

Overall Score:

**71 - Moderate**

Legal Framework Score:

**91 - Very Strong**

Actual Implementation Score:

**54 - Very Weak**

Category I. Civil Society, Public Information and Media

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## I-1. <sup>68</sup>Civil Society Organizations

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### 1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

**YES** | NO

**Comments:**

It is a constitutional right of the citizens to form unions, associations, or societies for purposes not contrary to law" (Art III, Section 8). It is also a constitutional policy of the state to "encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation" (Art II, Section 23). The State shall respect the role of independent people's organizations to enable the people to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means. (Article XIII, Section 15). These constitutional provisions ensure the people's right to association and assembly.

However, there is no single codified law implementing this constitutional mandate. Rules and regulations regulating the sector are diffused in various enactments and codes including: Corporation Code, Cooperative Code, Labor Code, Local Government Code, Securities and Exchange Reorganization Act, Tax Code, Tariff and Customs Code, Rules of Court, and the New Civil Code.

**References:**

Article III, Section 8 of 1987 Philippine Constitution (Bill of Rights)  
Article II, Section 23 of 1987 Philippine Constitution (State Policies)  
Article XIII, Section 15 of 1987 Philippine Constitution  
[www.chanrobles.com](http://www.chanrobles.com)

**YES:** A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

**NO:** A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

**Comments:**

Anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

However, registration with the Securities and Exchange Commission (SEC) is necessary for CSOs to qualify as recipients of donations or to participate in government projects. CSOs who want to avail of financial assistance from their accrediting government agencies are required to enter into a Memorandum of Agreement (MOA) or a similar document with the latter.

According to Sarabia, there was an unsuccessful attempt in the past to prevent NGOs from receiving foreign funds.

**References:**

Civil Society in the Philippines: Struggling for Sustainability” by Isagani Serrano, in Civil Society in Asia, edited by Wayne Hudson (Griffith University, Australia) and David Schak for Ashgate (London and New York), 2003.

Interview with Anna Leah Sarabia, executive director, Women’s Media Circle Foundation Inc., Sept. 14, 2008, Mandaluyong City.

**YES:** A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

**NO:** A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

**Comments:**

In general, anti-corruption/good governance CSOs are not required to publicly disclose their sources of funding.

However, public disclosure of sources of funding is required from CSOs who are accepting donations. According to legal experts, nonprofit organizations (or CSOs) are obliged to regularly report and disclose information relative to the conduct of their activities to the appropriate regulatory and supervisory agencies.

**References:**

Cariño, Ledivina V. (ed.) *Between the State and the Market: The Nonprofit Sector and Civil Society in the Philippines*, 2002. Center for Leadership, Citizenship and Democracy, National College of Public Administration and Governance, University of the Philippines, Quezon City.

**YES:** A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

**NO:** A NO score is earned if no such public disclosure requirement exists.

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## 2. Are good governance/anti-corruption CSOs able to operate freely?

83

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

**Comments:**

Registration is not required for the existence of civil society organizations.

However, CSOs who wish to access funds need to register with the Securities and Exchange Commission. Accreditation is usually a requirement for specific state-sponsored program or project participation.

There is some burden for CSOs who wish to be accredited because as a general rule, to be accredited by the relevant government agency, a CSO must have integrity and a commitment to social issues, a reputation and acceptability to the community, adequate resources, technical capability, and a track record.

Some CSO practitioners do not agree with the idea of government accreditation because to them it is as if the CSOs are being guarded or watched. They think that CSOs should be treated as partners because they provide valuable services the government is not able to provide.

Because of the government's tendency for bureaucratic control, many CSOs prefer self-accreditation. Currently, there is a Philippine Council for NGO Certification (PCNC) that gives a CSO donee status" after a stringent review of qualifications. The Caucus of Development NGO Networks (CODE-NGO) has been trying to establish a Philippine NGO Accreditation Committee, a self-regulating mechanism independent of state intervention.

**References:**

Carol Lerma and Jessica Los Baños in *Between the State and the Market: The Nonprofit Sector and Civil Society in the Philippines*, Ledivina V. Cariño, editor, 2002. Center for Leadership, Citizenship and Democracy, National College of Public Administration and Governance, University of the Philippines, Quezon City.

Philippines Overview, Asia Pacific Philanthropy Consortium. <http://www.asiapacificphilanthropy.org/node/21>

Interview with Anna Leah Sarabia, executive director, Women's Media Circle Foundation Inc., Sept. 14, 2008, Mandaluyong City.

Interview with retired professor Connie Alaras, former chair of the UP Department of English and Comparative Literature, and chairperson Moral Recovery Officers Foundation (CSO Rep to the Multi-sectoral Anti-corruption Council [MSACC]), Sept. 15, 2008, Quezon City.

**100:** CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

**75:**

**50:** CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

**25:**

**0:** Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

**Comments:**

Activist and development CSOs and people's organizations, though still in the minority, are at the cutting edge of social change processes as they engage in activities that directly impact the larger society, according to Serrano. They usually band together into larger social coalitions and movements to leverage their influence on public policy and government practice.

Especially active in the political and policymaking process are advocacy or issue-oriented CSOs.

**References:**

Civil Society in the Philippines: Struggling for Sustainability" by Isagani Serrano, in Civil Society in Asia, edited by Wayne Hudson (Griffith University, Australia) and David Schak for Ashgate (London and New York), 2003.

Interview with Anna Leah Sarabia, executive director, Women's Media Circle Foundation Inc., Sept. 14, 2008, Mandaluyong City.

**100:** Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

**75:**

**50:** Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

**25:**

**0:** Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

**Comments:**

There are no documented cases of any CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues.

One major reason for CSOs closing down is funding. Many CSOs face the the challenge of financial sustainability.

**References:**

Interview with retired professor Connie Alaras, former chair of the UP Department of English and Comparative Literature, and chairperson Moral Recovery Officers Foundation (CSO Rep to the Multi-sectoral Anti-corruption Council [MSACC]), Sept. 15, 2008, Quezon City.

Interview with Anna Leah Sarabia, executive director, Women's Media Circle Foundation Inc., Sept. 14, 2008, Mandaluyong City.

**YES:** A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

**NO:** A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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### 3. Are civil society activists safe when working on corruption issues?

67

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

**Comments:**

There are no documented cases of CSO activists imprisoned because of their work covering corruption.

Mr. Mabunga said that based on the data of PAHRA, no arrest or imprisonment can be said to be mainly due to work on corruption. He said that it is difficult to categorize that the reason of imprisonment is work on corruption because one cannot be jailed for that. He added that activists in the Philippines advocate for multiple issues and most of the time anticorruption is one of them. Therefore, it is possible that one of the advocacies of those imprisoned is anticorruption, but again, it is not the main reason for arrest.

**References:**

Interview with retired professor Connie Alaras, former chair of the UP Department of English and Comparative Literature, and chairperson Moral Recovery Officers Foundation (CSO Rep to the Multi-sectoral Anti-corruption Council [MSACC]), Sept. 15, 2008, Quezon City.

Mr. Renato Mabunga, Secretary General, PAHRA (Philippine Alliance of Human Rights Advocates). Telephone interview, December 19, 2008.

**YES:** A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

**NO:** A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

**Comments:**

Some journalists who were arrested and handcuffed during the standoff at the Peninsula Manila hotel in Makati City on Nov. 29, 2007, are also members of CSOs, but they were not physically harmed.

Renato Mabunga, Secretary General of the Philippine Alliance of Human Rights Advocates (PAHRA) (Telephone Interview 19 December 2008) stated that "it is difficult to assume that the motive of assault or physical injury is mainly due to corruption investigation work, though it is not impossible that those physically harmed were advocating or working against corruption. He said that most cases of human rights violations he has come across or covered are torture cases of suspected New People Army members and not really journalists working on anti-corruption.

**References:**

Interview with retired professor Connie Alaras, former chair of the UP Department of English and Comparative Literature, and chairperson Moral Recovery Officers Foundation (CSO Rep to the Multi-sectoral Anti-corruption Council [MSACC]), Sept. 15, 2008, Quezon City.

**YES:** A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

**NO:** A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

**Comments:**

There were civil society activists killed in the past year, but it is not clear whether their deaths were directly related to their work on corruption issues. In the Philippines, civil society activists commonly work on a broad spectrum of issues including corruption.

**References:**

Interview with Renato Mabunga, secretary general of Philippine Alliance of Human Rights Advocates (PAHRA), Oct. 31, 2008.

**YES:** A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

**NO:** A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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#### 4. Can citizens organize into trade unions?

75

4a. In law, citizens have a right to organize into trade unions.

YES | NO

**Comments:**

It is a constitutional right of the citizens to form unions, associations, or societies for purposes not contrary to law.” (Article III, Section 8)

**References:**

Article III, Section 8 of 1987 Philippine Constitution (Bill of Rights)

**YES:** A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

**NO:** A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

**Comments:**

In October 2007, the Bureau of Labor Relations reported 128 registered labor federations and 15,428 private sector unions. There were 1,555 public sector unions, with a total membership of 324,068, or approximately 20 percent of the public sector work force.

Challenges faced by unions in the Philippines include killings, abductions, other attacks on labor leaders and supporters, and an increasing number of firms using contractual labor.

**References:**

Country Report on Philippine Human Rights Practices, 2007. Released by the Bureau of Democracy, Human Rights and Labor, US Department of State. March 11, 2008.

**100:** Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

**75:**

**50:** Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

**25:**

**0:** Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

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## I-2. Media

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### 5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

**YES** | NO

**Comments:**

No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.” (Article III, Section 4)

**References:**

1987 Philippine Constitution, Article III, Section 4 (Bill of Rights)

**YES:** A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

**NO:** A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.



YES | NO

**Comments:**

No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.” (Article III, Section 4)

The Philippines is also party to international covenants guaranteeing freedom of expression such as the UN General Assembly Resolution — International Covenant on Civil and Political Rights (ICCPR). It is a treaty ratified by over 150 countries, including the Philippines, which imposes formal legal obligations on state parties to respect its provisions and elaborates on many of the rights included in the Universal Declaration on Human Rights (UDHR). The ICCPR guarantees the right to freedom of expression: 1) Everyone shall have the right to freedom of opinion; 2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice. (Article 19 and Center for Media Freedom and Responsibility, pp 13-14)

**References:**

1987 Philippine Constitution, Article III, Section 4 (Bill of Rights)

Freedom of Expression and Media in the Philippines, part of a series of baseline studies on seven Southeast Asian countries by London-based Article 19 and the Manila-based Center for Media Freedom and Responsibility, 2005.

**YES:** A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

**NO:** A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

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## 6. Are citizens able to form print media entities?

94

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

**Comments:**

There is no formal requirement for the registration of print media. Print publications need only to register as business enterprises.

Formation is not much of a problem. Much of the challenge for sustainability stems from the distribution and sales of print materials.

**References:**

Interview with Anna Leah Sarabia, executive director, Women’s Media Circle Foundation Inc., Sept. 14, 2008, Mandaluyong City.

Phone interview with Jose Torres Jr., chairman of the National Union of Journalists of the Philippines and managing editor of GMA News.TV, Sept. 15, 2008, Quezon City.

**100:** Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

**75:**

**50:** Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

**25:**

**0:** Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

**YES** | NO

**Comments:**

There is no formal requirement for the registration or licensing of print media with the government. Print publications need only to register as business enterprises.

**References:**

Freedom of Expression and Media in the Philippines, part of a series of baseline studies on seven Southeast Asian countries by London-based Article 19 and the Manila-based Center for Media Freedom and Responsibility, 2005.

Phone interview with Jose Torres Jr., chairman of the National Union of Journalists of the Philippines and managing editor of GMA News.TV, Sept. 15, 2008, Quezon City.

**YES:** A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

**NO:** A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

**100** | 75 | 50 | 25 | 0

**Comments:**

There is no formal requirement for the registration or licensing of print media with the government. Print publications need only to register as business enterprises.

Business permits are obtained from city government covering the print media entity. The number of days it takes to secure permits varies from one city to another.

**References:**

Freedom of Expression and Media in the Philippines, part of a series of baseline studies on seven Southeast Asian countries by London-based Article 19 and the Manila-based Center for Media Freedom and Responsibility, 2005.

Phone interview with Jose Torres Jr., chairman of the National Union of Journalists of the Philippines and managing editor of GMA News TV, Sept. 15, 2008, Quezon City.

**100:** Licenses are not required or licenses can be obtained within two months.

**75:**

**50:** Licensing is required and takes more than two months. Some groups may be delayed up to six months.

**25:**

**0:** Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

There is no formal requirement for the registration or licensing of print media with the government. Print publications need only to register as business enterprises.

**References:**

Freedom of Expression and Media in the Philippines, part of a series of baseline studies on seven Southeast Asian countries by London-based Article 19 and the Manila-based Center for Media Freedom and Responsibility, 2005.

Phone interview with Jose Torres Jr., chairman of the National Union of Journalists of the Philippines and managing editor of GMA News TV, Sept. 15, 2008, Quezon City.

**100:** Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

**75:**

**50:** Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

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## 7. Are citizens able to form broadcast (radio and TV) media entities?

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | **50** | 25 | 0

**Comments:**

Pursuant to Republic Act No. 3846 (An Act Providing for the Regulation of Radio Stations and Radio Communications in the Philippines, 1963), specifically Section 1, No person, firm, company, association or corporation shall construct, install, establish or operate a radio station in the Philippine Islands without having first obtained a franchise from the Philippine Legislature. ... Likewise, under the National Telecommunications Commission's (NTC) rules/policy, as specified in Executive Order No. 546 (1979), a legislative franchise is a prerequisite for the grant of permits to operate or Certificate of Public Convenience and Necessity (CPCN) for the operation of radio and/or TV broadcast station."

The process for the grant of franchise follows the procedure of how a bill becomes a law in Congress. A House bill, which serves as the application for franchise, must be filed by any member of Congress seeking to grant an entity a franchise to construct, install, establish, operate and maintain a radio and/or TV station. Once the bill is filed, it is referred to the Committee on Legislative Franchises. The committee then advises the applicant-entity to submit documents to support the application. After compliance/submission of documentary requirements, the committee schedules a hearing to deliberate on the application. During committee hearings, presence of the principal officers of applicant-entity is required. If the committee finds the application meritorious, it is approved by the committee and a committee report is prepared and submitted to the Committee on Rules for plenary deliberation. After its approval on second (plenary deliberation) and third reading, the bill then is transmitted to the Senate for its consideration.

**References:**

Interview with Jose Ronald T. Ayad, secretary, Committee on Legislative Franchises, House of Representatives, Sept. 4, 2008.

Freedom of Expression and Media in the Philippines, part of a series of baseline studies on seven Southeast Asian countries by London-based Article 19 and the Manila-based Center for Media Freedom and Responsibility, 2005.

**100:** Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

**75:**

**50:** Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

**25:**

**0:** Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

**YES** | NO

**Comments:**

A broadcast media franchise application denied by the House can be introduced again. Also, once a franchise law is revoked, a

new application can be filed. In a sense, it is a reapplication and not an appeal.

If an existing franchise is revoked, owners can appeal through the courts as to the legality of such revocation. For example, the law granting franchise to one of the biggest broadcast networks in the Philippines, ABS-CBN, says that its franchise is subject to amendment, alteration or repeal by Congress when the public interest so requires (Section 14). As a check to the legislative branch, the courts can review its action if public interest requires the revocation of a granted broadcast media franchise.

**References:**

Republic Act No. 7966, An Act Granting the ABS-CBN Broadcasting Corporation a Franchise to Construct, Install, Operate and Maintain Television and Radio Broadcasting Stations in the Philippines, and For Other Purposes Approved, March 30, 1995.

**YES:** A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

**NO:** A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | **50** | 25 | 0

**Comments:**

For the House of Representatives, the average time before a franchise bill is approved is about two to three session months after the applicant has submitted/complied with the committee's documentary requirements.

After its approval in the House, the franchise bill is sent to the Senate for consideration. Going through the same process of deliberations, a franchise bill is approved after approximately six session months.

**References:**

Interview with Jose Ronald T. Ayad, secretary, Committee on Legislative Franchises, House of Representatives, Sept. 4, 2008.

**100:** Licenses are not required or licenses can be obtained within two months.

**75:**

**50:** Licensing is required and takes more than two months. Some groups may be delayed up to six months.

**25:**

**0:** Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

**Comments:**

Congress does not charge an application fee for a media franchise.

However the process of obtaining a franchise, may be long, costly and difficult. For instance, an entity seeking franchise approval must lobby Congress since the grant of the franchise follows the procedure for drafting a law. In order to expedite this long and time consuming process, congressional patrons are usually needed, and this can become prohibitive.

Further, equipment and maintenance costs make operating a broadcast station expensive, in some cases prohibitively so. In the Philippines, broadcast networks are capital-intensive and usually require wealthy proprietors to maintain them. Two examples are the largest broadcast networks: ABS-CBN, owned by the wealthy Lopez family; and GMA 7, owned by former Marcos cronies.

**References:**

Interview with Jose Ronald T. Ayad, secretary, Committee on Legislative Franchises, House of Representatives, Sept. 4, 2008.

Phone interview with Jose Torres Jr., chairman of the National Union of Journalists of the Philippines and managing editor of GMANews.TV, Sept. 15, 2008, Quezon City.

**100:** Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

**75:**

**50:** Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

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## 8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published on-line.

**Comments:**

The government does not prevent Internet users from accessing online content.

According to the latest statistics, Internet access in the Philippines has jumped to 14 million users. That is only 15 percent of the 92.5 million population, but it is a 600 percent jump from the usage in 2000.

Though government has regulatory powers over Internet use and content, in general, it encourages self-regulation by Internet service providers, some of whom have instituted measures precisely to protect minors from accessing pornography sites.

**References:**

E-mail interview with Cheche Lazaro, broadcast journalist and producer; member of board of advisers, Philippine Center for Investigative Journalism, Sept. 14, 2008.

Internet World Statistics. <http://www.internetworldstats.com/stats3.htm>

Freedom of Expression and Media in the Philippines, part of a series of baseline studies on seven Southeast Asian countries by London-based Article 19 and the Manila-based Center for Media Freedom and Responsibility, 2005.

**100:** The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

**75:**

**50:** Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

**25:**

**0:** Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

**Comments:**

There are no documented cases of government censoring citizens creating on-line content.

The Internet is very useful tool in the promotion of transparency and good governance in the Philippines. Many civil society organizations focused on anti-corruption and good governance maintain informative and interactive Web sites.

So far, the policy of the government is self-regulation by Internet service providers.

**References:**

Phone interview with Jose Torres Jr., chairman of the National Union of Journalists of the Philippines and managing editor of GMANews.TV, Sept. 15, 2008, Quezon City.

E-mail interview with Cheche Lazaro, broadcast journalist and producer; member of board of advisers, Philippine Center for Investigative Journalism, Sept. 14, 2008.

Is Internet Censorship Inevitable?" by Janette Toral, Jan. 1, 2008. <http://philippineinternetreview.blogspot.com/2008/01/is-internet-censorship-inevitable.html>

**100:** The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

**75:**

**50:** In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

**25:**

**0:** The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

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## 9. Are the media able to report on corruption?

83

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

**YES**

**NO**

### Comments:

It is legal to report accurate news even if it damages the reputation of a public figure.

However, libel remains a criminal offense in the Philippines. According to the Revised Penal Code, Libel is public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead." (Article 353)

The law says that "every defamatory imputation is presumed to be malicious, even if it be true, if no good intention and justifiable motive for making it is shown" except in the following cases: (1) A private communication made by any person to another in the performance of any legal, moral or social duty; and (2) A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions (Article 354).

In practice, media people are able to report news even if it damages the reputation of public figures, but many journalists and reporters are sued for libel.

### References:

Revised Penal Code of the Philippines. <http://www.chanrobles.com/revisedpenalcodeofthephilippinesbook2.htm>

Phone interview with Jose Torres Jr., chairman of the National Union of Journalists of the Philippines and managing editor of GMA News.TV, Sept. 15, 2008, Quezon City.

E-mail interview with Cheche Lazaro, broadcast journalist and producer; member of board of advisers, Philippine Center for Investigative Journalism, Sept. 14, 2008.

**YES:** A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

**NO:** A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.



9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

**Comments:**

Lazaro believes there are subtle attempts to dissuade media from covering corruption-related issues.

According to Torres, there is no official policy for self-censorship but it does happen, especially in government-owned media entities.

Literature says that press freedom is often compromised by the interference of owners who have interests to protect and who compel their editors and reporters to cover events from the perspective of those interests.” (Article 19 and Center for Media Freedom and Responsibility, p 27) According to Torres, there also are cases where the desk reporters are apprehensive in covering stories that are related to the interests of their editors and owners, thinking that their superiors will be displeased but in fact they would not.

**References:**

Freedom of Expression and Media in the Philippines, part of a series of baseline studies on seven Southeast Asian countries by London-based Article 19 and the Manila-based Center for Media Freedom and Responsibility, 2005.

Phone interview with Jose Torres Jr., chairman of the National Union of Journalists of the Philippines and managing editor of GMANews.TV, Sept. 15, 2008, Quezon City.

E-mail interview with Cheche Lazaro, broadcast journalist and producer; member of board of advisers, Philippine Center for Investigative Journalism, Sept. 14, 2008.

**100:** The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

**75:**

**50:** The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

**25:**

**0:** The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

**Comments:**

There is no policy or practice that shows that government prevents publication of controversial corruption-related material. If there are cases, they are rare and undocumented.

**References:**

Phone interview with Jose Torres Jr., chairman of the National Union of Journalists of the Philippines and managing editor of GMA News TV, Sept. 15, 2008, Quezon City.

**100:** The government never prevents publication of controversial corruption-related materials.

**75:**

**50:** The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

**25:**

**0:** The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

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## 10. Are the media credible sources of information?

70

10a. In law, print media companies are required to publicly disclose their ownership.

**YES** | NO

**Comments:**

The 1987 Constitution in the section on mass media states that mass media ownership must be solely and exclusively owned by Filipinos, and the SEC is charged with compliance with this provision. During the registration of Articles of Incorporation with the SEC, owners' or shareholders' identities and residences must be fully disclosed.

**References:**

Securities and Exchange Commission website, <http://www.sec.gov.ph/>

**YES:** A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

**NO:** A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

**YES** | NO

**Comments:**

In every franchise application, corporate papers such as SEC Articles of Incorporation are required to determine the applicants' identities.

**References:**

Interview with Jose Ronald T. Ayad, secretary, Committee on Legislative Franchises, House of Representatives, Sept. 4, 2008.

**YES:** A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

**NO:** A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | **50** | 25 | 0

**Comments:**

The National Union of Journalists of the Philippines has a Journalist's Code of Ethics covering its members. Most media organizations also have their own codes of ethics. According to Lazaro, there are sincere efforts by major Philippine media outlets to strictly enforce such codes.

Envelopmental Journalism" was coined to describe the practice by unscrupulous reporters of accepting money from politicians to give them a few inches of coverage in their news articles. It was during the same period when "tabloids" ceased to be newspapers with digested news reports and became a mongrel that hovered between pornographic publications and fortunetelling magazines. Sensationalism in the headlines became the rule of the era. <http://www.hotmanila.ph/media/money.htm>

Lately, however, there have been attempts by media to install custom codes of ethics in their organizations, like Maria Ressa at ABS-CBN News.

**References:**

Phone interview with Jose Torres Jr., chairman of the National Union of Journalists of the Philippines and managing editor of GMANews.TV, Sept. 15, 2008, Quezon City.

E-mail interview with Cheche Lazaro, broadcast journalist and producer; member of board of advisers, Philippine Center for Investigative Journalism, Sept. 14, 2008.

**100:** Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

**75:**

**50:** Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

**25:**

**0:** Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

**Comments:**

The Center for Media Freedom and Responsibility's monitoring of the media coverage of the May 2007 elections found noticeable improvements in the coverage of the senatorial and party-list elections compared to 2004.

Lazaro agrees: Election coverage has improved over the years. Today, there is more depth, perspective, history and context to stories that have come out compared to coverage in the past few elections."

Torres, on the other hand, believes that access is still not fair, mentioning cases of story-buying.

**References:**

Phone interview with Jose Torres Jr., chairman of the National Union of Journalists of the Philippines and managing editor of GMANews.TV, Sept. 15, 2008, Quezon City.

E-mail interview with Cheche Lazaro, broadcast journalist and producer; member of board of advisers, Philippine Center for Investigative Journalism, Sept. 14, 2008.

A Lean Harvest of Investigative Reports" by Center for Media Freedom and Responsibility. [http://cmfr.com.ph/pjrreports/2008/january/0108\\_story01.html](http://cmfr.com.ph/pjrreports/2008/january/0108_story01.html)

**100:** All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

**75:**

**50:** Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

**25:**

**0:** The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

**Comments:**

Access to media during elections is divided in two, according to Lazaro. First is paid advertising, which is guided by Comelec rules and applies to all candidates who can afford ads. Second is access to programs and print space as part of the regular work of media. In this mode, access may not be equal.

For example, Torres comments that it is almost impossible to see popular opposition candidates featured in programs of state-owned media channels.

**References:**

Phone interview with Jose Torres Jr., chairman of the National Union of Journalists of the Philippines and managing editor of GMA News TV, Sept. 15, 2008, Quezon City.

E-mail interview with Cheche Lazaro, broadcast journalist and producer; member of board of advisers, Philippine Center for Investigative Journalism, Sept. 14, 2008.

**100:** The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

**75:**

**50:** The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

**25:**

**0:** The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

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## 11. Are journalists safe when investigating corruption?

0

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES

NO

**Comments:**

On Jan. 22, 2008, Julito Ucab, a freelance writer and former radio commentator and program manager of dxBC in Butuan City was arrested and jailed in connection with a libel suit filed against him by a rape suspect four years ago. The court issued an alias warrant (which means he cannot post bail) because he failed to attend court hearings.

Alex Adonis, broadcaster at Bombo radyo, cited in the 2007 report, is still in jail. He was convicted of libel against Davao Rep. Prospero Nograles and paroled in early 2008. However, he's facing another libel case and is currently waiting for approval from BJMP to post bail.

According to the 2007 World Press Freedom Review, around 20 journalists were arrested for separate libel charges, detained for a few hours and were released after posting bail. The president's husband, Jose Miguel Arroyo, has filed 11 libel suits against 46 journalists since 2003.

On Jan. 25, 2008, the Supreme Court issued a circular that urges judges to impose fines instead of jail time for libel convictions.

**References:**

Journalist arrested, jailed on libel charge, by Cecilia Rodriguez, Mindanao Bureau. <http://www.google.com.ph/search?hl=tl&q=Julito+ucab+jail&meta=cr%3DcountryPH>

A second radio journalist jailed for defamation,” Reporters Without Borders press release, Jan. 31, 2008; [http://groups.google.com.ph/group/nujpnnews/browse\\_thread/thread/01b8601cff0d3da9](http://groups.google.com.ph/group/nujpnnews/browse_thread/thread/01b8601cff0d3da9)

Phone interview with Jose Torres Jr., chairman of the National Union of Journalists of the Philippines and managing editor of GMANews.TV, Sept. 15, 2008, Quezon City.

Philippines World Press Freedom Review by Maureen MacNeill, 2007; [http://www.freemedia.at/cms/ipi/freedom\\_detail.html?country=/KW0001/KW0005/KW0129/](http://www.freemedia.at/cms/ipi/freedom_detail.html?country=/KW0001/KW0005/KW0129/)

**YES:** A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

**NO:** A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist’s work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned” is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | **NO**

**Comments:**

On Nov. 29, 30 media people were arrested while they were covering the takeover of a hotel by a group led by a former military officer who is now a senator. The journalists were detained at the police camp in Bicutan, Taguig City, before being released a short time later after they were questioned and their identities confirmed.

The National Union of Journalists of the Philippines also records around 10 ambushes on journalists nationwide. Death threats are a common form of harassment.

**References:**

Philippines World Press Freedom Review” by Maureen MacNeill, 2007. [http://www.freemedia.at/cms/ipi/freedom\\_detail.html?country=/KW0001/KW0005/KW0129/](http://www.freemedia.at/cms/ipi/freedom_detail.html?country=/KW0001/KW0005/KW0129/)

CHR: Arrest of newsmen illegal, by Jocelyn Uy, Philippine Daily Inquirer, Sept. 2, 2008. <http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20080902-158141/CHR-Arrest-of-newsmen-illegal>

Phone interview with Jose Torres Jr., chairman of the National Union of Journalists of the Philippines and managing editor of GMANews.TV, Sept. 15, 2008, Quezon City.

**YES:** A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

**NO:** A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

**Comments:**

The killing of journalists is still the major threat to press freedom in the Philippines.

From June 2007 to June 2008, the National Union of Journalists of the Philippines records seven killings nationwide. There has been 96 killings since 1986, 60 of which were during the administration of President Arroyo.

Torres of the NUJP believes that some of the journalists who were killed might have been not only covering but also involved in the web of corruption. One of the reasons is poor remuneration of journalists. He said that 80 percent of provincial journalists do not have fixed monthly salaries or are contractual employees.

**References:**

Philippines World Press Freedom Review” by Maureen MacNeill, 2007. [http://www.freemedia.at/cms/ipi/freedom\\_detail.html?country=/KW0001/KW0005/KW0129/](http://www.freemedia.at/cms/ipi/freedom_detail.html?country=/KW0001/KW0005/KW0129/)

Phone interview with Jose Torres Jr., chairman of the National Union of Journalists of the Philippines and managing editor of GMANews.TV, Sept. 15, 2008, Quezon City.

E-mail interview with Cheche Lazaro, broadcast journalist and producer; member of board of advisers, Philippine Center for Investigative Journalism, Sept. 14, 2008.

**YES:** A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

**NO:** A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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72  
I-3. Public Access to Information

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12. Do citizens have a legal right of access to information?

67

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

**Comments:**

The right of the people to obtain information on matters of public concern is guaranteed in the Constitution: Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research

data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.” (Article III, Section 7)

The mandatory publication of laws is a means of implementing the right to information: “Also, all public officials and employees are under obligation to: (e) Make documents accessible to the public. – All public documents must be made accessible to, and readily available for inspection by, the public within reasonable working hours.” (Section of RA 6713).

