request is subsequently received.</p>	<p>(5)Provisional arrest may be terminated if, within a period of 20 days after arrest, the requested Party has not received the request for extradition and the documents mentioned in Article XVII.</p> <p>6. Release from provisional arrest shall not prejudice re-arrest and extradition if a request for extradition is received subsequently.</p>	<p>4. The person arrested shall be set at liberty if the Requesting Party fails to present the request for extradition, accompanied by the documents specified in Article 8, within forty-five (45) days from the date of arrest, provided that this shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.</p>	<p>4.A person arrested upon application for provisional arrest may be set at liberty upon the expiration of twenty (20) days from the date of that person's arrest if a request for extradition has not been received.</p>

Article 44 Extradition	PH – SPAIN	PH - SWITZERLAND	RP - THAILAND	RP – UNITED KINGDOM
<p>10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.</p>	<p>ARTICLE 9 Provisional Arrest</p> <p>1. In case of urgency, the Requesting State may apply in writing to the competent authorities of the Requested State, through the International Criminal Police Organization (INTERPOL) or through diplomatic channels, for the provisional arrest of the person sought pending the presentation of the formal request for extradition.</p>	<p>ARTICLE 7 PROVISIONAL ARREST</p> <p>(a) In case of urgency, a Contracting State may apply by means of the facilities of the International Criminal Police Organization (INTERPOL) or by other means for the provisional arrest of the person sought. The application may be transmitted by post or telegraph or by any other means affording a record in writing.</p>	<p>ARTICLE X Provisional Arrest</p> <p>1. In case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. The competent authorities of the requested Party shall decide the matter in accordance with its law.</p>	<p>ARTICLE 9 PROVISIONAL ARREST</p> <p>2. In an urgent situation, the Requesting State may request the provisional arrest of the person sought pending presentation of the request for extradition. A request for provisional arrest may be transmitted through the diplomatic or other appropriate channels.</p>
	<p>(b)The application for provisional arrest shall be accompanied by a copy of the court decision or warrant of arrest, a description of the offence, when and where it was committed and the details of the identity of the person</p>	<p>2. The application for provisional arrest shall contain a description of the person sought, a statement that extradition is to be requested through the diplomatic channel, a statement of the existence of one of the documents mentioned in paragraph 2</p>	<p>2.The request for provisional arrest shall state that the documents mentioned in Article XVI exist and that it is intended to send a request for extradition. It shall also state for what crime extradition will be requested and when and</p>	<p>2.The application for provisional arrest shall contain:</p> <p>(a) a description of the person sought;</p> <p>(b) the location of the person sought, if known;</p>

	<p>sought; and shall contain a statement that an extradition request will be made subsequently.</p>	<p>of Article 4, authorizing the apprehension of the person, a short description of the acts or omissions alleged to constitute the offense, and a statement of the penalty that can be, or has been imposed for the offense.</p>	<p>where such crime was committed and shall so far as possible give a description of the person sought.</p>	<ul style="list-style-type: none"> (c) a brief statement of the facts of the case including, if possible, the date and location of the offence(s); (d) a description of the law(s) violated; (e) the original or copy of the warrant or order of arrest or of the finding of guilt or judgment of conviction against the person sought; and (f) a statement that the supporting documents for the person sought will follow within the time specified in this Treaty.
	<p>(c) Upon receipt of such an application for provisional arrest, the Requested State shall take the necessary steps to secure the arrest of the person sought and the Requesting State shall</p>	<p>3. On receipt of an application for provisional arrest the Requested State shall, subject to its laws, take necessary steps to secure the arrest of the person sought and the Requesting State shall be promptly notified of the</p>	<p>3.A request for provisional arrest shall be sent in Thailand to the Director-General of the Police Department, and in the Philippines to the National Bureau of Investigation, either through the diplomatic</p>	

