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Agenda item 2

Review of implementation of the United Nations Convention against Corruption

Executive summary: Philippines

Note by the Secretariat

The present conference room paper is made available to the Implementation Review Group in accordance with paragraph 36 of the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption (Conference of the States Parties resolution 3/1, annex). The summary contained herein corresponds to a country review conducted in the second year of the first review cycle.



Executive summary

Philippines

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

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.

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.

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.

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 (arts. 15, 16, 18 and 21)

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.

The bribery of foreign public officials and officials of public international organizations is not criminalized.

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.

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

Money-laundering, concealment (arts. 23 and 24)

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.

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 (arts. 17, 19, 20 and 22)

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.

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

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 totalling 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.

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 (art. 25)

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 (art. 26)

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

Participation and attempt (art. 27)

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 (arts. 30 and 37)

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.

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.

While prosecutorial discretion in criminal cases, including plea bargaining, exists, there is insufficient evidence to assess the implementation of UNCAC article 30(3).

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.

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 (arts. 32 and 33)

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.

Further whistle-blower protection would be provided under Senate Bill 2860.

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

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.

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 (arts. 29 and 41)

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.

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 (art. 42)

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 (arts. 34 and 35)

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.

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 (arts. 36, 38 and 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.

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.

Cooperation with private sector institutions is addressed in AMLA, RA 6981 and the Laurel Law (RA 6036).

2.2. Successes and good practices

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

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 coordination 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

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 (arts. 44, 45 and 47)

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.

The Philippines has signed thirteen bilateral extradition treaties, three of which were not yet in force at the time of the review.

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.

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.

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.

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.

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.

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.

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 (art. 46)

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.

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 broad enough to cover UNCAC offences without regard to whether the crime was committed by natural or legal persons.

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.

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.

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.

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.

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.

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.

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.

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 (arts. 48, 49 and 50)

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.

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.

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.

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.

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

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

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 coordination, 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

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.