However, the right to information and the corollary right of access to public records are, in the words of the Constitution, subject to such limitations as may be provided by law. Only matters of public concern are covered by these rights, stated the Supreme Court in 1973. In 1987 the court added that the right of access may not be extended to trade secrets or confidential commercial and financial information and matters of national security. The court noted and thus affirmed existing statutory limits on the right to public information such as information affecting national security; diplomatic correspondence relating to national security and national interest; matters pending decision; and confidential records of different branches of government.

Some experts believe that further legislation is required to prescribe the exact limitations within which the right may be exercised. For instance, with regard to confidential or classified information, who is authorized to make such classifications? What are the standards of such classification? Are such classifications subject to review by the courts? (Malaluan)

A Freedom of Information bill was approved in the House of Representatives last May. Its counterpart bill in the Senate is yet to be tackled in the Committee level.

#### References:

1987 Philippine Constitution, Article III, Section 7 (Bill of Rights)

Freedom of Expression and Media in the Philippines, part of a series of baseline studies on seven Southeast Asian countries by London-based Article 19 and the Manila-based Center for Media Freedom and Responsibility, 2005.

Republic Act No. 6713. Code of Conduct and Ethical Standards for Public Officials and Employees. <http://www.csc.gov.ph/cscweb/RA6713.html>

Democracy, Development and Access to Official Information in the Philippines” by Nepomuceno A. Malaluan of Action for Economic Reforms. Presented at the Conference on Freedom of Information and Civil Society in Asia, April 13-14, 2001. <http://foi-asia.org/Philippine/NMreport.html>

“Freedom of Information Act stalled in Senate,” by Purple S. Romero, Aug. 31, 2008. [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=5294&Itemid=88889051](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=5294&Itemid=88889051)

**YES:** A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

**NO:** A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

#### Comments:

The Philippine Supreme Court in the case of Legaspi vs CSC outlined the process by which the right to appeal may be exercised by the people. First, a request for information is addressed to the government agency having custody thereof. Such agency may not deny access to information, but may impose reasonable regulation as to the time and manner of the access. When access is denied, the government agency has the burden of showing that the information is not of public concern, or if it is, that it is exempted by law or some recognized limitation. The person to whom access was denied may seek judicial review of such denial, and in a proper case, the court may grant a writ of mandamus to compel access.

However, the judicial remedy of mandamus to compel access to information on matters of public concern does not ensure anything. Access to information needs to be immediate for it to be useful, but litigation takes time. When the court finally orders



the agency to release the information, its importance may have been rendered moot by supervening events. (Malaluan)

In the administrative level, there is a client feedback mechanism instituted by the Civil Service Commission called the Mamamayan Muna, Hindi Mamaya Na". This program is a nationwide client-satisfaction program which attempts to establish a culture in the public service recognizing the need to serve clients quickly, courteously and efficiently. If the cause of any delay is due to the nature of the information requested but to the inefficiency of the civil servants, citizens can use this grievance mechanism.

**References:**

Democracy, Development and Access to Official Information in the Philippines" by Nepomuceno A. Malaluan of Action for Economic Reforms. Presented at the Conference on Freedom of Information and Civil Society in Asia, April 13-14, 2001. <http://foi-asia.org/Philippine/NMreport.html>

Civil Service Commission Client Feedback Mechanism, <http://www.csc.gov.ph/cscweb/MMOUweb.html>

**YES:** A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

**NO:** A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

**Comments:**

Executive Order No. 265, signed in 2000, approves and adopts the Government Information Systems Plan (GISP) as framework and guide for all computerization efforts in government. This project aims to harness the full potential of information and communications technology to ensure wider public access to information and to deliver government services to the public more quickly and efficiently.

Since the opening of the 13th Congress, three bills have been filed in the House of Representatives. House Bill Nos. 784, 2123, and 2993, all of them entitled Freedom of Access to Information Act of 2004, promote comprehensive access to information. House bills 784 and 2993 both include a provision for certain types of information that should be exempted from the law, such as those involving matters of national security. HB 2123, meanwhile, seeks full disclosure of all official information and prohibits the withholding of information even on grounds of national security, public order and safety or when the information is specifically exempted from disclosure by any other statute, common law and international law principles, and pertinent jurisprudence. The bill seeks to simplify the limitations to the following: Except when it is clear that the purpose of the examination is to abet or promote or commit criminal acts defined and/or enumerated in existing statutes or to engage in sheer and idle curiosity."

The bills also require compliance within two to five working days except in unusual circumstances, such as when a request requires the examination of several separate records. The penalty for withholding a document would be a fine of not more than 20,000 pesos or imprisonment for between six months and six years.

These initiatives are hardly new, as similar measures have been filed before in Congress. In the 12th Congress, six bills on access to information were filed and later consolidated into one bill. That bill, HB 6771, however, remained pending with the Committee on Rules after the Committee on Public Information submitted its report. The Senate, for its part, filed four bills on access to information, all of them pending before the Committee on Public Information.

During the 11th Congress, Reps. Gerardo Espina and Harlin Abayon sponsored a similar bill, HB 8947, which was approved on its third reading. But the bill failed when a counterpart measure by Sen. Juan Flavio Velasco never got past the Committee on Public Information after the first reading.

All three bills filed in the House of Representatives of the current Congress are pending before the Committee on Public Information, where they were referred to after first reading. In the Senate, a counterpart SB 776 was filed by Sen. Manny Villar and another bill, SB 1112, was introduced by Sen. Franklin Drilon. Both are pending before that chamber's Committee on Public Information.

Through the GISP, infrastructure now allows citizens to inquire about basic government records such their social security contributions and loan status through text messages and the Internet. This mechanism is advantageous for citizens since it saves them a visit to the government agency, saving them time and money. However, there are limitations to this mechanism such as its inability to provide more complex or delicate information and the need for technological gadgets and know-how. Lacking these, citizens must go in person to the respective government agencies for the information they need.

Many advocates are pushing for a Freedom of Access to Information Law because of the absence of a uniform, simple and speedy access procedure. Widening Access to Information <http://www.i-site.ph/Focus/access-info.html>

**References:**

Government Information Systems Plan, <http://www.neda.gov.ph/ads/GISP/default.htm>

Government agencies hotlines, [http://www.gov.ph/faqs/hotlines\\_sms.asp](http://www.gov.ph/faqs/hotlines_sms.asp)

Government agencies e-services, <http://www.gov.ph/eservices/default.asp>

People's right to know upheld in Freedom of Information bill" by Ceres P. Doyo, Inquirer.net, Jan. 28, 2007. [http://newsinfo.inquirer.net/breakingnews/nation/view\\_article.php?article\\_id=46117](http://newsinfo.inquirer.net/breakingnews/nation/view_article.php?article_id=46117)

**YES:** A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

**NO:** A NO score is earned if there is no such formal mechanism or institution.

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### 13. Is the right of access to information effective?

50

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

**Comments:**

How fast information is obtained from the government depends on the type of information sought and the connections an individual has.

Most government agencies now provide electronic services to efficiently meet clients' basic requests. However, delicate information usually is more difficult to obtain. According to Malaluan, denial of access to information on matters of public concern in the Philippines remains widespread. The problem is more acute regarding information that is not part of government agencies' routine reports and publications. Requests for such documents, records and data from some government offices frequently are met with inaction, excuses, referrals or outright rejection.

Access to information, whether basic or more delicate, can be obtained more quickly if one is well-connected both individually and institutionally.

In past years, government agencies may be said to be generally cooperative in providing journalists information they need. But with the issuance of a memorandum order on Sept. 28, 2007, restricting the release of specific documents about the national broadband network to the Senate Blue Ribbon Committee, official government documents have become more difficult to obtain. An example is an experience by the Philippine Center for Investigative Journalism's: Agencies that had previously been accommodating of requests for information had suddenly shut their doors. One reporter commented that access to information has been restricted because of the intensity of attacks on the president.

Lazaro adds, I don't think records are uniformly available to all. Accessing information on politically sensitive information can be difficult even to practicing journalists."

**References:**

Democracy, Development and Access to Official Information in the Philippines” by Nepomuceno A. Malaluan of Action for Economic Reforms. Presented at the Conference on Freedom of Information and Civil Society in Asia, April 13-14, 2001. <http://foi-asia.org/Philippine/NMreport.html>

Government Agencies E-services, [www.gov.ph/eservices/default.asp](http://www.gov.ph/eservices/default.asp)

Freedom of Expression and Media in the Philippines, part of a series of baseline studies on seven Southeast Asian countries by London-based Article 19 and the Manila-based Center for Media Freedom and Responsibility, 2005.

“Gov’t curbs access to information amid senate scrutiny of project,” report by Philippine Center for Investigative Journalism, March 31, 2008. <http://www.pcij.org/stories/2008/access-to-info.html>

E-mail interview with Cheche Lazaro, broadcast journalist and producer; member of board of advisers, Philippine Center for Investigative Journalism, Sept. 14, 2008.

Interview with Anna Leah Sarabia, executive director, Women’s Media Circle Foundation Inc., Sept. 14, 2008, Mandaluyong City.

**100:** Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

**75:**

**50:** Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

**25:**

**0:** Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | **50** | 25 | 0

**Comments:**

Information such as census data can be obtained at a reasonable cost.

However, many government data are difficult to obtain. Documents such as socio-economic data and government contracts and policies are often fragmented and will require considerable time, effort and money to obtain.

Lazaro relates that there is no central file for government data. One has to piece data together from several sources.

One factor that adds to the cost of obtaining official government information is the number of time spent following up on the requested data. Requests go through channels, endorsed from one table to another. And if one is not persistent in following up, his or her request may be more difficult to trace.

Photocopying, if the data is voluminous, can also be costly.

**References:**

Democracy, Development and Access to Official Information in the Philippines” by Nepomuceno A. Malaluan of Action for Economic Reforms. Presented at the Conference on Freedom of Information and Civil Society in Asia, April 13-14, 2001. <http://foi-asia.org/Philippine/NMreport.html>

"Gov't curbs access to information amid senate scrutiny of project," report by Philippine Center for Investigative Journalism, March 31, 2008. <http://www.pcij.org/stories/2008/access-to-info.html>

E-mail interview with Cheche Lazaro, broadcast journalist and producer; member of board of advisers, Philippine Center for Investigative Journalism, Sept. 14, 2008.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | **50** | 25 | 0

**Comments:**

It depends on the type of information requested.

Census or personal information is easier to obtain than political information, which takes longer or sometimes cannot be obtained at all. Appeals that go through the courts take longer.

**References:**

Interview with Anna Leah Sarabia, executive director, Women's Media Circle Foundation Inc., Sept. 14, 2008, Mandaluyong City.

Phone interview with Jose Torres Jr., chairman of the National Union of Journalists of the Philippines and managing editor of GMA News TV, Sept. 15, 2008, Quezon City.

**100:** The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

**75:**

**50:** The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

The government gives legal assistance only for criminal cases, so if a citizen wishes to challenge an access to information case, he has to shoulder lawyer fees, which may be costly and burdensome.

Photocopying of materials also is costly.

**References:**

Phone interview with Jose Torres Jr., chairman of the National Union of Journalists of the Philippines and managing editor of GMA News TV, Sept. 15, 2008, Quezon City.

Phone interview with retired Judge Dolores España, chairwoman, Transparency International Philippines, Sept. 14, 2008.

**100:** In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

**75:**

**50:** In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

**25:**

**0:** The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

**Comments:**

In general, government gives reasons why it cannot provide the information requested. However, reasons are not always given formally or clearly.

In a recent report on access to government records, the Philippine Center for Investigative Journalism relates that when the center asked for a formal written response from the eight agencies that rejected their requests, only three of the agencies replied. All the responses invoked either the so-called confidential nature of the information requested, or simply, executive privilege.”

Although government agencies do not always explain, they often do give reasons, which many times are vague and unacceptable to the party requesting.

**References:**

Gov't curbs access to information amid senate scrutiny of project,” report by Philippine Center for Investigative Journalism, March 31, 2008. <http://www.pcij.org/stories/2008/access-to-info.html>

Phone interview with Jose Torres Jr., chairman of the National Union of Journalists of the Philippines and managing editor of GMA News TV, Sept. 15, 2008, Quezon City.

**100:** The government always discloses to the requestor the specific, formal reasons for denying information requests.

**75:**

**50:** The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

**25:**

**0:** The government does not regularly give reasons for denying an information request to the requestor.

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## Category II. Elections

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### II-1. <sup>59</sup>Voting & Citizen Participation

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#### 14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

**YES** | NO

**Comments:**

Section 1, Article V of the Philippine Constitution upholds the rights of all citizens to vote. Section 2 of Article V includes special provisions to enable and assist Filipinos working abroad, illiterate citizens and the disabled to vote. Section 196 of the Omnibus Election Code contain guidelines on the manner of voting for illiterates. Section 32 of COMELEC Resolution 7815 specifies that a special location will be assigned for disabled voters to make it easier for them to vote. RA 9189 provides the details of the overseas Filipinos voting system.

**References:**

Article V, 1987 Philippine Constitution  
Section 196, Omnibus Election Code  
COMELEC Resolution 7815  
Republic Act 9189

**YES:** A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

**NO:** A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

**References:**

Section 4, Article VI, 1987 Philippine Constitution  
Section 8, Article VI, 1987 Philippine Constitution  
Section 4, Article VII, 1987 Philippine Constitution  
Section 13, Article II, Omnibus Election Code  
Section 21, Article III, Omnibus Election Code  
Section 29, Article IV, Omnibus Election Code  
Section 36, Article V, Omnibus Election Code  
Section 37, Article VI, Omnibus Election Code

**YES:** A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

**NO:** A NO score is earned if no such framework exists.

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## 15. Can all citizens exercise their right to vote?

58

15a. In practice, all adult citizens can vote.

100 | 75 | **50** | 25 | 0

**Comments:**

There are two main obstacles that have hindered prospective voters from exercising their right to suffrage.

The first obstacle is the unclear and not widely disseminated rules on registration and voter lists. A report summarized the types of complaints the COMELEC hotline received during last year's barangay and SK elections:

- a. Voters were unable to find their precincts.
- b. People were not aware that they have to register first to be qualified to vote.
- c. People were not aware that they are deactivated from the voters' list if they have not voted for the past two national elections.
- d. Identity theft.

The second obstacle is the violence that mars Philippine elections. The COMELEC Consolidated Reports on Areas with Failure of Elections state that there were 370 barangays and 363 SK precincts with failed elections. The COMELEC blog reported 23 election-related deaths as of Oct. 28. These are alarming numbers considering that the seats contested are just for the barangay level and the youth representatives.

**References:**

eCOMELEC, Oct. 28, 2007, Barangay and SK elections 2007, <http://comelec.wordpress.com/2007/10/28/barangay-and-sk-elections-2007/>

COMELEC Consolidated Reports on Areas with Failure of Elections, Nov. 30, 2007. <http://comelec.wordpress.com/2007/11/30/comelec-resolution-no-8374/>

COMELEC Resolution 8374, Nov. 28, 2007. <http://comelec.wordpress.com/2007/11/30/comelec-resolution-no-8374/>

**100:** Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

**75:**

**50:** Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

**25:**

**0:** Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | **50** | 25 | 0

**Comments:**

The Hello Garci scandal demonstrated that ballots are not kept secret or are equivalently protected.

**References:**

<http://www.gmanews.tv/story/27477/Hello-Garci-scandal> Hello Garci scandal

<http://www.yehey.com/news/Article.aspx?id=164648>

**100:** Ballots are secret, or there is a functional equivalent protection, in all cases.

**75:**

**50:** Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

**25:**

**0:** Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | **75** | 50 | 25 | 0



**Comments:**

National elections have proceeded according to the schedule mandated in the law. However, the threat of charter change, which could extend terms of service by the national officials, is always present.

The October 2007 barangay and SK elections were delayed for two years. The previous local election was held in 2002, and RA 9164, passed that year, scheduled the next local elections for October 2005. But RA 9340, passed in 2005, amended that date to October 2007.

There have been five previous postponements to the barangay and SK elections already. The delays are caused by insufficiency of funds.

**References:**

Sen. Aquilino Pimentel Sr. press release, Sept. 16, 2007.

Delay in village, youth polls unconstitutional – Tanada,” by Delfin Mallari Jr., Philippine Daily Inquirer, Sept. 18, 2007. [http://newsinfo.inquirer.net/breakingnews/nation/view\\_article.php?article\\_id=89290](http://newsinfo.inquirer.net/breakingnews/nation/view_article.php?article_id=89290)

**100:** Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

**75:**

**50:** Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

**25:**

**0:** Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

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## 16. Are citizens able to participate equally in the political process?

80

16a. In law, all citizens have a right to form political parties.

YES

NO

**Comments:**

Although the Bill of Rights expressly states every Filipino’s right to association, political parties are subject to the registration and accreditation of the COMELEC under Section 60, Article VIII of the Omnibus Election Code.

**References:**

Section 8, Article III, 1987 Philippine Constitution  
Section 60, Article VII, Omnibus Election Code

**YES:** A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

**NO:** A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

**Comments:**

Article IX of the Election Omnibus Code sets out various qualifications for every elected position to be contested. Age, place of birth and length of residence are some of the determining factors for eligibility to run for public office. Literacy, property, gender, and ethnicity are not used as basis for eligibility of candidates.

**References:**

Article IX, Omnibus Election Code

**YES:** A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

**NO:** A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

**Comments:**

RA 7941 mandates the COMELEC to accredit those national, regional, sectoral parties or organizations or coalitions thereof belonging to marginalized and underrepresented sectors, organizations and parties, and who lack well-defined political constituencies but who could contribute to the formulation and enactment of appropriate legislation. These sectors include labor, peasant, fisherfolk, urban poor, indigenous cultural communities, elderly, handicapped, women, youth, veterans, overseas workers and professionals.”

Although by law, the party list system is meant to favor the marginalized, the results of the May 2007 elections and the composition of the 14th Congress show a different picture. Only 6 of the 17 party list groups who won seats in Congress fit the above description of representatives of the marginalized sectors. The rest of the party list groups represent elitist interests and are accused of getting their position with a mix of fraud, influence peddling, and heavy advertising.

Kontra Daya, a citizen monitoring group, raised suspicions that the Arroyo administration is manipulating the party list system by fielding administration-supported political parties. Among the many accusations against COMELEC during its accreditation period were:

- a. charge of unqualified party-list groups and unqualified nominees,
- b. offer to facilitate party-list accreditation for a fee,
- c. Malacañang meddling, and
- d. harassment of certain party-list groups.

Registration requirements are reasonable, which ensures that citizens can still form political parties with ease. But COMELEC Resolution 7819 shows that the political parties have to meet certain criteria set by the commission in order to maintain their accredited status. Their performance in the past two elections (a certain percentage of votes should be garnered), determines a party’s continued accreditation.

**References:**

The Traditional Politics of Some Party-List Groups” by the Center for People Empowerment in Governance, Vol. VII, No. 28, Aug. 19-25, 2007, <http://www.bulatlat.com/2007/08/traditional-politics-some-party-list-groups>

Bantay Eleksyon '07, People's Coalition to Monitor 2007 Elections, Report No. 2, May 11, 2007. <http://www.iper.org.ph/CER/bantayeleksyon2007/reports/reportno2-report.html>

**100:** While there is no guarantee of electoral success, political parties can form freely without opposition.

**75:**

**50:** Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

**25:**

**0:** Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | **50** | 25 | 0

**Comments:**

The exorbitant cost of running a political campaign ensures that average citizens are not able to run for political office. Based on the 2007 election expenditure report, the top 20 election expenditures total for the senatorial race ranged from 4.9 million to 121.58 million pesos.

There is one notable exception to this based on last year's elections. The present governor of Pampanga is a retired priest who had no prior experience in politics and who entered the campaign without a political machine. His campaign was supported by donations from Kapampangans and their relatives from abroad. He was able to win the campaign based on his charisma, his mass base (Catholic churchgoers), his idealism compared to his opponents, and the widespread disenchantment of Kapampangans with their previous leaders.

**References:**

Top Election Spenders, Newsbreak Online, Aug. 24, 2007, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=3683&Itemid=88889297](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=3683&Itemid=88889297)

Gov. Ed Panlilio is Inquirer's Filipino of the Year 2007," Philippine Daily Inquirer, Jan. 13, 2008. <http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20080113-111988/Gov-Ed-Panlilio-is-Inquirers-Filipino-of-the-Year-2007>

**100:** While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

**75:**

**50:** Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

**25:**

**0:** Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

**Comments:**

Congress has been a bastion of conservative politics and the political elite. There is no real, credible opposition except for party list representatives who have also now been infiltrated by administration candidates.

Congress remains the stronghold of traditional politics, now shored up by the increasing presence of certain elitist party list groups. This is a long way off the charter-based principle of guaranteeing the marginal sectors' representation in the lawmaking body.

There are some genuine opposition blocs such as Bayan Muna led by Satur Ocampo, Gabriela representative Liza Masa, and Anak Pawis sectoral representative Crispin Beltran, but they are not as powerful as the traditional blocs.

**References:**

The Traditional Politics of Some Party-List Groups” by the Center for People Empowerment in Governance, Vol. VII, No. 28, Aug. 19-25, 2007, <http://www.bulatlat.com/2007/08/traditional-politics-some-party-list-groups>

**100:** The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

**75:**

**50:** The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

**25:**

**0:** The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

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## II-2. Election Integrity

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18. Is the election monitoring agency effective?

50

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

**Comments:**

Article IX contains provisions for the constitutional commissions, the Commission on Elections being one of them. It expressly states the following unique characteristics: independent process of appointing of officials, fiscal autonomy and ability to formulate its own rules.

**References:**

Section 4, 5, and 6, Article IX, 1987 Philippine Constitution

**YES:** A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

**Comments:**

For the past year, there have been several openings in the leadership positions of the Commission on Elections. There have been Commissioner appointments and the COMELEC Chairman position was vacated in the last quarter of 2007. The appointees for commissioners are Moslemen Macarambon, Leonardo Leonida and Lucenito Tagle.

The appointments were met with criticism from civil society groups. This outrage was prompted because Leonida and Tagle were not even included in the list of names from both the presidential selection committee or the citizen search committee. Macarambon is accused of being a protegee of infamous former Commissioner Virgilio Garcillano.

The COMELEC chairmanship was vacated this year when Benjamin Abalos resigned due to corruption accusations and his involvement in an infrastructure/communication graft scandal. Former Supreme Court associate justice Jose Melo's appointment as COMELEC chairman was met with mixed reactions from opposition members and civil society.

The COMELEC chairman and commissioners are appointed by the president and vetted by the Commission on Appointments (CA). The CA is perceived to be politicized and therefore all appointees are viewed with suspicion by the public.

**References:**

COMELEC welcomes CA probe on new Commissioners," eCOMELEC, July 15, 2008, <http://comelec.wordpress.com/2008/07/15/comelec-welcomes-ca-probe-on-new-poll-commissioners/>

"Appointments, appointments," by Ramon Casiple, July 10, 2008, <http://moncasiple.wordpress.com/2008/07/10/appointments-appointments-2/>

"Roxas welcomes Melo's nomination," Inquirer.net, Jan. 26, 2008, <http://newsinfo.inquirer.net/breakingnews/nation/view/20080126-114991/Roxas-welcomes-Melos-nomination>

"Arroyo's actions on Esperon, Melo double whammy to Filipinos," by Veronica Uy, Inquirer.net, Jan. 26, 2008, <http://newsinfo.inquirer.net/breakingnews/nation/view/20080126-114990/Arroyos-actions-on-Esperon-Melo-double-whammy-to-Filipinos>

**100:** Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | **50** | 25 | 0

**Comments:**

The organizational structure of the Commission is as follows:

The Chairman is the Chief Executive of the Commission. Under him is the Executive Director (ED) whose duty is to implement policies and decisions and to take charge of the administrative affairs of the Commission. Assisting the Executive Director are two deputies: a Deputy Executive Director for Administration (DEDA) and a Deputy Executive Director for Operations (DEDO).

In the field, there are 16 regional election directors (RED), 79 provincial election supervisors (PES), 1,609 election officers (EO) and their staffs. The election officers are based in every city and municipality. Their main function is to supervise the conduct of electoral activities within their areas of responsibility as field representatives of the Commission."

In his speech delivered on reform in the COMELEC, Sarmiento highlights the following human resource needs:

"Capability-building/professionalization of the COMELEC will have two aspects: one, on appointment and professionalization: the other, on performance and management auditing of the COMELEC. The 2007 Electoral Reform Summit on Electoral Modernization held last December 5-7, 2007 recommended, among others, professionalization of COMELEC personnel, adopt qualification standards and return to CESO standards, set a clearer mindset to study modernization, punish cheating and cheaters within and outside COMELEC, workshops on management and planning training for Commissioners and Directors and formulation of qualification standards for Election Officers and Regional Directors. The putting up of an Election Management Academy similar to the Philippine Judicial Academy will go a long way in developing a competent, value-driven and committed electoral workforce."

**References:**

COMELEC Web site, Organizational Structure, <http://www.comelec.gov.ph/aboutus/structure.html>

Building the House of Electoral Reforms for 2010 and Beyond," by Rene Sarmiento, COMELEC commissioner, presented at the Electoral Forum for Reform for 2010 and Beyond, Feb. 27, 2008.

**100:** The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

**25:**

**0:** The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | **50** | 25 | 0

**Comments:**

Some of the reports that COMELEC are expected to make public:

- a. election results
- b. guidelines and resolutions regarding conduct of elections
- c. advisories (i.e. gun ban, liquor ban, deputizing PNP personnel)
- d. stance on various election-related issues (i.e. automated voting, ARMM elections)
- e. comprehensive reports on the previous elections with details on: election expenditures of candidates, election contributions to candidates, number of election-related casualties, areas with declared failure of elections, etc.

Because of the manual process of voting and counting of votes, election results in the Philippines are delayed. Most winners of the were proclaimed two days after the December 2007 special barangay and SK elections, although there are still several barangays which did not proclaim the winners.

The COMELEC, through both its Web site and blog, is punctual in its release of guidelines and resolutions to the public. This does not mean that their actions are timely, but it means that upon decision on matters, the COMELEC immediately posts the approved documents. The same goes for their advisories.

As for the comprehensive reports on the outcome of elections, the COMELEC's consolidated report regarding the outcome of the October 2007 barangay and SK elections was released to the public on Nov. 30.

Reports on the electoral expenditures of senatorial candidates during the May 2007 elections started making the rounds in the media by mid-August; based on the Omnibus Election Code, these reports are supposed to be submitted a month after the elections. This was because many senatorial candidates were delayed in submitting their statement of electoral expenditures.

In all, election reports are released to the public, but the schedule of release is not predictable.

**References:**

Majority of Barangay and SK special poll winners proclaimed," eCOMELEC, Dec. 17, 2007, <http://comelec.wordpress.com/2007/12/17/majority-of-barangay-and-sk-special-poll-winners-proclaimed/>

COMELEC Resolution No. 8374, eCOMELEC, Nov. 30, 2007, <http://comelec.wordpress.com/2007/11/30/comelec-resolution-no-8374/>

Election Contributions and Expenses of the Elected Senators in the 2007 Mid-Term Elections, Newsbreak Online, Sept. 5, 2007, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=3683&Itemid=88889297](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=3683&Itemid=88889297)

**100:** Reports are released to the public on a predictable schedule, without exceptions.

**75:**

**50:** Reports are released, but may be delayed, difficult to access, or otherwise limited.

**25:**

**0:** The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

**Comments:**

During the 2007 elections, many offenses went unchecked and the violators were never apprehended. Most notable is the brazen posting of campaign materials in any place the candidates deemed fit, as well as the excessive TV and radio political advertisements. COMELEC does not have the manpower and political will to apprehend and penalize the offenders.

In cases where COMELEC did impose penalty on certain candidates who violated election laws, the fine seems too insignificant to effectively deter candidates from committing such violations.

**References:**

Final Report on the 2007 Elections, Peoples' Coalition to Monitor the 2007 Elections, July 3, 2007, [www.iper.org.ph](http://www.iper.org.ph)

Top Election Spenders, Newsbreak, Aug. 24, 2007, [www.newsbreak.com.ph](http://www.newsbreak.com.ph)

**100:** When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

**75:**

**50:** The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

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## 19. Are elections systems transparent and effective?

71

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | **50** | 25 | 0

**Comments:**

The reports from the May 2007 elections estimate that hundreds of thousands of voters were disenfranchised. Among the causes were widespread irregularities in the certified voters list. Voters' names were missing or reassigned to different polling precincts.



Although some of the voters noticed these inaccuracies before the election and promptly reported them to COMELEC, nothing was done to correct the errors.

The COMELEC Web site does provide a primer on the voter registration process. RA 8189 was established to ensure accessibility of the registration process for prospective voters. However, the system seems to be fraught with inefficiencies. The public is not fully aware of the whole registration process. Many citizens also are not aware that they can be removed from the voters list if they have not voted for the past two national elections.

The COMELEC said the certified voters list has been cleansed and purged of over 1.3 million unqualified voters. However, complaints remained of names of dead people still active in the voters list.

**References:**

Voter turnout possibly lowest in six years,” by Avigail Olarte, The Daily PCIJ, May 15, 2007, <http://www.pcij.org/blog/?p=1695>

“A tale of three disenfranchised voters,” by Carmela Ledesma, The Daily PCIJ, May 15, 2007, <http://www.pcij.org/blog/?p=1686>

“Barangay & SK elections 2007,” eCOMELEC, Oct. 28, 2007, <http://comelec.wordpress.com/category/barangay-sk-elections-2007/page/3/>

**100:** There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

**75:**

**50:** There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

**25:**

**0:** The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost” voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

**YES** | **NO**

**References:**

Article VI Sec 17 and VII Sec 4 1987 Constitution

Article XX, Omnibus Election Code 1985, Batas Pambansa 881, [www.lawphil.net/statutes/batasbam](http://www.lawphil.net/statutes/batasbam)

**YES:** A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

**NO:** A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

**Comments:**

There have been instances when the courts overturned an election result. But the recount process often takes too long and the candidate can only assume office a few months before the next election comes up.