	be promptly notified of the result of its application.	result of its request.	channels or direct by post or telegraph or through the International Criminal Police Organization (INTERPOL).	
			(d) The requesting Party shall be informed without delay of the result of its request.	3.The Requesting State shall be notified without delay of the decision on its request for provisional arrest and the reasons for any inability to proceed with the request.
	3. A person arrested upon such application shall be released from custody upon the expiration of sixty days from the date of that person's arrest if a request for that person's extradition, supported by the documents specified in Article 7, has not been received. In such case, the Requested State shall notify the Requesting State as soon as possible.	4.A person arrested upon application for provisional arrest may be set at liberty upon the expiration of forty (40) days from the date of that person's arrest if a request for extradition has not been received.	4. Provisional arrest may be terminated if, within a period of 20 days after arrest, the requested Party has not received the request for extradition and the documents mentioned in Article XVI.	5. A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of provisional arrest pursuant to this Treaty if the executive authority of the Requested State has not received the formal request for extradition and the documents supporting the extradition request as required in Article 6 of this Treaty.
	6. The release of a person pursuant to paragraph 4		7. Release from provisional arrest shall not	(e)The fact that the person sought has been

	of this Article shall not prevent the re-arrest and institution or continuation of proceedings with a view to extraditing the person sought if the request and the supporting documents are received subsequently.		prejudice rearrest and extradition if a request for extradition is received subsequently.	discharged from custody pursuant to paragraph 4 of this Article shall not prejudice the subsequent re-arrest and extradition of that person if the extradition request and supporting documents are delivered at a later date.
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Article 44 <i>Extradition</i>	PH – USA			
10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.	<p>ARTICLE 9 PROVISIONAL ARREST</p> <p>(2) In case of urgency, a Contracting Party may request the provisional arrest of the person sought pending presentation of the request for extradition. A request for provisional arrest may be transmitted through the diplomatic channel or directly between the Philippine Department of Justice and the United States Department of Justice.</p>			
	2.The application for			

	<p>provisional arrest shall contain:</p> <ul style="list-style-type: none"> (f) a description of the person sought; (1) the location of the person sought, if known; (2) a brief statement of the facts of the case, including, if possible, the time and location of the offense; (3) a description of the laws violated; (4) a statement of the existence of a warrant of arrest or finding of guilt or judgment of conviction against the person sought; and (5) a statement that a request for extradition for the person sought will follow. 			
	<p>3.The Requesting State shall be notified without delay of the disposition of its application and the reasons for any denial.</p>			

	<p>4. A person who is provisionally arrested may be discharged from custody upon the expiration of sixty (60) days from the date of arrest pursuant to this Treaty if the executive authority of the Requested State has not received the formal request for extradition and the supporting documents required in Article 7.</p>			
	<p>5. The fact that the person sought has been discharged from custody pursuant to paragraph 4 of this Article shall not prejudice the subsequent rearrest and extradition of that person if the extradition request and supporting documents are delivered at a later date.</p>			

Chapter IV: Article 44 (Extradition), para. 11

Article 44 <i>Extradition</i>	PH - AUSTRALIA	PH – CANADA	PH - CHINA	PH – HONG KONG SPECIAL ADMINISTRATIVE REGION

