

Overall Score:

**57 - Very Weak**

Legal Framework Score:

**84 - Strong**

Actual Implementation Score:

**31 - Very Weak**

Category 1. Non-Governmental Organizations, Public Information and Media

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## 1.1. <sup>53</sup>Anti-Corruption Non-Governmental Organizations

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

67

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes

No

#### Comments:

The constitutional provision cited above refers to a right to form any association (not necessarily focused on anti-corruption or good governance) provided that it is for some purpose not contrary to law.

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:

Sec. 8 of Article III of the Constitution provides: t

"[T]he right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged."

<http://www.chanrobles.com/article3.htm>

**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. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

**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.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

**Comments:**

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

**References:**

Sec. 8, Article III, Philippine Constitution provides:

The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

<http://www.chanrobles.com/article3.htm>

**Yes:** A YES score is earned if anti-corruption/good governance NGOs 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 NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | No

**Comments:**

No law exists to require or prevent disclosure. In general, anti-corruption/good governance Civil Society Organizations (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, non-profit 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.

Vincent Lazatin, executive director of Transparency and Accountability Network (TAN) also affirmed in an interview conducted on Nov. 8, 2010, that no such public disclosure requirement for good governance/anti-corruption NGOs exists.

**References:**

Cariño, Ledivina V. (ed.)

"Between the State and the Market: The Nonprofit Sector and Civil Society in the Philippines," 2002.

**Yes:** A YES score is earned if anti-corruption/good governance NGOs 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 anti-corruption/good governance NGOs able to operate freely?

50

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

**Comments:**

Dr. Morada rates it 90 percent.

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, University of Queensland, Brisbane Australia, April 2, 2011, phone interview

**100:** NGOs 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:** NGOs 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 NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

**25:**

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

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

**Comments:**

The role of NGOs in the policy making process is not yet institutionalized according to above-named sources. Mr. Malaluan is torn between the scores 75 and 50 percent.

Dr. Morada rates it 100 percent.

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, University of Queensland, Brisbane Australia, April 2, 2011, phone interview

Filipino Journalist (name withheld upon request) rates it 75 percent.

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

**75:**

**50:** Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs 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 NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes | No

**Comments:**

There were no reported cases of anti-corruption/good governance NGOs shut down by government for their work on anti-corruption issues during the study period.

Dr. Morada rates it 100 percent.

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, University of Queensland, Brisbane Australia, April 2, 2011, phone interview

**Yes:** A YES score is earned if there were no NGOs 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 NGO 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 NGO's work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO 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 anti-corruption/good governance NGO activists safe when working on corruption issues?

33

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes

No

#### References:

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, University of Queensland, Brisbane Australia, April 2, 2011, phone interview

**Yes:** A YES score is earned if there were no NGO 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.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes | **No**

**Comments:**

A strong qualification should be made here: If we interpret good governance in a very broad sense, the November 2009 massacre of more than 50 journalists and family members who simply accompanied the wife of a politician to file his certificate of candidacy in Maguindanao province may be seen as a physical assault on good governance activists.

Dr. Morada scores 50 percent.

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, University of Queensland, Brisbane Australia, April 2, 2011, phone interview

**Yes:** A YES score is earned if there were no documented cases of NGO 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.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | **No**

**Comments:**

A strong qualification should again be made here: If we interpret good governance in a very broad sense, the November 2009 massacre of more than 50 journalists and family members who simply accompanied the wife of a politician to file his certificate of candidacy in Maguindanao province may be seen as a serious instance of killing good governance activists.

Dr. Morada rates 30 percent..

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

**Yes:** A YES score is earned if there were no documented cases of NGO 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?

88

04a. In law, citizens have a right to organize into trade unions.

Yes | No

**Comments:**

The right to form, associate, and also not to associate with unions, associations, societies is a guaranteed right enshrined in the Constitution.

**References:**

Sec. 8, Article III, Constitution of the Philippines provides:

The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

<http://www.chanrobles.com/article3.htm>

**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.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

**Comments:**

Atty Malaluan scores 75 percent.

Dr. Morada scores 100 percent.

**References:**

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

**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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## 1.2. Media's Ability to Report on Corruption

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

100

05a. In law, freedom of the media is guaranteed.

Yes

No

#### References:

Sec. 4, Article III, Constitution of the Philippines reads “[N]o 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.” <http://www.chanrobles.com/article3.htm>

The Philippines is also a signatory of international covenants guaranteeing freedom of expression such as the UN General Assembly Resolution — International Covenant on Civil and Political Rights (ICCPR).

**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.

05b. In law, freedom of speech is guaranteed.

Yes

No

**Comments:**

There are however established exceptions to this right, quoted hereunder is a case decided by the Supreme Court [ G.R. No. 133486, ABS-CBN vs COMELEC]:

“While the liberty to think is absolute, the power to express such thought in words and deeds has limitations.

In Cabansag v. Fernandez this Court had occasion to discuss two theoretical tests in determining the validity of restrictions to such freedoms, as follows:

These are the “clear and present danger” rule and the “dangerous tendency” rule. The first, as interpreted in a number of cases, means that the evil consequence of the comment or utterance must be “extremely serious and the degree of imminence extremely high” before the utterance can be punished. The danger to be guarded against is the “substantive evil” sought to be prevented.

The “dangerous tendency” rule, on the other hand, . . . may be epitomized as follows: if the words uttered create a dangerous tendency which the state has a right to prevent, then such words are punishable. It is not necessary that some definite or immediate acts of force, violence, or unlawfulness be advocated. It is sufficient that such acts be advocated in general terms. Nor is it necessary that the language used be reasonably calculated to incite persons to acts of force, violence, or unlawfulness. It is sufficient if the natural tendency and probable effect of the utterance be to bring about the substantive evil which the legislative body seeks to prevent.”

**References:**

Sec. 4, Article III, Constitution of the Philippines states:

“[N]o 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.”

<http://www.chanrobles.com/article3.htm>

**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?

75

06a. 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 with the Securities and Exchange Commission (SEC).

**References:**

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

**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.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | **No**

**Comments:**

Atty. Malaluan explains that there are no formal requirements for the licensing of print media. They only need to register as business enterprises.

**References:**

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

**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.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

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

**Comments:**

There are no formal requirements for acquiring print media licenses. Business permits are obtained from the city government covering the print media entity. The number of days it takes to secure permits varies from one city to another.

Dr. Morada rates 75 percent.

**References:**

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, University of Queensland, Brisbane Australia, April 2, 2011, phone interview

**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.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

**Comments:**

There are no formal requirements for obtaining print media licenses.

**References:**

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

**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?

07a. 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.

Dr. Morada rates 75 percent.

**References:**

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, University of Queensland, Brisbane Australia, April 2, 2011, phone interview

**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.

07b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes

No

**Comments:**

Appeals are always ready through the courts or through administrative means, according to Malaluan. He adds that the Constitution provides that review by the courts is also available. This is also provided by the Rules of Court of the Philippines.

A broadcast media franchise application denied by the House of Representatives 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 (Republic Act No. 7966, 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:**

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

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.

07c. 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:**

NO, the procedure is tedious as it requires Congressional approval to obtain a franchise. Under the National Telecommunications (NTC) procedure, application requires submission of voluminous documents and hearing process which could take time before the actual grant to operate is obtained.

**References:**

Atty. Zona Russet M. Tamayo, Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, 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.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

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

**Comments:**

NO, operating a radio/TV station is expensive. And even obtaining documentary requirements is costly as the NTC requires feasibility studies (on economic and technical viability) which may require hiring of technical consultants to do the job.

Dr. Morada rates 75 percent.

**References:**

Atty. Zona Russet M. Tamayo, Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, University of Queensland, Brisbane Australia, April 2, 2011, phone interview

**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

08a. In practice, the government does not prevent citizens from accessing content published on-line.

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

**References:**

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

**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.

08b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

#### References:

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, University of Queensland, Brisbane Australia, April 2, 2011, phone interview

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011, scores 75 percent.

**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?

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes

No

**Comments:**

Free speech and expression are guaranteed by the Constitution; and by specific jurisprudence which provides that government officials enjoy lesser privacy protection (Ayer v. Enrile). According to Nepo Malaluan, this general freedom is qualified by contempt of court and libel laws.

Libel is a criminal offense in the Philippines. According to the Revised Penal Code, “[L]ibel 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:**

Art. 90, Revised Penal Code of the Philippines (or REPUBLIC ACT NO. 4661 – AN ACT SHORTENING THE PRESCRIPTIVE PERIOD FOR LIBEL AND OTHER SIMILAR OFFENSES, AMENDING FOR THE PURPOSE ARTICLE NINETY OF THE REVISED PENAL CODE )

**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.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100

75

50

25

0

**Comments:**

All of Lazatin’s comments and his scoring (at 25 percent) were made in the context of the past administration of President Gloria Macapagal Arroyo, more particularly reflective of the past 12 month’s experience.

Atty. Malaluan and Dr. Morada gave a score of 75 percent.

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, University of Queensland, Brisbane Australia, April 2, 2011, phone interview

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011, scores 100 percent.