Any complaints of the citizens due to denial of suffrage or registration errors tend not to be acted upon by COMELEC.

**References:**

Waiting for election results,” by Isagani Cruz, Inquirer.net, May 19, 2007, [http://opinion.inquirer.net/inquireropinion/columns/view\\_article.php?article\\_id=66811](http://opinion.inquirer.net/inquireropinion/columns/view_article.php?article_id=66811)

“Galario to appeal COMELEC resolution on recall,” by Walter Balane, MindaNews, Aug. 18, 2007, [http://www.mindanews.com/index.php?option=com\\_content&task=view&id=4956](http://www.mindanews.com/index.php?option=com_content&task=view&id=4956)

**100:** The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

**75:**

**50:** The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

**25:**

**0:** The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

**Comments:**

In response to widespread allegations of police involvement in tampering with election results, President Arroyo instructed the military to assist in securing peace and order during the 2007 elections.

PNP reports claim that election-related violence went down for last year’s national elections. Yet despite these encouraging facts, civil society remain skeptical of military and police involvement during elections.

There were reports of military and police harassment of leftist party-list candidates and their supporters.

**References:**

Arroyo calls on military to help PNP stop poll violence,” by Juliet Labog- Javellana and Nikko Dizon, Inquirer.net, May 1, 2007, [http://newsinfo.inquirer.net/inquirerheadlines/nation/view\\_article.php?article\\_id=63361](http://newsinfo.inquirer.net/inquirerheadlines/nation/view_article.php?article_id=63361)

“Poll violence fewer this year than ’04 and ’01 – PNP,” GMA News.TV, July 4, 2007, <http://www.gmanews.tv/story/49533/Poll-violence-this-year-fewer-than-04-01—PNP>

"Election Fraud and Violence Exposed," Philippines Today, June 7, 2007, <http://www.philippinestoday.net/index.php?module=article&view=384>

"They Just Opened Fire," by Daisy Gomez, Bulatlat.com, May 23-29, 2007, <http://www.bulatlat.com/news/4-16/4-16-mindanao.html>

**100:** The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

**75:**

**50:** The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

**25:**

**0:** The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

**YES** | NO

**References:**

Batas Pambansa 881 Section 180, Article XV, Omnibus Election Code 1985 [www.lawphil.net/statutes/batasbam](http://www.lawphil.net/statutes/batasbam)

**YES:** A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

**NO:** A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

**100** | 75 | 50 | 25 | 0

**Comments:**

Citizen groups have always played a vital role in monitoring the election process in the Philippines.

An Internet search alone will show a number of incisive reports from local non-government organizations and international observers alike.

Reports from international observers at election 'hotspots' in the country included violence, cheating and harassment. Although their reports were far from flattering for the country's image, their opinions prove that they were able to see the election process without interference from government.

**References:**

Policy Study, Publication and Advocacy (PSPA), Center for People Empowerment in Governance (CenPEG), No. 01 / May 15, 2007, Election Turnout, Lowest in Years? [http://www.pcij.org/blog/wp-docs/CenPEG\\_initial\\_report\\_2007\\_elections.pdf](http://www.pcij.org/blog/wp-docs/CenPEG_initial_report_2007_elections.pdf)

Bantay Eleksyon 2007, People's Coalition to Monitor 2007 Elections, Report No. 3, 15 May 2007, Midterm Philippine Election Report, [http://www.pcij.org/blog/wp-docs/Bantay\\_Eleksyon\\_2007\\_Report\\_No.3.pdf](http://www.pcij.org/blog/wp-docs/Bantay_Eleksyon_2007_Report_No.3.pdf)

Bulatlat.com, Gill H. Boeringer, May-June 2007, Spectacle of a Problematic Election, <http://www.bulatlat.com/2007/05/spectacle-problematic-election>

**100:** Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

**75:**

**50:** Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

**25:**

**0:** Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

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## 17. Is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

**YES** | NO

**References:**

The Commission on Elections is an independent commission established by Part C, Article IX, 1987 Philippine Constitution

**YES:** A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

**NO:** A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

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## II-3. Political Financing

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### 20. Are there regulations governing the financing of political parties?

57

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

**Comments:**

Section 95 provides a list of individuals and organizations who are prohibited from making private contributions to individual candidates and political parties alike. The list pertains to individuals and organizations who hold significant interests in the form of contracts, franchises, or grants with the government.

The law restricts expenditures but not contributions to a political party.

**References:**

Section 95, Omnibus Election Code

**YES:** A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties, including prohibitions against foreign donations.

**NO:** A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to political parties.

YES | NO

**Comments:**

Article XI only sets out limits on expenditures of political candidates not individual contributions.

**References:**

Batas Pambansa 881 Article XI, Omnibus Election Code

**YES:** A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

**NO:** A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on corporate donations to political parties.

YES | NO

**Comments:**

Based on Article XI, limits are set only for campaign expenditures by candidates and parties, not for corporate contributions. However, the code prohibits contributions from corporations that have contracts, loans and franchises with government.

**References:**

Article XI, Omnibus Election Code

**YES:** A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

**NO:** A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | NO

**Comments:**

Section 101 set a limit of one peso and fifty centavos (Php 1.50) for every registered voter.

**References:**

Section 101, Article XI, Omnibus Election Code

**YES:** A YES score is earned if there are any limits in size on political party expenditures. A YES score is earned if all party expenditures are prohibited.

**NO:** A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for the disclosure of donations to political parties.

YES | NO

**Comments:**

The treasurer of the political party is required to file a statement of all contributions and expenditures incurred a week before the

day of the elections. A follow-up statement is required from the treasurer 30 days after the day of the election detailing expenses incurred not included in the prior statement.

**References:**

Section 107, Article XI, Omnibus Election Code

**YES:** A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

**NO:** A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances and expenditures of political parties.

YES | **NO**

**Comments:**

The party treasurer has the sole responsibility for recording and accounting finances of the political party.

**References:**

Section 105 and 106, Omnibus Election Code

**YES:** A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures or if such requirements exist but allow for parties to self-audit.

20g. In law, there is an agency or entity that monitors the financing of political parties.

**YES** | NO

**Comments:**

The constitution mandates the Commission on Elections to oversee every aspect of Philippine elections. COMELEC is specifically tasked to note funding from foreigners or foreign agencies. The commission is also responsible for giving recommendations to Congress on how to curb campaign spending and minimize all forms of campaign fraud.

**References:**

Part C, Article IX, 1987 Philippine Constitution

**YES:** A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is

ineffective in practice.

**NO:** A NO score is earned if there is no such agency or entity.

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## 21. Are there regulations governing the financing of individual political candidates?

50

21a. In law, there are regulations governing private contributions to individual political candidates.

**YES** | NO

**Comments:**

Section 95 provides a list of individuals and organizations who are prohibited from making private contributions to individual candidates and political parties alike. The list pertains to individuals and organizations who hold significant interests in the form of contracts, franchises or grants with the government.

**References:**

Section 95, Omnibus Election Code

**YES:** A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to individual political candidates, including prohibitions against foreign donations.

**NO:** A NO score is earned if there is no regulation of private contributions to individual political candidates.

21b. In law, there are limits on individual donations to political candidates.

YES | **NO**

**Comments:**

Article XI only sets out limits on expenditures of political candidates, not individual contributions.

**References:**

Article XI, Omnibus Election Code

**YES:** A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

**NO:** A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.



21c. In law, there are limits on corporate donations to individual political candidates.

YES | **NO**

**Comments:**

Based on Article XI, limits are only set for campaign expenditures of candidates and political parties, not for corporate contributions.

**References:**

Article XI, Omnibus Election Code

**YES:** A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

**NO:** A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21d. In law, there are requirements for the disclosure of donations to individual political candidates.

**YES** | NO

**Comments:**

The candidate is required to file a statement of all contributions and expenditures incurred a week before the day of the elections. A follow-up statement is required from the candidate 30 days after the day of the election detailing contributions and expenses incurred not included in the prior statement.

**References:**

Section 107, Article XI, Omnibus Election Code

**YES:** A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

**NO:** A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

21e. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates.

YES | **NO**

**Comments:**

The candidate or authorized representative of the candidate has the sole responsibility for recording and accounting of the campaign finances of individual political candidates.

**References:**

Section 105 and 106, Article XI, Omnibus Election Code

**YES:** A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures or if such requirements exist but allow for candidates to self-audit.

21f. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | NO

**Comments:**

The constitution mandates the Commission on Elections to oversee every aspect of Philippine elections. COMELEC is specifically tasked to note funding from foreigners or foreign agencies. The commission is also responsible for giving recommendations to Congress on how to curb campaign spending and minimize campaign fraud.

**References:**

Part C, Article IX, 1987 Philippine Constitution

**YES:** A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

**NO:** A NO score is earned if there is no such agency or entity.

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## 22. Are the regulations governing the political financing of parties effective?

0

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

**Comments:**

There are no such limits. News articles on campaign contributions show that the amount of individual donations to candidates and to parties has reached up to 10 million pesos per donor.

Elections often are won based on who has the most money, and the more the candidate spends, the greater his chances of winning. For instance, for the 2010 presidential elections the two candidates who have independent financing, Sen. Mar Roxas and Manny Villar, are believed to have the greatest chances of winning.

**References:**

Legarda is Top Campaign Fund Raiser, by Jesus Llanto, Newsbreak Online, Sept. 4, 2007, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=3682&Itemid=88889004](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=3682&Itemid=88889004)

Election Contributions and Expenses of the Elected Senators in the 2007 Mid-Term Elections, Newsbreak Online, September 2007, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=3683&Itemid=88889297](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=3683&Itemid=88889297)

Top Election Spenders, Newsbreak Online, August 2007, [http://www.newsbreak.com.ph/index.php?option=com\\_content&task=view&id=3637&Itemid=88889004](http://www.newsbreak.com.ph/index.php?option=com_content&task=view&id=3637&Itemid=88889004)

**100:** Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

**75:**

**50:** Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

100 | 75 | 50 | 25 | 0

**Comments:**

There are no such limits.

**References:**

Legarda is Top Campaign Fund Raiser, by Jesus Llanto, Newsbreak Online, Sept. 4, 2007, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=3682&Itemid=88889004](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=3682&Itemid=88889004)

Election Contributions and Expenses of the Elected Senators in the 2007 Mid-Term Elections, Newsbreak Online, September 2007, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=3683&Itemid=88889297](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=3683&Itemid=88889297)

**100:** Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

**75:**

**50:** Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

**Comments:**

There are reports that candidates and parties during the campaign have exceeded their limits on spending for advertising. But these candidates were not prosecuted for such offenses.

**References:**

Legarda is Top Campaign Fund Raiser, by Jesus Llanto, Newsbreak Online, Sept. 4, 2007, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=3682&Itemid=88889004](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=3682&Itemid=88889004)

Hey, big (election) spenders, by Dan Mariano, The Manila Times, Feb. 2, 2007, <http://www.manilatimes.net/national/2007/may/18/yehey/opinion/20070518opi2.html>

**100:** Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

**75:**

**50:** Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

**Comments:**

There have been numerous cases of candidates exceeding spending limits during the campaign period, but no case has been filed by COMELEC. This could be because of lack of funds and manpower to conduct investigations and pursue a case against these candidates.

**References:**

Hey, big (election) spenders, by Dan Mariano, The Manila Times, Feb. 2, 2007, <http://www.manilatimes.net/national/2007/may/18/yehey/opinion/20070518opi2.html>

Building the House of Electoral Reforms for 2010 and Beyond,” by Rene Sarmiento, COMELEC commissioner, presented at the Electoral Forum for Reform for 2010 and Beyond, Feb. 27, 2008.

**100:** The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties. The agency is fair in its application of this power.

**75:**

**50:** The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

**Comments:**

The COMELEC does not have the manpower nor the resources to conduct investigations and consequently enforce penalties on offenders.

On cases in which COMELEC does impose penalties, the amount or fine is too minimal to effectively deter candidates from committing violations.

**References:**

Legarda is Top Campaign Fund Raiser, by Jesus Llanto, Newsbreak Online, Sept. 4, 2007, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=3682&Itemid=88889004](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=3682&Itemid=88889004)

Hey, big (election) spenders, by Dan Mariano, The Manila Times, Feb. 2, 2007, <http://www.manilatimes.net/national/2007/may/18/yehey/opinion/20070518opi2.html>

**100:** When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

**75:**

**50:** The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

The Omnibus Election Code states that the responsibility for accounting campaign finances rests on the individual candidates or the party treasurer. Even if disclosure of campaign expenditures and contributions are required from the parties and the candidates, the COMELEC's role has been historically for documentation and filing only.

**References:**

Hey, big (election) spenders, by Dan Mariano, The Manila Times, Feb. 2, 2007, <http://www.manilatimes.net/national/2007/may/18/yehey/opinion/20070518opi2.html>

The Report of the 2007 Elections, Bantay Eleksyon, People's Coalition to Monitor the 2007 Elections, July 3, 2007, <http://www.iper.org.ph/CER/bantayeleksyon2007/reports/final-report-07-election.html>

**100:** Political party finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

**75:**

**50:** Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

**25:**

**0:** Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

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## 23. Are the regulations governing the political financing of individual candidates effective?

0

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

**Comments:**

There are no such limits.

**References:**

Legarda is Top Campaign Fund Raiser, by Jesus Llanto, Newsbreak Online, Sept. 4, 2007, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=3682&Itemid=88889004](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=3682&Itemid=88889004)

Election Contributions and Expenses of the Elected Senators in the 2007 Mid-Term Elections, Newsbreak Online, September 2007, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=3683&Itemid=88889297](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=3683&Itemid=88889297)

**100:** Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

**75:**

**50:** Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

**Comments:**

There are no such limits.

**References:**

Legarda is Top Campaign Fund Raiser, by Jesus Llanto, Newsbreak Online, Sept. 4, 2007, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=3682&Itemid=88889004](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=3682&Itemid=88889004)

Election Contributions and Expenses of the Elected Senators in the 2007 Mid-Term Elections, Newsbreak Online, September 2007, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=3683&Itemid=88889297](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=3683&Itemid=88889297)

**100:** Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

**75:**

**50:** Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

**25:**

**0:** Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

The COMELEC does not have the manpower nor the resources to conduct investigations and consequently enforce penalties on offenders.

**References:**

Hey, big (election) spenders, by Dan Mariano, The Manila Times, Feb. 2, 2007, <http://www.manilatimes.net/national/2007/may/18/yehey/opinion/20070518opi2.html>

Building the House of Electoral Reforms for 2010 and Beyond," by Rene Sarmiento, COMELEC commissioner, presented at the Electoral Forum for Reform for 2010 and Beyond, Feb. 27, 2008.

The Report of the 2007 Elections, Bantay Eleksyon, People's Coalition to Monitor the 2007 Elections, July 3, 2007, <http://www.iper.org.ph/CER/bantayeleksyon2007/reports/final-report-07-election.html>

**100:** The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns. The agency is fair in its application of this power.

**75:**

**50:** The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0



**Comments:**

The COMELEC does not have the manpower nor the resources to conduct investigations and consequently enforce penalties on offenders.

On cases that COMELEC does impose penalties, the amount or fine is too minimal to be effective in affecting behavior of candidates.

**References:**

Legarda is Top Campaign Fund Raiser, by Jesus Llanto, Newsbreak Online, Sept. 4, 2007, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=3682&Itemid=88889004](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=3682&Itemid=88889004)

Hey, big (election) spenders, by Dan Mariano, The Manila Times, Feb. 2, 2007, <http://www.manilatimes.net/national/2007/may/18/yehey/opinion/20070518opi2.html>

**100:** When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

**75:**

**50:** The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

Based on the Omnibus Election Code, the responsibility for accounting campaign finances rests on the candidate or the treasurer of the political party. Even if disclosure of campaign expenditures and contributions are required from the parties and the candidates, the COMELEC's role has been historically for documentation and filing only.

**References:**

Hey, big (election) spenders, by Dan Mariano, The Manila Times, Feb. 2, 2007, <http://www.manilatimes.net/national/2007/may/18/yehey/opinion/20070518opi2.html>

The Report of the 2007 Elections, Bantay Eleksyon, People's Coalition to Monitor the 2007 Elections, July 3, 2007, <http://www.iper.org.ph/CER/bantayeleksyon2007/reports/final-report-07-election.html>

**100:** The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices.

**75:**

**50:** The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

**25:**

**0:** The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

## 24. Can citizens access records related to the financing of political parties?

17

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

### Comments:

Article XI of the Omnibus Election Code requires political parties and individual candidates to provide a statement of their campaign expenditures and contributions one week before the elections and 30 days after the date of elections.

Checking the Web sites of the two main political parties that contested the 2007 senatorial elections, there was no public disclosure of their campaign expenditures.

Citizen groups, however, have been very vigilant in estimating campaign expenditures of the candidates. This has been the only way to exact some form of accountability on the candidates and parties. News reports and citizen group policy studies have alerted the public whenever candidates and parties are exceeding the limits set by COMELEC. These are the only times that candidates and parties answer to the public.

Nonetheless, COMELEC admits that it has neither the manpower nor the resources to investigate and penalize violators.

### References:

Hey, big (election) spenders, by Dan Mariano, The Manila Times, Feb. 2, 2007, <http://www.manilatimes.net/national/2007/may/18/yehey/opinion/20070518opi2.html>

The Report of the 2007 Elections, Bantay Eleksyon, People's Coalition to Monitor the 2007 Elections, July 3, 2007, <http://www.iper.org.ph/CER/bantayeleksyon2007/reports/final-report-07-election.html>

**100:** Political parties disclose their sources of funding and expenditures at least every quarter.

**75:**

**50:** Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

**25:**

**0:** Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

The Omnibus Election Code specifies that financial records should be submitted to COMELEC and will be treated as public documents. Hence, citizens are supposed to have access to these documents. However, Section 270 only provides information on the payment for the type of document, not how long the processing and release of the documents will take.

The most reliable campaign finance information comes from media sources. Citizen watchdogs monitor TV ads by individual candidates and political parties to estimate total expenditures. A news article detailing total campaign contributions and expenditures of the senatorial candidates from COMELEC was published in September, around four months after the election date.

**References:**

The Report of the 2007 Elections, Bantay Eleksyon, People's Coalition to Monitor the 2007 Elections, July 3, 2007, <http://www.iper.org.ph/CER/bantayeleksyon2007/reports/final-report-07-election.html>

Legarda is Top Campaign Fund Raiser, by Jesus Llanto, Newsbreak Online, Sept. 4, 2007, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=3682&Itemid=88889004](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=3682&Itemid=88889004)

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take two to four weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Section 270 of the Omnibus Election Code states that records can be accessed by the public for minimal costs (2 pesos per page).

In practice, citizens get their information on campaign spending and contributions from media sources. Journalists have to go to the Commission on Elections office to access the records.

**References:**

Bantay Eleksyon '07, People Coalition to Monitor 2007 Elections, Report No. 2, May 11 2007, <http://www.iper.org.ph/CER/bantayeleksyon2007/reports/reportno2-report.html>

Legarda is Top Campaign Fund Raiser, by Jesus Llanto, Newsbreak Online, Sept. 4, 2007, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=3682&Itemid=88889004](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=3682&Itemid=88889004)

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## 25. Can citizens access records related to the financing of individual candidates' campaigns?

25

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | **25** | 0

### Comments:

Article XI of the Omnibus Election Code requires political parties and individual candidates to provide a statement of their campaign expenditures and contributions one week before the elections and 30 days after the date of elections.

Some 2007 senatorial candidates filed their reports to COMELEC after the deadline of June 29.

Citizen groups, however, have been very vigilant in estimating campaign expenditures of the candidates. This has been the only way to exact some form of accountability on the candidates and parties. News reports and citizen group policy studies have alerted the public whenever candidates and parties are exceeding the limits set by COMELEC. These are the only times that candidates and parties answer to the public.

Despite being alerted to possible violations, COMELEC admits that it has neither the manpower nor the resources to investigate and penalize violators.

### References:

Legarda is Top Campaign Fund Raiser, by Jesus Llanto, Newsbreak Online, Sept. 4, 2007, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=3682&Itemid=88889004](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=3682&Itemid=88889004)

Hey, big (election) spenders, by Dan Mariano, The Manila Times, Feb. 2, 2007, <http://www.manilatimes.net/national/2007/may/18/yehey/opinion/20070518opi2.html>

**100:** Individual candidates disclose their sources of funding and expenditures at least every quarter.

**75:**

**50:** Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

**25:**

**0:** Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | **0**

**Comments:**

The Omnibus Election Code specify that financial records should be submitted to COMELEC and will be treated as public documents. Hence, citizens are supposed to have access to these documents. However, Section 270 only provides information on the payment for the type of document requested, not how long the processing and release of the documents will take.

The most reliable campaign finance information comes from media sources. Citizen watchdogs monitor TV ads by individual candidates and political parties to estimate total expenditures. A news article detailing total campaign contributions and expenditures of the senatorial candidates from COMELEC was published in September, around four months after the election date.

**References:**

Bantay Eleksyon '07, People Coalition to Monitor 2007 Elections, Report No. 2, May 11, 2007, <http://www.iper.org.ph/CER/bantayeleksyon2007/reports/reportno2-report.html>

Legarda is Top Campaign Fund Raiser, by Jesus Llanto, Newsbreak Online, Sept. 4, 2007, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=3682&Itemid=88889004](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=3682&Itemid=88889004)

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take two to four weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | **50** | 25 | 0

**Comments:**

Section 270 of the Omnibus Election Code states that records can be accessed by the public for minimal costs (2 pesos per page).

In practice, citizens get their information on campaign spending and contributions from media sources. Journalists trying to access this information will have to go to the Commission on Elections office to get their copies.

**References:**

Bantay Eleksyon '07, People Coalition to Monitor 2007 Elections, 11 May 2007, Report No. 2, <http://www.iper.org.ph/CER/bantayeleksyon2007/reports/reportno2-report.html>

Newsbreak Online, Jesus Llanto, Legarda is Top Campaign Fund Raiser, 4 September 2007, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=3682&Itemid=88889004](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=3682&Itemid=88889004)

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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### Category III. Government Accountability

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#### III-1. <sup>70</sup>Executive Accountability

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27. Can the chief executive be held accountable for his/her actions?

56

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | **50** | 25 | 0

**Comments:**

The chief executive should ideally just be implementing policies legislated by members of Congress. Nonetheless, President Arroyo does give public announcements regarding issues like reproductive health, anti-corruption, and disease outbreaks.

The president does respond to sensitive issues like allegations of corruption in her administration. She will even establish task forces for investigations if necessary.

Despite public projection of openness, the president will still sign executive orders and memorandum circulars that prevent her Cabinet members from testifying in Congress. In the recent ZTE-NBN Senate hearings, former National Economic and Development Agency chief Romulo Neri invoked executive privilege and refused to answer several questions. Section III of Executive Order 464 states that all public officials shall secure prior consent of the President prior to appearing before either House of Congress.”

**References:**

Interview with attorney Antonio Jamon, faculty at the College of Law, University of the Philippines, Pasig City, Sept. 11, 2008.

Senators seek time on compromise over Neri appearance,” by Evangeline de Vera, Malaya News, March 5, 2008, [www.malaya.com.ph/mar05/news2.htm](http://www.malaya.com.ph/mar05/news2.htm)

**100:** The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

**75:**

**50:** The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

**25:**

**0:** The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

**Comments:**

The judiciary has the power to review resolutions, orders and other executive decisions if a formal complaint is lodged in the courts.

However, in cases where there is demand that the president be removed from office as a consequence of his/her actions, only the House of Representatives can initiate the impeachment case.

**References:**

Section 1, Article VIII, Philippine Constitution

Section 2 and 3, Article XI, Philippine Constitution

**YES:** A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

**NO:** A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

**Comments:**

The majority of Supreme Court justices are President Arroyo's appointees. This has major implications in how the judiciary has reviewed executive actions last year.

An example is when Arroyo invoked Executive Order 464 which supposedly prohibits Cabinet members from testifying in Congress or Senate hearings without approval from the Arroyo, during the ZTE hearings.

The Supreme Court first made the decision to overturn EO 464 because the reasons for the subpoena were deemed covered in the exception clauses of the EO 464. With the composition of Supreme Court changed soon after that decision, the original ruling was overturned and EO 464 was upheld.

**References:**

Interview with attorney Antonio Jamon, faculty at the College of Law, University of the Philippines, Pasig City, Sept. 11, 2008.

Executive Privilege in the ZTE-NBN Controversy," by Attorney Nepomuceno Malaluan, Action for Economic Reforms, March 7, 2008, [http://www.aer.ph/index.php?option=com\\_content&task=view&id=676&Itemid=62](http://www.aer.ph/index.php?option=com_content&task=view&id=676&Itemid=62)

**100:** When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

**75:**

**50:** The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

**25:**

**0:** The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | **25** | 0

**Comments:**

Since the president holds sway over a majority of the members of Congress, she can rely on Congress to pass policies and regulations according to her agenda.

President Arroyo, though, is known to implement and invoke executive orders (i.e., declaration of national emergencies, EO 464), enter into questionable agreements with foreign countries (i.e., JPEPA), and arrange for multi-billion dollar projects (i.e. ZTE) without going through the legislature.

**References:**

Interview with attorney Antonio Jamon, faculty at the College of Law, University of the Philippines, Pasig City, Sept. 11, 2008.

Arroyo: I know ZTE contract tainted, but can't cancel deal," GMA News TV, Feb. 23, 2008. <http://www.gmanews.tv/story/81878/Arroyo-I-learned-about-ZTE-mess-on-eve-of-signing-deal>



**100:** The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

**75:**

**50:** The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

**25:**

**0:** The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

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## 28. Is the executive leadership subject to criminal proceedings?

100

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

**YES** | NO

### Comments:

Section 2 of the Philippine Constitution states that: 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.”

### References:

Section 2 and 3, Article XI, Philippine Constitution

**YES:** A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

**NO:** A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

**YES** | NO

### Comments:

All public officials are accountable to the people. RA 3019, or the Anti-Graft and Corrupt Practices Act, enumerates the various punishable offenses and corresponding penalties for any public official. RA 6713 establishes a code of conduct for all public officials to abide by. RA 6713 also mandates the Civil Service Commission to strictly promulgate and enforce this code. The Office of the Ombudsman is another avenue for citizens to file cases against erring public officials.

**References:**

Section 1, Article XI, Philippine Constitution  
Section 13, Article XI, Philippine Constitution  
RA 3019  
RA 6713

**YES:** A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

**NO:** A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

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## 29. Are there regulations governing conflicts of interest by the executive branch?

56

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

**Comments:**

Section 17, Article XI of the Constitution states that public officials may be "required by law to submit a statement of assets, liabilities, and net worth (SALN).

Section 8 of RA 6713 states that all public officials are obliged to submit their SALN. RA 6713 lists the various items that the statement should include and the dates when the statements should be filed.

**References:**

Section 17, Article XI, Philippine Constitution  
Section 8, RA 6713

**YES:** A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

**NO:** A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

**Comments:**

Section 17, Article XI of the Constitution states that public officials may be "required by law to submit a statement of assets,

liabilities, and net worth (SALN).

Section 8 of RA 6713 states that all public officials are obliged to submit their SALN. RA 6713 lists the various items that the statement should include and the dates when the statements should be filed.

**References:**

Section 17, Article XI, Philippine Constitution

Section 8, RA 6713

**YES:** A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

**NO:** A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

**Comments:**

Section 3 of RA 3019, or the Anti-Graft and Corrupt Practices Act, lists acts by public officials that are considered corrupt. Directly or indirectly receiving or requesting any gifts from companies or individuals with a pending contract or permit with the government is considered an offense under this law.

**References:**

Section 3, RA 3019

**YES:** A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

**NO:** A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

**Comments:**

Both Article XI and RA 6713 only require that assets be declared by public officials themselves.

**References:**

Section 17, Article XI, Philippine Constitution  
Section 8, RA 6713

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

**Comments:**

Any government official who resigns, retires, or is separated from public office is prohibited from joining any organization that his/her office regulated, supervised, licensed or had other official transactions with for one year after his/her departure.

**References:**

Section 7, RA 6713

**YES:** A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

**NO:** A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

The one-year prohibition for public officials is too short since in the private sector, such post-employment prohibitions range from 5 years to 10 years.

This is also easily circumvented since many officials take informal roles as consultants during the cooling-off period.

**References:**

Interview with attorney Antonio Jamon, faculty at the College of Law, University of the Philippines, Pasig City, Sept. 11, 2008.

**100:** The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

The Ombudsman reiterated to public officials and government employees not to accept gifts not only during the Christmas season, but throughout the whole year. The Manila Times editorial made allegations that some House members of the Commission on Appointments extorted money from nominees to Cabinet positions.

**References:**

Interview with attorney Antonio Jamon, faculty at the College of Law, University of the Philippines, Pasig City, Sept. 11, 2008.

It’s better to give than to receive,” press release from Office of the Ombudsman, Dec. 15, 2006. <http://www.ombudsman.gov.ph/page.php?pid=371>

“Bribery by the Commission,” editorial, The Manila Times, June 26, 2007, <http://www.manilatimes.net/national/2007/june/26/yehey/opinion/20070626opi1.html>

**100:** The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

**25:**

**0:** The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

**Comments:**

Asset disclosure records are simply collected and filed. On March 30, 2003, an agreement was signed to create the Lifestyle Check Coalition.” Some government officials have been penalized or dismissed from their duties following such lifestyle checks by the Presidential Anti-Graft Commission.

The coalition is composed of 14 government agencies, including Commission on Audit, National Bureau of Investigation, Office of the Ombudsman, among others, and several civil society organizations (examples of these are Transparency and Accountability Network and Catholic Bishops Conference of the Philippines – National Secretariat for Social Action).