<p>11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects to ensure the efficiency of such prosecution.</p>	<p style="text-align: center;"><i>Article 4</i> EXCEPTIONS TO EXTRADITION</p> <p style="text-align: center;">x x x</p> <p>C. Extradition may be refused in any of the following circumstances:</p> <p>(g) If the person whose extradition is requested is a national of the Requested State. Where the Requested State refuses to extradite a national of that State, it shall, if the other State so requests and the laws of the Requested State allow, submit the case to the competent authorities in order that proceedings for the prosecution of the person in respect of all or any of the offence for which extradition has</p>	<p style="text-align: center;"><i>Article 4</i> DISCRETIONARY REFUSAL OF EXTRADITION</p> <p>Extradition may be refused in any of the following circumstances:</p> <p>A. When the person whose extradition is requested is a national of the Requested State. Where the Requested State refuses to extradite a national of that State, it shall submit the case to its competent authorities in order that appropriate proceedings may be taken. If the Requested State requires additional documents or evidence, such documents or evidence shall be submitted without charge to that State. The Requesting State shall be informed of any action taken.</p> <p style="text-align: center;">x x x</p>	<p style="text-align: center;">ARTICLE 3 EXTRADITION OF NATIONALS</p> <p>(1) The Parties reserve the right to refuse the extradition of its nationals.</p> <p>2. Where the requested Party exercises this right, the requesting Party may request that the case be submitted to the competent authorities of the requested Party in order that proceedings for prosecution of the person may be instituted in accordance with the laws of the requested Party.</p>	<p style="text-align: center;">ARTICLE 3 SURRENDER OF NATIONALS</p> <p>a. The Government of the Republic of the Philippines reserves the right to refuse the surrender of its nationals. The Government of Hong Kong reserves the right to refuse the surrender of nationals of the state whose Government is responsible for its foreign affairs.</p> <p>b. Nationality shall be determined at the time of the commission of the offence for which surrender is requested.</p> <p>(3). Where the requested Party exercises this right, the requesting Party may request that the case be submitted to the competent authorities of the requested Party in order that proceedings for prosecution of the person may be considered.</p>
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	<p>been requested may be taken if that is considered appropriate. Nationality shall be determined at the time of the commission of the offence for which extradition is requested;</p> <p>x x x</p>			
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Article 44 <i>Extradition</i>	PH – INDIA	PH – INDONESIA	PH – KOREA	PH - MICRONESIA
<p>11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their</p>	<p>Article 3 Extradition of Nationals</p> <p>Nothing in this Treaty shall preclude the extradition by the Requested State of its nationals in respect of an extraditable offence.</p>	<p>ARTICLE VI EXTRADITION TO (sic) NATIONALS</p> <p>2. Each Party shall have the right to refuse extradition of nationals.</p>	<p>ARTICLE 6 Extradition of Nationals</p> <p>a) Neither of the Contracting Parties shall be bound to deliver up its own nationals under this Treaty but the competent authority of each Contracting Party shall have the power to deliver them up if, in its discretion, it considers that it is proper to do so.</p>	<p>ARTICLE 4 EXCEPTIONS TO THE EXTRADITION</p> <p>x x x</p> <p>2. Extradition may be refused in any of the following circumstances:</p>

<p>proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects to ensure the efficiency of such prosecution.</p>		<p>B. If the requested Party does not extradite its nationals, that Party shall at the request of the requesting Party submit the case to the competent authorities of the former for prosecution. For this purpose the files, information and exhibits relating to the crime shall be surrendered by the requesting Party to the requested Party.</p> <p>1. Notwithstanding paragraph B of this Article, the requested Party shall not be required to submit the case to its competent authorities for prosecution if the authorities have no jurisdiction.</p>	<p>b) Where a Contracting Party refuses extradition pursuant to paragraph 1 of this Article, it may submit the case to its competent authority in order that the proceedings for the prosecution of the person in respect of all or any of the offences for which extradition has been sought may be taken if that is considered appropriate. The Party shall inform the Requesting Party of any action taken and the outcome of any prosecution. Nationality shall be determined at the time of the commission of the offence for which extradition is requested.</p>	<p>1. If the person whose extradition is requested is a national of the Requested State. Where the Requested State refuses to extradite a national of that State it shall, if the other State so requests and the law of the Requested State allow, submit the case to the competent authorities in order that proceedings for the prosecution of the person in respect of all or any of the offenses for which extradition has been requested may be taken if that is considered appropriate. Nationality shall be determined at the time of the commission of the offense for which extradition is requested:</p> <p style="text-align: center;">x x x</p>
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Article 44	PH – SPAIN	PH - SWITZERLAND	RP - THAILAND	RP – UNITED KINGDOM
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<i>Extradition</i>				
<p>11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects to ensure the efficiency of such prosecution.</p>	<p style="text-align: center;">ARTICLE 4 Discretionary Refusal of Extradition</p> <p>1. Extradition may be refused in any of the following circumstances:</p> <p>(1) when a person whose extradition is requested is a national of the Requested State:</p> <p style="text-align: center;">x x x</p> <p>1. When the Requested State refuses to extradite a national of that State, it shall submit the case to its competent authorities in order that appropriate proceedings may be taken. If the Requested State requires additional documents or evidence, such documents or evidence shall be submitted without charge to that State. The Requesting State shall be informed of any action</p>	<p style="text-align: center;">ARTICLE 3 EXCEPTIONS TO EXTRADITION</p> <p style="text-align: center;">x x x</p> <p>(b) Extradition may be refused in any of the following circumstances:</p> <p style="text-align: center;">x x x</p> <p>2. the person whose extradition is requested is a national of the Requested State. Where the Requested State refuses to extradite a national of that State it shall, if the other State so requests and the laws of the Requested State allow, submit the case to the competent authorities in order that proceedings for the prosecution of the person in respect of all or any of the offenses for which extradition has been requested may be taken if that is considered appropriate. Nationality shall be determined at the time of the commission of the offense for which</p>	<p style="text-align: center;">ARTICLE VI Extradition of Nationals</p> <p>(1) Each Party shall have the right to refuse extradition of nationals.</p> <p>2. If the requested Party does not extradite its nationals, that Party shall at the request of the requesting Party submit the case to the competent authorities of the former for prosecution. For this purpose the files, information and exhibits relating to the crime shall be surrendered by the requesting Party to the requested Party.</p>	<p style="text-align: center;">ARTICLE 5 EXTRADITION OF NATIONALS</p> <p>Extradition shall not be refused on the ground that the person sought is a citizen of the Requested State.</p>