**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.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

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

**Comments:**

Government's stinginess with information is the reason for Vince Lazatin's 50 percent score. However, Malaluan scores this item at 100 percent. Lazatin notes that threats against Marites Danguilan Vitug's book—Shadow of Doubt: Probing the Supreme Court—did not materialize. In a public workshop on Dec. 9, 2010, Vitug herself reported that several Supreme Court justices disapproved of her book which probed the high court and the corrupt practices of some justices.

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

Marites Danguilan-Vitug, Newsbreak and award-winning author, presentation at the Center for Asian Integrity (CAI) workshop, Dec. 9, 2010, Manila Peninsula Hotel, Makati, Philippines

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011, scores it at 50 percent.

**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?

30

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 Securities and Exchange Commission (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:

Sec. 11 (1), Art. XVI, 1987 Philippine Constitution provides:

The ownership and management of mass media shall be limited to citizens of the Philippines, or to corporations, cooperatives or associations, wholly-owned and managed by such citizens.

The Congress shall regulate or prohibit monopolies in commercial mass media when the public interest so requires. No combinations in restraint of trade or unfair competition therein shall be allowed.

**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:

Broadcast media companies must obtain a franchise before they are allowed to operate in the Philippines. The franchise for a particular broadcast media firm is issued through a law passed by Congress and signed by the President of the Republic. In every franchise application, corporate papers such as SEC Articles of Incorporation are required to determine the applicants' identities.

The journalist, however, answered NO.

**References:**

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, University of Queensland, Brisbane Australia, April 2, 2011, phone interview

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011

**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 types 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:**

Dr. Morada scores 50 percent.

**References:**

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, University of Queensland, Brisbane Australia, April 2, 2011, phone interview

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 , scored 75 percent.

**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:**

In its Election Monitor (Vol. I, No. 8 issue dated Sept. 24, 2010) the National Citizens' Movement for Free Elections (NAMFREL) refers to a study by the Center for Media Freedom and Responsibility (CMFR) conducted from February to May 2010, which revealed that eight out of 10 (84.2 percent) news reports aired over broadcast stations ABS-CBN 2, GMA 7 and NBN 4 were "neutral" or presented both sides of a story. According to CMFR's monitoring of the media coverage of the 2010 polls, a big majority (64.6 percent) of news reports printed on the front pages of major broadsheets and reported over prime time news shows "provided background information on candidates."

Print, broadcast and online media in the country showed "efforts to solicit the platforms and plans for governance" of candidates in the 2010 polls. But despite this, the media also committed several "lapses" in covering the 2010 polls. The media watchdog's study showed how television and newspaper reports focused on presidential front-runners, which gave less airtime and space for candidates for other positions. Television reports also tended to give more attention to the conduct of the presidential campaigns and the preparations for the poll automation rather than the platforms of lesser known candidates. The CMFR likewise said that the party-list polls were "hardly covered," focusing only on the "controversial" groups such as Ang Ladlad (representing gay and trans-gendered people) and Ang Galing Pinoy (the party list group of security guards that had the son of President Gloria Macapagal Arroyo as its leading nominee). The media watchdog said that legislators should consider amending Republic Act 9006 or the Fair Election Act, since candidates this year found ways to "circumvent" some provisions in the law.

The group also proposed greater focus on news on election spending, as well as on the party-list elections and the selection of their nominees. The CMFR also advised media organizations to "exercise care in airing reports circulating over the Internet," since these may be forms of black propaganda. (Note: A thorough search of the CFMR web site failed to zero in on the study cited by NAMFREL.)

Malaluan scores this item at 75 percent, while Dr. Morada at 25 percent..

**References:**

Center for Media Freedom and Responsibility report on media coverage of the 2010 elections

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, University of Queensland, Brisbane Australia, April 2, 2011, phone interview

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011, scored 25 percent.

**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:**

Dr. Morada scores it at 25 percent.

**References:**

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, University of Queensland, Brisbane Australia, April 2, 2011, phone interview

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011, scores it at 0 percent.

**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**

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

**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:**

A very strong qualification must be made here if corruption is broadly defined to include corruption of electoral laws and democratic processes. A number of journalists were murdered allegedly by forces associated with a powerful warlord family in Maguindanao province in November 2009. They were accompanying the wife and relatives of a politician who wanted to contest the candidacy of a scion of the warlord family. Warned earlier not to file his certificate of candidacy, the politician thought sending his wife and other female relatives and legal counsel accompanied by a small army of journalists would deter aggressive action. He was obviously mistaken as all were gunned down and killed.

**References:**

A number of entries at the CMFR web site under the title 'Press Freedom Watch' indicate several instances where journalists investigating corruption, abuse of power, and other bad governance practices were physically harmed or even killed.

Examples include the following:

1. On 19 2010, CMFR reported that two broadcasters were killed in two separate incidents in Northern Luzon and Southern Mindanao.
2. On June 29, 2010, CMFR reported that two journalists were attacked after filing a complaint against a politician.
3. On July 15, 2010, CMFR reported that a volunteer reporter survived seven bullet wounds inflicted by unidentified men in Nabua, Camarines Sur on July 9, 2010. The injured journalist had been reporting on local elections and corruption.

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scores it with NO.

**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

**References:**

1. Inquirer.net, Nov. 24, 2009, "21 killed in Maguindanao," <<http://newsinfo.inquirer.net/inquirerheadlines/nation/view/20091124-237982/21-killed-in-Maguindanao>>

2. Inquirer.net, Alcuin Papa, Nov. 26, 2009, "Maguindanao massacre worst-ever for journalists," <<http://newsinfo.inquirer.net/breakingnews/nation/view/20091126-238554/Maguindanao-massacre-worst-ever-for-journalists>>

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scores it at NO.

**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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58  
1.3. Public Requests for Government Information

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12. Do citizens have a legal right to request information?

67

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

Yes | No

**Comments:**

A Freedom of Information bill was almost passed into law in the middle of 2010, but the alleged lack of quorum in the House of Representatives prevented this.

**References:**

Article III, Sec. 7 of the Bill of Rights, 1987 Constitution of the Philippines provides:

The right of the people to information on matters of public concern shall be recognized. 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.

**Yes:** A YES score is earned if there is a formal right to request 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 a request for 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, according to Malaluan, 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.

**References:**

In an interview with Malaluan, who is a lawyer, he said the courts will offer recourse for any citizen denied his/her request for a basic government record.

**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:**

According to Malaluan, this formal mechanism is to be provided for in the proposed Freedom of Information (FOI) bill.

**References:**

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

**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 to information requests effective?

17

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

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

**Comments:**

The 25 percent score is based largely on the President Gloria Macapagal-Arroyo's last eight months' rule of the past 12 month-period. An additional qualification: things have improved significantly under the new administration of President Benigno Aquino III, according to Lazatin.

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011, scores it at 0 percent.

**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 information request mechanism at a reasonable cost.

**Comments:**

There's a noticeable effort on the part of the new administration to put information online, according to Vince Lazatin.

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011, scores it at 0 percent.

**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 NGOs. 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 NGOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011

**100:** Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

**75:**

**50:** Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

**25:**

**0:** The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

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

100 | 75 | 50 | 25 | 0

**Comments:**

The ZERO score reflects the last months of the administration of President Gloria Macapagal-Arroyo, according to Lazatin and Malaluan.

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011, scores it at 25 percent.

**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.

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

100 | 75 | 50 | 25 | 0

**Comments:**

Recourse to the courts is expensive even for middle class citizens according to both sources. However, Malaluan scores this item at 25 percent.

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City,

## Philippines

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scores it at 25 percent.

**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.

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

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

### Comments:

While Lazatin scored this item at 50 percent, Malaluan scores it at 25 percent. SEE VL's comments on tape.

### References:

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

Nepomoceno Malaluan, Co-Director, Institute for Freedom of Information (a partnership program of Action for Economic Reform [AER] & the Philippine Center for Investigative Journalism [PCIJ]); and Spokesperson, Freedom to Know Now Coalition, Nov. 12, 2010, AER office, Quezon City, Philippines

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scores it at 0 percent.

**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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## 2.1. <sup>46</sup>Voting and Party Formation

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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:**

The law allows all citizens of the Philippines, whether natural born or naturalized, subject to the requirement on age and limitation on residency, to vote.

**References:**

Sec. 1, Article V of the Constitution provides:

"[S]uffrage may be exercised by all citizens of the Philippines not otherwise disqualified by law, who are at least eighteen years of age, and who shall have resided in the Philippines for at least one year and in the place wherein they propose to vote for at least six months immediately preceding the election. No literacy, property, or other substantive requirement shall be imposed on the exercise of suffrage."

<http://www.chanrobles.com/article5suffrage.htm>

**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

**Comments:**

An earlier law, RA 7056, provided for national and local elections in 1992, paving the way for synchronized and simultaneous elections beginning 1995 .

National elections (for the 1st Congress of the Philippines under the 1987 Constitution) and local elections (for local government unit officials at different levels) were held in 1987 after the ratification of the 1987 Constitution. National and local officials elected in 1987 served up to 1992. For further reference, see Article XVIII (Transitory Provisions) of the Constitution.