Under the coalition’s charter, these agencies are tasked to conduct investigations and initiate prosecutions of government officials found to be involved in corrupt practices. The group pooled the expertise, resources and power of its members in “identifying leads, gathering information, and prosecuting public officials”. There have been more than 150 random lifestyle checks conducted through the coalition, with more than 100 of those cases filed in the Office of the Ombudsman. Some have resulted in the expulsion of government officials.

The public provides tips, while the intelligence-gathering units of the coalition investigate suspected officials. The findings are forwarded to other member units for evaluation and confirmation. The Office of the Ombudsman, the Civil Service Commission, the Presidential Anti-Graft Commission and the heads of agencies cooperate in the administrative aspects of the process, specifically in determining the administrative culpability, if any, of the officials involved, and imposing the appropriate sanctions. On the other hand, the Office of the Ombudsman handles the criminal aspect of the process, specifically in filing the appropriate cases in court and prosecuting officials who failed the lifestyle check.

Unfortunately, aside from the occasional news on random lifestyle checks, there have been no updates on the progress of the Lifestyle Check Coalition since 2005.

**References:**

Interview with attorney Antonio Jamon, faculty at the College of Law, University of the Philippines, Pasig City, Sept. 11, 2008.

Malacanang affirms PACG recommendation to dismiss DBM Bureau Director,” press release by Presidential Anti-Graft Commission, Jan. 14, 2008. [http://www.pagc.gov.ph/News14\\_Jan\\_08.htm](http://www.pagc.gov.ph/News14_Jan_08.htm)

[http://www.neda.gov.ph/ads/mtpdp/MTPDP2004-2010/PDF/MTPDP%202004-2010%20NEDA\\_Chapterx21\\_Corruption.pdf](http://www.neda.gov.ph/ads/mtpdp/MTPDP2004-2010/PDF/MTPDP%202004-2010%20NEDA_Chapterx21_Corruption.pdf)

**100:** Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

**75:**

**50:** Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

**25:**

**0:** Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

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### 30. Can citizens access the asset disclosure records of the heads of state and government?

83

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

**Comments:**

Section 17, Article XI of the Constitution states that statement of assets, liabilities, and net worth shall be disclosed to the public. Section 8 of RA 6713 requires that for any person who are requesting copies of these records should only pay reasonable fee to cover reproduction and mailing costs.

**References:**

Section 17, Article XI, Philippine Constitution  
Section 8, RA 6713

**YES:** A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

**NO:** A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Statements of assets and liabilities (SALs) of the president and other elected officials are filed with the Office of the Ombudsman, which does not post this information to the public. The SAL of the Cabinet members are filed in the Office of the President, which, again, does not make this information available online.

However, news articles confirm that the SALs of the president and her Cabinet are easily accessible to the public from the government offices where they were filed. Furthermore, the public can find this type of information in media sources since coverage of status of the president and Cabinet secretaries often make the news.

A source of delay in releasing asset disclosure records is that some Cabinet members do not submit their SALs and other important records upon appointment by the president. The law clearly states that Cabinet members should pass their SAL to the Commission on Appointments to confirm their nomination.

**References:**

Arroyo richer by 12.5M since assuming power in 2001," by Avigail Olarte, The Daily PCIJ, June 16, 2006, <http://www.pcij.org/blog/?p=1006>

"Shhh, justices' assets report still secret," by Aries Rufo, Newsbreak, May 9, 2008, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=4581&Itemid=88889051](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=4581&Itemid=88889051)

"Arroyo appointees repeatedly bypassed like two COMELEC officials should quit – Pimentel" News release by Sen. Aquilino Pimentel Dec. 18, 2004, [http://www.nenepimentel.org/news/20041218\\_Comelec.asp](http://www.nenepimentel.org/news/20041218_Comelec.asp)

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some additional delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | **75** | 50 | 25 | 0

**Comments:**

Statements of assets and liabilities (SALs) of the president and other elected officials are filed with the Office of the Ombudsman, which does not post this information to the public. The SAL of the Cabinet members are filed in the Office of the President, which, again, does not make this information available online. A visit to the government office where the statements were filed is required. Also, the public can find this type of information in media sources since coverage of status of the president and Cabinet secretaries often make the news.

**References:**

Arroyo richer by 12.5M since assuming power in 2001," by Avigail Olarte, The Daily PCIJ, June 16, 2006, <http://www.pcij.org/blog/?p=1006>

"Shhh, justices' assets report still secret," by Aries Rufo, Newsbreak, May 9, 2008, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=4581&Itemid=88889051](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=4581&Itemid=88889051)

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## 26. Can citizens sue the government for infringement of their civil rights?

100

26. In law, can citizens sue the government for infringement of their civil rights?

**YES** | NO



**Comments:**

Citizens' civil rights are enshrined in Article III of the Philippine Constitution. Section 1 of Article VIII states that the courts are the proper avenue for the resolution of any complaints against the government regarding grave abuse of discretion" on the part of any branch or instrumentality of the state.

**References:**

Article III, Philippine Constitution  
Section 1, Article VIII, Philippine Constitution

**YES:** A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

**NO:** A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

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### 31. Official government functions are kept separate and distinct from the functions of the ruling political party.

25

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | **25** | 0

**Comments:**

It is common practice for the administration to use government resources for campaigns.

**References:**

Interview with attorney Antonio Jamon, faculty at the College of Law, University of the Philippines, Pasig City, Sept. 11, 2008.

Gloria and Gold in the Philippines," by Cher S. Jimenez, Center for Research on Globalization, March 12, 2008. <http://www.globalresearch.ca/index.php?context=va&aid=8298>

"Institutionalizing vote-buying in the Philippines," by George Aguilar, Sunstar Bacolod, April 29, 2008. <http://www.sunstar.com.ph/static/bac/2008/04/29/oped/george.aguilar.rational.animal.html>

**100:** Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

**75:**

**50:** The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

**25:**

**0:** The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

## III-2. Legislative Accountability

### 32. Can members of the legislature be held accountable for their actions?

92

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

#### Comments:

The Supreme Court has the authority to declare acts of Congress or the president as unconstitutional.

#### References:

Section 1, Article VIII, Philippine Constitution

**YES:** A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

**NO:** A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

#### Comments:

The judiciary is generally fair in its decisions. There are instances when politically sensitive issues give rise to partisanship.

#### References:

Interview with attorney Antonio Jamon, faculty at the College of Law, University of the Philippines, Pasig City, Sept. 11, 2008.

Wheels of Justice or Wheel of Fortune?" analysis by Benjie Oliveros, Bulatlat, Sept. 16, 2008, [http://72.14.235.104/search?q=cache:r-TmM2ZS0\\_OJ:bulatlat.com/2008/09/16/wheels-of-justice-or-wheel-of-fortune/+questionable+supreme+court+decisions&hl=en&ct=clnk&cd=7&gl=ph](http://72.14.235.104/search?q=cache:r-TmM2ZS0_OJ:bulatlat.com/2008/09/16/wheels-of-justice-or-wheel-of-fortune/+questionable+supreme+court+decisions&hl=en&ct=clnk&cd=7&gl=ph)

**100:** When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

**75:**

**50:** The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

**25:**

**0:** The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

**YES** | NO

**Comments:**

Members of the legislature can be subjected to criminal proceedings except when Congress is in session. This immunity only applies for offenses that are punishable by less than six years in prison. This privilege is extended to ensure that sessions of Congress are not disrupted for prosecution of minor offenses.

**References:**

Section 11, Article VI, Philippine Constitution

**YES:** A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

**NO:** A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

---

33. Are there regulations governing conflicts of interest by members of the national legislature?

50

33a. In law, members of the national legislature are required to file an asset disclosure form.

**YES** | NO

**Comments:**

All members of the legislature are required to file an asset disclosure form upon assumption of office. Their statement of assets, liabilities, and net worth are made available to the public.

**References:**

Section 12, Article VI, Philippine Constitution  
Section 17, Article XI, Philippine Constitution

**YES:** A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

**NO:** A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

**YES** | NO

**Comments:**

All elected officials leaving office are prohibited for one year from taking private-sector employment connected to their previous office.

**References:**

Section 7, RA 6713

**YES:** A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

**YES** | NO

**Comments:**

Section 3 of RA 3019, or the Anti-Graft and Corrupt Practices Act, lists acts by elective officials that are considered corrupt. Directly or indirectly receiving or requesting any gifts from companies or individuals with a pending contract or permit with the government is considered an offense under this law.

**References:**

Section 3, RA 3019

**YES:** A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

**NO:** A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

**Comments:**

Both Article XI of the Constitution and RA 6713 only require that assets be declared by public officials themselves.

**References:**

Section 17, Article XI, Philippine Constitution  
Section 8, RA 6713

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | **50** | 25 | 0

**Comments:**

Most officials observe the one-year cooling-off period before officially taking any position in the private sector.

Another way in which the spirit of the post-employment regulation is violated is when losing candidates from the the previous elections are appointed into Cabinet or other official positions one year after the campaign.

**References:**

Interview with attorney Antonio Jamon, faculty at the College of Law, University of the Philippines, Pasig City, Sept. 11, 2008.

**100:** The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

Regulations governing gifts and hospitality are not as effective as they may seem. In October 2007, President Arroyo allegedly doled cash handouts obtained from the Land Bank to congressmen. The Land Bank is a government-run bank through which government funds are usually disbursed.

Senate minority leader Aquilino Pimentel said the distribution of huge sums of money to the congressmen and local chief executives by Malacañang without any accompanying disbursement papers is enough to show that a bribe was given. Given the circumstances behind the distribution of the money, it is obviously intended to buy support for the president in the face of new impeachment moves against her," Pimentel said.

**References:**

Interview with attorney Antonio Jamon, faculty at the College of Law, University of the Philippines, Pasig City, Sept. 11, 2008.

Bishops slam Gloria's moral bankruptcy," Oct. 17, 2007, <http://www.malaya.com.ph/oct17/news1.htm>

**100:** The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

**25:**

**0:** The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

Asset disclosure statements are only submitted for filing, not auditing. The Audit Commission regularly releases the statements to the media for publication but not for investigation.

On March 30, 2003, an agreement was signed to create the Lifestyle Check Coalition." Some government officials have been penalized or dismissed from their duties following such lifestyle checks by the Presidential Anti-Graft Commission.

The coalition is composed of 14 government agencies, including Commission on Audit, National Bureau of Investigation, Office of the Ombudsman, among others, and several civil society organizations (examples of these are Transparency and Accountability Network and Catholic Bishops Conference of the Philippines – National Secretariat for Social Action).

Under the coalition's charter, these agencies are tasked to conduct investigations and initiate prosecutions of government officials found to be involved in corrupt practices. The group pooled the expertise, resources and power of its members in "identifying leads, gathering information, and prosecuting public officials". There have been more than 150 random lifestyle checks conducted through the coalition, with more than 100 of those cases filed in the Office of the Ombudsman. Some have resulted in the expulsion of government officials.

The public provides tips, while the intelligence-gathering units of the coalition investigate suspected officials. The findings are forwarded to other member units for evaluation and confirmation. The Office of the Ombudsman, the Civil Service Commission, the Presidential Anti-Graft Commission and the heads of agencies cooperate in the administrative aspects of the process, specifically in determining the administrative culpability, if any, of the officials involved, and imposing the appropriate sanctions. On the other hand, the Office of the Ombudsman handles the criminal aspect of the process, specifically in filing the appropriate cases in court and prosecuting officials who failed the lifestyle check.

Unfortunately, aside from the occasional news on random lifestyle checks, there have been no updates on the progress of the Lifestyle Check Coalition since 2005.

**References:**

Interview with attorney Antonio Jamon, faculty at the College of Law, University of the Philippines, Pasig City, Sept. 11, 2008.

[http://www.neda.gov.ph/ads/mtpdp/MTPDP2004-2010/PDF/MTPDP%202004-2010%20NEDA\\_Chapterx21\\_Corruption.pdf](http://www.neda.gov.ph/ads/mtpdp/MTPDP2004-2010/PDF/MTPDP%202004-2010%20NEDA_Chapterx21_Corruption.pdf)

**100:** Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

**75:**

**50:** Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

**25:**

**0:** Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

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## 34. Can citizens access the asset disclosure records of members of the national legislature?

92

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES

NO

**References:**

Section 17, Article XI, Philippine Constitution  
Section 8, RA 6713

**YES:** A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

**NO:** A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

The deadline of filing of statements of assets and liabilities for members of Congress and Senate is April 30. News articles regarding their wealth are published 2 to 3 weeks after the deadline. It indicates that these documents can be accessed easily as soon as all the records are complete or have been filed.

**References:**

Shhh, justices' assets report still secret," by Aries Rufo, Newsbreak, May 9, 2008, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=4581&Itemid=88889051](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=4581&Itemid=88889051)

"Beltran dies still poorest congressman, Villar is richest," by Milla Ager, Philippine Daily Inquirer, May 20, 2008, <http://newsinfo.inquirer.net/breakingnews/nation/view/20080520-137756/Beltran-dies-still-poorest-congressman-Villar-richest>

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Filing a request for records of legislators requires a visit to the Office of the Ombudsman, but the public can access these records easily online once the news coverage has been done.

**References:**

Shhh, justices' assets report still secret," by Aries Rufo, Newsbreak, May 9, 2008, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=4581&Itemid=88889051](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=4581&Itemid=88889051)

"Beltran dies still poorest congressman, Villar is richest," by Milla Ager, Philippine Daily Inquirer, May 20, 2008, <http://newsinfo.inquirer.net/breakingnews/nation/view/20080520-137756/Beltran-dies-still-poorest-congressman-Villar-richest>



**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## 35. Can citizens access legislative processes and documents?

92

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

### References:

Section 7, Article III, Philippine Constitution

Section 20, Article IV, Philippine Constitution

**YES:** A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

**NO:** A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

### Comments:

The House and Senate both have Web sites containing legislative processes and documents the public can download for free, although the documents are not regularly updated.

### References:

Interview with attorney Antonio Jamon, faculty at the College of Law, University of the Philippines, Pasig City, Sept. 11, 2008.

House Bills and Resolutions Online Query. <http://www.congress.gov.ph/bis/index.php>

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

The House and Senate both have Web sites containing legislative processes and documents which the public can download for free. Senate transcripts cost Php3.00 (US\$.06) per page meant to cover reproduction costs – reasonable costs for the average Filipino.

**References:**

Interview with attorney Antonio Jamon, faculty at the College of Law, University of the Philippines, Pasig City, Sept. 11, 2008.

House Bills and Resolutions Online Query. <http://www.congress.gov.ph/bis/index.php>

Senate Legislative Information System. <http://202.86.198.73/plis/Public/bill.main.asp>

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## 36. Are judges appointed fairly?

50

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

### Comments:

The 1987 Philippine Constitution assures that only men and women of competence, integrity, probity and independence will become members of the Judiciary.

Mandated by Section 8, Article VIII, the Judicial and Bar Council searches, screens and selects judicial appointees. The council is supervised by the Supreme Court and composed of the chief justice as ex officio chairman, the secretary of justice, a representative of Congress, a lawyer a professor of law, a retired Supreme Court member and a representative of the private sector.

### References:

<http://jbc.supremecourt.gov.ph/mission.php>

**YES:** A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

**NO:** A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

### Comments:

The Judicial and Bar Council is only tasked to nominate candidates for the president's approval. All candidates nominated for national-level positions meet the minimum requirements of having formal legal training and work experience.

The process of choosing the best of the candidates available remains questionable. The president allegedly holds influence in the choosing of nominees for the position.

### References:

Interview with attorney Antonio Jamon, faculty at the College of Law, University of the Philippines, Pasig City, Sept. 11, 2008.

**100:** National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

**75:**

**50:** Most national-level judges selected meet these qualifications, with some exceptions.

**25:**

**0:** National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | **NO**

**Comments:**

The Judicial and Bar Council submits a list of nominees, but the final decision remains with the president.

**References:**

Section 9, Article VIII, Philippine Constitution

**YES:** A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

**NO:** A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

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## 37. Can members of the judiciary be held accountable for their actions?

83

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

**YES** | NO

**Comments:**

No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.”

**References:**

Section 14, Article VIII, 1987 Philippine Constitution

**YES:** A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

**NO:** A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

**Comments:**

Minute resolutions need not be signed by the members of the court who took part in the deliberations of a case nor do they require the certification of the chief justice. For to require members of the court to sign all resolutions issued would not only delay the issuance of its resolutions but a great amount of their time would be spent on functions more properly performed by the clerk of court and which time could be more profitably used in the analysis of cases and the formulation of decisions and orders of important nature and character." The court has ample discretion to formulate decisions and/or minute resolutions, provided a legal basis is given.

However, the courts have been under attack for their integrity for the past year. Even if all their decisions have corresponding reasons based on the law, their application of the law tend to be discretionary, often perceived as favoring the current administration.

**References:**

Interview with attorney Antonio Jamon, faculty at the College of Law, University of the Philippines, Pasig City, Sept. 11, 2008.

Wheels of Justice or Wheel of Fortune?" analysis by Benjie Oliveros, Bulatlat, Sept. 16, 2008, [http://72.14.235.104/search?q=cache:r-TmM2ZS0\\_0J:bulatlat.com/2008/09/16/wheels-of-justice-or-wheel-of-fortune/+questionable+supreme+court+decisions&hl=en&ct=clnk&cd=7&gl=ph](http://72.14.235.104/search?q=cache:r-TmM2ZS0_0J:bulatlat.com/2008/09/16/wheels-of-justice-or-wheel-of-fortune/+questionable+supreme+court+decisions&hl=en&ct=clnk&cd=7&gl=ph)

**100:** Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

**75:**

**50:** Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

**25:**

**0:** Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

**Comments:**

The Constitution has an article on accountability of public officials, which include all members of the Supreme Court. Article XI mandates the Office of the Ombudsman to investigate and recommend disciplinary actions for public officials found guilty of betraying public trust.

The Supreme Court also has the Office of the Court Administrator to supervise and manage the lower courts and their personnel.

**References:**

Section 2, Article XI, Philippine Constitution  
<http://www.supremecourt.gov.ph/contacts/OCA.htm>

**YES:** A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

**NO:** A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

**Comments:**

The Constitution refers to the Office of the Ombudsman as an independent office. By granting fiscal autonomy to the Office of the Ombudsman, its independence from political interference is provided for.

**References:**

Sections 5 and 14, Article XI, Philippine Constitution

**YES:** A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

**NO:** A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

Judges have been found guilty after investigations conducted by the disciplinary agency. However, to quote Solita Monsod's column: Between 1987 and Aug. 31, 2008, 136 administrative complaints were filed against (Court of Appeals) justices. But of the 112 cases decided [by the Supreme Court, I presume], 108 were dismissed. Only two justices were dismissed from the service, while two others were fined or admonished." This shows that the effectiveness of these investigations is very limited.

**References:**

Interview with attorney Antonio Jamon, faculty at the College of Law, University of the Philippines, Pasig City, Sept. 11, 2008.

Examination of Conscience,” by Solita Collas-Monsod, Philippine Daily Inquirer, Sept. 13, 2008, <http://opinion.inquirer.net/columnist/?colid=1219>

**100:** The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies’ investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

**75:**

**50:** The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies’ investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

**Comments:**

Judges have been found guilty after investigations conducted by the disciplinary agency. However, to quote Solita Monsod’s column: Between 1987 and Aug. 31, 2008, 136 administrative complaints were filed against (Court of Appeals) justices. But of the 112 cases decided [by the Supreme Court, I presume], 108 were dismissed. Only two justices were dismissed from the service, while two others were fined or admonished.” This shows that the effectiveness of these investigations is very limited.

The latest example is the Meralco-GSIS case, in which the presiding justice was reprimanded, a Court of Appeals justice sacked, another reprimanded, another suspended and still another admonished by the Supreme Court.

**References:**

Interview with attorney Antonio Jamon, faculty at the College of Law, University of the Philippines, Pasig City, Sept. 11, 2008.

Examination of Conscience,” by Solita Collas-Monsod, Philippine Daily Inquirer, Sept. 13, 2008, <http://opinion.inquirer.net/columnist/?colid=1219>

**100:** When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

**75:**

**50:** The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

## 38. Are there regulations governing conflicts of interest for the national-level judiciary?

50

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

**YES** | NO

### Comments:

Section 17, Article XI of the Constitution states that public officials may be "required by law to submit a statement of assets, liabilities, and net worth (SALN).

Section 8 of RA 6713 states that all public officials are obliged to submit a SALN. RA 6713 lists the various items that the statement should include and the dates when the statements should be filed. However, most members of the judiciary have not filed a SALN and have refused to disclose their assets (see Gabriella Quimson NIS 2006).

### References:

Section 17, Article XI, Philippine Constitution  
Section 8, RA 6713

**YES:** A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

**NO:** A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

**YES** | NO

### Comments:

Section 3 of RA 3019 or the Anti-Graft and Corrupt Practices Act lists acts by public officials that are considered corrupt. Directly or indirectly receiving or requesting any gifts from companies or individuals with a pending contract or permit with the government is considered an offense under this law.

The new Code of Judicial Conduct promulgated in 2004 also sets out rules of conduct for members of the judiciary.

### References:

Section 3, RA 3019  
Code of Judicial Conduct



**YES:** A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

**NO:** A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | **NO**

**Comments:**

RA 3019 only requires submission of asset disclosure forms of judges.

**References:**

RA 3019

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

**YES** | NO

**Comments:**

Any government official who resigns, retires or is otherwise separated from public office is prohibited for one year from joining any organization that his/her office regulated, supervised, licensed, or had other official transactions with.

**References:**

Section 7, RA 6713

**YES:** A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

The one-year cooling off period is observed nominally. Most judges can go back to their old law firms as consultants or other informal positions during the cooling-off period. They can resume their formal posts after the one year period.

**References:**

Interview with attorney Antonio Jamon, faculty at the College of Law, University of the Philippines, Ortigas

**100:** The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

There are rampant accusations that judges routinely accept gifts and money from lawyers and benefactors during Christmastime. There are also reports of Court of Appeals judges who indiscriminately hand down temporary restraining orders.

**References:**

Interview with attorney Antonio Jamon, faculty at the College of Law, University of the Philippines, Pasig City, Sept. 11, 2008.

Court of Appeals Scandal: The Many Faces of Bribery," by Aries Rufo, Newsbreak, Sept. 9, 2008, <http://www.abs-cbnnews.com/special-report/09/09/08/court-appeals-scandal-many-faces-bribery>.

**100:** The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

Although the Commission on Audit regularly reviews the finances of the judiciary as a whole, there is no independent auditing body for the asset disclosures of national level judges. Justices' asset disclosure records are restricted to the public.

**References:**

Shhh, justices' assets report still secret," by Aries Rufo, Newsbreak, May 9, 2008, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=4581&Itemid=88889051](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=4581&Itemid=88889051)

Interview with attorney Antonio Jamon, faculty at the College of Law, University of the Philippines, Pasig City, Sept. 11, 2008.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

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### 39. Can citizens access the asset disclosure records of members of the national-level judiciary?

50

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

**Comments:**

The Supreme Court Clerk of Court is the repository of the justice's statement of assets and liabilities.

**References:**

RA 3019

**YES:** A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

**NO:** A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | **25** | 0

**Comments:**

Asset disclosure records of Supreme Court justices are restricted.

A resolution was passed by the Supreme Court in 1989 barring access to the asset disclosure records of justices. A reason cited for this is access may create circumstances which may endanger, diminish or destroy their independence and objectivity in the performance of their judicial functions or expose them to retribution for adverse decisions, kidnapping, extortion, blackmail or other untoward consequences.

Another reason for this denial of access is when the requests are made to fish for information” that could adversely influence the judge’s ruling.

Last reason for the denial of access is to ensure the safety of the judges from threats in areas where there is a strong rebel presence.

Only a personal request from the ombudsman or a subpoena from a court can grant access to these statements.

**References:**

Shhh, justices’ assets report still secret,” by Aries Rufo, Newsbreak, May 9, 2008, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=4581&Itemid=88889051](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=4581&Itemid=88889051)

Interview with attorney Antonio Jamon, faculty at the College of Law, University of the Philippines, Pasig City, Sept. 11, 2008.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

**Comments:**

Asset disclosure records of Supreme Court justices are restricted.

A resolution was passed by the Supreme Court in 1989 barring access to the asset disclosure records of justices. A reason cited for this is access may create circumstances which may endanger, diminish or destroy their independence and objectivity in the performance of their judicial functions or expose them to retribution for adverse decisions, kidnapping, extortion, blackmail or other untoward consequences.

Another reason for this denial of access is when the requests are made to fish for information” that could adversely influence the judge’s ruling.

Last reason for the denial of access is to ensure the safety of the judges from threats in areas where there is a strong rebel presence.

Only a personal request from the ombudsman or a subpoena from a court can grant access to these statements.

**References:**

Shhh, justices’ assets report still secret,” by Aries Rufo, Newsbreak, May 9, 2008, [http://newsbreak.com.ph/index.php?option=com\\_content&task=view&id=4581&Itemid=88889051](http://newsbreak.com.ph/index.php?option=com_content&task=view&id=4581&Itemid=88889051)

Interview with attorney Antonio Jamon, faculty at the College of Law, University of the Philippines, Pasig City, Sept. 11, 2008.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## III-4. Budget Processes

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40. Can the legislature provide input to the national budget?

83

40a. In law, the legislature can amend the budget.

YES | NO

**References:**

Section 25, Article VI, Philippine Constitution

**YES:** A YES score is earned if the legislature has the power to add or remove items to the national government budget.

**NO:** A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

**Comments:**

The government budget has to go through Congress annually for approval. Even appropriations for intelligence funds require approval, though Congress does not necessarily have access to information on how these funds are used.

There are loopholes in the process through which the executive can fund projects without congressional approval. The executive has freedom to realign savings from unspent funds. The guidelines for this process are not clear, and the practice has not yet been contested in the courts.

**References:**

E-mail interview with Patrick Lim, coordinator, Department of Agriculture Budget Monitoring Project, CODE-NGO, Sept. 18, 2008.

Three Senate panels to probe 2008 budget," ABS-CBNnews.com, Sept. 15, 2008, <http://www.abs-cbnnews.com/nation/09/15/08/three-senate-panels-probe-2008-budget-controversies>

**100:** All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

**75:**

**50:** Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

**25:**

**0:** The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

**Comments:**

Most legislators are interested not in performing their oversight functions but in acquiring as much funding for their pet projects.

Opposition legislators try to perform budget oversight but face difficulties in getting the necessary information. Information is often received through informal channels.

Some opposition legislators use inconsistencies in the budget to attack the existing majority leader or administration. This is also a viable way for senators to start positioning themselves for upcoming elections.

**References:**

E-mail interview with Patrick Lim, coordinator, Department of Agriculture Budget Monitoring Project, CODE-NGO, Sept. 18, 2008.

Nogralles keeps hands off 'double insertion' in budget," by Johanna Camille Sesante, GMA News.TV, Sept. 16, 2008, <http://www.gmanews.tv/story/120680/Nogralles-keeps-hands-off-double-insertion-in-budget>

**100:** Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

**75:**

**50:** Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

**25:**

**0:** Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

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## 41. Can citizens access the national budgetary process?

25

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

**Comments:**

Budget hearings are usually done according to process stated in the law, with hearings, debate, etc. But budget modifications or congressional insertions and initiatives are not transparent, and are negotiated behind closed doors. The budget is also filled with lump sum items and it is difficult for civil society to get the details or breakdown of such allocations.

**References:**

E-mail interview with Patrick Lim, coordinator, Department of Agriculture Budget Monitoring Project, CODE-NGO, Sept. 18, 2008.

**100:** Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

**75:**

**50:** There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

**25:**

**0:** Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | **25** | 0

**Comments:**

Congressional budget hearings are open to the public in some stages, but people attending them may only observe and cannot speak unless invited. Individual agencies are supposed to have their own consultation processes to provide a venue for public participation.

Based on the source's experience, agency mechanisms still need great improvement and are unable to promote genuine participation.

**References:**

E-mail interview with Patrick Lim, coordinator, Department of Agriculture Budget Monitoring Project, CODE-NGO, Sept. 18, 2008.

Civil society gets into the budget act," by Nora Gamolo, Manila Times Internet Edition, Oct. 26, 2007, <http://www.manilatimes.net/national/2007/oct/26/yehey/opinion/20071026opi7.html>

**100:** Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

**75:**

**50:** Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

**25:**

**0:** Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.



100 | 75 | 50 | 25 | 0

**Comments:**

Based on the source's experience, it is difficult to access budget information, although his organization has not been formally denied documents.

Budget items are not provided on Congress; Web site. Other pertinent financial data such as disbursement and audit reports are submitted more than a year after the fiscal period.

**References:**

E-mail interview with Patrick Lim, coordinator, Department of Agriculture Budget Monitoring Project, CODE-NGO, Sept. 18, 2008.

Civil society gets into the budget act," by Nora Gamolo, Manila Times Internet Edition, Oct. 26, 2007, <http://www.manilatimes.net/national/2007/oct/26/yehey/opinion/20071026opi7.html>

**100:** Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

**75:**

**50:** Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

**25:**

**0:** Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

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### 43. Is the legislative committee overseeing the expenditure of public funds effective?

67

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

**Comments:**

Budget reviews start by September. Department heads are expected to answer questions posed by members of the Appropriations Committee regarding items in their budget.

The Senate Finance Committee often starts probes and investigations, supposedly based on inconsistencies in budget or department expenditures within the fiscal year.

**References:**

Three Senate panels to probe 2008 budget," ABS-CBNnews.com, Sept. 15, 2008, <http://www.abs-cbnnews.com/nation/09/15/08/three-senate-panels-probe-2008-budget-controversies>

"Appropriations Committee starts review of 2007 budget," Congress Web site, Sept. 11, 2006, [http://www.congress.gov.ph/committees/commnews/commnews\\_det.php?newsid=679](http://www.congress.gov.ph/committees/commnews/commnews_det.php?newsid=679)

**100:** Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

**75:**

**50:** Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

**25:**

**0:** There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | **50** | 25 | 0

**Comments:**

Chairmanship of the Appropriations Committee is determined by the administration. Of the 121 seats on the Appropriations Committee, 11 belong to opposition members. Leadership of Senate Finance Committee is also from the administration bloc.