	taken.	extradition is requested; x x x	(c) Notwithstanding paragraph 2 of this Article, the requested Party shall not be required to submit the case to its competent authorities for prosecution if the authorities have no jurisdiction.	
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Article 44 <i>Extradition</i>	PH – USA			
11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their	<p>ARTICLE 6 EXTRADITION OF NATIONALS</p> <p>Extradition shall not be refused on the ground that the person sought is a citizen of the Requested State.</p>			

proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects to ensure the efficiency of such prosecution.				
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Chapter IV: Article 44 (Extradition), para. 15

Article 44 Extradition	PH - AUSTRALIA	PH – CANADA	PH - CHINA	PH – HONG KONG SPECIAL ADMINISTRATIVE REGION
15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the	<p><i>Article 4</i> EXCEPTIONS TO EXTRADITION</p> <p>(b) Extradition shall not be granted in any of the following circumstances:</p> <p style="text-align: center;">x x x</p> <p>(b) if there are substantial grounds for believing that a</p>	<p><i>Article 3</i> MANDATORY REFUSAL OF EXTRADITION</p> <p>Extradition shall not be granted in any of the following circumstances:</p> <p style="text-align: center;">x x x</p> <p>4. When there are substantial grounds for</p>	<p>ARTICLE 4 MANDATORY GROUNDS FOR REFUSAL OF EXTRADITION</p> <p>1) The person sought shall not be extradited if the requested Party has substantial grounds for believing:</p> <p style="text-align: center;">x x x</p> <p>b. that the request for extradition is in fact made</p>	<p>ARTICLE 5 REFUSAL OF SURRENDER</p> <p>1. A person shall not be surrendered if the requested Party has substantial grounds for believing:</p> <p style="text-align: center;">x x x</p> <p>b) that the request for surrender (though</p>