**References:**

Republic Act No. 7166 (enacted 26 November 1991) states:

"[I]t is the policy of the State to synchronize elections so that there shall be simultaneous regular elections for national and local officials once every three (3) years."

<<http://www.chanrobles.com/republicactno7166.htm>>

**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?

33

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

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

**Comments:**

Not all overseas Filipinos, detainees, and election workers, field reporters and other domestic absentee voters can vote. – Casiple

**References:**

Ramon Casiple, Executive Director, Institute for Political & Electoral Reforms (IPER) , Nov. 11, 2010, IPER office

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scored it at 75 percent

**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.

**Comments:**

Ballots are targets for tampering. The use of ballot secrecy folders is not enough because voters vote close to each other side-by-side. In controlled area precincts, operators can make sure that they will know the contents of ballots to serve their purposes. Examples would be warlords, Iglesia Ni Kristo (INK), etc.

**References:**

Ramon Casiple, Executive Director, Institute for Political & Electoral Reforms (IPER) , Nov. 11, 2010, IPER office

Atty. Luie Guia – LIBERTAS

**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.

**Comments:**

There have been many cases of postponement of Barangay, SK and ARMM elections.

**References:**

Ramon Casiple, IPER ED

Luie Guia, LIBERTAS, election lawyer

**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.

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

50

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

Yes

No

### Comments:

The legal existence of the Communist Party of the Philippines (MLMTT) is mired. While the law (Republic Act 1700) declaring it illegal was repealed during the term of President Fidel Ramos (1992-1998), its association with the New People's Army (NPA), which continues an armed struggle against the Philippine Government despite intermittent peace talks, complicates matters. As an aftermath of 9/11, the CPP and the NPA were listed as terrorist organizations by the US government and the European Union.

### References:

Sec. 8, Article III of the Philippine Constitution provides:

The right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged.

**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:

If running for political office is also meant to read as entering into government office, a basic requirement under Civil Service Rules is that the candidate must not have been convicted of any crime involving moral turpitude.

### References:

Section 12 of the Omnibus Election Code (Batas Pambansa No. 881) provides the following disqualifications (and qualifiers to the disqualifications):

"Any person who has been declared by competent authority insane or incompetent, or has been sentenced by final judgment for subversion, insurrection, rebellion or for any offense for which he has been sentenced to a penalty of more than eighteen months or for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office, unless he has been given plenary pardon or granted amnesty.

This (sic) disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of

sentence, unless within the same period he again becomes disqualified.”

**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:**

Requirements imposed by the Commission on Elections (COMELEC ) such as presence in all regions of the country is a barrier because some parties may have heavy presence in a only a few regions. Financial requirements are quite heavy and could also be an important barrier to entry.

**References:**

Ramon Casiple, Executive Director, IPER

Luie Guia, LIBERTAS, election lawyer

**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:**

Only theoretically. Problems of money, political connections, access to armed forces, and popularity practically makes it very difficult for an ordinary citizen to run for public office in many areas.

**References:**

Ramon Casiple, Executive Director, IPER

**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:**

The basis for opposition is the elections for the leadership of the legislative chambers.

**References:**

Ramon Casiple, Executive Director, IPER

**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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## 2.2. Election Integrity

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

100

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

Yes

No

**Comments:**

The COMELEC is the constitutional body mandated to administer laws relative to the conduct of elections. COMELEC then has the power to appoint or designate Civil Society Organizations (CSOs) or NGOs to conduct parallel/ quick counts.

In the recent 2010 elections, the COMELEC appointed the Parish Pastoral Council for Responsible Voting (PPCRV) as its official partner in monitoring said elections.

**References:**

Article IX of the Constitution provides for the establishment, among others, of an independent Commission on Elections (COMELEC), mandated to “[E]nforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.”

**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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18. Is the election monitoring agency effective?

45

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

Yes

No

**Comments:**

However, the COMELEC does not enjoy financial or budgetary autonomy and this is a major medium for political interference.

**References:**

Article IX of the Constitution on Constitutional Commissions provides:

The Constitutional Commissions, which shall be independent, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit.

**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:**

Most appointments to the COMELEC are political in nature with due consideration to professional qualifications.

**References:**

Ramon Casiple, IPER ED

Atty Luie Guia, LIBERTAS, election lawyer

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – gave a score of 75 percent.

**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:**

A lot of deputized, non-full time non-COMELEC staff are involved substantially during elections. Through self-admission, many COMELEC staff admit they were recruited through the intervention of politicians.

**References:**

Ramon Casiple, IPER ED

Atty Luie Guia – LIBERTAS, election lawyer, scores it at 75 percent.

**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:**

The Comelec is late by several years in officially reporting the results of an election to Congress.

**References:**

Ramon Casiple, IPER ED

Guia scores it at 75 percent.

**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:**

There is little political will to do this.

**References:**

Ramon Casiple – Executive Director, IPER

Luie Guia scores it between 25 and 0; closer to 0 percent.

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scores it at 40 percent.

**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?

33

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

100 | 75 | 50 | 25 | 0

**Comments:**

In some areas, there is rampant manipulation of voter registration.

**References:**

Ramon Casiple, IPER ED

Luie Guia scores this indicator at 50 percent.

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 scores this indicator at 75 percent.

**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

**Comments:**

A caveat: contesting allegedly fraudulent election results entails heavy expenses to be borne by the protesting candidates. Most often, dissatisfied candidates are deterred by the high costs of pursuing their electoral challenges through judicial mechanisms.

**References:**

Sec. 4, Article VII of the Constitution provides, among others that “[T]he Supreme Court, sitting en banc, shall be the sole judge of all contests relating to the election, returns, and qualifications of the President or Vice-President, and may promulgate its rules for the purpose.”

Sec. 17 of Article VI of the Constitution provides, among others, that “[T]he Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system registered therein.”

The COMELEC is empowered by Sec. 2 of Article IX of the Constitution to “[E]xercise exclusive original jurisdiction over all contests relating to the elections, returns, and qualifications of all elective regional, provincial, and city officials, and appellate jurisdiction over all contests involving elective municipal officials decided by trial courts of general jurisdiction, or involving elective Barangay officials decided by trial courts of limited jurisdiction.” COMELEC decisions on election contests involving elective municipal and Barangay offices shall be final, executory, and not appealable.

**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:**

This is true only for pre-proclamation protests and for post-proclamation protests for local positions. – Casiple

**References:**

Ramon Casiple, IPER ED – scores it at 75 percent.

Guia scores it at 25 percent.

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scores it 10 percent.

**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:**

Only if politicians do not have much influence with the military or police officers or if the latter do not have political ambitions.

**References:**

Ramon Casiple, Executive Director, IPER

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scores it at 25 percent.

**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

**Comments:**

1. There seems to be no specific law or constitutional provision that allows domestic and international observers to monitor elections in the Philippines.
2. The apparent practice is for the COMELEC to adopt an appropriate resolution (particularly for foreign observers) for each particular election.
3. COMELEC also deputizes non-governmental organizations such as the National Movement for Free Elections (Namfrel) and the Parish Pastoral Council for Responsible Voting (PPCRV) as citizens' arms to conduct poll watching functions in the precincts, render assistance to voters, and in the canvassing of voters; and assist the COMELEC in voters' education campaign in municipalities, provinces and cities where parishes are existing.
4. In the case of PPCRV's deputation for May 2001, these conditions applied:
  - a. be under the direct and immediate control of the Commission;
  - b. comply with all lawful orders of the Commission in the performance of the specific functions and activities assigned by the Commission;
  - c. be non-partisan and impartial during the election period;
  - d. not to be under the influence whatsoever of any foreign government, corporation or entity, and that neither shall said organization nor any of its members seek to achieve its objectives or programs through violence, or aim to propagate any ideology opposed to the principles of a republican and democratic government;
  - e. undertake to police its ranks and prevent infiltration by persons or group of persons who may, directly or indirectly, destroy its character of impartiality;
  - f. submit to the Commission a list of officials and other officers constituting its board and any changes therein shall be effective only after approval thereof by the Commission;
  - g. make available to the Commission Petitioner's personnel, facilities, equipment, papers and effects;
  - h. coordinate activities with other accredited Citizen's arm of the Commission; and
  - i. submit a weekly written report of its operations during the period of the May 14, 2001, elections.

**References:**

COMELEC RESOLUTION NO. 3254, promulgated on Sept. 28, 2000, which covered the RULES AND REGULATIONS ON FOREIGN OBSERVERS IN CONNECTION WITH THE MAY 14, 2001, NATIONAL AND LOCAL ELECTIONS, is an example.

COMELEC RESOLUTION No. 8763, promulgated on Feb. 9, 2010, which entitled GUIDELINES FOR ACCREDITATION OF FOREIGN OBSERVERS IN CONNECTION WITH THE MAY 10, 2010, AUTOMATED NATIONAL AND LOCAL ELECTIONS, is another example.