**References:**

Congress Web site, Committee on Appropriations, <http://www.congress.gov.ph/committees/search.php?congress=14&s=roster&id=0504>

Senate Permanent Committees, Committee on Finance, [http://www.senate.gov.ph/committee/ctte\\_mem.pdf](http://www.senate.gov.ph/committee/ctte_mem.pdf)

**100:** The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

**75:**

**50:** The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

**25:**

**0:** The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

**Comments:**

The concerned committee would conduct an investigation if the irregularity is exposed in the media. Normally, the Senate would undertake the investigation, and the House of Representatives would be slower in undertaking investigations as it is controlled by the president, as was the case in the ZTE, fertilizer and other scandals.

**References:**

E-mail interview with Patrick Lim, coordinator, Department of Agriculture Budget Monitoring Project, CODE-NGO, Sept. 18, 2008.

Three Senate panels to probe 2008 budget," ABS-CBNnews.com, Sept. 15, 2008, <http://www.abs-cbnnews.com/nation/09/15/08/three-senate-panels-probe-2008-budget-controversies>

**100:** When irregularities are discovered, the committee is aggressive in investigating the government.

**75:**

**50:** The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

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#### 42. Is there a separate legislative committee which provides oversight of public funds?

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

**YES** | NO

**Comments:**

There is no single legislative committee that oversees public expenditure of funds. However, different committees have the power to monitor public expenditures of the agencies related to their committees as part of their oversight functions. But the oversight functions are not often exercised.

The appropriations committee oversees budget preparation but does not monitor the budget expenditure during the entire year.

**References:**

Section 25-D, Article IX, House Rules, <http://www.congress.gov.ph/legis/rules/index.php?rule=9>  
Rule X, Section (13)4, Senate Rules, <http://www.senate.gov.ph/committee/duties.asp#Finance>

**YES:** A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

**NO:** A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

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## Category IV. Administration and Civil Service

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### IV-1. <sup>82</sup>Civil Service Regulations

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44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

**YES** | NO

**Comments:**

According to the Constitution, the civil service shall be administered by the Civil Service Commission, one of the three independent bodies considered as Constitutional Commissions.

The new Administrative Code of 1987 (EO 292), mandates the CSC to promote morale, efficiency, integrity, responsiveness, progressiveness and courtesy in the civil service.

**References:**

1987 Philippine Constitution, Article IX – A and B. <http://lawphil.net/consti/cons1987.html>

Administrative Code of 1987 (EO 292). [http://www.lawphil.net/executive/execord/eo1987/eo\\_292\\_1987.html](http://www.lawphil.net/executive/execord/eo1987/eo_292_1987.html)

**YES:** A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

**NO:** A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

**YES** | NO

**References:**

Administrative Code of 1987 (EO 292). [http://www.lawphil.net/executive/execord/eo1987/eo\\_292\\_1987.html](http://www.lawphil.net/executive/execord/eo1987/eo_292_1987.html)

Code of Conduct and Ethical Standards for Public Officials and Employees, RA 6713. <http://www.csc.gov.ph/cscweb/RA6713.html>

Anti-graft and Corrupt Practices Act, RA 3019. [http://www.lawphil.net/statutes/repacts/ra1960/ra\\_3019\\_1960.html](http://www.lawphil.net/statutes/repacts/ra1960/ra_3019_1960.html)

**YES:** A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

**NO:** A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

**YES** | NO

**Comments:**

Grievances should be taken to the Civil Service Commission.

**References:**

Administrative Code of 1987 (EO 292). [http://www.lawphil.net/executive/execord/eo1987/eo\\_292\\_1987.html](http://www.lawphil.net/executive/execord/eo1987/eo_292_1987.html)

Code of Conduct and Ethical Standards for Public Officials and Employees, RA 6713. <http://www.csc.gov.ph/cscweb/RA6713.html>

Anti-graft and Corrupt Practices Act, RA 3019. [http://www.lawphil.net/statutes/repacts/ra1960/ra\\_3019\\_1960.html](http://www.lawphil.net/statutes/repacts/ra1960/ra_3019_1960.html)

Phone interview with Evangeline C. Cruzado, manager of PhilHealth Regional Office NCR-South and president of National Union of Career Executive Service Officers (NUCESO), Sept. 17, 2008.

**YES:** A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

**NO:** A NO score is earned if no such mechanism exists.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

**YES** | NO

**References:**

Administrative Code of 1987 (EO 292). [http://www.lawphil.net/executive/execord/eo1987/eo\\_292\\_1987.html](http://www.lawphil.net/executive/execord/eo1987/eo_292_1987.html)

Code of Conduct and Ethical Standards for Public Officials and Employees, RA 6713. <http://www.csc.gov.ph/cscweb/RA6713.html>

Anti-graft and Corrupt Practices Act, RA 3019. [http://www.lawphil.net/statutes/repacts/ra1960/ra\\_3019\\_1960.html](http://www.lawphil.net/statutes/repacts/ra1960/ra_3019_1960.html)

**YES:** A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

**NO:** A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

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## 45. Is the law governing the administration and civil service effective?

69

45a. In practice, civil servants are protected from political interference.

100 | 75 | **50** | 25 | 0

**Comments:**

Third-level civil servants, those at the highest level of civil service, are especially affected by political interference.

**References:**

Phone interview with Evangeline C. Cruzado, manager of PhilHealth Regional Office NCR-South – Las Piñas and president of National Union of Career Executive Service Officers (NUCESO), Sept. 17, 2008.

Phone interview with Karina C. David, former Civil Service Commission chairwoman and officer of Former Senior Government Officials (FSGO), Sept. 16, 2008.

**100:** Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

**75:**

**50:** Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

**25:**

**0:** Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

**Comments:**

In general, civil servants with first- and second-level rank are appointed and evaluated by the Civil Service Commission according to professional criteria.

However, third-level (appointive) officials are not under the jurisdiction of the CSC. They are appointed by the president, with unclear criteria.

For example, many retired military officers are appointed to third-level positions (heads of agencies). Their qualifications often are questioned because the civilian nature of their posts.

**References:**

Phone interview with Evangeline C. Cruzado, manager of PhilHealth Regional Office NCR-South – Las Piñas and president of National Union of Career Executive Service Officers (NUCESO), Sept. 17, 2008.

Phone interview with Karina C. David, former Civil Service Commission chairwoman and officer of Former Senior Government Officials (FSGO), Sept. 16, 2008.

**100:** Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

**25:**

**0:** Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

**Comments:**

The Civil Service Commission's rules on hiring, firing, and promotions for first- and second-level civil servants are strictly implemented. There may be exceptions but they are few.

CSC has no jurisdiction over third-level civil servants. Their hiring, firing and promotions are the prerogative of the president.

**References:**

Phone interview with Evangeline C. Cruzado, manager of PhilHealth Regional Office NCR-South – Las Piñas and president of National Union of Career Executive Service Officers (NUCESO), Sept. 17, 2008.

**100:** Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

**75:**

**50:** Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

**25:**

**0:** Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

**Comments:**

Generally, rank-and-file employees have clear job descriptions.

According to Cruzado, confusion and blurring of job descriptions in the third level happens when a new department secretary creates new positions of assistant secretaries or undersecretaries and their job assignments are not clear.

David thinks that the job descriptions are weak and segregated from the compensation package.

**References:**

Phone interview with Evangeline C. Cruzado, manager of PhilHealth Regional Office NCR-South – Las Piñas and president of National Union of Career Executive Service Officers (NUCESO), Sept. 17, 2008.

Phone interview with Karina C. David, former Civil Service Commission chairwoman and officer of Former Senior Government Officials (FSGO), Sept. 16, 2008.

**100:** Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person's authority, responsibility and base pay.

**75:**

**50:** Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

**25:**

**0:** Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.



100 | 75 | 50 | 25 | 0

**Comments:**

For civil servants covered by the Salary Standardization Law (SSL), bonuses constitute only a small fraction of total pay.

But for those employed in government-owned and controlled corporations (GOCCs) and government financial institutions (GFIs), the basic salaries may be considered negligible compared to the bonuses and allowances received.

**References:**

Phone interview with Evangeline C. Cruzado, manager of PhilHealth Regional Office NCR-South – Las Piñas and president of National Union of Career Executive Service Officers (NUCESO), Sept. 17, 2008.

Phone interview with Karina C. David, former Civil Service Commission chairwoman and officer of Former Senior Government Officials (FSGO), Sept. 16, 2008.

**100:** Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

**75:**

**50:** Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

**25:**

**0:** Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

**Comments:**

Job vacancies or openings are published to comply with the law.

The Career Executive Service Board maintains on its Web site a database of vacancies for career service officers (managerial positions) in national government offices. Some government agencies list vacancies on their Web sites. It is not certain whether these lists are updated.

Third-level position openings are not published.

**References:**

Phone interview with Evangeline C. Cruzado, manager of PhilHealth Regional Office NCR-South – Las Piñas and president of National Union of Career Executive Service Officers (NUCESO), Sept. 17, 2008.

Phone interview with Karina C. David, former Civil Service Commission chairwoman and officer of Former Senior Government Officials (FSGO), Sept. 16, 2008.

**100:** The government publishes such a list on a regular basis.

**75:**

**50:** The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

**25:**

**0:** The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | **75** | 50 | 25 | 0

**Comments:**

Grievances concerning first- and second-level civil servants are brought to the Civil Service Commission. This mechanism can be considered effective.

However, for third-level (appointive) positions, the only recourse for grievances is through the appointing authority, which is the president. In a sense, there is no grievance mechanism for third-level positions unless a citizen decides to file a formal graft/corruption complaint with the Presidential Anti-Graft Commission.

Heads of agencies cannot legally overrule the CSC. The CSC is the appeals mechanism. What this means is that while agencies and CSC regional offices have concurrent jurisdiction, the concerned employee or agency can appeal to the CSC proper. Heads of agencies can undermine CSC decisions but for as long as the CSC mechanism for monitoring compliance is operational then they can in fact be charged for contempt. The lack of effectiveness really happens when the President refuses to follow civil service rules and law. This occurs in 2 ways.

First, the President appoints so many of the top career positions but there is no legal check on this power. Second, when the President refuses to follow decisions of the CSC there is no mechanism to compel. The other way CSC decisions are not followed relates to the Court of Appeals which is a further appeal mechanism. There are limits to the breadth of expertise considering the wide range of cases before it. The Supreme Court, which by law is the only appeals body for CSC decisions, ordered that the Court of Appeals to be the first appeals level.

**References:**

Phone interview with Evangeline C. Cruzado, manager of PhilHealth Regional Office NCR-South – Las Piñas and president of National Union of Career Executive Service Officers (NUCESO), Sept. 17, 2008.

Phone interview with Karina C. David, former Civil Service Commission chairwoman and officer of Former Senior Government Officials (FSGO), Sept. 16, 2008.

**100:** The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

**75:**

**50:** The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

**25:**

**0:** The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward

on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

**Comments:**

National government agencies are generally paid on time.

**References:**

Phone interview with Evangeline C. Cruzado, manager of PhilHealth Regional Office NCR-South – Las Piñas and president of National Union of Career Executive Service Officers (NUCESO), Sept. 17, 2008.

Phone interview with Karina C. David, former Civil Service Commission chairwoman and officer of Former Senior Government Officials (FSGO), Sept. 16, 2008.

**100:** In the past year, no civil servants have been paid late.

**75:**

**50:** In the past year, some civil servants have been paid late.

**25:**

**0:** In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

**Comments:**

There is a formal blacklist of first- and second-level civil servants who are barred from government service.

It is not certain if the Office of the President uses such as list in screening potential presidential appointees.

**References:**

Phone interview with Evangeline C. Cruzado, manager of PhilHealth Regional Office NCR-South – Las Piñas and president of National Union of Career Executive Service Officers (NUCESO), Sept. 17, 2008.

Phone interview with Karina C. David, former Civil Service Commission chairwoman and officer of Former Senior Government Officials (FSGO), Sept. 16, 2008.

**100:** A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

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## 46. Are there regulations addressing conflicts of interest for civil servants?

58

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

### Comments:

The disclosure of assets by public officials is mandated by the 1987 Philippine Constitution Article XI, Section 17. All public officials including the president must submit their statement of assets, liabilities and net worth (SALN). See also the Code of Conduct and Ethical Standards for Public Officials and Employees, Rule VII Section 1.

In practice, however, completeness and truthfulness of information supplied is not assured.

### References:

1987 Philippine Constitution, Article XI, Section 17. <http://lawphil.net/consti/cons1987.html>

Code of Conduct and Ethical Standards for Public Officials and Employees, RA 6713. <http://www.csc.gov.ph/cscweb/RA6713.html>

**YES:** A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

**NO:** A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

### References:

1987 Philippine Constitution, Article IX, Sections 1-2. <http://lawphil.net/consti/cons1987.html>

Code of Conduct and Ethical Standards for Public Officials and Employees, RA 6713. <http://www.csc.gov.ph/cscweb/RA6713.html>

Anti-graft and Corrupt Practices Act, RA 3019. [http://www.lawphil.net/statutes/repacts/ra1960/ra\\_3019\\_1960.html](http://www.lawphil.net/statutes/repacts/ra1960/ra_3019_1960.html)

**YES:** A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

**NO:** A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

**YES** | NO

**Comments:**

Applicable prohibitions continue to apply for a period of one year after resignation, retirement or separation from public office.

**References:**

Code of Conduct and Ethical Standards for Public Officials and Employees, RA 6713, Rule X Section

1. <http://www.csc.gov.ph/cscweb/RA6713.html>

**YES:** A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

**NO:** A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

**YES** | NO

**Comments:**

RA No. 3019 defines the act of receiving any gift and penalizes the same, save for certain exceptions.

RA 6713 (Code of Conduct and Ethical Standards) forbids the solicitation of gifts, gratuity, favor and entertainment.

PD 46, referred to as the gift-giving decree, makes it punishable for any official or employee to receive directly or indirectly and for the private person to give or offer to give any gift, present or other valuable thing on any occasion including Christmas. This applies when the offering is given by reason of his official position, regardless of whether or not the same is for past favors or the giver hopes or expects to receive a favor 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 entertainment in honor of the official or employee or his immediate relatives.

**References:**

Anti-graft and Corrupt Practices Act, RA 3019. [http://www.lawphil.net/statutes/repacts/ra1960/ra\\_3019\\_1960.html](http://www.lawphil.net/statutes/repacts/ra1960/ra_3019_1960.html)

Code of Conduct and Ethical Standards for Public Officials and Employees, RA 6713. <http://www.csc.gov.ph/cscweb/RA6713.html>

Presidential Decree 46 – Making it Punishable for Public Officials and Employees to Receive, and for Private Persons to Give Gifts on any Occasion, Including Christmas. [http://www.lawphil.net/statutes/presdecs/pd1972/pd\\_46\\_1972.html](http://www.lawphil.net/statutes/presdecs/pd1972/pd_46_1972.html)

**YES:** A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

**NO:** A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | **NO**

**Comments:**

Copies of statements of assets, liabilities and net worth (SALN) are transmitted to respective agencies such as the National Office of the Ombudsman, Deputy Ombudsman, and Civil Service Commission.

Auditing of statements is done by government agencies for officers or employees under investigation.

**References:**

Code of Conduct and Ethical Standards for Public Officials and Employees, RA 6713. <http://www.csc.gov.ph/cscweb/RA6713.html>

**YES:** A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

**NO:** A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | **25** | 0

**Comments:**

Employment of former civil servants in the private sector is not monitored by the government.

**References:**

Phone interview with Evangeline C. Cruzado, manager of PhilHealth Regional Office NCR-South – Las Piñas and president of National Union of Career Executive Service Officers (NUCESO), Sept. 17, 2008.

**100:** The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

**75:**

**50:** The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

**25:**

**0:** The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | **25** | 0

**Comments:**

The low score is not due to the poor efforts or the unwillingness to enforce the rules but mainly because the rule of no gifts” is not workable or realistic. It is the culture of Filipinos to give tokens of appreciation. One main problem is how to deal with gifts that are given “after the fact.” In her time in the CSC, David required a gift registry.

**References:**

Phone interview with Evangeline C. Cruzado, manager of PhilHealth Regional Office NCR-South – Las Piñas and president of National Union of Career Executive Service Officers (NUCESO), Sept. 17, 2008.

Phone interview with Karina C. David, former Civil Service Commission chairwoman and officer of Former Senior Government Officials (FSGO), Sept. 16, 2008.

**100:** The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

**75:**

**50:** The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

**25:**

**0:** The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | **50** | 25 | 0

**References:**

Phone interview with Evangeline C. Cruzado, manager of PhilHealth Regional Office NCR-South – Las Piñas and president of National Union of Career Executive Service Officers (NUCESO), Sept. 17, 2008.

Phone interview with Karina C. David, former Civil Service Commission chairwoman and officer of Former Senior Government Officials (FSGO), Sept. 16, 2008.

**100:** The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

**75:**

**50:** The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

**25:**

**0:** Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | **25** | 0

**Comments:**

The statements of assets, liabilities and net worth (SALN) are audited but only to a limited extent, i.e. of those under investigation and random checks by respective agencies.

**References:**

Phone interview with Evangeline C. Cruzado, manager of PhilHealth Regional Office NCR-South – Las Piñas and president of National Union of Career Executive Service Officers (NUCESO), Sept. 17, 2008.

Phone interview with Karina C. David, former Civil Service Commission chairwoman and officer of Former Senior Government Officials (FSGO), Sept. 16, 2008.

**100:** Civil service asset disclosures are regularly audited using generally accepted auditing practices.

**75:**

**50:** Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

**25:**

**0:** Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

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47. Can citizens access the asset disclosure records of senior civil servants?



47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

**References:**

Code of Conduct and Ethical Standards for Public Officials and Employees, RA 6713, Rule VII, Section 3. <http://www.csc.gov.ph/cscweb/RA6713.html>

1987 Philippine Constitution, Article III, Section 7 (Bill of Rights). <http://lawphil.net/consti/cons1987.html>

**YES:** A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

**NO:** A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

To obtain the forms, one has to make a formal request to the head of the office. The length of time for obtaining forms varies from one agency to another.

**References:**

Phone interview with Evangeline C. Cruzado, manager of PhilHealth Regional Office NCR-South – Las Piñas and president of National Union of Career Executive Service Officers (NUCESO), Sept. 17, 2008.

Phone interview with Karina C. David, former Civil Service Commission chairwoman and officer of Former Senior Government Officials (FSGO), Sept. 16, 2008.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Once the forms are at hand, the cost for photocopying the forms are relatively reasonable because they are but several pages. However, to be able to obtain the forms, one has to request them from the head of the office and justify why the forms are needed. Cost may include expenses incurred while following up on the request.

**References:**

Phone interview with Evangeline C. Cruzado, manager of PhilHealth Regional Office NCR-South – Las Piñas and president of National Union of Career Executive Service Officers (NUCESO), Sept. 17, 2008.

Phone interview with Karina C. David, former Civil Service Commission chairwoman and officer of Former Senior Government Officials (FSGO), Sept. 16, 2008.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## IV-2. Whistle-blowing Measures

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48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

63

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

**Comments:**

There are several laws that protect and reward people who provide information against corrupt practices and other crimes such as RA 6981 and PD 749. However, these laws apply to witnesses and/or complainants; not directly to whistle-blowers.

According to the AIMS-Hills Governance Research on whistle-blowing in the Philippines, there are eight pending whistle-blowing bills in the House and Senate. Almost all of the bills seek to strengthen the accountability, integrity, and responsiveness of public officials and employees. It is observed that there is an emerging consensus on designing a whistle-blowing legislation primarily as an anti-corruption measure.

**References:**

Witness Protection, Security and Benefit Act, RA 6981. [http://lawphil.net/statutes/repacts/ra1991/ra\\_6981\\_1991.html](http://lawphil.net/statutes/repacts/ra1991/ra_6981_1991.html)

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. [http://119.111.101.4/statutes/presdecs/pd1975/pd\\_749\\_1975.html](http://119.111.101.4/statutes/presdecs/pd1975/pd_749_1975.html)

**YES:** A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

**NO:** A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | **25** | 0

**Comments:**

The culture does not encourage whistle-blowing. In fact, one of the main reasons why people do not report corrupt practices is because of its negative consequences. Most often, whistle-blowers are fired and become ostracized by friends and co-workers. The fear generated by such retaliation creates a chilling effect on the willingness of people to come forward.

The anti-corruption party list CIBAC relates that they have encountered many cases where citizens were harassed or discriminated against for filing formal charges against public officers and employees.

To avoid negative consequences, reports are done anonymously. However, this limits the availability of information to pursue the case/complaints.

**References:**

Phone interview with Karina C. David, former Civil Service Commission chairwoman and officer of Former Senior Government Officials (FSGO), Sept. 16, 2008.

E-mail interview with attorney Frederick Mikhail Farolan, chief of staff, Citizens' Battle Against Corruption (CIBAC) party list, House of Representatives, Sept. 17, 2008, Quezon City.

Whistleblowing in the Philippines Awareness, Attitudes and Structures. AIMS-Hills Governance Center. [http://www.aims-hills.ph/projectpage/prs/research3\\_7.htm](http://www.aims-hills.ph/projectpage/prs/research3_7.htm)

**100:** Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

**75:**

**50:** Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

**25:**

**0:** Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

**YES** | **NO**

**Comments:**

There are several laws that protect and reward people who provide information against corrupt practices and other crimes such as RA 6981 and PD 749. However, these laws apply to witnesses and/or complainants; not directly to whistle-blowers.

Internally, some big companies have their own whistle-blowing policy like the Philippine Long Distance Telephone (PLDT), one of the Philippine companies listed on the New York Stock Exchange (NYSE). Because of this, it needs to comply with NYSE's regulatory requirements such as Section 404 of the Sarbanes-Oxley Act, a landmark United States law on corporate accountability, which requires companies to establish internal control structures and procedures including an internal whistle-blowing policy. The policy protects a whistle-blower who identifies himself or herself by defining the punishable actions that constitute retaliation against a whistle-blower.

Of the eight pending whistle-blowing bills in Congress, at least three seek to strengthen corporate accountability or clearly apply to whistle-blowing in the private sector.

In practice, like in the civil service, private sector employees report anonymously to avoid negative consequences of blowing the whistle.

**References:**

Witness Protection, Security and Benefit Act, RA 6981.  
[http://lawphil.net/statutes/repacts/ra1991/ra\\_6981\\_1991.html](http://lawphil.net/statutes/repacts/ra1991/ra_6981_1991.html)

Granting Immunity from Prosecution to Givers of Bribes and Other Gifts and to their Accomplices in Bribery and Other Graft Cases Against Public Officers, PD 749.  
[http://119.111.101.4/statutes/presdecs/pd1975/pd\\_749\\_1975.html](http://119.111.101.4/statutes/presdecs/pd1975/pd_749_1975.html)

Whistleblowing in the Philippines Awareness, Attitudes and Structures. AIMS-Hills Governance Center. [http://www.aims-hills.ph/projectpage/prs/research3\\_7.htm](http://www.aims-hills.ph/projectpage/prs/research3_7.htm)

**YES:** A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

**NO:** A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

**Comments:**

The personal risks also apply to whistle-blowers in the private sector. These risks include the loss of job and other retaliatory actions at work, ostracism by colleagues, severance of social relationships and threats to personal security and safety.

**References:**

Whistleblowing in the Philippines Awareness, Attitudes and Structures. AIMS-Hills Governance Center. [http://www.aims-hills.ph/projectpage/prs/research3\\_7.htm](http://www.aims-hills.ph/projectpage/prs/research3_7.htm)

**100:** Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

**75:**

**50:** Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

**25:**

**0:** Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

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50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

75

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

**Comments:**

The Office of the Ombudsman faces a lack of funds, manpower and equipment, but meager resources have not prevented it from performing its duties. A series of grants from international donors allows the OMB to investigate cases sourced from the World Bank, the European Union, AusAID, USAID and the MCC.

The Civil Service Commission as a constitutional body receives automatic appropriations.

**References:**

Gabriella Quimson, Philippine National Integrity System Study, 2006.

Ombudsman meager resources not an obstacle in doing its job," government Web site, July 28, 2005. <http://www.gov.ph/news/default.asp?i=11782>

Attorney Rodolfo Elman of the Office of the Ombudsman in Mindanao, during the Club 888 Forum in Davao City, March 5, 2008.

**100:** The agency/entity has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

Both the Office of the Ombudsman and the Civil Service Commission are constitutional bodies having yearly earmarked public funding.

**References:**

Phone interview with Karina C. David, former Civil Service Commission chairwoman and officer of Former Senior Government Officials (FSGO), Sept. 16, 2008.

1987 Philippine Constitution

**100:** The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Ombudsman Gutierrez said allegations that they are sitting on cases and complaints are not true and points out a number of big

fish” cases that are being investigated.

With regard to the reporting mechanism in the CSC, David, a former chairwoman, relates that in her time with the commission, complaints on petty corruption like illegal use of official vehicle are dealt with and responded to within one to two weeks 80 percent of the time.

**References:**

Interview with Ombudsman Merceditas N. Gutierrez, Sept. 18, 2008, and <http://www.newsflash.org/2004/02/hl/hl107059.htm>

Phone interview with Karina C. David, former Civil Service Commission chairwoman and officer of Former Senior Government Officials (FSGO), Sept. 16, 2008.

**100:** The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

The Office of the Ombudsman is charged with five major functions: public assistance, graft prevention, investigation, prosecution and administrative adjudication. In practice the Ombudsman has initiated motu proprio investigations including parallel investigations on ongoing cases.

In the Civil Service Commission, complaints are endorsed to the concerned government agencies. Regional offices arbitrate CSC-related complaints.

The Office of the Ombudsman has consistently been aggressive in investigating cases of corruption in government. Unlike the National Prosecution Service under the Department of Justice which investigates only cases formally brought under its jurisdiction, the Ombudsman investigates motu proprio cases filed in whatever form and in whatever manner. The Office of the Ombudsman has investigated and successfully prosecuted President Estrada, a President of the Republic of the Philippines, and has also investigated a former Secretary of Justice, Nani Perez. During the Perez hearings, the ombudsman also summoned the First Gentleman, her former classmate, to participate in the investigation.

**References:**

<http://www.ombudsman.gov.ph/>. RA 6770 Sec 15 (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.”

Phone interview with Karina C. David, former Civil Service Commission chairwoman and officer of Former Senior Government Officials (FSGO), Sept. 16, 2008.

**100:** When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

**75:**

**50:** The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

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**49. Is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?**

100

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES

NO

**Comments:**

There is no legislated mechanism in which civil servants can report corruption. However, there are existing programs launched by the Civil Service Commission and the Office of the Ombudsman establishing these sort of mechanisms using e-mail, hotlines, and text messages (SMS). These reporting mechanisms are designed for the general public but include civil servants. There are also NGO hotlines, such as Bantay Kalikasan, that are available to the public to report corrupt environmental practices.

The reporting mechanism of the CSC is not primarily designed as an anti-corruption mechanism but for complaints on inefficiency and discourtesy of civil servants, though petty graft and corruption are also reported and dealt with.

**References:**

Phone interview with Karina C. David, former Civil Service Commission chairwoman and officer of Former Senior Government Officials (FSGO), Sept. 16, 2008.

E-mail interview with attorney Frederick Mikhail Farolan, chief of staff, Citizens' Battle Against Corruption (CIBAC) party list, House of Representatives, Sept. 17, 2008, Quezon City.

**YES:** A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

**NO:** A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.



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## 51. Is the public procurement process effective?

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51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

**YES** | NO

**Comments:**

Section 47 of RA 9184 (Procurement Law) requires disclosure of relations. RA 3019 and RA 6713 also apply.

**References:**

Government Procurement Reform Act, RA 9184. [http://www.lawphil.net/statutes/repacts/ra2003/ra\\_9184\\_2003.html](http://www.lawphil.net/statutes/repacts/ra2003/ra_9184_2003.html).

Code of Conduct and Ethical Standards for Public Officials and Employees, RA 6713. <http://www.csc.gov.ph/cscweb/RA6713.html>

Anti-graft and Corrupt Practices Act, RA 3019. [http://www.lawphil.net/statutes/repacts/ra1960/ra\\_3019\\_1960.html](http://www.lawphil.net/statutes/repacts/ra1960/ra_3019_1960.html)

**YES:** A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

**NO:** A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

**YES** | NO

**Comments:**

Training is required in law. In practice, a professionalization program, which is a certificate course for procurement officers, is yet to be implemented in compliance with Section 63.1e of the Implementing Rules and Regulations (IRR-A) of RA 9184.

**References:**

Interview with Carole Belisario, supervising technical staff, Procurement Watch Inc., Sept. 16, 2008, Quezon City.

Interview with Joselito Armovit, head of monitoring group, Government Procurement Policy Board-Technical Support Office, Sept.17, 2008, Quezon City.

Government Procurement Reform Act, RA 9184. [http://www.lawphil.net/statutes/repacts/ra2003/ra\\_9184\\_2003.html](http://www.lawphil.net/statutes/repacts/ra2003/ra_9184_2003.html).

Implementing Rules and Regulations – Part A (IRR-A)of RA 9184. [http://www.procurementservice.org/gppb/Approved%20IRR-A%20of%20R.A.%209184\(July%2011,%202003\).pdf](http://www.procurementservice.org/gppb/Approved%20IRR-A%20of%20R.A.%209184(July%2011,%202003).pdf)

**YES:** A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

**NO:** A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | **50** | 25 | 0

**Comments:**

There are rules on conflict of interest. Enforcement varies from one agency to another. Belisario believes that since there is no clear, written declaration of COI, rules may not be strictly enforced.

**References:**

Interview with Carole Belisario, supervising technical staff, Procurement Watch Inc., Sept. 16, 2008, Quezon City.

Interview with Joselito Armovit, head of monitoring group, Government Procurement Policy Board-Technical Support Office, Sept. 17, 2008, Quezon City.