<p>request would cause prejudice to that person's position for any one of these reasons.</p>	<p>request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political belief or that that person's position may be prejudiced for any of those reasons;</p> <p style="text-align: center;">x x x</p>	<p>believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political beliefs;</p> <p style="text-align: center;">x x x</p>	<p>for the purpose of prosecution or punishment on account of the person's race, religion, gender, nationality or political opinion; or</p> <p style="text-align: center;">x x x</p>	<p>purporting to be made on account of an offence for which surrender may be granted) is in fact made for the purpose of prosecution or punishment on account of race, religion, nationality or political opinions; or</p> <p style="text-align: center;">x x x</p>
<p style="text-align: center;">Article 44 <i>Extradition</i></p>	<p style="text-align: center;">PH – INDIA</p>	<p style="text-align: center;">PH – INDONESIA</p>	<p style="text-align: center;">PH – KOREA</p>	<p style="text-align: center;">PH - MICRONESIA</p>
<p>15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.</p>			<p style="text-align: center;">ARTICLE 3 Mandatory Refusal Of Extradition</p> <p>Extradition shall not be granted under this Treaty in any of the following circumstances:</p> <p style="text-align: center;">x x x</p> <p>1. when the requested Party has well-founded reasons to suppose that the request for extradition has been presented with a view to persecuting or punishing the person sought, by</p>	<p style="text-align: center;"><i>Article 3</i> EXCEPTIONS TO EXTRADITION</p> <p>b) Extradition shall not be granted in any of the following circumstances:</p> <p style="text-align: center;">x x x</p> <p>(1) If there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecution or punishing a person on account of that</p>

			reason of race, religion, nationality or political opinion, or that that person's position may be prejudiced for any of those reasons. The provision of this paragraph, however, shall not apply to the offences mentioned in subparagraphs (a), (b) and (c) of paragraph 1 of this Article.	person's race, religion, nationality or political belief or that person's position may be prejudiced for any of those reasons; x x x
Article 44 <i>Extradition</i>	PH – SPAIN	PH - SWITZERLAND	RP - THAILAND	RP – UNITED KINGDOM
15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.	<p>ARTICLE 3 Mandatory Refusal of Extradition</p> <p>a) Extradition shall not be granted in any of the following circumstances: x x x</p> <p>c) when there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the</p>	<p>ARTICLE 3 EXCEPTIONS TO EXTRADITION</p> <p>(1) Extradition shall not be granted in any of the following circumstances: x x x</p> <p>(1) there are substantial grounds for believing that a request for extradition for an ordinary criminal offense has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion,</p>		<p>ARTICLE 3 GROUNDS FOR REFUSAL</p> <p>Extradition under this Treaty shall be refused in any of the following cases: x x x</p> <p>(b) if the Requested State has substantial grounds for believing that the request for extradition has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin,</p>

	purpose of prosecuting or punishing a person on account of that person's race, religion, nationality or political beliefs; x x x	nationality or political belief or that the person's position may be prejudiced for any of those reasons; x x		political opinions, sex or status, or that that person's position may be prejudiced for any of those reasons; x x x
Article 44 <i>Extradition</i>	PH – USA			

Chapter IV: Article 44 (Extradition), para. 16

Article 44 <i>Extradition</i>	PH - AUSTRALIA	PH – CANADA	PH - CHINA	PH – HONG KONG SPECIAL ADMINISTRATIVE REGION
16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.				<p>ARTICLE 2 OFFENCES</p> <p>1. Surrender shall be granted for an offence coming within any of the following descriptions of offences insofar as it is according to the laws of both Parties punishable by imprisonment or other form of detention for more than one year, or by a more severe penalty: x x x</p> <p>(xiv) offences relating to</p>

				fiscal matters, taxes or duties, notwithstanding that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty or customs regulation of the same kind as the law of the requesting Party; x x x
Article 44 <i>Extradition</i>	PH – INDIA	PH – INDONESIA	PH – KOREA	PH - MICRONESIA
16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.	<p>Article 2 Extraditable Offences</p> <p>x x x</p> <p>2. An offence may be an extraditable offence notwithstanding that it relates to taxation or revenue or is one of a purely fiscal character.</p> <p>x x x</p>		<p>ARTICLE 2 Extraditable Offences</p> <p>x x x</p> <p>4. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, foreign exchange control or other revenue matter, extradition may not be refused on the ground that the law of the Requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs, or exchange regulation of the same kind as the law of the</p>	