**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:**

There is difficulty if the government allows it. In some places, it is difficult to do so because of partisan activities of government agencies.

**References:**

Ramon Casiple, IPER ED

**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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59  
2.3. Political Financing Transparency

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

50

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

Yes | No

**Comments:**

The main purpose of this prohibition is to level the playing field for candidates, to give the less moneyed ones a fair chance to compete based on professional credentials and skills.

**References:**

Article XI of the Omnibus Election Code (on Electoral Contributions and Expenditures) imposes limits on electoral expenses of individual candidates and political parties. It does not, however, limit individual donations to political parties.

Republic Act 9006, also known as The Fair Elections Act provides:

SEC. 5. Authorized Expenses of Candidates and Political Parties. – The aggregate amount that a candidate or registered political party may spend for election campaign shall be as follows:

1. For candidates for President and Vice-President – Ten pesos (P10.00, US\$0.2) for every voter;
2. For other candidates without any political party and without support from any political party – Five pesos (P5.00, US\$0.1) for every voter currently registered in the constituency where he filed his certificate of candidacy.
3. For other candidates with political party and with support from any political party – Three pesos (P3.00, US\$0.07) for every voter currently registered in the constituency where he filed his certificate of candidacy.
4. For Political Parties/Organizations/Coalitions – Five pesos (P5.00) for every voter currently registered in the constituency or constituencies where they have official candidates.

**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.

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

Yes | **No**

**Comments:**

Despite this no-limit, candidates are not 100 percent transparent in reporting the total donations they receive from donors.

**References:**

Article XI of the Omnibus Election Code does not impose limits on corporate contributions to political parties. In this electoral code, corporations are considered juridical persons or individuals.

**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.

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

**Yes** | No

**Comments:**

Joel Rocamora, Insitute for Popular Democracy, QC , wrote this observation in February 1998:

Excerpts from Philippine Political Parties Continuity and Change

” Laws on financial contributions refer specifically to elections. They are silent on contributions to political parties not related directly to elections. These laws are so strict that if they were observed, candidates would have to self-finance campaigns. In any case, they are virtually impossible to implement. The COMELEC has no capability to validate or to dig into the business affiliations of individual contributors. Even when violations do occur, the COMELEC does not apply sanctions.

The party itself is almost always not a source of electoral funds. Every candidate must raise his own funds – from his family, friends, business associates, and from political allies. As campaign expenses have increased exponentially, national party organizations have taken on the task of raising money in Manila and distributing it to local candidates. These national party funds, however, cover only part of the campaign expenses of local candidates.

The ruling party has a distinct advantage in campaign fund raising. It can tap government resources – financial, human, institutional. In addition to government funds, the ruling party is also better placed to secure contributions from business sources because of the party’s control over government contracts, licenses and other favors. Lakas reportedly has been accumulating a “war chest” many years before the 1998 elections.”

**References:**

SEC. 5. Authorized Expenses of Candidates and Political Parties. – The aggregate amount that a candidate or registered political party may spend for election campaign shall be as follows:

xxx

For other candidates with political party and with support from any political party – Three pesos (P3.00, US\$0.07) for every voter currently registered in the constituency where he filed his certificate of candidacy.

3.

For Political Parties/Organizations/Coalitions – Five pesos (P5.00, US\$0.1) for every voter currently registered in the constituency or constituencies where they have official candidates.

**Yes:** A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

**No:** A NO score is earned if there are no limits on political party expenditures during an election. 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 requirements for the disclosure of donations to political parties.

Yes

No

**Comments:**

Excerpts from Philippine Political Parties, Continuity and Change – by Joel Rocamora, Institute for Popular Democracy (IPD), QC Feb. 27, 1998:

“If in the past patron-client ties limiting effective participation by the electorate was the most serious problem corrupting democratic representation, today rapidly growing election campaign expenses is the key problem. Running election campaigns have become so expensive that only rich people or those dependent on rich financiers can run. Qualified, popular candidates without money and without financial backers cannot win. Even when relatively honest people do win, they have to spend so much money to campaign that they invariably become corrupt in order to recover their expenses or to return the favor of financial backers.

Since patronage demands continue, in fact, increase after the candidate is elected, using the powers of one’s office to reward supporters is a basic requirement in Philippine politics. “All the congressional respondents mentioned honesty as an important criterion for public judgment but conversations indicated this to be a particular kind of honesty owed only in relation to one’s supporters rather than the electorate at large. A politician must deliver what he has agreed to produce for political support. He is in no way beholden to those who did not support him.” This group loyalty does not apply to political parties, only to individual political leaders. (David, 1994:1) “

**References:**

Sections 98 and 99, Article XI of the Omnibus Election Code, respectively, require the true name of the contributor and requires

the contributor to (not later than 30 days after the day of the election) file with the Commission a report under oath stating the amount of each contribution, the name of the candidate, agent of the candidate or political party receiving the contribution, and the date of the contribution.

**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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

Yes | **No**

**Comments:**

In truth, no instances of financial irregularities were ever uncovered by the COMELEC since all reports of election finance are always in order and in compliance with the Commission's rules.

Also, there is no independent auditing firm that undertakes to audit the finances and expenditures of political parties.

**References:**

Article XI of the Omnibus Election Code does not require independent auditing of the finances and expenses of political parties when financial irregularities are uncovered.

**Yes:** A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. 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 when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

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

**Yes** | No

**Comments:**

It is also observed that the limitation set by law for expenditures by candidates per voter is not realistic.

**References:**

It is the Commission on Elections (COMELEC) that fulfills this function. Article XI of the Omnibus Election Code provides that statements of campaign contributions and expenses must be submitted to the COMELEC.

**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. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

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

40

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

Yes | **No**

**Comments:**

There is, however, no way of determining whether the candidates' disclosure is the absolute truth in so far as donations to their campaign is concerned.

**References:**

Article XI of the Omnibus Election Code does not impose any limit on individual donations to political candidates.

**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.

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

Yes | **No**

**Comments:**

The Omnibus Election Code considers corporations as juridical persons or individuals.

**References:**

Article XI of the Omnibus Election Code does not impose any limit on corporate donations to individual political candidates.

**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.

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

Yes | No

**Comments:**

There is, however, no way of determining whether the candidates' disclosures are the absolute truth in so far as donations to their campaign is concerned.

**References:**

Sec. 99, Article XI of the Omnibus Election Code :

Every person giving contributions to any candidate, treasurer of the party, or authorized representative of such candidate or treasurer shall, not later than 30 days after the day of the election, file with the Commission a report under oath stating the amount of each contribution, the name of the candidate, agent of the candidate or political party receiving the contribution, and the date of the contribution.

**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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

Yes | No

**Comments:**

In truth, no irregularities were ever uncovered. All reports on contributions and expenses are invariably in order and in compliance with pertinent laws.

**References:**

Article XI of the Omnibus Election Code does not require an independent audit of the campaign finances of individual candidates when irregularities are uncovered.

**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 when financial irregularities are uncovered. 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 when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

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

Yes | No

**Comments:**

The COMELEC was not very effective in performing this task. The obvious indicator would be the television ads that flooded the screens during the campaign period in 2010. Another indicator is the Civil Society Organizations (CSOs) that monitored and reported the campaign finances of candidates running for national posts.

**References:**

The Omnibus Election Code (Article XI) designates the Commission on Elections (COMELEC) as the entity which monitors the campaign finances of individual political candidates.

**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. A NO score is also earned if this monitoring is solely carried out by the media and non-governmental organizations.

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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:**

Guia is of the opinion that the question does not fully apply to the Philippine situation since there are no limits on contributions by individuals and corporations.

The unrestricted donation is a huge gap in Philippine electoral process. – Casiple

**References:**

Luie Guia – election lawyer, LIBERTAS

Ramon Casiple – Executive Director, IPER

**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:**

The unrestricted donation is a huge gap in Philippine electoral process.

**References:**

Ramon Casiple – Executive Director, IPER

**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:**

Guia's zero score pertains to limits on electoral campaign expenses.

Though there are regulatory laws, these are not observed. – Casiple

**References:**

Ramon Casiple, IPER ED

Luie Guia LIBERTAS

**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.

100 | 75 | 50 | 25 | 0

**Comments:**

There is no monitoring. – Casiple

**References:**

Ramon Casiple, IPER ED

Luie Guia scores it zero

**100:** The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of political parties, or cooperates well with other agencies that do. 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, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. 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, is uncooperative with other agencies, 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.

100 | 75 | 50 | 25 | 0

**Comments:**

There is no monitoring agency. Although a monitoring unit was set up lately in the Comelec, it is too early to say what it will and can do.

**References:**

Ramon Casiple – Executive Director, IPER

**100:** When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

**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, reluctant to cooperate with other agencies, 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 and may refuse cooperation with other agencies.

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

100 | 75 | 50 | 25 | 0

**Comments:**

Comelec has no capability to audit.

**References:**

Ramon Casiple, Executive Director IPER

**100:** Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing 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:**

Practically, there is no limit.

**References:**

Ramon Casiple, IPER ED

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – gave a score of 0 percent.

**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:**

Practically, there is no limit.