**100:** Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

**75:**

**50:** Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

**25:**

**0:** Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

**YES** | NO

**Comments:**

A statement of assets, liabilities, and net worth (SALN) is required for all government employees. Spending habits are checked through lifestyle checks, which are triggered through complaints to the OMB.

In practice, lifestyle checks are more intensive on revenue officers than procurement officials.

**References:**

1987 Philippine Constitution, Article XI, Section 17. <http://lawphil.net/consti/cons1987.html>

Interview with Carole Belisario, supervising technical staff, Procurement Watch Inc., Sept. 16, 2008, Quezon City.

Interview with Joselito Armovit, head of monitoring group, Government Procurement Policy Board-Technical Support Office, Sept.17, 2008, Quezon City.

**YES:** A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

**NO:** A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

**YES** | NO

**Comments:**

Under RA 9184, the default mode of procurement is competitive public bidding. However, IRR-A of RA 9184 only covers locally funded projects. Implementing Rules and Regulations Part B that will cover foreign-funded projects is being being drafted by stakeholders headed by the Government Procurement Policy Board.

**References:**

Government Procurement Reform Act, RA 9184. [http://www.lawphil.net/statutes/repacts/ra2003/ra\\_9184\\_2003.html](http://www.lawphil.net/statutes/repacts/ra2003/ra_9184_2003.html).

Interview with Joselito Armovit, head of monitoring group, Government Procurement Policy Board-Technical Support Office, Sept.17, 2008, Quezon City.

**YES:** A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

**NO:** A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

**YES** | NO

**Comments:**

Under RA 9184, there are certain and limited conditions that need to be complied with for sole sourcing, such as the presence of the certificate of exclusivity, which is proof that the goods sought are indeed protected by IPO or patent. However, in practice, Procurement Watch Inc. has observed instances in which basic goods such as vitamin C, petri dishes and saline solution were bought by hospitals using the sole sourcing method.

**References:**

Interview with Carole Belisario, supervising technical staff, Procurement Watch Inc., Sept. 16, 2008, Quezon City.

Interview with Joselito Armovit, head of monitoring group, Government Procurement Policy Board-Technical Support Office, Sept.17, 2008, Quezon City.

Government Procurement Reform Act, RA 9184. [http://www.lawphil.net/statutes/repacts/ra2003/ra\\_9184\\_2003.html](http://www.lawphil.net/statutes/repacts/ra2003/ra_9184_2003.html).

**YES:** A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

**NO:** A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

**Comments:**

Under RA 9184, there is a formal appeals process – motion for reconsideration, then filing of the protest. If the dispute is not settled through this process, the bidder may turn to the courts.

**References:**

Interview with Carole Belisario, supervising technical staff, Procurement Watch Inc., Sept. 16, 2008, Quezon City.

Interview with Joselito Armovit, head of monitoring group, Government Procurement Policy Board-Technical Support Office, Sept.17, 2008, Quezon City.

Government Procurement Reform Act, RA 9184. [http://www.lawphil.net/statutes/repacts/ra2003/ra\\_9184\\_2003.html](http://www.lawphil.net/statutes/repacts/ra2003/ra_9184_2003.html).

Implementing Rules and Regulations – Part A (IRR-A) of RA 9184. [http://www.procurementservice.org/gppb/Approved%20IRR-A%20of%20R.A.%209184\(July%2011,%202003\).pdf](http://www.procurementservice.org/gppb/Approved%20IRR-A%20of%20R.A.%209184(July%2011,%202003).pdf)

**YES:** A YES score is earned if there is a formal appeal process for unsuccessful bidders.

**NO:** A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

**Comments:**

Unsuccessful bidders can use the courts to appeal a procurement decision. However, according to Section 58 of IRR-A, court action may be resorted to only after the protests have been resolved by the head of the procuring entity.

**References:**

Interview with Carole Belisario, supervising technical staff, Procurement Watch Inc., Sept. 16, 2008, Quezon City.

Interview with Joselito Armovit, head of monitoring group, Government Procurement Policy Board-Technical Support Office, Sept.17, 2008, Quezon City.

Implementing Rules and Regulations – Part A (IRR-A) of RA 9184. [http://www.procurement-service.org/gppb/Approved%20IRR-A%20of%20R.A.%209184\(July%2011,%202003\).pdf](http://www.procurement-service.org/gppb/Approved%20IRR-A%20of%20R.A.%209184(July%2011,%202003).pdf)

**YES:** A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

**NO:** A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

**Comments:**

There are sanctions for erring bidders and procurement officials who commit acts of collusion, bribery and other unethical conduct. The public official may be charged with administrative sanctions, while the bidders may be blacklisted from participating in government-wide bidding in the future. There are blacklisting guidelines found Section 69 of IRR-A.

**References:**

Interview with Carole Belisario, supervising technical staff, Procurement Watch Inc., Sept. 16, 2008, Quezon City.

Interview with Joselito Armovit, head of monitoring group, Government Procurement Policy Board-Technical Support Office, Sept.17, 2008, Quezon City.

Government Procurement Reform Act, RA 9184. [http://www.lawphil.net/statutes/repacts/ra2003/ra\\_9184\\_2003.html](http://www.lawphil.net/statutes/repacts/ra2003/ra_9184_2003.html).

Implementing Rules and Regulations – Part A (IRR-A) of RA 9184. [http://www.procurement-service.org/gppb/Approved%20IRR-A%20of%20R.A.%209184\(July%2011,%202003\).pdf](http://www.procurement-service.org/gppb/Approved%20IRR-A%20of%20R.A.%209184(July%2011,%202003).pdf)

**YES:** A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

**NO:** A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

**Comments:**

There are agencies which are very flexible. Again, enforcement varies from one agency to another.

**References:**

Interview with Joselito Armovit, head of monitoring group, Government Procurement Policy Board-Technical Support Office, Sept. 17, 2008, Quezon City.

**100:** A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

**75:**

**50:** A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

**25:**

**0:** There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

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## 52. Can citizens access the public procurement process?

83

52a. In law, citizens can access public procurement regulations.

**YES** | NO

**Comments:**

RA 9184, Article VII contains guidelines on Invitation to Bid.

In practice, procurement regulations are downloadable from the Web sites of GPPB, PWI and Philippine Government Electronic Procurement System (PhilGEPs).

**References:**

Government Procurement Reform Act, RA 9184. [http://www.lawphil.net/statutes/repacts/ra2003/ra\\_9184\\_2003.html](http://www.lawphil.net/statutes/repacts/ra2003/ra_9184_2003.html).

Government Procurement Policy Board (GPPB) Web site. <http://www.gppb.gov.ph/>

Procurement Watch Inc. (PWI) Web site. [www.procurementwatch.org.ph](http://www.procurementwatch.org.ph)

Philippine Government Electronic Procurement System (PhilGEPs). <http://www.philgeps.net/GEPS/Default.aspx>

**YES:** A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

**NO:** A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

**Comments:**

Under the law, the procuring entities are mandated to post all winning contracts in the PHIL-GEPS, however, not all government agencies strictly comply with the posting requirements.

**References:**

Government Procurement Reform Act, RA 9184. [http://www.lawphil.net/statutes/repacts/ra2003/ra\\_9184\\_2003.html](http://www.lawphil.net/statutes/repacts/ra2003/ra_9184_2003.html).

Interview with Carole Belisario, supervising technical staff, Procurement Watch Inc., Sept. 16, 2008, Quezon City.

**YES:** A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

**NO:** A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Procurement laws and rules are downloadable.

However, procurement documents for a particular bidding are available only to invited observers (NGO & PA) for that bidding process. The general public cannot access the documents unless they write the procuring agency for a request, which the agency may grant at their discretion.

**References:**

Interview with Carole Belisario, supervising technical staff, Procurement Watch Inc., Sept. 16, 2008, Quezon City.

Interview with Joselito Armovit, head of monitoring group, Government Procurement Policy Board-Technical Support Office, Sept.17, 2008, Quezon City.

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Rules governing the competitive procurement process are available online.

**References:**

Interview with Carole Belisario, supervising technical staff, Procurement Watch Inc., Sept. 16, 2008, Quezon City.

Interview with Joselito Armovit, head of monitoring group, Government Procurement Policy Board-Technical Support Office, Sept.17, 2008, Quezon City.

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

**Comments:**

Posting requirements such as advertisements, PHIL-GEPS, agency Web site as well as posting in conspicuous place at the agency is mandatory under the law. See Section 21 of IRR-A of RA 9184.

In practice, ads and postings are done. See Phil-GEPS Web site and agency Web sites.

However, especially with foreign-funded projects, there are times when there is insufficient time for bidders to respond to ads. With the drafting of a new IRR for foreign-funded projects, hopefully this problem will be dealt with.

**References:**

Interview with Carole Belisario, supervising technical staff, Procurement Watch Inc., Sept. 16, 2008, Quezon City.

Interview with Joselito Armovit, head of monitoring group, Government Procurement Policy Board-Technical Support Office, Sept.17, 2008, Quezon City.

Interview with Anna Leah Sarabia, executive director, Women's Media Circle Foundation Inc., Sept. 14, 2008, Mandaluyong City.



**100:** There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

**75:**

**50:** There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

**25:**

**0:** There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

**Comments:**

Records of public procurement results are publicly available through a formal process. Citizens can access procurement results through CSO observers, who access the procurement outcomes through the PHIL-GEPS. A password needs to be obtained from the PHIL-GEPS.

Many CSOs have participated in the Procurement Transparency Group, organized by the Government Procurement Policy Board (GPPB). This group collaborates with the GPPB in sending out CSO observers to biddings.

**References:**

Interview with Carole Belisario, supervising technical staff, Procurement Watch Inc., Sept. 16, 2008, Quezon City.

Interview with Joselito Armovit, head of monitoring group, Government Procurement Policy Board-Technical Support Office, Sept.17, 2008, Quezon City.

**100:** Records of public procurement results are publicly available through a formal process.

**75:**

**50:** Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

**25:**

**0:** This information is not available to the public through an official process.

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## 53. Is the privatization process effective?

92

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

### Comments:

RA 7886 as amended says: In the best interest of the government and the small local investors and for the development of the domestic capital market, no offer of sale to large investors shall be undertaken until after a minimum of 10 percent of the sale of assets in corporate form shall have been offered to small local investors, including Filipino overseas workers. ... Where this is not practicable or in the best interest of the public, at least 10 percent in any event shall be reserved for small local investors to be offered to them at the same price within 120 days from the approval of the sale. This rule shall likewise apply when there are no takers, in whole or in part, when the first offer was made. The Committee on Privatization shall formulate guidelines that provide specific preference for such small local investors."

### References:

Committee on Privatization and the Asset Privatization Trust, RA 7886. [www.lawphil.net](http://www.lawphil.net)

Executive Order No. 323, Article IV Section 3, <http://www.dof.gov.ph/cop/pdf/E0323.pdf>

**YES:** A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

**NO:** A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

### References:

Code of Conduct and Ethical Standards for Public Officials and Employees, RA 6713. <http://www.csc.gov.ph/cscweb/RA6713.html>

Anti-graft and Corrupt Practices Act, RA 3019. [http://www.lawphil.net/statutes/repacts/ra1960/ra\\_3019\\_1960.html](http://www.lawphil.net/statutes/repacts/ra1960/ra_3019_1960.html)

Proclamation 50, Creating the Asset Privatization Trust. <http://www.dof.gov.ph/cop/pdf/proc50.pdf>

**YES:** A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

**NO:** A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

**References:**

Phone interview with Matthew de Guzman, marketing specialist, Privatization and Management Office, Sept. 19, 2008.

**100:** Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

**75:**

**50:** Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

**25:**

**0:** Conflict of interest regulations do not exist, or are consistently ineffective.

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## 54. Can citizens access the terms and conditions of privatization bids?

80

54a. In law, citizens can access privatization regulations.

YES | NO

**Comments:**

The freedom of information provision in the Constitution covers this. Also, Proclamation 50 (Powers and Functions of the Committee on Privatization as amended by EO 323 and assumed by the Privatization Council) Section 5-7: To issue necessary guidelines to all government agencies to govern ongoing negotiations on the disposal of government corporate asset.”

**References:**

1987 Philippine Constitution, Art. III, Sec. 7 (Freedom of Information). [www.lawphil.net](http://www.lawphil.net)

Proclamation 50, Creating the Asset Privatization Trust. <http://www.dof.gov.ph/cop/pdf/proc50.pdf>

Executive Order 323, <http://www.dof.gov.ph/cop/pdf/E0323.pdf>

**YES:** A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the

basis for scoring this indicator.

**NO:** A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

**Comments:**

Invitations to bid are public in three newspapers of general circulation for three consecutive days.

**References:**

Phone interview with Matthew de Guzman, marketing specialist, Privatization and Management Office, Sept. 19, 2008.

**100:** There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

**75:**

**50:** There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

**25:**

**0:** There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

**Comments:**

Public disclosure of privatization decisions is not mandated in privatization laws. Interested parties can request information from the Privatization and Management Office or other relevant government agency. The freedom of information provision in the Constitution applies.

**References:**

Phone interview with Matthew de Guzman, marketing specialist, Privatization and Management Office, Sept. 19, 2008.

Phone interview with Shirley Espiritu, legal counsel, Privatization and Management Office, Sept. 19, 2008.

**YES:** A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

**NO:** A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Citizens can access privatization policies through the Privatization and Management Office (PMO). PMO is the lead office in charge of marketing the assets/companies, along with various disposition entities. The privatization process is described in the PMO Web site.

**References:**

Phone interview with Matthew de Guzman, marketing specialist, Privatization and Management Office, Sept. 19, 2008.

**100:** Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

**References:**

Phone interview with Matthew de Guzman, marketing specialist, Privatization and Management Office, Sept. 19, 2008.

**100:** Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## Category V. Oversight and Regulation

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### V-1. <sup>76</sup>National Ombudsman

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#### 56. Is the national ombudsman effective?

77

56a. In law, the ombudsman is protected from political interference.

**YES** | NO

**Comments:**

Because the appointment of the Tanodbayan position itself is by the president – and always has been the procedure since the first Ombudsman was appointed – the nominee always runs the risk of being viewed as under the influence of the president.

Although Simeon Marcelo, the previous Ombudsman, was from the start suspected to be a tainted appointment coming from a law firm perceived to be closely linked to President Arroyo's husband, Marcelo was eventually seen by the CSOs and the international community to be independent.

The same goes for the present Ombudsman, Merceditas Gutierrez. CSOs claimed she was not independent and that she was chosen only because she was the first gentleman's classmate in the Ateneo Law School. Yet she later had the first gentleman summoned to appear in the ZTE Broadband investigation and is now in the process of investigating and prosecuting former Secretary of Justice Nani Perez, alleged to be one of the president's favorite Cabinet ministers.

**References:**

Article XI of the 1987 Constitution provides for the establishment of an Office of the Ombudsman and endows it with fiscal autonomy and constitutional independence. This means that by law the Ombudsman is protected from political interference.

Philippine National Integrity System Study, by Gabriella Quimson, 2006.

**YES:** A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

**Comments:**

The Ombudsman in practice operates independently without undue political pressure and hindrance from the government or the president. This is evidenced by three “big fish” cases which have been pursued – the case of President Estrada, in which he was convicted for plunder; the case of the Ombudsman’s former boss and former Secretary of Justice Nani Perez for graft and extortion; and the ZTN Broadband case in which the Ombudsman summoned first gentleman Jose Miguel Arroyo to appear and also “inhibited” herself from the investigation panel.

Public perception that the Ombudsman lacks independence is probably fueled by press reports, although no evidence has surfaced to prove this. One of the most damaging incidents was the mid-term resignation of Simeon Marcelo, the previous Ombudsman, which brought about suspicions that he had resigned due to political interference in high-profile cases. These suspicions were never confirmed by him.

It seems that the OMB is not well understood by the public. It may be important for the office to ensure that there is sufficient funding for a communications strategy and social marketing.

**References:**

Heidi Mendoza, former Ombudsman employee, at a Transparency International-Philippines and Asia-Pacific planning conference, May 2008, Manila.

Telephone Interview with Ophel Tongco, managing director, Centre for Governance at the Development Academy of the Philippines, Sept. 16, 2008.

Ombudsman resigns says he is exhausted,” by Jing Villamente, Manila Standard, Oct. 1-2, 2005, [http://www.manilastandardtoday.com/page=news04\\_oct01\\_2005](http://www.manilastandardtoday.com/page=news04_oct01_2005)

**100:** This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

**75:**

**50:** This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

**25:**

**0:** This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

The Ombudsman is a constitutional body, and the head of such a body cannot be removed without relevant justification, such as impeachment for abuse of power.

Recently however, the business group Coalition Against Corruption has tried to call for the impeachment of the ombudsman. Ombudsman Gutierrez should be impeached for filing of weak cases against... lawmakers implicated in the fertilizer scam," attorney Harry Roque said. The ombudsman has welcomed the move.

The government has not interfered at any time in the removal of the ombudsman and has not ever interfered in the past. However, powerful CSOs have tried to impeach the ombudsman. This demonstrates the vibrancy of Philippine civil service and the democratic process.

**References:**

Phone interview with Assistant Ombudsman Evelyn Baliton, head of the Public Assistance and Anti-Corruption Office, Sept. 16, 2008.

Ombudsman ready to face impeach moves in Congress," by Sol Jose Vanzi, Philippine Star, April 22, 2008, <http://www.newswatch.org/2004/02/hl/hl107380.htm>

**100:** The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

**75:**

**50:** The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

**25:**

**0:** The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | **75** | 50 | 25 | 0

**Comments:**

A lack of finance, manpower and equipment are standing in the way of higher success rates for the Ombudsman. There are instances in which Ombudsman investigators have no choice but to close and terminate cases. For example, the Ombudsman's Military and Other Law Enforcement Officers office has less than 20 lawyers handling all its many preliminary investigation cases.

**References:**

2006 National Integrity System (NIS) report by Gabriella Quimson

Paper on the role of the Office of the Ombudsman in resolving extra-judicial killings, <http://209.85.175.104/search?q=cache:ZmJHUGs1x18J:www.supremecourt.gov.ph/publications/summit/Summit%2520Papers/Gutierrez%2520-%2520On%2520the%2520Role%2520of%2520the%2520Ombudsman.pdf+ombudsman+resources&hl=tl&ct=clink&cd=7&gl=ph>

**100:** The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

**25:**



**0:** The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

**Comments:**

All ombudsmen, both past and present, have had excellent legal credentials.

However, the extended kinship system in the Philippines, either by blood, affinity or sponsorship makes it difficult to prevent the Ombudsman from being fully insulated from perceived political influence. In addition, in order to preserve the integrity of the system a governance CSO implemented the Ombudsman Watch [http://www.tan.org.ph/files/proj\\_oaw2.asp](http://www.tan.org.ph/files/proj_oaw2.asp) by monitoring the process of selecting the current OMB. If they had had any problems concerning a black box' in the appointments procedure this was not expressed at that time. In addition, the present Ombudsman's reputation in terms of integrity is unsullied. Ombudsman Gutierrez was nominated by Justice Vitug (did not apply) and was selected unanimously by the Judicial Bar Council, an independent screening committee under the Judiciary. She rose from the ranks in the Legal Council of the Department of Justice (DOJ) to Secretary of the department in twenty years. She was assigned as Chief Presidential Legal Counsel and Anticorruption Czarina before her appointment as Ombudsman.

**References:**

Conrado Vasquez bio on OMB Web site, <http://www.ombudsman.gov.ph/page.php?pid=217>

**100:** Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

Although there are sufficient funds to pay for salaries at the moment, there is not enough budget for operations. There is a lack of funds for communication services, a printing press and social marketing resources.

**References:**

Phillippine Constitution 1987

**100:** The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

**Comments:**

There is an annual report made to Congress comprised mainly of numerical data such as the numbers of cases received, cases disposed, cases forwarded to the Sandiganbayan corruption court, as well as the regular courts. The OMB also makes monthly accomplishment reports compiled for budget hearings in Congress. In addition there are case reports done by the Preliminary Investigation Administrative and Adjudication and Monitoring Office (PIAAMO) on the nature of cases, pending cases and summary of cases. The last two reports are being done with a view to eventually release non-confidential information to the public.

The OMB Web site maintains current press releases, accomplishments, reports and project updates. The law on confidentiality prohibits the Ombudsman from making public certain reports except to concerned parties. However, information on the number of convictions and number of cases filed is in the public domain.

**References:**

Preliminary Investigation Administrative and Adjudication and Monitoring Office, Office of the Ombudsman, Sept. 17, 2008.

**100:** The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

**75:**

**50:** The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

**25:**

**0:** The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

Investigation is one of the Ombudsman's five major functions dictated by law. In practice the Ombudsman has initiated motu proprio investigations including parallel investigations of ongoing cases.

In terms of lack of impartiality – investigation of cases are still on-going (eg the Joc Joc Bolante case) were the OMB has given a directive to the Investigating panel handling the case to terminate investigation by early next year. Cases she filed demonstrate that regardless of party affiliation and people who have been suspended also belong to both the pro-administration and also the opposition side. In addition, if indeed the OMB has been guilty of partiality no court has made declaration to this effect (see the Comelec case).

**References:**

RA 6770 Sec 15 (1)

**100:** The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

**75:**

**50:** The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

**25:**

**0:** The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

**Comments:**

The Supreme Court has said the legislative history of RA 6770 (Ombudsman Act) bears out the conclusion that the Office of the Ombudsman was intended to possess full administrative disciplinary authority, including the power to impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault. The court also cited its decision in *Uy v. Sandiganbayan*, which states: "The Philippine Ombudsman, as protector of the people, is armed with the power to prosecute erring public officers and employees, giving him an active role in the enforcement of laws on anti-graft and corrupt practices and such other offenses that may be committed by such officers and employees. The legislature has vested him with broad powers to enable him to implement his own actions."

However, sometimes the Ombudsman's hands are tied when the Court of Appeals issues temporary restraining orders to prevent the OMB from imposing penalties on offenders. A case in point: After the OMB filed suspension charges against the Department of Environment and Natural Resources (DENR), the agency went to court stating it was a grave abuse of power by the OMB. The Court of Appeals upheld the DENR's appeal, but the Supreme Court supported the OMB and overturned the appellate ruling.

**References:**

<http://www.ombudsman.gov.ph/page.php?pid=285>

In the latest Social Weather Stations Survey of Enterprises on Corruption (2008), the Office of the Ombudsman registered a positive rating for its commitment to fighting corruption. The same SWS study cites the Office of the Ombudsman as the most trusted agency to bring a complaint to (a ranking it has held since 2005).

**100:** When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

**75:**

**50:** The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | **50** | 25 | 0

**Comments:**

On the whole, the judiciary and the Sandiganbayan corruption court does act on the findings of the Ombudsman, with a notable exception being the Comelec Mega Pacific case, in which the Supreme Court nullified the OMB's civil decision.

**References:**

Ombudsman Merceditas Gutierrez, Sept. 18, 2008.

Assistant Ombudsman Mark Jalandoni, Sept. 17, 2008.

**100:** Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

**75:**

**50:** In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

**25:**

**0:** Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

**Comments:**

There are allegations that we are sitting on these cases. That is not true," Gutierrez said.

According to Jalandoni, in some cases it seems that the public does not fully appreciate the legal and judicial processes. Evidence must be presented beyond reasonable doubt, in accordance to legal procedures and processes. The Ombudsman is also swamped with requests covering the entire country. There are only 250 investigators and 88 million Filipinos who are potential complainants. Resources are stretched and the present Ombudsman has inherited thousands of unresolved cases from the previous Ombudsman.

Former President Estrada's case was resolved soon after the Ombudsman came into office. The Comelec case findings, a three-year running case, was forwarded to the judiciary within six months. The Nani Perez case has been investigated and charged in all four divisions of the Sandiganbayan anti-graft court, and Perez now faces two counts of graft, robbery and falsification of public documents. The Joc Joc Bolante case is being investigated but may take some time due to the sweeping geographic nature of the case. The ZTE cases are undergoing public hearing and investigation, and Gutierrez said they will be consolidated into a single case.

**References:**

Interview with Ombudsman Merceditas Gutierrez, Sept. 18, 2008.

Interview with Assistant Ombudsman Mark Jalandoni, Sept. 17, 2008.

<http://www.newsflash.org/2004/02/hl/hl107059.htm>.

**100:** The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

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## 57. Can citizens access the reports of the ombudsman?

83

57a. In law, citizens can access reports of the ombudsman(s).

**YES** | NO

**Comments:**

The freedom of information clauses in the Constitution apply to the Ombudsman, as would the pending FOIA bill.

The Ombudsman also publicize(s) matters covered by its investigation when circumstances so warrant and with due prudence."

**References:**

Constitution, Article II, Section 28; and Article III, Section 7

Freedom of Information Act of 2008 bill, which was pending at committee level on Aug. 27, 2008. [http://www.senate.gov.ph/lis/bill\\_res.aspx?congress=14&q=SBN-2571](http://www.senate.gov.ph/lis/bill_res.aspx?congress=14&q=SBN-2571)

<http://www.lawphil.net>

**YES:** A YES score is earned if all ombudsman reports are publicly available.

**NO:** A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Citizens can access Ombudsman reports within a week of requesting them, except for cases which are prohibited by law due to confidentiality. The Public Assistance Bureau has a procedural work flow chart which states that people requesting assistance must be informed within a week, either by telephone or letter, of the action on their request. An officer is assigned to the complainant and immediate remedial action is acted upon, and there is OMB follow-up on behalf of the complainant for the speedy resolution of the case.

**References:**

Interview with Assistant Ombudsman Mark Jalandoni, Sept. 18, 2008.

Interview with director of the Public Assistance Bureau, Office of the Ombudsman, Sept. 17, 2008.

**100:** Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Reports take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Citizens can access reports for free. The Integrity Development Review annual reports, previously embargoed by the EU, are not accessible to the public. Cases which have not had a final resolution are not available to the public, but this is consistent with judicial institutions based on law.

**References:**

Interview with Assistant Ombudsman Evelyn Baliton, Sept. 18, 2008.

Interview with Assistant Ombudsman Mark Jalandoni, Sept. 18, 2008.

**100:** Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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## 55. Is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

**YES**

**NO**

**Comments:**

The OMB is the country's premiere anti-corruption body, lead government agency and primary integrity institution responsible for curbing graft and corruption. The Constitution grants it powers to investigate citizens' complaints against public officials; direct public officials or agencies to correct abuse and impropriety; recommend penalties and punishment; direct the furnishing of reports; request other government agencies for assistance; publicize matters of jurisprudence; determine causes of inefficiency, red tape, mismanagement, fraud and corruption in government; make recommendations for elimination of corruption and the observance of high standards of ethics and efficiency; and promulgate rules of procedure. The Tanodbayan (ombudsman) and his or her deputies serve as protectors of the people."

**References:**

Article XI of the 1987 Constitution provides for the establishment of an Office of the Ombudsman and endows it with fiscal autonomy and constitutional independence.

RA 6770, Ombudsman Act of 1989, provides for the functional and structural organization of the OMB.

**YES:** A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

**NO:** A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

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## V-2. Supreme Audit Institution

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### 59. Is the supreme audit institution effective?

78

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

**Comments:**

Article IX explicitly sets out the independence of the Commission on Audit by granting it fiscal autonomy and the right to promulgate its own rules and regulations.

**References:**

Section 5 and 6, Part A, Article IX, Philippine Constitution

**YES:** A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

Article IX of the Philippine Constitution expressly states that the chairman and commissioners of the COA are appointed for a definite period (seven years for the chair, five years for one commissioner, and three years for another commissioner).

The current COA chairman, Reynaldo Villar, was appointed in April 2008 after the retirement of the previous chairman, Guillermo Carague, in February. Villar was already a COA commissioner before assuming the chairmanship.

**References:**

General information on Commission on Appointments, [http://www.coa.gov.ph/Gen\\_Information.htm](http://www.coa.gov.ph/Gen_Information.htm)

Commission on Appointments profile, <http://www.comappt.gov.ph/default.html>



**100:** The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

**75:**

**50:** The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

**25:**

**0:** The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | **75** | 50 | 25 | 0

**Comments:**

As early as 2004, there have been discussions on how best to strengthen the Commission on Audit. One way legislators believe this can be done is to address issues with its auditors, ranging from their low salaries to the location of their offices. These factors supposedly contribute to the vulnerability of COA auditors to corruption and bribery.

**References:**

Commission on Audit Web site, directory of COA officials. [http://www.coa.gov.ph/Gen\\_Information.htm](http://www.coa.gov.ph/Gen_Information.htm)

A Stronger COA Sought,” Committee Affairs Department, Appropriations Committee, Nov. 16, 2004, [http://www.congress.gov.ph/committees/commnews/commnews\\_det.php?newsid=96](http://www.congress.gov.ph/committees/commnews/commnews_det.php?newsid=96)

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

**100** | 75 | 50 | 25 | 0

**Comments:**

Article IX of the Philippine Constitution expressly states that the chairman and commissioners of the COA are appointed for a definite period (seven years for the chair, five years for one commissioner, and three years for another commissioner).

The current COA chairman, Reynaldo Villar, was appointed in April 2008 after the retirement of the previous chairman, Guillermo Carague, in February. Villar was already a COA commissioner before assuming the chairmanship.

**References:**

General information on Commission on Audit, [http://www.coa.gov.ph/Gen\\_Information.htm](http://www.coa.gov.ph/Gen_Information.htm)

Commission on Appointments profile, <http://www.comappt.gov.ph/default.html>

GMA nominates Reynaldo Villar as COA Chair," Gov.ph.news, April 19, 2008, <http://www.gov.ph/news/default.asp?i=20654>

**100:** Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

Article IX of the Constitution states that the Commission on Audit (and other constitutional commissions) shall enjoy fiscal autonomy, hence their yearly budget is insulated from political influence.

COA's budget has been automatically released annually, although in recent years there has been a trend of a declining budget.