			Requesting Party.	
Article 44 Extradition	PH – SPAIN	PH - SWITZERLAND	RP - THAILAND	RP – UNITED KINGDOM
16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.	<p>ARTICLE 2 Extraditable Offences</p> <p>x x x</p> <p>3. Subject to paragraph 1, an offence of a fiscal character is an extraditable offence.</p> <p>x x x</p>	<p>ARTICLE 3 EXCEPTIONS TO EXTRADITION</p> <p>x x x</p> <p>2. Extradition may be refused in any of the following circumstances if:</p> <p>1. the act for which extradition is requested violates provisions of law relating exclusively to currency policy, trade policy or economic policy or for acts which are intended exclusively to reduce taxes or duties;</p> <p>x x x</p>		
Article 44 Extradition	PH – USA			

Article 44 Extradition	PH - AUSTRALIA	PH – CANADA	PH - CHINA	PH – HONG KONG SPECIAL ADMINISTRATIVE REGION
<p>17. Before refusing extradition, the requested State shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.</p>	<p><i>Article 8</i> ADDITIONAL INFORMATION</p> <p>1. If the Requested State considers that the documentation furnished in support of a request for extradition is not sufficient in accordance with this Treaty and the laws of the Requested State to enable extradition to be granted, that State may request that additional information be furnished within such time as it specifies.</p> <p style="text-align: center;">x x x</p>	<p><i>Article 8</i> ADDITIONAL INFORMATION</p> <p>If the Requested State considers that the information furnished in support of the request for extradition of a person is not sufficient to fulfill the requirements of this Treaty, that State may request that additional information be furnished within such time as it specifies.</p>	<p>ARTICLE 11 ADDITIONAL INFORMATION</p> <p>(1) If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision pursuant to this Treaty, the latter Party shall request the necessary supplementary information and may fix a time limit for receipt thereof in accordance with its laws. Where duly requested by the requesting Party, the time limit may be extended for further fifteen days.</p> <p style="text-align: center;">x x x</p>	<p>ARTICLE 12 ADDITIONAL INFORMATION</p> <p>- If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision pursuant to this Agreement, the latter Party shall request the necessary supplementary information and may fix a time limit for receipt thereof</p> <p style="text-align: center;">. x x x</p>

Article 44 Extradition	PH – INDIA	PH – INDONESIA	PH – KOREA	PH - MICRONESIA
17. Before refusing extradition, the requested State shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.	<p>Article 8 Extradition Procedures</p> <p>x x x</p> <p>(6) If the Requested State considers that the evidence produced or information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within such time as the Requested State shall require.</p>		<p>ARTICLE 9 Additional Information</p> <p>a. If the Requested Party considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that Party may request that additional information be furnished within such time as it specifies.</p> <p>x x x</p>	<p>ARTICLE 7 ADDITIONAL INFORMATION</p> <p>(a) If the Requested State considers that the documentation furnished in support of a request for extradition is not sufficient in accordance with this Treaty and the laws of the Requested State to enable extradition to be granted, that State may request that additional information be furnished within such time as it specifies.</p> <p>x x x</p>

Article 44 Extradition	PH – SPAIN	PH - SWITZERLAND	RP - THAILAND	RP – UNITED KINGDOM
17. Before refusing extradition, the requested State shall, where appropriate, consult with the requesting State Party	<p>ARTICLE 8 Additional Information</p> <p>If the Requested State</p>	<p>ARTICLE 6 ADDITIONAL INFORMATION</p> <p>(e) If the Requested</p>		<p>ARTICLE 7 ADDITIONAL INFORMATION</p> <p>If the Requested State</p>