**References:**

Ramon Casiple – ED IPER

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – gave a score of 0 percent.

**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:**

There is no monitoring.

**References:**

Ramon Casiple

Luie Guia scores it 0 percent.

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scores it 0 percent.

**100:** The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. 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. It may be reluctant to cooperate with other investigatory agencies.

**25:**

**0:** The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

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 institutional mechanism is not sufficient to allow the COMELEC to effectively penalize campaign finance offenders, according to Guia.

Comelec has no capability to audit. – Casiple

**References:**

Ramon Casiple – ED IPER

Luie Guia LIBERTAS

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scores it at 0 percent.

**100:** When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

**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, reluctant to cooperate with other agencies, 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 or may refuse to cooperate with other agencies.

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

100 | 75 | 50 | 25 | 0

**Comments:**

There is no auditing by government agencies.

**References:**

Ramon Casiple – Exec Dir, IPER

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scores it at 0 percent.

**100:** The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

**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.

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

0

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

100 | 75 | 50 | 25 | 0

### Comments:

Submitted reports are not credible; the real reports are never submitted.

### References:

Ramon Casiple – Executive Director, Institute for Political and Electoral Reforms  
54-C Mapagkawangawa St., QC

Luie Guia – election lawyer, LIBERTAS

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scored it at 25 percent.

**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:**

Real reports are not accessible since they are not submitted anyway. – Casiple

Nobody is actually interested in obtaining the records of political party finances. -Guia

**References:**

Ramon Casiple – Executive Director, IPER

Luie Guia – Election lawyer, LIBERTAS

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scored it at 25 percent.

**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:**

There is the burden of time, and the burden of bureaucratic delays. – Casiple

Guia scored it 0 percent because nobody actually tries to access these records.

**References:**

Ramon Casiple – Exec. Director, IPER

Luie Guia – Election lawyer, LIBERTAS

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scores it at 25 percent.

**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 NGOs. 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 NGOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

**Comments:**

There is no independent audit.

**References:**

Ramon Casiple, IPER ED

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scored it at 25 percent.

**100:** Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

**75:**

**50:** Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

**25:**

**0:** Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

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

6

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:**

Submitted reports are not credible; real reports are never prepared or submitted. -CASIPLE

Guia observes that individual candidates never publish their financial reports.

**References:**

Ramon Casiple, IPER Executive Director, Nov. 11, 2010, IPER office

Luie Guia – Election Lawyer, LIBERTAS

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scored it at 25 percent.

**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:**

Yes, but there is a question about accuracy and about whether there is a willingness of the Comelec to disclose the information.

**References:**

Ramon Casiple – Executive Director, IPER

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scores it at 0 percent.

**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:**

Yes, but only those that are submitted to the Comelec.

**References:**

Ramon Casiple – Executive Director, IPER

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scores it at 0 percent.

**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 NGOs. 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 NGOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | 50 | 25 | 0

**Comments:**

There is no independent audit of candidates' campaign finance reports submitted to the COMELEC.

**References:**

Ramon Casiple, Executive Director, Institute for Political and Electoral Reform (IPER), Nov. 11, 2010, IPER Office, Quezon City

Luie Guia, LIBERTAS, election lawyer

Malou Mangahas,  
"Money Politics and the May 2010 Elections"

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scored it at 0 percent.

**100:** Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

**75:**

**50:** Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

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### Category 3. Government Conflicts of Interest Safeguards & Checks and Balances

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#### 3.1. <sup>53</sup>Conflicts of Interest Safeguards & Checks and Balances: Executive Branch

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26. In law, can citizens sue the government for infringement of their civil rights?

0

26a. In law, can citizens sue the government for infringement of their civil rights?

Yes

**No**

**Comments:**

Jurisprudence rather than specific constitutional provisions or law provide that the government can be sued. In *Tan v. Director of Forestry*, 125 SCRA 302, the Supreme Court said that State immunity from suit may be invoked as long as the suit really affects the property, rights or interests of the State and not merely those of the officers nominally made party defendants.

Generally, any governmental action that violates the Bill of Rights is illegal.

**References:**

There is no constitutional provision or law that specifically provides that citizens can sue the government for infringement of their civil rights.

Nonetheless, Sections 1 and 4 of Article III (Bill of Rights) of the Philippine Constitution can be utilized for this purpose. Section 1 provides that "[N]o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws". Section 4 meanwhile provides that "[N]o 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".

However, the government may not be sued without its consent (Sec. 3, Art. XVI of the Philippine Constitution).

Art. 124 of the Revised Penal Code prohibits and punishes any public officer or employee who illegally detains a person.

**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.

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

44

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

100 | 75 | 50 | 25 | 0

### Comments:

NO. The President issues Executive Orders (EO), which are merely published. It is only when the media or other branch of the government (legislative) become interested in the subject matter of the EO will the President issue an explanation, citing the wisdom behind the issuance of such. In most cases, the citizens are not even aware of the President's policies.

### References:

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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:

This is the principle of check and balance among the three branches of government – the executive, legislative and judiciary.

### References:

Sec. 1, Art. VIII of the Philippine Constitution provides, among others, that “[J]udicial 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”.

**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:**

YES, but only when the action of the executive is brought to the court’s attention through the filing of a complaint/petition. The judiciary does not review the actions of the executive on its own initiative as there has to be a formal case filed in court.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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:**

1. President Gloria Arroyo during her time has issued controversial Executive Orders to circumvent investigations involving her or members of her family. One of these is Executive Order 464, which prohibits ranking government officials from appearing in congressional hearings without the written permission of President Arroyo.

2. NO. Policies/ regulations are usually through the issuance of EO's.

**References:**

Manila Bulletin, by Mario Casayuran, Sept. 8, 2007, "Senators hit Executive Order No 464"

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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?

50

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

Yes | **No**

**Comments:**

The president of the Philippines enjoys immunity from suit during the pendency of his/her term (see *Soliven v. Makasiar*, 167 SCRA 393). He/she may be charged and prosecuted for crimes committed during his/her term when he/she is no longer in office provided that the prescription period for the crimes still holds (e.g. 20 years for murder). Only when the president ceases to be one, immunity from suit is lifted.

**References:**

Sec. 2, Art. XI of the Constitution provides that the President "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".

Impeachment, however, is not criminal prosecution. It is sui generis and is a quasi-judicial and quasi-political process.

**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:**

There has yet to be an official with said rank from the executive branch to be tried or indicted for a criminal offense.

In the Legislative Branch however there had been two representatives convicted of criminal offenses.

**References:**

Ministerial-level or cabinet officials are not among the impeachable officers listed in Sec. 2, Art. XI of the Constitution.

A number of laws provide for the prosecution of ministerial- and all other sub-ministerial officials. An example is Republic Act No. 6713 or an AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES.

RA 6713 lists the prohibited acts and transactions of public officials:

(a) Financial and material interest. — Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office.

(b) Outside employment and other activities related thereto. — Public officials and employees during their incumbency shall not:

- (1) Own, control, manage or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law;
- (2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions; or

(3) Recommend any person to any position in a private enterprise which has a regular or pending official transaction with their office.

These prohibitions shall continue to apply for a period of one (1) year after resignation, retirement, or separation from public office, except in the case of subparagraph (b) (2) above, but the professional concerned cannot practice his profession in connection with any matter before the office he used to be with, in which case the one-year prohibition shall likewise apply.

(c) Disclosure and/or misuse of confidential information. —

Public officials and employees shall not use or divulge, confidential or classified information officially known to them by reason of their office and not made available to the public, either:

- (1) To further their private interests, or give undue advantage to anyone; or
- (2) To prejudice the public interest.

(d) Solicitation or acceptance of gifts. — Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office. As to gifts or grants from foreign governments, the Congress consents to:

- (i) The acceptance and retention by a public official or employee of a gift of nominal value tendered and received as a souvenir or mark of courtesy;
- (ii) The acceptance by a public official or employee of a gift in the nature of a scholarship or fellowship grant or medical treatment; or

(iii) The acceptance by a public official or employee of travel grants or expenses for travel taking place entirely outside the Philippine (such as allowances, transportation, food, and lodging) of more than nominal value if such acceptance is appropriate or consistent with the interests of the Philippines, and permitted by the head of office, branch or agency to which he belongs.

**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:**

The mandatory nature of this provision exempts no one from compliance, and is strictly enforced and followed.

**References:**

Sec 8, RA 6713 requires that public officials and employees, including the President and other nationally-elected officials, have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

**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:**

The mandatory nature of this provision exempts no one from compliance, and is strictly enforced and followed.

**References:**

Sec. 8, RA 6713 requires ministerial-level officials to file their assets, liabilities and net worth disclosure form.

**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:**

While the law is very strict on this, it can be said that this is not strictly observed and monitored.

**References:**

Par. d, Sec. 7, RA 6713 provides that public officials and employees, including members of the executive branch, shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

**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:**

The cited provisions of RA 6713 does not in any way provide for mandatory audit of the executive branch asset disclosure, much less mandatory audits by independent bodies.