**References:**

Section 5, Part A, Article IX, Philippine Constitution

Government cutting COA budget in 2009," by Norman Bordadora, Inquirer.net, Sept. 9, 2008, <http://newsinfo.inquirer.net/breakingnews/nation/view/20080915-160843/Government-cutting-COA-budget-in-2009>

"A Stronger COA Sought," Committee Affairs Department, Appropriations Committee, Nov. 16, 2004, [http://www.congress.gov.ph/committees/commnews/commnews\\_det.php?newsid=96](http://www.congress.gov.ph/committees/commnews/commnews_det.php?newsid=96)

COA Accomplishment Report, March 2008, [http://www.coa.gov.ph/Gen\\_Information.htm](http://www.coa.gov.ph/Gen_Information.htm)

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

**Comments:**

In March 2008, COA listed the 2006 and 2007 Annual Audit Reports among its achievements. COA reports are accessed by media and opposition parties alike, which shed light on several instances of government misconduct, like a 1.5 billion peso unofficial budgetary allocation to the Department of Agriculture during the senatorial campaign period or the unliquidated cash advances and loans without records in the president's office.

**References:**

COA Accomplishment Report, March 2008, [http://www.coa.gov.ph/Gen\\_Information.htm](http://www.coa.gov.ph/Gen_Information.htm)

Arroyo Fails COA Audit," by Malou Mangahas, PCIJ.org, May 19, 2008, <http://www.pcij.org/i-report/2008/op-audit.html>

"Government cutting COA budget in 2009," by Norman Bordadora, Inquirer.net, Sept. 9, 2008, <http://newsinfo.inquirer.net/breakingnews/nation/view/20080915-160843/Government-cutting-COA-budget-in-2009>

**100:** The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

**75:**

**50:** The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

**25:**

**0:** The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

**Comments:**

COA has a Fraud Alert Form on its Web site where ordinary citizens can file complaints or report leads on supposed fraudulent behavior of government officials. Unfortunately, the Fraud Alerts are usually filed by individuals who refuse to identify themselves and who would not present themselves as witnesses, so most of the cases end up being dismissed.

COA also cannot do much except to forward fraud complaints to the relevant offices. These offices are not compelled by law to act on COA recommendations.

Cases against powerful politicians and cronies are usually not acted upon except on instances when high media coverage is involved. There have been cases of harassment and COA officials have received death threats from alleged corruptors.

**References:**

Fraud Alert Feedback CY 2008, Commission on Audit website, <http://www.coa.gov.ph/Fraud.htm>

Fraud Alert Feedback CY 2007, Commission on Audit website, <http://www.coa.gov.ph/Fraud.htm>

**100:** Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

**75:**

**50:** In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

**25:**

**0:** Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | **75** | 50 | 25 | 0

**Comments:**

COA conducts its audits on its own schedule. More than 1,000 audit reports were generated by COA, according to its March 2008 report.

However, COA does conduct special audits stirred by political pressure, as in the case of the upcoming Meralco audit. The Supreme Court had ordered the audit of Meralco as early as 2006, but COA only moved on the issue when the president urged them to do so in September 2008.

**References:**

COA Accomplishment Report, March 2008, [http://www.coa.gov.ph/Gen\\_Information.htm](http://www.coa.gov.ph/Gen_Information.htm)

Arroyo Fails COA Audit," by Malou Mangahas, PCIJ.org, May 19, 2008, <http://www.pcij.org/i-report/2008/op-audit.html>

"COA audit on Meralco books to start this week," GMA news, Sept. 15, 2008, <http://www.gmanews.tv/story/120356/COA-audit-on-Meralco-books-to-start-next-week>

**100:** The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

**75:**

**50:** The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

**25:**

**0:** The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

## 60. Can citizens access reports of the supreme audit institution?

100

60a. In law, citizens can access reports of the audit agency.

YES | NO

### Comments:

Annual audit reports and accomplishment reports are published online at the COA Web site.

### References:

Section 7, Article III, Philippine Constitution

[www.coa.gov.ph](http://www.coa.gov.ph)

**YES:** A YES score is earned if all supreme auditor reports are available to the general public.

**NO:** A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

### Comments:

All important COA reports are published and freely downloadable from the commission's Web site.

### References:

Annual Audit Reports 1998 to 2007, Commission on Audit website, <http://www.coa.gov.ph/Audit/AAR.htm>

Fraud Alert Feedback Reports 2002 to 2008, Commission on Audit website, <http://www.coa.gov.ph/Fraud.htm>

**100:** Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Reports take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Important audit reports are published and freely downloadable from the COA Web site.

**References:**

Annual Audit Reports 1998 to 2007, Commission on Audit website, <http://www.coa.gov.ph/Audit/AAR.htm>

Fraud Alert Feedback Reports 2002 to 2008, Commission on Audit website, <http://www.coa.gov.ph/Fraud.htm>

**100:** Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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58. Is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

**Comments:**

The Commission on Audit is the supreme audit institution in the Philippines.

**References:**

Part D, Article IX, Philippine Constitution

**YES:** A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

**NO:** A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

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93  
V-3. Taxes and Customs

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62. Is the tax collection agency effective?

75

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

As of 2006, the BIR employed more than 10,000 workers distributed in one national office, 19 regional offices, 123 revenue district offices, and 4 revenue data centers all over the Philippines. Based on the speeches delivered by various BIR leaders, the bureau recognizes its manpower constraints vis-a-vis their planned direction. The bureau needs to build its human resource capability and rationalize human resources among the different offices to ensure efficient function of the tax collection system.

According to the 2007 Business Survey on Corruption, the BIR and its employees are not highly regarded by business owners – the BIR's main clients. A third of the respondents claim that they were asked for bribes when filing their income tax returns. In order to address this, BIR is working with the Office of the Ombudsman in conducting random lifestyle checks of its employees.

**References:**

Social Weather Stations, 2007 Business Survey on Corruption, presentation to the Cabinet, Aug. 21, 2008

Improving Revenue Collection to Finance Government Expenditures," speech delivered by Finance Secretary Margarito Teves, Aug. 1, 2007, <http://www.bir.gov.ph/updates/features.htm>

**100:** The agency has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

**Comments:**

According to the BIR's 2006 annual report: Total budget allocation for the Bureau for CY 2006 amounted to P 4,115.691 Million. The bulk of the budget was allotted to Personal Services with a percentage share of 65.70%, followed by Maintenance and Other Operating Expenses (33.84%) and Capital Outlay (0.46%).”

**References:**

BIR Annual Report 2006, <ftp://ftp.bir.gov.ph/webadmin1/pdf/360732006%20BIR%20Annual%20Report.pdf>

Exemption for BIR, BOC from pay standardization mulled,” by Regina Bongco, Malaya newspaper, Sept. 17, 2007.

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

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## 65. Is the customs and excise agency effective?

75

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

As of 2007, the BOC employed more than 4,000 people.

In their Web site, the BOC acknowledges the need to streamline their bureaucracy and manage their human resources better.

**References:**

Exemption for BIR, BOC from pay standardization mulled,” by Regina Bongco, Malaya newspaper, Sept. 17, 2007.

Bureau of Customs Web site, News, <http://www.customs.gov.ph/aboutBOCStrategy.jsp>

**100:** The agency has staff sufficient to fulfill its basic mandate.



**75:**

**50:** The agency has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | **75** | 50 | 25 | 0

**Comments:**

The Bureau of Customs received a 1.2 billion peso budget last year, of which 900 million goes to employees' salaries. The BOC relies on international donor funds to improve facilities and develop human resources.

The BOC intends to focus its resources on improvement of its import tax collection through automation and computerization of its services.

**References:**

Exemption for BIR, BOC from pay standardization mulled," by Regina Bongco, Malaya newspaper, Sept. 17, 2007.

Bureau of Customs, Operational Plans and Programs, <http://www.customs.gov.ph/aboutBOCOpPlanTactics.jsp>

**100:** The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

---

## 61. Is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

**YES** | NO

**Comments:**

It is the Bureau of Internal Revenue.

**References:**

RA 8424

**YES:** A YES score is earned if there is a national agency formally mandated to collect taxes.

**NO:** A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

---

### 63. Are tax laws enforced uniformly and without discrimination?

0

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

**Comments:**

Based on the SWS survey of business owners and managers, perception of BIR sincerity in fighting corruption is bad (-31 to – 50 net sincerity rating). A third of respondents said they were asked for a bribe in paying their income taxes.

Furthermore, there is widespread belief among Filipinos that they can get away with not correctly paying their taxes. Citing the same survey, only 18 percent of respondents from the business sector said they pay their taxes honestly.

In order to address this, the BIR has been undertaking a massive campaign to prosecute the biggest tax evaders in the country.

**References:**

2007 Business Survey on Corruption, Social Weather Stations, presentation to the Cabinet, Aug. 21, 2008

BIR files tax evasion case versus holders, sellers of fake tax certificates,” by Chino Leyco, Manila Times Internet Edition, July 25, 2008, <http://www.manilatimes.net/national/2008/july/25/yehey/business/20080725bus5.html>

**100:** Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

**75:**

**50:** Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

**25:**

**0:** Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

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64. Is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

**Comments:**

It is the Bureau of Customs.

**References:**

Philippine Administrative Act 355

RA 430

**YES:** A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

**NO:** A NO score is earned if that function is spread over several agencies, or does not exist.

---

66. Are customs and excise laws enforced uniformly and without discrimination?

0

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

**Comments:**

The Bureau of Customs ranked the worst among government agencies by business owners and managers surveyed with regard their sincerity in fighting corruption (-68 to -75 net sincerity rating). One-fourth of respondents claim they were asked for bribes in complying with government import regulations.

Several groups of citizens often evade customs and excise law. There are proposals pending in Congress for an overhaul of the organizational structure of the Bureau of Customs to increase its capability to generate revenues.

**References:**

2007 Business Survey on Corruption, Social Weather Stations, presentation to the Cabinet, Aug. 21, 2008

Finance department supports overhaul of BIR, Customs," GMAnews.TV, Aug. 12, 2008, <http://www.gmanews.tv/story/113005/Finance-department-supports-overhaul-of-BIR-Customs>

**100:** Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

**75:**

**50:** Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

**25:**

**0:** Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

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## V-4. State-Owned Enterprises

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68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

65

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

**Comments:**

The Commission on Audit, just like all constitutional commissions, enjoy fiscal autonomy and it is granted the power to promulgate its own rules and regulations.

**References:**

Section 5 and 6, Part A, Article IX, Philippine Constitution

**YES:** A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

**References:**

Commission on Audit Web site, directory of COA officials. [http://www.coa.gov.ph/Gen\\_Information.htm](http://www.coa.gov.ph/Gen_Information.htm)

"A Stronger COA Sought," Committee Affairs Department, Appropriations Committee, Nov. 16, 2004, [http://www.congress.gov.ph/committees/commnews/commnews\\_det.php?newsid=96](http://www.congress.gov.ph/committees/commnews/commnews_det.php?newsid=96)

**100:** The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

**25:**

**0:** The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

**Comments:**

Article IX of the Constitution states that the Commission on Audit (and other constitutional commissions) shall enjoy fiscal autonomy, hence their yearly budget is insulated from political influence.

COA's budget has been automatically released annually, though in recent years there has been a trend of declining budgets.

**References:**

Section 5, Part A, Article IX, Philippine Constitution

"Government cutting COA budget in 2009," by Norman Bordadora, Inquirer.net, Sept. 9, 2008, <http://newsinfo.inquirer.net/breakingnews/nation/view/20080915-160843/Government-cutting-COA-budget-in-2009>

"A Stronger COA Sought," Committee Affairs Department, Appropriations Committee, Nov. 16, 2004, [http://www.congress.gov.ph/committees/commnews/commnews\\_det.php?newsid=96](http://www.congress.gov.ph/committees/commnews/commnews_det.php?newsid=96)

"Exemption for BIR, BOC from pay standardization mulled," by Regina Bongco, Malaya newspaper, Sept. 17, 2007.

**100:** The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | **50** | 25 | 0

**Comments:**

Annual audits are conducted yearly by the Commission on Audit, including corporate government sectors. The results of COA audits are published on the commission's Web site. But COA is limited to forwarding recommendations or filing fraud complaints on the enterprises, and whether corresponding and appropriate measures are taken by the agency or state corporation is beyond COA's powers.

**References:**

Annual Audit Reports of Government Owned/ Controlled Corporations 2007, Commission on Audit website, <http://www.coa.gov.ph/Audit/AAR.htm>

COA Accomplishment Report, March 2008, [http://www.coa.gov.ph/Gen\\_Information.htm](http://www.coa.gov.ph/Gen_Information.htm)

**100:** When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

**75:**

**50:** The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | **25** | 0

**Comments:**

During the legislative hearing for COA's 2005 budget, a congressman asked then Commissioner Guillermo Carague if COA needed additional funds to increase manpower to effectively pursue and investigate cases of irregularities among government officials. Carague answered that COA does not have any prosecutorial powers and they can only refer such cases to the Office of the Ombudsman for further action.

Furthermore, based on the reports on fraud alerts found in the COA Web site, the COA may initiate investigations but it can only recommend action to the relevant agencies, which must on their own pursue the case for suspension or dismissal against its employees.

**References:**

A Stronger COA Sought," Committee Affairs Department, Appropriations Committee, Nov. 16, 2004, [http://www.congress.gov.ph/committees/commnews/commnews\\_det.php?newsid=96](http://www.congress.gov.ph/committees/commnews/commnews_det.php?newsid=96)

Commission on Audit Web site, Fraud Alert Reports, <http://www.coa.gov.ph/Fraud.htm>

**100:** When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

**75:**

**50:** The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

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## 69. Can citizens access the financial records of state-owned companies?

85

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

**Comments:**

Financial records of state-owned companies are deemed public records, and as such are required by law to be made available to the public.

**References:**

Section 7, Article III, Philippine Constitution

**YES:** A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

**NO:** A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

**Comments:**

Based on the Annual Financial Reports on Government Owned/ Controlled Corporations by the Commission on Audit:

The Commission on Audit (COA) is the Philippines' Supreme State Audit Institution, responsible for auditing all government agencies. In addition, the COA prepares an Annual Financial Report (AFR) for Government-Owned and/or Controlled Corporations (GOCCs) and submits the same to the President and the Congress of the Philippines in compliance to Section 4, Article IX-D of the Philippine Constitution.

The AFR shows the financial position, results of operations, sources and applications of cash and the changes in the equity of government corporations as of December 31, 2006. To enhance the information value, the financial statements included in this AFR are accompanied by explanatory notes supported by tabular presentations and textual analyses for asset, liability, equity, income and expense accounts.

The AFR intends to serve as a potent tool for corporate planning, budgeting and policy formulation and as a medium to enlighten the general public on how GOCCs manage their finances and operations.”

The latest Annual Financial Report available from the Web site is 2006. The 2007 report is still unpublished to the Web site.

**References:**

Annual Financial Reports 2005 and 2006, Commission on Audit website, [http://www.coa.gov.ph/Financial\\_Reports.htm](http://www.coa.gov.ph/Financial_Reports.htm)

**100:** State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

**75:**

**50:** State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

**25:**

**0:** Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

**Comments:**

The Annual Financial Report on GOCCs states:

This is the second year that the AFR is prepared based on the prescribed Chart of Accounts under the New Government Accounting System (NGAS). The NGAS Chart of Accounts aims to: (a) ensure uniformity in the use of accounts for similar transactions, (b) facilitate consolidation of accounts and monitoring of GOCCs's financial transactions, and (c) ensure efficient implementation by concerned GOCCs of the computerized NGAS, otherwise known as the e-NGAS.”

Furthermore, the Annual Financial Report on National Government describes the New Government Accounting System as:

“The Commission on Audit under Section 2(2), Article IX-D of the 1987 Constitution is given the exclusive authority to promulgate, among others, accounting rules and regulations. To ensure the promulgation of accounting standards that are attuned to



international standards, the Philippine Government Accounting Standards (PGAS) was approved by this Commission under COA Resolution No. 2006-006 dated January 31, 2006.”

**References:**

Annual Financial Report on Government Owned/Controlled Corporations, Commission on Audit Web site, 2006, [http://www.coa.gov.ph/Financial\\_Reports.htm](http://www.coa.gov.ph/Financial_Reports.htm)

Annual Financial Report on National Government, Commission on Audit Web site, 2006, [http://www.coa.gov.ph/Financial\\_Reports.htm](http://www.coa.gov.ph/Financial_Reports.htm)

**100:** Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

**75:**

**50:** Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

**25:**

**0:** State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | **50** | 25 | 0

**Comments:**

The most recent Annual Financial Report available on the COA Web site was from 2006. The 2007 report had not yet been uploaded.

**References:**

Annual Financial Reports of Government Owned/ Controlled Corporations, Commission on Audit Web site, 2005 and 2006, [http://www.coa.gov.ph/Financial\\_Reports.htm](http://www.coa.gov.ph/Financial_Reports.htm)

**100:** Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

**75:**

**50:** Records take around two weeks to obtain. Some delays may be experienced.

**25:**

**0:** Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Annual financial reports are freely downloadable from the Commission on Audit Web site.

**References:**

Annual Financial Report of Government Owned/Controlled Corporations, Commission on Audit Web site, 2006, [http://www.coa.gov.ph/Financial\\_Reports.htm](http://www.coa.gov.ph/Financial_Reports.htm)

**100:** Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

**75:**

**50:** Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

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67. Is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

**Comments:**

The Commission on Audit is mandated to examine and audit all revenues and receipts of all instrumentalities of government, including government-owned and -controlled companies.

**References:**

Section 2, Part D, Article XI, Philippine Constitution

**YES:** A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

**NO:** A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

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83  
V-5. Business Licensing and Regulation

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70. Are business licenses available to all citizens?

50

70a. In law, anyone may apply for a business license.

YES | NO

**References:**

Article X, Philippine Constitution

**YES:** A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

**NO:** A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

**Comments:**

There is no formal process for appealing a rejected license. Every local government unit has a different set of procedures for appeals. Commonly, businessmen approach the mayors or the administrators themselves to request an appeal, but a formal appeal process does not exist.

**References:**

RA 7160

**YES:** A YES score is earned if there is a formal process for appealing a rejected license.

**NO:** A NO score is earned if no such mechanism exists.

---

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

Although most local government units claim they can issue business permits within a day, there are requirements from national agencies that business owners have to secure even before they can apply for a license at the local level. Application for a tax identification number and business names alone are done in separate government offices and will already take a week to secure.

The Philippine Business Registry was launched early in 2008 to provide a single window” online facility for businesses. So far, it has not streamlined registry processes, so time taken to register for license has not yet been reduced.

**References:**

Doing Business Report, World Bank Group, 2008, <http://www.doingbusiness.org/ExploreEconomies/?economyid=153>

Philippine Business Registry, About Us, <http://www.business.gov.ph/portal/dt>

**100:** Licenses are not required, or licenses can be obtained within roughly one week.

**75:**

**50:** Licensing is required and takes around one month. Some groups may be delayed up to a three months

**25:**

**0:** Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Aside from the different offices that a business owner has to visit to secure the basic requirements (i.e. business name, tax identification number), there are several regulatory offices from which businesses may need to secure permits, depending on its type. Some of these regulatory offices only have regional offices or one central office.

The Philippine Business Registry was launched in 2008 to start accepting online applications but is not yet fully developed.

Aside from bureaucratic red tape and systemic inefficiencies, corruption also increases the costs of obtaining permits in the country. Some businesses prefer to deal with fixers” to facilitate their licenses. Some resort to bribing government officials to speed up their transactions.

**References:**

Doing Business Report, The World Bank, 2008, <http://www.doingbusiness.org/ExploreEconomies/?economyid=153>

**100:** Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

**75:**

**50:** Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

**25:**

**0:** Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

---

## 71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

**YES** | NO

### Comments:

Although health standards do exist in the Philippines, they are not uniformly applied all over the country.

For one, delivery of health services (including issuance of sanitary permits and health inspections of businesses) are relegated to local government units. Every local government unit, depending on its focus industries, implements its own inspection standards. Most of the time, business owners do not know what inspectors will be checking.

### References:

Bureau of Food and Drugs is the main regulatory body for public health standards in businesses. The relevant laws and issuance are found in this site: [http://www.bfad.gov.ph/left\\_laws\\_regulations.htm](http://www.bfad.gov.ph/left_laws_regulations.htm)

**YES:** A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

**NO:** A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

**Comments:**

Similar to health standards, environmental standards in the country are not uniformly applied.

Different local government units legislate their own environmental codes that sometimes expand or limit the existing provisions set by DENR. Businesses cannot assume that meeting environmental standards in one locality means that they can do the same in others.

**References:**

The Department of Environment and Natural Resources is the government body responsible for overseeing environmental standards in the country. For list of the relevant environmental laws and regulations, see <http://www.denr.gov.ph/section-policies/>.

**YES:** A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

**NO:** A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

**Comments:**

The National Building Code is widely followed as a standard, even by local government units.

**References:**

RA 6541, National Building Code

**YES:** A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

**NO:** A NO score is earned if such requirements are not made public or are otherwise not transparent.

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## 72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

25

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

**Comments:**

There is a widespread perception in the public and business sectors that the inspection process and the business licensing process is riddled with corruption. Four in 10 businessmen surveyed by SWS said they have been asked for bribes while seeking licenses.

One of the reasons for this is a lack of synchronization between national standards and local government standards. Even if rules and regulations are promulgated at the national level, the local governments conduct inspections. This disconnect allows for room for interpretation of standards on a case-by-case basis.

However, most highly urbanized cities (i.e. Makati, Taguig, Marikina) have made efforts to professionalize their inspection system because they realized that this contributes to attracting investors.

**References:**

Business blues and the red-tape act," editorial, The Manila Standard, May 28, 2008, <http://www.manilatimes.net/national/2008/may/28/yehey/opinion/20080528opi1.html>

2007 Business Survey on Corruption, Social Weather Stations, presentation to the Cabinet, Aug. 21, 2008, <http://www.sws.org.ph/TAG7%20for%20Cabinet%20Aug21-final.pdf>

**100:** Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

**75:**

**50:** Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

**25:**

**0:** Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

**Comments:**

There is a widespread perception in the public and business sectors that the inspection process and the business licensing process is riddled with corruption. Four in 10 businessmen surveyed by SWS said they have been asked for bribes while seeking licenses.

One of the reasons for this is a lack of synchronization between national standards and local government standards. Even if rules and regulations are promulgated at the national level, the local governments conduct inspections. This disconnect allows for room for interpretation of standards on a case-by-case basis.

However, most highly urbanized cities (i.e. Makati, Taguig, Marikina) have made efforts to professionalize their inspection system because they realized that this contributes to attracting investors.

**References:**

Business blues and the red-tape act," editorial, The Manila Standard, May 28, 2008, <http://www.manilatimes.net/national/2008/may/28/yehey/opinion/20080528opi1.html>

2007 Business Survey on Corruption, Social Weather Stations, presentation to the Cabinet, Aug. 21, 2008, <http://www.sws.org.ph/TAG7%20for%20Cabinet%20Aug21-final.pdf>

**100:** Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

**75:**

**50:** Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

**25:**

**0:** Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | **25** | 0

**Comments:**

There is a widespread perception in the public and business sectors that the inspection process and the business licensing process is riddled with corruption. Four in 10 businessmen surveyed by SWS said they have been asked for bribes while seeking licenses.

One of the reasons for this is a lack of synchronization between national standards and local government standards. Even if rules and regulations are promulgated at the national level, the local governments conduct inspections. This disconnect allows for room for interpretation of standards on a case-by-case basis.

However, most highly urbanized cities (i.e. Makati, Taguig, Marikina) have made efforts to professionalize their inspection system because they realized that this contributes to attracting investors.

**References:**

Business blues and the red-tape act," editorial, The Manila Standard, May 28, 2008, <http://www.manilatimes.net/national/2008/may/28/yehey/opinion/20080528opi1.html>

2007 Business Survey on Corruption, Social Weather Stations, presentation to the Cabinet, Aug. 21, 2008, <http://www.sws.org.ph/TAG7%20for%20Cabinet%20Aug21-final.pdf>

**100:** Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

**75:**

**50:** Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.



25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

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## Category VI. Anti-Corruption and Rule of Law

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### VI-1. <sup>71</sup>Anti-Corruption Law

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#### 73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES

NO

#### Comments:

The latest anti-corruption law is the Anti-Red Tape Law passed by the 13th Congress and signed by President Arroyo in 2006. The law directs government agencies to modify their systems and procedures August 2009. Among other actions, it requires agencies to set up Citizens Charters that people can use to hold bureaucrats accountable.

#### References:

1987 Philippine Constitution

Transparency International Philippine National Integrity System Study 2006, by Gabriella Quimson, p 37 Table 5: Philippine Anti-Graft and Corruption Laws, by Year.

Compilation of Laws on Graft and Corruption, A project through the GOP-UNDP Portfolio on Enabling Environment:Poverty Reduction through Good Governance," printed by the Office of the Ombudsman, 1991 revised edition.

"The Sandiganbayan, the Ombudsman, the PCGG, the anti-graft laws, and the Code of Conduct for Public Officials: The laws, rules of procedure, and cases," by Rufus Bautista, 1991.

Chan Robles Virtual Law Library, <http://adb.org/Documents/Policies/PCP/prelims.pdf>

The Lawphil Project – Philippine Laws and Jurisprudence Databank, <http://www.lawphil.net>;

Transparent Accountable Governance Web site, <http://www.tag.org.ph/philaw/default.htm>

**YES:** A YES score is earned if corruption laws include attempted acts.

**NO:** A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

**Comments:**

The latest big fish” case being the graft and extortion case filed in early 2008 by the Ombudsman against former Secretary of Justice Nani Perez, who is alleged to have extorted \$2 million from former Manila Rep. Mark Jimenez.

**References:**

RA 3019, Anti-Graft and Corrupt Practices Act for extortion and violation of Section 3 (b) and (c).

**YES:** A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

**NO:** A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

**Comments:**

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.”

**References:**

RA 3019, Anti-graft and Corrupt Practices Act, Section 3

**YES:** A YES score is earned if offering a bribe is illegal.

**NO:** A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

**References:**

RA 3019, Anti-Graft and Corrupt Practices Act, Section 3b and 3c.

Revised Penal Code, Title II: Crimes Against the Fundamental Laws of the State, Chapter 2, Section 2 – Bribery Articles 210, 211, 211A, 212; [http://www.ombudsman.gov.ph/UserFiles/File/Revised\\_Penal\\_Code\\_Title%20II\\_and\\_VII.pdf](http://www.ombudsman.gov.ph/UserFiles/File/Revised_Penal_Code_Title%20II_and_VII.pdf)

**YES:** A YES score is earned if receiving a bribe is illegal.

**NO:** A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

**YES** | NO

**Comments:**

In law, bribing anyone, including a foreign official, is illegal.

**References:**

RA 3019, Anti-Graft and Corrupt Practices Act, Section 3b and 3c.

**YES:** A YES score is earned if bribing a foreign official is illegal.

**NO:** A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

**YES** | NO

**Comments:**

The Anti-Graft and Corrupt Practices Act has 11 provisions defining acts of graft and corruption, and the use of public resources for private gain is covered in five articles.

**References:**

RA 3019, Anti-Graft and Corrupt Practices Act, Section 3, Articles b-d, f, i.

**YES:** A YES score is earned if using public resources for private gain is illegal.

**NO:** A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

**Comments:**

Law prohibits divulging valuable information of a confidential character, acquired by a public employee's office or by the employee on account of his official position, to unauthorized persons, or releasing such information in advance of its authorized release date.

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."

**References:**

RA 3019, Anti-Graft and Corrupt Practices Act, Section 3 Article k.

**YES:** A YES score is earned if using confidential state information for private gain is illegal.

**NO:** A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

**Comments:**

The Anti-Money Laundering Act criminalizes money laundering. It also creates a financial intelligence unit; imposes requirements on customer identification, record-keeping and reporting of covered and suspicious transactions; relaxes strict bank deposit secrecy laws; provides for freezing/seizure/forfeiture recovery of dirty money or property; and provides for international cooperation.

**References:**

RA 9160 – The Anti-Money Laundering Act of 2001, <http://www.amlc.gov.ph/archive.html#9194>

**YES:** A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

**NO:** A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

**Comments:**

Nothing in this Act shall be interpreted to prejudice or prohibit the practice of any profession, lawful trade or occupation by any private person or by any public officer who under the law may legitimately practice his profession, trade or occupation, during his incumbency, except where the practice of such profession, trade or occupation involves conspiracy with any other person or public official to commit any of the violations penalized in this Act.”

**References:**

RA 3019, Anti-Graft and Corrupt Practices Act Section 14

**YES:** A YES score is earned if organized crime is illegal.

**NO:** A NO score is earned if this is not illegal.

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## VI-2. Anti-Corruption Agency

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### 75. Is the anti-corruption agency effective?

81

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

**Comments:**

The Office of the Ombudsman is a constitutionally independent body.

Because the Presidential Anti-Graft Commission’s function is to investigate allegations about presidential appointees but it is itself part of the executive branch, it is sometimes perceived as less effective as anti-corruption commission.

**References:**

1987 Constitution, Article 11 Sections 5-14

**YES:** A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

**NO:** A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

**Comments:**

The Ombudsman in practice operates independently without undue political pressure and hindrance from the government or the president.

This is evidenced by three recent big fish” cases: the plunder conviction of former President Joseph Estrada; the graft and extortion case against former Secretary of Justice Nani Perez (the Ombudsman’s former boss); and the ZTN broadband case in which the ombudsman summoned first gentleman Jose Miguel Arroyo, her former classmate, to appear and then also “inhibited” herself from the investigation panel.

The public perception, fueled by press reports, is that the Ombudsman lacks independence, but no evidence has surfaced to prove this.

**References:**

Heidi Mendoza, former Ombudsman employee, at a Transparency International-Philippines and Asia-Pacific planning conference, May 2008, Manila.

Telephone interview with Ophel Tongco, managing director, Centre for Governance at the Development Academy of the Philippines, Sept. 16, 2008.