<p>to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.</p>	<p>considers that the information provided in support of the request for the extradition of a person is not sufficient to fulfill the requirements of this Treaty, that State may request that additional information be provided within such time as it specifies.</p>	<p>State considers that the documentation furnished in support of a request for extradition is not sufficient in accordance with this Treaty and the laws of the Requested State to enable extradition to be granted, that State may request that additional information be furnished within such time as it specifies.</p> <p style="text-align: center;">x x x</p>		<p>considers that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty and the laws of the Requested State to enable extradition to be granted, that State may request that additional information be furnished within such time as it specifies. Failure to comply with such requests within such time limits may result in the person's discharge. The fact that the person sought has been discharged from custody pursuant to this Article shall not prejudice the subsequent re-arrest and extradition of that person.</p>
<p>Article 44 <i>Extradition</i></p>	<p>PH – USA</p>			
<p>17. Before refusing extradition, the requested State shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide</p>	<p>ARTICLE 18 CONSULTATION</p> <p>The Department of Justice of the Republic of the Philippines and the Department of Justice of the United States of America may consult with</p>			

information relevant to its allegation.	each other directly in connection with the processing of individual cases and in furtherance of maintaining and improving procedures for the implementation of this Treaty.			
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Chapter IV: Article 45 (Transfer of Sentenced Persons)

Article 45 Transfer of Sentenced Persons	PH – CANADA	PH – CUBA	PH - HONG KONG SPECIAL ADMINISTRATIVE REGION	PH – THAILAND
45. States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.	<p>ARTICLE 4 SCOPE OF APPLICATION</p> <p>The application of this Treaty shall be subject to the following conditions, namely that:</p>	<p>ARTICLE 4 Conditions for Transfer</p> <p>A Sentenced Person may be transferred only on the following conditions:</p>	<p>ARTICLE 4 Conditions for Transfer</p> <p>A sentenced person may be transferred only on the following conditions:</p>	<p>ARTICLE 4 Scope of Application</p> <p>The application of this Treaty shall be subject to the following conditions, namely that:</p>

	(a) the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the receiving State or would constitute a criminal offence if committed on its territory;	- The conduct on account of which the Sentence has been imposed would constitute a criminal offense according to the law of the Receiving Party if it had been committed within the jurisdiction of its courts;	1. the conduct on account of which the sentence has been imposed would constitute a criminal offence according to the law of the receiving Party if it had been committed within the jurisdiction of its courts;	- the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the receiving State or would constitute a criminal offence if committed in its territory;
	(2) the sentenced person is a citizen of the receiving State;	- Where the Republic of the Philippines is the Receiving Party, the Sentenced Person is a citizen of the Philippines; - Where the Republic of Cuba is the Receiving Party, the Sentenced Person is a citizen of Cuba and is permanently domiciled in Cuba;	- where the Republic of the Philippines is the receiving Party, the sentenced person is a citizen of the Philippines; - where the Hong Kong Special Administrative Region is the receiving Party, the sentenced person is a permanent resident of, or has close ties with the Hong Kong Special Administrative Region;	2. the sentenced person is a national of the receiving State;
Article 45 Transfer of Sentenced Persons	PH – CANADA	PH – CUBA	PH - HONG KONG SPECIAL ADMINISTRATIVE REGION	PH – THAILAND
45. States Parties may				3. the sentenced

<p>consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.</p>				<p>person was not sentenced in respect of an offence:</p> <ul style="list-style-type: none"> • in the case of the Republic of the Philippines, <ul style="list-style-type: none"> - against the internal or external security of the State; or - against the President of the Republic of the Philippines, his spouse, or his sons or daughters. • in the case of the Kingdom of Thailand, <ul style="list-style-type: none"> - against the internal or external security of the State; - against the Monarch, his Consort or his sons or daughters; or - against legislation protecting national art treasures.
	<p>(3)the sentence imposed on the sentenced person is one of imprisonment or any other form of deprivation of liberty, including supervision in the community:</p>	<p>- The sentence imposed on the Sentenced Person is for a period of three (3) years or more of which at least one (1) year remains to be served at the time of the request for transfer;</p>	<p>- the sentence imposed on the sentenced person is for a period of 3 years or more of which at least one year remains to be served at the time of the request for transfer;</p>	<p>(d) the sentence imposed on the sentenced person is one of imprisonment, confinement or any other form of deprivation of liberty:</p>

	- for life;or			- for life;
				- for an indeterminate period on account of mental incapacity; or