The asset disclosure forms are open to public for a period of 10 years after receipt of the proper bodies. Therefore, independent audits by interested entities can be done theoretically.

**References:**

Sec. 10, RA 6713 simply reads:

“Review and Compliance Procedure. — (a) The designated Committees of both Houses of the Congress shall establish procedures for the review of statements to determine whether said statements which have been submitted on time, are complete, and are in proper form. In the event a determination is made that a statement is not so filed, the appropriate Committee shall so inform the reporting individual and direct him to take the necessary corrective action.

(b) In order to carry out their responsibilities under this Act, the designated Committees of both Houses of Congress shall have the power within their respective jurisdictions, to render any opinion interpreting this Act, in writing, to persons covered by this Act, subject in each instance to the approval by affirmative vote of the majority of the particular House concerned.

The individual to whom an opinion is rendered, and any other individual involved in a similar factual situation, and who, after issuance of the opinion acts in good faith in accordance with it shall not be subject to any sanction provided in this Act.

(c) The heads of other offices shall perform the duties stated in subsections (a) and (b) hereof insofar as their respective offices are concerned, subject to the approval of the Secretary of Justice, in the case of the Executive Department and the Chief Justice of the Supreme Court, in the case of the Judicial Department”.

**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

#### References:

Sec. 7 of Republic Act No. 6713 reads:

“Prohibited Acts and Transactions. – In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

(a) Financial and material interest. – Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office.

(b) Outside employment and other activities related thereto. – Public officials and employees during their incumbency shall not:

(1) Own, control, manage or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law;

(2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions; or

(3) Recommend any person to any position in a private enterprise which has a regular or pending official transaction with their office.

These prohibitions shall continue to apply for a period of one (1) year after resignation, retirement, or separation from public office, except in the case of subparagraph (b) (2) above, but the professional concerned cannot practice his profession in connection with any matter before the office he used to be with, in which case the one-year prohibition shall likewise apply.”

**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 president after his/her term usually engaged in civic works, save for former President Gloria Arroyo who ran for a congressional seat in the 2010 elections and won.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

**Comments:**

I need to consult my notes of the interview with Vitug. This was how Vitug scored it. If you were to ask me, I would score it closer to zero than to 25.

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

**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.

100 | 75 | 50 | 25 | 0

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

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?

56

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

Yes | No

**Comments:**

Recently, Ombudsman Merceditas Gutierrez, a known ally of former President Gloria Arroyo, drew criticisms and public outrage for refusing to disclose to the public the Statement of Assets, Liabilities and Net worth of Arroyo's son – Congressman Juan Miguel Arroyo.

**References:**

Sec. 8 of Republic Act No. 6713 provides:

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

**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

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

**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:**

Records are readily available to journalists but not to ordinary citizens.

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

**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 NGOs. 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 NGOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

**References:**

Presentation of Malou Mangahas, Philippine Center for Investigative Journalism (PCIJ) at the Center for Asian Integrity (CAI) Mapping Corruption workshop, Dec. 9, 2010, Manila Peninsula Hotel, Makati, Philippines

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

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31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

0

31a. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

**Comments:**

NO, there is no clear/distinct separation between official functions and political party functions. In fact, even political party functions are perceived to be official functions. And during official functions, members of the same political party of the official (like the president) attend to show their support.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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.

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### 3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

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#### 32. Can members of the legislature be held accountable for their actions?

75

32a. In law, the judiciary can review laws passed by the legislature.

Yes

No

**Comments:**

This is the principle of check and balance among the three branches of the government.

**References:**

Art. VIII, 1987 Constitution provides that “[J]udicial 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.”

It further provided that “[A]ll cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court en banc, and all other cases which under the Rules of Court are required to be heard en banc, including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordinances, and other regulations, shall be decided with the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.”

**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:**

NO, the judiciary cannot review the laws passed by the legislature in its (judiciary) own initiative. There has to be a petition filed before a court can make a review.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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 provides:

A Senator or Member of the House of Representatives shall, in all offenses punishable by not more than six years imprisonment, be privileged from arrest while the Congress is in session. No Member shall be questioned nor be held liable in any other place for any speech or debate in the Congress or in any committee thereof.

**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?

46

33a. In law, members of the national legislature are required to file an asset disclosure form.

Yes

No

**Comments:**

The mandatory nature of said provision exempts no one from compliance and is strictly enforced and followed by public officials and employees.

**References:**

Sec 8, RA 6713 requires that public officials and employees, including the President and other nationally-elected officials (including members of the legislature), have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

**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 – principle of conflict of interest.

**References:**

Section 7, RA 6713 provides:

In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

(a) Financial and material interest. – Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office.

(b) Outside employment and other activities related thereto. – Public officials and employees during their incumbency shall not:

(1) Own, control, manage or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law;

(2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions; or

(3) Recommend any person to any position in a private enterprise which has a regular or pending official transaction with their office.

These prohibitions shall continue to apply for a period of one (1) year after resignation, retirement, or separation from public office, except in the case of subparagraph (b) (2) above, but the professional concerned cannot practice his profession in connection with any matter before the office he used to be with, in which case the one-year prohibition shall likewise apply.

**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:**

The purpose of the law is to ensure that the conduct of elective officials is beyond reproach, that they are bound by law to perform their official functions without the promise of any favor or gift.

**References:**

Par. d, Sec. 7, RA 6713 provides that public officials and employees, including members of the executive branch, shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

**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:**

The cited provisions of RA 6713 does not in any way provide for mandatory audit of the legislative branch asset disclosure, much less mandatory audits by independent bodies.

The asset disclosure forms are open to public for a period of 10 years after receipt of the proper bodies. Therefore, independent audits by interested entities can be done theoretically.

**References:**

Sec. 10, RA 6713 simply reads:

“Review and Compliance Procedure. — (a) The designated Committees of both Houses of the Congress shall establish procedures for the review of statements to determine whether said statements which have been submitted on time, are complete, and are in proper form. In the event a determination is made that a statement is not so filed, the appropriate Committee shall so inform the reporting individual and direct him to take the necessary corrective action.

(b) In order to carry out their responsibilities under this Act, the designated Committees of both Houses of Congress shall have the power within their respective jurisdictions, to render any opinion interpreting this Act, in writing, to persons covered by this Act, subject in each instance to the approval by affirmative vote of the majority of the particular House concerned.

The individual to whom an opinion is rendered, and any other individual involved in a similar factual situation, and who, after issuance of the opinion acts in good faith in accordance with it shall not be subject to any sanction provided in this Act.

(c) The heads of other offices shall perform the duties stated in subsections (a) and (b) hereof insofar as their respective offices are concerned, subject to the approval of the Secretary of Justice, in the case of the Executive Department and the Chief Justice of the Supreme Court, in the case of the Judicial Department”.

**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:**

NO, legislators can join the private sector the moment they leave public office.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

**References:**

Marites D. Vitug – Chairperson, Newsbreak Advisory Board, telephone interview, Jan. 5, 2011.

**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 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.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

**References:**

Marites D. Vitug – Chairperson, Newsbreak Advisory Board, phone interview, Jan. 5, 2011.

**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: 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.

---

## 34. Can citizens access the asset disclosure records of members of the national legislature?

63

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

Yes

No

### Comments:

Significant to this law is the issue regarding the Statement of Assets and Liabilities of Juan Miguel Arroyo, son of former President Gloria Arroyo.

Below is an excerpt from an article by Rodel Rodis, Philippine Daily Inquirer, August 15, 2010:

xxx

“Responsibility for the enforcement of the SALN law rests with the Office of the Ombudsman headed by Merceditas Gutierrez, a GMA appointee who was the Ateneo Law School classmate of former First Gentleman Mike Arroyo. Understandably, she has shown no desire to investigate the Arroyos.”

xxx

“After 50 years, the SALN law may be on life support but it isn’t dead yet. Since Congress will not likely pass any law that will put more teeth into SALN, President Noynoy Aquino should just sign an executive order designating officials in each agency of government to compile the SALNs of public officials and to review and verify them and post them online. The Department of Justice should then go after the public officials with unexplained wealth and place the onus on them to prove their innocence as Winnie explained to Mikey. That’s the way the SALN law was envisioned 50 years ago this week. It’s time to finally enforce it and use it as a weapon of good governance.

### References:

Section 12, Article VI, Philippine Constitution provides:

All Members of the Senate and the House of Representatives shall, upon assumption of office, make a full disclosure of their financial and business interests. They shall notify the House concerned of a potential conflict of interest that may arise from the filing of a proposed legislation of which they are authors.

Section 17, Article XI, Philippine Constitution also states:

A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.

**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, non-governmental 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

**References:**

Marites D. Vitug – Chairperson, Newsbreak Advisory Board, telephone interview Jan. 5, 2011

**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

**References:**

Marites D. Vitug – Chairperson, Newsbreak Advisory Board, phone interview, Jan.5, 2011

**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 NGOs. 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 NGOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

100 | 75 | 50 | 25 | 0

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

**100:** The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

**75:**

**50:** The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

**25:**

**0:** The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

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### 35. Can citizens access legislative processes and documents?