Interview with retired professor Connie Alaras, former chair of the UP Department of English and Comparative Literature, and chairperson Moral Recovery Officers Foundation (CSO Rep to the Multi-sectoral Anti-corruption Council [MSACC]), Sept. 15, 2008, Quezon City.

**100:** This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

**75:**

**50:** This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

**25:**

**0:** This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

**Comments:**

The Ombudsman is a constitutional body and the head of such a body cannot be removed without relevant justification, such as

impeachment for abuse of power.

Recently however, the Coaliton Against Corruption, a business interest group, has tried to call for the impeachment of Ombudsman Merceditas Gutierrez. Ombudsman Gutierrez should be impeached for filing of weak cases against... lawmakers implicated in the fertilizer scam,” attorney Harry Roque said. Gutierrez has welcomed the move.

In the past, even though powerful CSOs have tried to impeach the ombudsman, the government has never interfered. This demonstrates the vibrancy of Philippine civil service and the democratic process.

CSOs have constantly threatened to file cases against the Ombudsman but so far no case has been filed.

**References:**

1987 Philippine Constitution

Interview with Assistant Ombudsman Evelyn Baliton, head of the Public Assistance and Anti-Corruption Office, Sept. 16, 2008.

Ombudsman Ready to Face Impeach Moves in Congress,” <http://www.newsflash.org/2004/02/hl/hl107380.htm>.

**100:** The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

**75:**

**50:** The director(s) can in some cases be removed through a combination of official or unofficial pressure.

**25:**

**0:** The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

**Comments:**

All ombudsmen have had excellent legal credentials, from first Ombudsman Conrado Vasquez, who was presiding justice of the Court of Appeals, to present Ombudsman Merceditas Gutierrez, who was chief presidential legal counsel.

However, the extended kinship system in the Philippines makes it difficult to prevent the ombudsman from being fully insulated from perceived political influence, whether by blood, affinity or sponsorship. In addition, in order to preserve the integrity of the system, a governance CSO implemented the Ombudsman Watch by monitoring the process Gutierrez’s selection.

**References:**

Office of the Ombudsman Web site, <http://www.ombudsman.gov.ph/page.php?pid=217>

Transparency and Accountability Network Web site, [http://www.tan.org.ph/files/proj\\_oaw2.asp](http://www.tan.org.ph/files/proj_oaw2.asp)

**100:** Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | **75** | 50 | 25 | 0

**Comments:**

The OMB has a professional, full-time staff to fulfill its mandate. However, it is undermanned considering there are only 250 investigators to cover 88 million Filipinos who are potential complainants. With persistent complaints to deal with, OMB resources are stretched thin, and the present ombudsman has inherited thousands of cases from the previous ombudsman.

While a lack of finance, manpower and equipment have been challenges, they have not prevented the Ombudsman from performing its duties. A series of grants from international donors allows the OMB to pursue investigating cases sourced from World Bank, the European Union, AusAID and USAID and the Millennium Challenge Corporation.

Ombudsman Merceditas Gutierrez and her staff are unsullied in terms of integrity and professionalism. Chairman Kostanciai de Guzman of the Presidential Anti-Graft Commission also has a clean reputation. Both fight an enthusiastic but difficult war against corruption.

**References:**

Transparency International Philippine National Integrity System Study 2006, by Gabriella Quimson.

Ombudsman meager resources not an obstacle in doing its job," government Web site, July 28, 2005, <http://www.gov.ph/news/default.asp?i=11782>

Attorney Rodolfo Elman of the Office of the Ombudsman in Mindanao, during the Club 888 Forum in Davao City, March 5, 2008.

**100:** The agency (or agencies) has staff sufficient to fulfill its basic mandate.

**75:**

**50:** The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

**25:**

**0:** The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.



100 | 75 | 50 | 25 | 0

**Comments:**

The OMB is a constitutional body; it has a yearly earmarked budget, making its funding predictable and fairly consistent from year to year.

In practice, although there are sufficient funds to pay salaries at the moment, there is not enough budget for operations. There is a lack of funds for communication services, a printing press and social marketing.

The Presidential Anti-Graft Commission recently received 1 billion pesos in counterpart funding in addition to its regular funding.

**References:**

1987 Philippine Constitution

**100:** The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

**75:**

**50:** The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

**25:**

**0:** The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

**Comments:**

There is an annual report made to Congress comprised mainly of numerical data such as the numbers of cases received, cases disposed, cases forwarded to the Sandiganbayan corruption court, as well as the regular courts. The OMB also makes monthly accomplishment reports compiled for budget hearings in Congress. In addition there are case reports done by the Preliminary Investigation Administrative and Adjudication and Monitoring Office (PIAAMO) on the nature of cases, pending cases and summary of cases. The last two reports are being done with a view to eventually release non-confidential information to the public.

The OMB Web site maintains current press releases, accomplishments, reports and project updates. The law on confidentiality prohibits the Ombudsman from making public certain reports except to concerned parties. However, information on the number of convictions and number of cases filed is in the public domain.

The Presidential Anti-Graft Commission publishes to the Web updated accomplishment reports.

**References:**

Preliminary Investigation Administrative and Adjudication and Monitoring Office, Office of the Ombudsman, Sept. 17, 2008.

Office of the Ombudsman Web site, <http://www.ombudsman.gov.ph/>

Presidential Anti-Graft Commission, <http://www.pagc.gov.ph/Publication.htm>

**100:** The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

**75:**

**50:** The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

**25:**

**0:** The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

**Comments:**

The Office of the Ombudsman is charged with five major functions: public assistance, graft prevention, investigation, prosecution and administrative adjudication.

The Presidential Anti-Graft Commission strives to improve its mandate by suggesting amendments to the executive order establishing its existence. For instance, instead of reviewing cases at the level of the Office of the President, where sometimes delays may occur, there have been requests for cases to go directly to the president.

**References:**

Ombudsman Act of 1989, RA 6770, [http://www.lawphil.net/statutes/repacts/ra1989/ra\\_6770\\_1989.html](http://www.lawphil.net/statutes/repacts/ra1989/ra_6770_1989.html)

Telephone interview with Presidential Anti-Graft Commissioner Tess Baltazar, Sept. 17, 2008.

**100:** The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

**75:**

**50:** The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

**25:**

**0:** The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

**Comments:**

The Office of the Ombudsman is charged with five major functions: public assistance, graft prevention, investigation, prosecution

and administrative adjudication. RA 6770 states the OMB shall 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.”

The Presidential Anti-Graft Commission can also initiate motu proprio cases.

In practice, the Ombudsman has initiated motu proprio investigations including parallel investigations on ongoing cases.

The OMB has met the target for Control of Corruption, a non-negotiable indicator, in the U.S. Millennium Challenge Account Philippine Program. In the MCA Philippine Threshold Program, the OMB met their target of 450 successfully mediated cases by churning out 623.

Aside from these, the Office has a lifestyle check hotline, a dedicated channel for reporting corruption and leads on unexplained wealth. There are also special projects in enforcement such as Oplan Red Plate (a quick response task force for misuse of government vehicles) and Task Force SAPAK (a task force for the purpose of investigating irregularities in school building construction, teacher positions for sale, unauthorized collections, etc.)

There is also another anti-corruption initiative, the mediation program being institutionalized in the office at present. The mediation program specifically aims to expedite the resolution of cases involving low-ranking officials and non-graft cases so that it can prioritize cases involving high-ranking officials and those involving large sums of money, which is mandated in RA 6770.

#### References:

Ombudsman Act of 1989, RA 6770, [http://www.lawphil.net/statutes/repacts/ra1989/ra\\_6770\\_1989.html](http://www.lawphil.net/statutes/repacts/ra1989/ra_6770_1989.html)

**100:** When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

**75:**

**50:** The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

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## 76. Can citizens access the anti-corruption agency?

38

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

#### Comments:

Ombudsman Gutierrez said allegations that the commission is sitting on cases are not true.

President Joseph Estrada’s case was resolved soon after Gutierrez came into office. The Comelec case findings, a three-year running case, was forwarded to the judiciary within six months. The Nani Perez case has been investigated and charged in all four divisions of the Sandiganbayan anti-graft court and Perez now faces two counts of graft, robbery and falsification of public documents. The Joc Joc Bolante case is being investigated but may take some time due to the wide geographic nature of the

case. The ZTE cases, which Gutierrez said will be consolidated into a single case, are undergoing public hearing and investigation.

The Presidential Anti-Graft Commission is trying to shorten the time it takes to resolve cases by suggesting amendments to the executive order that founded it so that its cases are reviewed not by the president's office but by the president directly.

**References:**

Interview with Ombudsman Merceditas N. Gutierrez, Sept. 18, 2008, and <http://www.newsflash.org/2004/02/hl/hl107059.htm>

Ombudsman Consolidation ZTE Cases.

**100:** The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

**25:**

**0:** The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | **25** | 0

**Comments:**

Whistle-blowers often face negative consequences. Members of the anti-corruption party list CIBAC relate that they have encountered many cases in which citizens were harassed or discriminated against for filing formal charges against public officers and employees.

Complaints can be filed on the OMB Web site. However, complainants still must go to the OMB for confirmation and submission of evidence.

Currently, there are eight pending whistle-blower bills in the legislature.

**References:**

E-mail interview with attorney Frederick Mikhail Farolan, chief of staff, Citizens' Battle Against Corruption (CIBAC) party list, House of Representatives, Sept. 17, 2008, Quezon City.

Office of the Ombudsman Web site, <http://www.ombudsman.gov.ph/complaint.php?pid=318>

**100:** Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

**75:**

**50:** Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

**25:**

**0:** Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

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## 74. Is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

**YES** | NO

### Comments:

As of 2006 there were 17 government special anti-graft entities agencies, but the one with the constitutional mandate and broadest powers to prevent, investigate and prosecute corruption cases is the Office of the Ombudsman. Aside from PAGC, The other bodies serve to catch corruptors within their area of work, for instance the Run After Tax Evaders (RATES) in the Bureau of Internal Revenue, the Run After the Smugglers (RATS) in the Bureau of Customs and the Money Laundering Task Force.

### References:

RA 6770 – Ombudsman Act of 1989.

Executive Order 12, Creating the Presidential Anti-Graft Commission and Providing for Its Powers, Duties and Functions and for Other Purposes, April 16, 2001.

**YES:** A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

**NO:** A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

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## 73 VI-3. Rule of Law

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## 77. Is there an appeals mechanism for challenging criminal judgments?

50

77a. In law, there is a general right of appeal.

YES | NO

**Comments:**

There is a formal process of appeal for challenging criminal judgments. According to Bonifacio-Cruz, in cases where the penalty imposed is reclusion perpetua, appeal to the Court is a matter of right. However, the right to appeal is neither a natural right nor a part of due process. It is purely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law.

**References:**

Interview with Ana Bonifacio-Cruz, Court of Tax Appeals attorney, Sept. 11, 2008, Quezon City.

Rules of Court. <http://www.supremecourt.gov.ph/rulesofcourt/table%20of%20contents.htm>

**YES:** A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

**NO:** A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

In the Court of Tax Appeals, a decision usually is rendered within a month after the case is submitted for decision. However, this seems to be an exception compared with the bigger picture of the whole judiciary.

According to Español, it takes around four years in the Court of Appeals for an appeal to have a decision and another four years in the Supreme Court. The average number of years for appeals to be resolved in lower court is five years.

**References:**

Interview with Ana Bonifacio-Cruz, Court of Tax Appeals attorney, Sept. 11, 2008, Quezon City.

Phone interview with retired Judge Dolores Español, chairwoman, Transparency International Philippines, Sept. 14, 2008.

**100:** Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

**75:**

**50:** Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

**25:**

**0:** Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

Poor litigants are exempt from court fees. The government also provides free legal services through the Public Attorney's Office. However, government assistance is for criminal cases only. For civil cases, citizens need to shoulder attorney fees, which are especially costly if the case is delicate and serious. Regardless of whether free legal assistance is obtained, any appeal is costly because it usually takes years to resolve.

**References:**

Interview with Ana Bonifacio-Cruz, Court of Tax Appeals attorney, Sept. 11, 2008, Quezon City.

Phone interview with retired Judge Dolores España, chairwoman, Transparency International Philippines, Sept. 14, 2008.

**100:** In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees are not a barrier to appeals.

**75:**

**50:** In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorneys fees present somewhat of a barrier to pursuing appeal.

**25:**

**0:** The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorneys fees greatly discourage the use of the appeals process.

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## 78. Do judgments in the criminal system follow written law?

50

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

**Comments:**

Law and prevailing jurisprudence are used as a guide. However, political interference and bribery are frequent, especially in cases involving politicians and their families, rich and influential people and allies of the ruling party.

Offentimes, the corruption is bridged by lawyers. A retired Court of Appeals justice said that most of the time, corruption starts with lawyers and not with judges and magistrates. Reports show that from 1947 to 2007, there were at least 94 lawyers disbarred by the Supreme Court for alleged improprieties.

**References:**

Interview with Ana Bonifacio-Cruz, Court of Tax Appeals attorney, Sept. 11, 2008, Quezon City.

Phone interview with retired Judge Dolores España, chairwoman, Transparency International Philippines, Sept. 14, 2008.

Corruption in the judiciary exists – Philippine Judicial Academy,” GMANews.TV, Sept. 11, 2008, <http://www.gmanews.tv/story/119729/Corruption-in-the-judiciary-exists—Philippine-Judicial-Academy>.

**100:** Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

**75:**

**50:** Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

**25:**

**0:** Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

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## 79. Are judicial decisions enforced by the state?

50

79. In practice, are judicial decisions enforced by the state?

100 | 75 | **50** | 25 | 0

**Comments:**

Judicial decisions generally are enforced by the state. However, there are instances in which certain parties delay or even reject enforcement. For example, evictions may not be enforced because of lack of police assistance. Some local government chiefs avoid displeasing squatters, who are a big part of the voting public.

**References:**

Interview with Ana Bonifacio-Cruz, Court of Tax Appeals attorney, Sept. 11, 2008, Quezon City.

Phone interview with retired Judge Dolores España, chairwoman, Transparency International Philippines, Sept. 14, 2008.

**100:** Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

**75:**

**50:** Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

**25:**

**0:** Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.



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## 80. Is the judiciary able to act independently?

88

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

### Comments:

Under the Constitution, there must be independence and separation of powers.

Article VIII, Sections 1-3 of the 1987 Philippine Constitution states: The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law. Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government (Section 1).

The Congress shall have the power to define, prescribe, and apportion the jurisdiction of the various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof... (Section 2).

The Judiciary shall enjoy fiscal autonomy. Appropriations for the Judiciary may not be reduced by the legislature below the amount appropriated for the previous year and, after approval, shall be automatically and regularly released (Section 3)."

### References:

1987 Philippine Constitution, Article VIII, Sections 1-3, <http://lawphil.net/consti/cons1987.html>

**YES:** A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts ).

**NO:** A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

### Comments:

Among the three branches of government, the judiciary is considered to be most independent. However, there is a growing perception that the judiciary is losing its independence due to political interference and pressure from Malacañang (the Office of the President), its appointing authority.

Former Senate President Drilon thinks that reforming the selection process of the judiciary will prevent speculation that there is bias or prejudgment by Supreme Court members when they decide on landmark cases.

**References:**

Interview with Ana Bonifacio-Cruz, Court of Tax Appeals attorney, Sept. 11, 2008, Quezon City.

Phone interview with retired Judge Dolores España, chairwoman, Transparency International Philippines, Sept. 14, 2008.

Judiciary's independence also in question," by former Senate President Frank Drilon, Philippine Daily Inquirer, Sept. 17, 2008, <http://opinion.inquirer.net/inquireropinion/letterstotheeditor/view/20080917-161285/Judiciarys-independence-also-in-question>

**100:** National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

**75:**

**50:** National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

**25:**

**0:** National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

**YES** | **NO**

**Comments:**

All cases are raffled.

**References:**

Rules of Court. <http://www.supremecourt.gov.ph/rulesofcourt/table%20of%20contents.htm>

Interview with Ana Bonifacio-Cruz, Court of Tax Appeals attorney, Sept. 11, 2008, Quezon City.

Phone interview with retired Judge Dolores España, chairwoman, Transparency International Philippines, Sept. 14, 2008.

**YES:** A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

**NO:** A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

**Comments:**

All administrative cases against justices of appellate courts and judges of lower courts fall exclusively within the jurisdiction of the Supreme Court.

The Office of the Court Administrator handles the cases.

**References:**

Administrative Matter 01-8-10-SC, dated Sept. 11, 2001, Discipline of Judges of Regular and Special Courts and Justices of the Court of Appeals and Sandiganbayan.”

Interview with Ana Bonifacio-Cruz, Court of Tax Appeals attorney, Sept. 11, 2008, Quezon City.

Phone interview with retired Judge Dolores España, chairwoman, Transparency International Philippines, Sept. 14, 2008.

**YES:** A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

**NO:** A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

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## 81. Are judges safe when adjudicating corruption cases?

0

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

**Comments:**

Many judges receive death threats and some have been murdered, but not in the past year.

To curb the work-related killings and harassment of judges, the court has taken several security measures such as the Philippine Judicial Academy’s three-day seminar on personal security training for Judges.

The court also has approved arming judges faced with death threats.

**References:**

Phone interview with retired Judge Dolores España, chairwoman, Transparency International Philippines, Sept. 14, 2008.

Chief Justice Puno Condemns Calbayog Judge’s Killing, Calls for Early Resolution of Case,” by Jay B. Rempillo, Supreme Court News, Jan. 15, 2008, <http://www.supremecourt.gov.ph/news/courtnews%20flash/2008/01/01150801.php>

**YES:** A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

**NO:** A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | **NO**

**Comments:**

Judge Roberto Navidad of Calbayog City Regional Trial Court, Branch 32, was shot dead by a lone gunman in Calbayog City in Samar province on Jan. 14, 2008.

Judge Orlando Velasco of Regional Trial Court Branch 63, Bayawan City, Negros Oriental was killed in July 27, 2007.

The Supreme Court records 15 judges killed since 1999 (14 of which were killed during the Arroyo administration).

**References:**

Chief Justice Puno Condemns Calbayog Judge's Killing, Calls for Early Resolution of Case," by Jay B. Rempillo, Supreme Court News, Jan. 15, 2008, <http://www.supremecourt.gov.ph/news/courtnews%20flash/2008/01/01150801.php>

"Priest, judge slain, as spate of RP killings remains unsolved," GMA News.TV, Jan. 16, 2008, <http://www.gmanews.tv/story/76673/Priest-judge-slain-as-spate-of-RP-killings-remains-unsolved>

**YES:** A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

**NO:** A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

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## 82. Do citizens have equal access to the justice system?

68

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | **50** | 25 | 0

**References:**

Interview with Ana Bonifacio-Cruz, Court of Tax Appeals attorney, Sept. 11, 2008, Quezon City.

Phone interview with retired Judge Dolores España, chairwoman, Transparency International Philippines, Sept. 14, 2008.

**100:** Judicial decisions are not affected by racial or ethnic bias.

**75:**

**50:** Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

**25:**

**0:** Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

**Comments:**

Women have full access and use of the judicial system. However, factors preventing women from going to the courts such as fear of reprimation from an abusive husband is another matter.

**References:**

Interview with Ana Bonifacio-Cruz, Court of Tax Appeals attorney, Sept. 11, 2008, Quezon City.

Phone interview with retired Judge Dolores España, chairwoman, Transparency International Philippines, Sept. 14, 2008.

**100:** Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

**75:**

**50:** Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

**25:**

**0:** Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

**Comments:**

Section 11 of the Constitution assures that free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.”

**References:**

1987 Philippine Constitution, Article III (Bill of Rights)

Integrated Bar of the Philippines provides a legal aid service for indigents and for litigants who are unable to afford to pay for lawyers; <http://www.ibp.org.ph/index.php>

**YES:** A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

**NO:** A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | **50** | 25 | 0

**Comments:**

The Public Attorney's Office (PAO), an attached agency of the Department of Justice, provides indigent litigants free legal assistance.

Some PAO lawyers are skilled and helpful. Legal aid/public defenders are sometimes unable to competently represent all defendants because of the poor ratio of lawyers to cases handled. In 2007, the PAO served a total of more than 4.3 million indigent clients.

With the passage of RA 9406 (An Act Reorganizing and Strengthening the Public Attorney's Office) last year, hopefully, the PAO will be strengthened fiscally and technically.

**References:**

Department of Justice Web site. <http://www.doj.gov.ph/agencies/pao.html>

Rule of Law Statistics. National Statistical Coordination Board Web site. [http://www.nscb.gov.ph/stats/statdev/2008/ruleOfLaw/Chapter\\_RuleOfLaw.asp](http://www.nscb.gov.ph/stats/statdev/2008/ruleOfLaw/Chapter_RuleOfLaw.asp)

Interview with Ana Bonifacio-Cruz, Court of Tax Appeals attorney, Sept. 11, 2008, Quezon City.

Phone interview with retired Judge Dolores España, chairwoman, Transparency International Philippines, Sept. 14, 2008.

Public Attorney's Office gets a boost with new PAO Bill," by Jomar Canlas, The Manila Times, April 9, 2007. <http://www.manilatimes.net/national/2007/apr/09/yehey/metro/20070409met4.html>

**100:** State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

**75:**

**50:** State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

**25:**

**0:** State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | **50** | 25 | 0

**Comments:**

There are some who can afford attorney fees, but they can be costly, especially if the case is controversial or challenging. Attorney fees are a significant consideration in whether to bring a case because cases undergo lengthy litigation.

There are free legal aids provided by groups and institutions around the country.

**References:**

Phone interview with retired Judge Dolores Españo, chairwoman, Transparency International Philippines, Sept. 14, 2008.

**100:** In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorneys fees do not represent a major cost to citizens.

**75:**

**50:** In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

**25:**

**0:** The cost of engaging the legal system prevents middle class citizens from filing suits. Attorneys fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | **50** | 25 | 0

**Comments:**

Attorneys fees are a significant consideration in whether to bring a case.

Currently the Supreme Court is finalizing the procedures for small-claims cases, in which there would be pilot courts to hear cases involving amounts less than 100,000 pesos without any more need for legal representation. Chief Justice Reynato Puno believes that through this system, the people, especially the poor who cannot afford the expenses, would enjoy a quicker access to justice.”

**References:**

Phone interview with retired Judge Dolores Españo, chairwoman, Transparency International Philippines, Sept. 14, 2008.

**100:** In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

**75:**

**50:** In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorneys fees are a significant consideration in whether to bring a case.

**25:**

**0:** The cost of engaging the legal system prevents small businesses from filing suits. Attorneys fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | **75** | 50 | 25 | 0

**Comments:**

Courts are accessible to most citizens. There are Municipal Trial Courts that cover one municipality and there are also Municipal Circuit Trial Courts that cover two or more municipalities. In the case of circuit trial courts and family courts (which have exclusive jurisdiction over child and family cases), citizens need to travel to the designated court, usually the capital or several centers of a province.

This year, the mobile court program was launched in Metro Manila, and one court resolved 20 cases in just one day. Hearings were conducted in a bus that had been converted into a courtroom.

**References:**

Phone interview with retired Judge Dolores España, chairwoman, Transparency International Philippines, Sept. 14, 2008.

Declogging the courts," Philippine Daily Inquirer editorial, July 14, 2008. <http://opinion.inquirer.net/inquireropinion/editorial/view/20080714-148447/Declogging-the-courts>

**100:** Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

**75:**

**50:** Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

**25:**

**0:** Courts are unavailable to some regions without significant travel on the part of citizens.



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### 83. Is the law enforcement agency (i.e. the police) effective?

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83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

**Comments:**

There are minimum qualifications for entry into the Philippine National Police, such as good moral conduct, the passing of psychiatric/psychological, drug and physical fitness tests.

There are also qualifications for promotions. In general, there is adherence to the principle of seniority when appointing next-in-line officers.

However, since positions from police senior superintendent to the national chief are appointed by the president, there is much room for presidential discretion.

**References:**

RA 8551, The Philippine National Police Reform and Reorganization Act. [www.lawphil.net](http://www.lawphil.net)

Interview with Sandra Landicho, administrative officer, Office of the Inspector General, Sept. 19, 2008, Quezon City.

**100:** Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

**75:**

**50:** Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

**25:**

**0:** Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

**Comments:**

The current police-to-population ratio is 1:700. According to PNP, the ideal ratio is 1:500.

**References:**

PNP seeking additional budget for recruitment of new cops,” Inquirer, Sept. 19, 2007. [http://newsinfo.inquirer.net/breakingnews/nation/view\\_article.php?article\\_id=89432](http://newsinfo.inquirer.net/breakingnews/nation/view_article.php?article_id=89432)

**100:** The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

**75:**

**50:** The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

**25:**

**0:** The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency’s ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | **50** | 25 | 0

**Comments:**

Political interference is present in the national and local levels since the president appoints officials from police senior superintendents up to the national chief. Provincial governors have the power to appoint police provincial directors, and local chief executives act as deputized agents” of the National Police Commission. They can inspect police forces and units, conduct audits, and exercise other functions as may be duly authorized by the commission.

**References:**

Interview with Sandra Landicho, administrative officer, Office of the Inspector General, Sept. 19, 2008, Quezon City.

RA 8551, The Philippine National Police Reform and Reorganization Act. [www.lawphil.net](http://www.lawphil.net)

**100:** The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

**75:**

**50:** The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

**25:**

**0:** The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

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## 84. Can law enforcement officials be held accountable for their actions?

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

**Comments:**

There is a People's Law Enforcement Board (PLEB) supervised by the National Police Commission that has both NGO and government representatives. The PLEB is the central receiving entity for any citizen complaints against the PNP.

RA 8551, Section 43, requires the council in every city and municipality to create a PLEB for every 500 city or municipal police personnel and for each of the legislative districts in a city.

**References:**

RA 8551, The Philippine National Police Reform and Reorganization Act. [www.lawphil.net](http://www.lawphil.net)

**YES:** A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

**NO:** A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

The law requires that PLEBs acknowledge complaints or refer them to the proper disciplinary or adjudicatory authority within three days of receipt.

In practice, there is poor public perception of police action on complaints, which adversely affects the number of people reporting crimes and complaints.

**References:**

RA 8551, The Philippine National Police Reform and Reorganization Act. [www.lawphil.net](http://www.lawphil.net)

National police pine for 'good-cop' image of old," by Maricel V. Cruz, The Manila Times, March 29, 2008. [http://www.manilatimes.net/national/2008/mar/29/yehey/top\\_stories/20080329top5.html](http://www.manilatimes.net/national/2008/mar/29/yehey/top_stories/20080329top5.html)

**100:** The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

**75:**

**50:** The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

**Comments:**

The National Police Commission is the agency mandated by the 1987 Constitution and the major police reform laws, Republic Acts 6975 and 8551 to administer and control the Philippine National Police. Under RA 8551, otherwise known as the 'PNP Reform and Reorganization Act of 1998,' the Commission regained the powers to investigate police anomalies and irregularities, administer police entrance examination and summarily dismiss erring police officers."

Within the PNP, the law provides for an investigative Internal Affairs Service (IAS), which monitors and investigates "police anomalies and irregularities." Its functions include proactively inspecting and auditing PNP personnel and units; investigating complaints and gathering evidence in support of open investigations; conducting summary hearings on PNP members facing administrative charges; submitting periodic reports on the assessment, analysis and evaluation of the character and behavior of PNP personnel and units to the chief, PNP and the commission; filing appropriate criminal cases against PNP members before the court as evidence warrants and assisting in the prosecution of the case; and providing assistance to the Office of the Ombudsman in cases involving the personnel of the PNP.

The IAS has the power of both investigation and adjudication. But due to limited funds, it is only able to do its investigating mandate.

Other mechanisms include the National Police Commission and the Ombudsman.

**References:**

RA 8551, The Philippine National Police Reform and Reorganization Act. [www.lawphil.net](http://www.lawphil.net)

National Police Commission <http://www.napolcom.gov.ph/>

Internal Affairs Service Website. <http://www.pnp.gov.ph/about/content/offices/central/ias/web/index.html>

Interview with Sandra Landicho, administrative officer, Office of the Inspector General, Sept. 19, 2008, Quezon City.

**YES:** A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

**NO:** A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

**Comments:**

The Internal Affairs Service (IAS), although a part of the PNP, has attributes of an independent and autonomous unit, which empowers it to act on matters within its jurisdiction without having to wait for instructions from the PNP chief. The IAS' powers include proactively inspecting and auditing PNP personnel and units; investigating complaints and gathering evidence in support of open investigations; conducting summary hearings on PNP members facing administrative charges; submitting periodic reports on the assessment, analysis and evaluation of the character and behavior of PNP personnel and units to the chief, PNP and the commission; filing appropriate criminal cases against PNP members before the court as evidence warrants and assisting in the prosecution of the case; and providing assistance to the Office of the Ombudsman in cases involving the personnel of the PNP. It also conducts automatic investigation of incidents in which evidence was compromised, tampered with, obliterated or lost while in the custody of police personnel.

The case of the Ortigas carjacking, in which police were allegedly involved, was not investigated by the Internal Affairs Division.

**References:**

RA 8551, Section 39

<http://www.pnp.gov.ph/>

**100:** When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

**75:**

**50:** The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

**25:**

**0:** The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

**YES** | **NO**

**Comments:**

Law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

However, IAS administrative investigation into presidential appointees in the PNP must be approved by the president.

**References:**

Interview with Sandra Landicho, administrative officer, Office of the Inspector General, Sept. 19, 2008, Quezon City.

**YES:** A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

**NO:** A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

**Comments:**

Law enforcement officers are subject to criminal investigation for official misconduct. No police crimes are exempt from prosecution.

However, the prosecution of police officers is another matter, as corruption in the police organization is a serious problem in the Philippines.

In practice, the Internal Affairs Service of the PNP is not able to endorse (decided administrative) cases for criminal proceedings because of limited funds.

**References:**

Interview with Sandra Landicho, administrative officer, Office of the Inspector General, Sept. 19, 2008, Quezon City.

**100:** Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

**75:**

**50:** Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

**25:**

**0:** Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.