Article 45 Transfer of Sentenced Persons	PH – CANADA	PH – CUBA	PH - HONG KONG SPECIAL ADMINISTRATIVE REGION	PH – THAILAND
45. States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.	- for a period or which at least one year remains to be served at the time of the request for transfer;			- for a period or which at least one year remains to be served at the time of the request for transfer
		- The Sentenced Person must be a national or		

		citizen of the recipient State, and in the case of Cuba, the sentenced person must have permanent residence in the said territory;		
	(4)a sentenced person may not be transferred unless he or she has served in the transferring State any minimum period of imprisonment, or any other form of deprivation of liberty stipulated by the law of the transferring State. In the case of the Republic of the Philippines, in the absence of any law on the matter, the minimum period will be one third (1/3) of the maximum period imposed by the court, or four years, whichever is less;			- a sentenced person may not be transferred unless he has served in the transferring State any minimum period of imprisonment, confinement or any other form of deprivation of liberty stipulated by the law of the transferring State. In the case of the Republic of the Philippines, in the absence of any law on the matter, the minimum period will be one third (1/3) of the maximum period imposed by the court, or four years, whichever is less;

Article 45 Transfer of Sentenced Persons	PH – CANADA	PH – CUBA	PH - HONG KONG SPECIAL ADMINISTRATIVE REGION	PH – THAILAND
	(5)the judgment is final and	- The judgement is final	5. the judgment is	6. the judgment is

	there are no other legal proceedings relating to the offence;	and no further proceedings relating to the offence are pending with the Transferring Party;	final and no further proceedings relating to the offence or any other offence are pending in the transferring Party;	final and no other legal proceedings relating to the offence or any other offence are pending in the transferring State;
	(6)the transferring and receiving States and the sentenced person all agree to the transfer. However, if either Party considers it necessary in view of his or her age or physical or mental condition, the sentenced person's consent may be given by a person entitled to act on his or her behalf;	- The Transferring and Receiving Parties and the Sentenced Person all agree to the transfer, provided that where either Party considers it necessary, the Sentenced Person's consent may be given by a person entitled to act on his behalf.	(f) the transferring and receiving Parties and the sentenced person all agree to the transfer, provided that where either Party considers it necessary, the sentenced person's consent may be given by a person entitled to act on his behalf.	7. the transferring and receiving States and the sentenced person all agree to the transfer; provided that, where in view of his age or physical or mental condition either Party considers it necessary, the sentenced person's consent may be given by a person entitled to act on his behalf;
				8. the transfer of the sentenced person does not prejudice either Party's sovereignty, security, public order, or other essential interests;
				9. a sentenced person may not be transferred unless he has made full payment of the fine, restitution of property, or compensation for damages according to the judgment of the court in the

				transferring State in a criminal case.
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Article 45 Transfer of Sentenced Persons	PH – SPAIN			
	<p>Article 4 Conditions for Transfer</p> <p>This Treaty shall be applied only on the following conditions:</p>			
	<p>2. if the acts or omissions on account of which the sentence has been imposed are punishable in the administering State, although the definition thereof may not be identical;</p>			
	<p>3. if the sentenced person is a national of the administering State at the time of the request for transfer;</p> <p>4. if the judgment is final and there are no</p>			

	other legal proceedings relating to the offense or any other offense is pending in the sentencing state;			
	4. if the transfer is consented to by the sentenced person or, in the event of incapacity, by his legal representative;			
	- if the part of the sentence still to be served at the time of the receipt of the request referred to in Article 6 is at least one year. In exceptional cases, as determined by both States, a request may be accepted even if part of the sentence still to be served is at least one (1) year.			
Article 45 Transfer of Sentenced Persons	PH – SPAIN			
	- if the sentenced person has satisfied payment of fines, court costs, civil			

	indemnities and/or pecuniary sanctions of all kinds for which he is liable under the terms of the sentence, or has provided sufficient security to ensure payment thereof to the satisfaction of the sentencing State, unless the sentenced person has been declared insolvent.			
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