58

35a. In law, citizens can access records of legislative processes and documents.

Yes | No

**Comments:**

But the cost of access to certain information is excessive. There is a very low level of bureaucratic commitment to openness.

House Bill No. 3732 also known as Freedom of Information Bill that is pending in the House of Representatives, if passed would have addressed the following issues/ problems:

1. Absence of a uniform, simple and speedy access procedure.
2. Release of information remains discretionary.
3. There is still untested, if not sufficient, basis for sanctions in cases of violation of the right to information.
4. The remedy to compel disclosure, primarily judicial, remains inaccessible to the general public.
5. Government's record-keeping system is in a very poor state.

\* Source: Access to Information Network (ATIN) July 14, 2009

**References:**

Section 7, Article III, Philippine Constitution provides:

The right of the people to information on matters of public concern shall be recognized. 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.

Section 20, Article VI, Philippine Constitution also states:

The records and books of accounts of the Congress shall be preserved and be open to the public in accordance with law, and such books shall be audited by the Commission on Audit which shall publish annually an itemized list of amounts paid to and expenses incurred for each Member.

Lastly, Section 28 of Article II of the Constitution provides:

Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

**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

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

**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.

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

**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 NGOs. 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 NGOs trying to access this information.

61

### 3.3. Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch

#### 36. Are judges appointed fairly?

75

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.

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:**

Sec. 7 (1) of Art VIII of the Constitution provides:

No person shall be appointed Member of the Supreme Court or any lower collegiate court unless he is a natural born citizen of the Philippines.

(3) A Member of the Judiciary must be a person of proven competence, integrity, probity and independence.

Sec. 9 of the same article further provides:

The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointment needs no confirmation.

Finally, Sec 8 (5) of the same Article states: The Judicial and Bar Council shall have the principal function of recommending appointees to the Judiciary.

**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:**

Excerpts from Vitug's Shadow of Doubt -Probing the Court:

"By the time President Arroyo was expected to step down in May 2010, she would have appointed all the Justices on the Court. [...] In her nine years in power, Arroyo appointed 23 justices [...] Many of them were personally known to her."

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011; Author of Shadow of Doubt – Probing the Court ; published 2010

**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 after reviewing the credentials and qualifications of the candidates. However, the final decision of who to appoint from the list of nominees remains with the president.

**References:**

Section 9, Article VIII, Philippine Constitution :

The members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.

**Yes:** A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity 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 the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

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### 37. Can members of the judiciary be held accountable for their actions?

58

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

Yes

No

**Comments:**

According to the Supreme Court justices, there's no need since the decisions speak for themselves. The law under Sec 14 Article VIII of the Constitution however states: No decision shall be rendered by any court without expressing therein clearly and distinctly the fact and the law on which it is based.

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

**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.

**Comments:**

No law requires judges and justices to explain their decisions. Sec. 14 of Article VIII of the Constitution however requires: No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

**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:**

Members of the Supreme Court are removed from office only through impeachment. Justices of regular and special courts, and judges of trial courts are subject to disciplinary action of the Supreme Court, based on the formers internal rules.

The Supreme Court shall refer the matter to the Office of the Court Administrator for evaluation, report, and recommendation or assign the case for investigation, report, and recommendation to a retired member of the Supreme Court, if the respondent is a Justice of the Court of Appeals and the Sandiganbayan, or to a Justice of the Court of Appeals, if the respondent is a Judge of a Regional Trial Court or of a special court of equivalent rank, or to a Judge of the Regional Trial Court if the respondent is a Judge of an inferior court.

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

Sec. 11 of Article VIII of the Constitution:

The Supreme Court en banc shall have the power to discipline judges of lower courts or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

Rule 140 Sec 1 of the Rules of Court further provides:

Proceedings for the discipline of Judges of regular and special courts and Justices of the Court of Appeals and the Sandiganbayan may be instituted motu proprio by the Supreme Court..

In the case of Supreme Court Justices, Sec. 2 of Article XI of the Constitution states: the Members of the Supreme Court may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and

corruption, other high crimes. pr betrayal of public trust.

**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. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to 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 Supreme Court has the exclusive authority to discipline judges and justices of lower courts, in accordance with its internal rules as well as those provided in the Rules of Court.

**References:**

Sec. 6 Art. 8 of the Philippine Constitution provides:

The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

In addition, Sec. 11 of the same article provides: The Supreme Court en banc shall have the power to discipline judges of lower courts, or order their dismissal by a majority vote of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

Further, Sec. 1 of Rule 140 of the Rules of Court states:

Proceedings for the discipline of Judges of regular and special courts and Justices of the Court of Appeals and the Sandiganbayan may be instituted motu proprio by the Supreme Court.

**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 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:**

The Supreme Court(SC) will only act upon a complaint filed, although under the Rules of Court, the SC may motu proprio institute a complaint and order an investigation on erring judges/ justices.

The SC drew criticisms from the legal profession, media and the academe when it refused to investigate/ discipline one of its Justices (Mariano del Castillo) for plagiarism. The SC instead threatened to cite in contempt the UP College of Law Professors

who discovered the plagiarized decision.

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

**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:**

Excerpts from the above article:

"Ten magistrates voted to clear their colleague's name. They are Chief Justice Renato Corona, Associate Justices Presbitero Velasco Jr., Eduardo Nachura, Teresita Leonardo-de Castro, Arturo Brion, Lucas Bersamin, Roberto Abad, Martin Villarama Jr., Jose Perez, and Jose Mendoza.

Those who dissented were Associate Justices Conchita Carpio-Morales and Maria Lourdes Aranal-Sereno. Associate Justices Antonio Carpio and Diosdado Peralta were on official leave.

The court's decision was based on the investigation made by the court's own Ethics and Ethical Standards Committee."

**References:**

GMA News.Tv, Sophia Dedace, Oct. 15, 2010,  
"SC Clears Justice Mariano del Castillo of Plagiarism"

**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?

46

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes

No

### Comments:

The Judiciary, however at some point managed to exempt itself from complying with this mandate.

Editorial, Manila Times, Aug. 25, 2009,  
<http://www.manilatimes.net>

The good news—that the Supreme Court is revisiting the 20-year-old practice of refusing to disclose the assets and liabilities of justices and judges—is one more commendable move of the Puno Court to strengthen constitutional compliance and the rule of law in our country.

Two such earlier moves—the introduction into our legal system of the writs of amparo and habeas data—have markedly advanced human rights observance and willingness to disclose information among officials of security agencies.

The non-disclosure of the magistrates' Statement of Assets, Liabilities and Net worth (SALN) is backed by a Supreme Court ruling made in May 1989. But up to the term of the late Chief Justice Marcelo Fernan, who resigned in 1991, requests for the magistrates' SALN were seldom rejected. On September 22, 1992, however, the High Court passed a resolution reinforcing the restrictive May 1989 ruling and giving guidelines for the denial of requests.

The May 1989 resolution and September 1992 guidelines give heavy weight to the possibility that requests from the public—including media organizations—for a magistrate's SALN submission would compromise the independence of the judiciary. Indeed a SALN could be used by a defeated litigant to harass or get back at the judge, or be used by a party in a pending case to threaten the judge with bad publicity and thereby influence his or her decision.

The evil designs of rebels are correctly anticipated by a guideline, which says: "4. In the few areas where there is extortion by rebel elements or where the nature of their work exposes judges to assaults against their personal safety, the request shall not only be denied but should be immediately reported to the military."

And, to assuage the feelings of parties disappointed that their effort to avail themselves of their legally protected right to information has met with failure, the Supreme Court's Guideline No. 5 states: "The reason for the denial shall be given in all cases."

The Constitution's requirement

The practice of non-disclosure has made the Philippine judiciary the only branch of government exempt from complying with the Constitution's Section 17 of Article XI stating that "(a) public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities and net worth. In the case of the President, the Vice-President, the Members of Cabinet, the Congress, the Supreme Court . . . the declaration shall be disclosed to the public in the manner provided by law."

Soon after Chief Justice Reynato Puno assumed office in December 2006, he spoke of favoring disclosure. He obviously saw the need for the judiciary to help in restoring trust in government by being transparent about the magistrates' possessions and lifestyle. But he also made a point of arriving at a balance between carrying out the Right to Information Act, the ethical requirements of transparency among judges, and preventing their SALN from being used to hurt them and their independence.

The Times source says the SC justices, after an en banc session, have decided to form a committee to restudy the non-disclosure practice and come up with a better set of guidelines. The justices can pattern their guidelines on that of the United

States Supreme Court. These allow American judges to comply with the SALN filing requirements without giving such information as a person with evil intentions can use.

The bottom line is that the members of the judiciary must not be exempt from disclosing their assets and liabilities.

**References:**

Sec. 17 of Article XI of the Constitution provides:

A public officer or employee shall, upon assumption of public office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the Supreme Court, the declaration shall be disclosed to the public in the manner provided by law.

**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:**

Members of the judiciary are at all times expected to avoid impropriety and appearances of impropriety in all their dealings or activities.

**References:**

Republic Act 3019 or the Anti Graft and Corrupt Practices Act provides:

Sec. 1 – It is the policy of the Philippine Government, in line with the principle that a public office is a public trust, to repress certain acts of public officers and private persons alike which constitute graft and corrupt practices or which lead thereto.

Sec. 2 (c) – Receiving any gift includes the act of accepting directly or indirectly a gift from a person other than a member of the public officer's immediate family, in behalf of himself or of any member of his family or relative within the fourth civil degree, either by consanguinity or affinity like Christmas, if the value of the gift is under the circumstances manifestly excessive.

Finally, Rule 5.04 of Canon 5 of the Code of Judicial Conduct states:

A judge or any immediate member of the family shall not accept a gift, bequest, favor or loan from anyone except as may be allowed by law.

**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

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

**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:**

Former Chief Justice Artemio Panganiban sat on the board of 11 firms.

**References:**

Republic Act 6713 also known as the Code of Conduct and ethical Standards for Public Officials and Employees provide:

Sec. 7 – In addition to acts and omissions of public officials and employees prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared unlawful:

(b) Public officials and employees during their incumbency shall not:

(2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided that such practice will not conflict or tend to conflict with their official functions;

These prohibitions shall continue to apply for a period of one year after resignation, retirement or separation from public office, except in the case of subparagraph b(2), but the professional concerned cannot practice his profession in connection with any matter before the office he used to be with, in which case the one year prohibition shall likewise apply.

**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:**

There are no restrictions.

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

**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. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

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:**

I need to consult Vitug’s book on judicial practice and corruption “Shadow of Doubt”. The book is currently with my research assistant.

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

**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 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.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

**Comments:**

There is no disclosure of assets for Supreme Court Justices, therefore no audits.

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

**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:** 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.

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### 39. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

Yes | No

**Comments:**

Among all public officials, only the Supreme Court Justices are exempt from complying, despite the mandatory provision of the law that all public officials are obliged to do so.

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

**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:**

Only the Supreme Court Justices among all public officials are exempt from complying, despite the clear requirement of the law.

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

**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.

100 | 75 | 50 | 25 | 0

**Comments:**

Supreme Court Justices have exempted themselves from complying with the mandatory requirement of law that public officials must submit a statement of assets, liabilities and net worth.

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

**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 NGOs. 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 NGOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | 25 | 0

**Comments:**

Not applicable. Supreme Court Justices have exempted themselves from complying with the mandatory requirement of law that public officials must submit a statement of assets, liabilities and net worth.

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

**100:** The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

**75:**

**50:** The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

**25:**

**0:** The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

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### 3.4. Budget Process Oversight & Transparency

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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

**Comments:**

The power to amend lies within the exclusive jurisdiction of the legislative branch, subject to the vetoing power of the president.

**References:**

Secs 24 and 25. , Art. VI, 1987 Constitution provide among others that “[A]ll appropriation, revenue or tariff bills, bills authorizing increase of the public debt, bills of local application, and private bills, shall originate exclusively in the House of Representatives, but the Senate may propose or concur with amendments”, and that “[T]he Congress may not increase the appropriations recommended by the President for the operation of the Government as specified in the budget.”

Sec. 25 of the same Art. VI provides that “[N]o law shall be passed authorizing any transfer of appropriations; however, the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.”

**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.

Congress has practically abdicated the power of the purse to the executive branch, failing to scrutinize the annual national budget thoroughly and facilitating corruption in the process. “Congress is given four months to debate the budget. But, more often than not, debates—particularly in the House of Representatives—deal not with policy but rather parochial concerns,” said the 2008/2009 Philippine Human Development Report (PHDR).

The Open Budget Survey measures legislative strength based on a number of criteria that assess the legal authority of the legislature to approve budgets at the start of the year and to approve any amendments made to the budget over the course of the fiscal year. Other criteria measure the length of time available to a legislature to discuss and approve a budget and the level of detail available in the proposed expenditure budget approved by a legislature. Further, the Open Budget Survey assesses the openness of budget discussions conducted by the legislature, including the extent of the opportunities that individuals and civil society organizations have to testify at public hearings organized by the legislature and to be present during legislative hearings at which the executive testifies on its proposed budget.

The 2010 Open Budget Survey reports that the Philippines belong to the group of 43 countries with legislatures found to be moderate (a category between weak and strong) in the budget process.

**References:**

1. HDN Discussion Paper Series No. 5, Emilia Boncodin, 2008, “Case Study: The influence of the budget process on governance effectiveness,” <http://hdn.org.ph/forthcoming-philippine-human-development-report-institutions-and-politics/>

2. The Open Budget Survey 2010, International Budget Partnership, October 2010, “Open Budgets. Transform Lives.” [http://internationalbudget.org/files/2010\\_Full\\_Report-English.pdf](http://internationalbudget.org/files/2010_Full_Report-English.pdf)

**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.

100 | 75 | 50 | 25 | 0

**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:**

Maria Lourdes Rebullida, Professor and former Chairperson, Department of the Political Science, University of the Philippines, Dec. 15, 2010

**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?

58

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

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

**Comments:**

The rating (an index constructed from scores for 92 questions for each country) from the Open Budget Survey is sufficient and a second source is not necessary.

**References:**

Open Budget Survey 2010, International Budget Partnership, Oct. 19, 2010, "Open Budget Index 2010, Philippines," < <http://pcij.org/resources/OBI2010-Philippines.pdf> >

**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

**References:**

1. "Reclaiming the People's Purse," Social Watch Philippines, 2008, <<http://socialwatchphilippines.org/publications.htm>>
2. "Alternative Budget 2008," Social Watch Philippines, 2007, <<http://socialwatchphilippines.org/publications.htm>>
3. "Alternative Budget 2007," Social Watch Philippines, 2006, <<http://socialwatchphilippines.org/publications.htm>>

**100:** Citizens, usually acting through NGOs, 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 NGOs can provide input, but this information is often not relevant to budget decisions.

**25:**

**0:** Citizens or NGOs 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:**

YES, the Department of Budget and Management (DBM) on its web site uploads budget allocations. However, the information in the DBM web site does not cover all government offices. Citizens have to go to a particular government office/agency to be able to get hold of the information.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**100:** Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

**75:**

**50:** Citizens, journalists and NGOs 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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42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes | No

**References:**

As of August 2010, Senator Franklin Drilon chairs the Finance Committee.

Pursuant to Resolution No. 18, 15th Congress, the Senate has created Congressional Oversight Committee on Public Expenditures chaired by Senator Franklin Drilon, with seven other senator members.

<http://www.senate.gov.ph>

**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).

### 43. Is the legislative committee overseeing the expenditure of public funds effective?

42

43a. In practice, department heads regularly submit reports to this committee.

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

**Comments:**

NO. While departments are supposed to submit reports, in most cases they do so only when asked to submit.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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:**

NO. Affiliation to a particular political party is a major influence on how legislators act towards each other.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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.

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

**Comments:**

YES, although the outcome of the investigation is highly dependent on what political party the public official under investigation is affiliated with.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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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Category 4. Public Administration and Professionalism

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4.1. <sup>71</sup>Civil Service: Conflicts of Interest Safeguards and Political Independence

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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:**

Apart from the Civil Service Commission, there is also the Career Eligibility Service Board, which monitors civil servant occupying managerial positions.

**References:**

Section 1, Article IX, Constitution of the Philippines provides:

The Constitutional Commissions, which shall be independent, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit.

**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

**Comments:**

The prohibition on nepotism applies to all public officials and employees. However, there is the so-called “confidential employee” whose nature of employment is, as the designation connotes, to handle confidential matters. High ranking government officials (President, Vice President, Cabinet Secretaries, Senators, Congressmen, Justices) are allowed to employ them – who may be immediate family members or relatives.

**References:**

Presidential Decree No. 807 (Civil Service Decree of the Philippines):

Sec. 49. Nepotism. – (a) All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government-owned or controlled corporations, made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are hereby prohibited.

As used in this Section, the word “relative” and members of the family referred to are those related within the third degree either of consanguinity or of affinity.

(b) The following are exempted from the operation of the rules on nepotism: (1) persons employed in a confidential capacity, (2) teachers, (3) physicians, and (4) members of the Armed Forces of the Philippines: Provided, however, that in each particular instance full report of such appointment shall be made to the Commission.

**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:**

YES, each government agency/office is mandated to have their own grievance committee and if not resolved, may be elevated to the Civil Service Commission (CSC).

Refer to CSC Resolution No. 010113, Jan. 10, 2001, Revised Policies in the Settlement of Grievances in the Public Sector

**References:**

Presidential Decree No. 807 generally provides that “[N]o officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process.”

It also provides for an appeals mechanism for civil servants meted disciplinary action in Sec. 39.

Sec. 39. Appeals. – (a) Appeals, where allowable, shall be made by the party adversely affected by the decision within 15 days from receipt of the decision unless a petition shall be decided within fifteen days. Notice of the appeal shall be filed with the disciplining office, which shall forward the records of the case, together with the notice of appeal, with its comment, if any. The notice of appeal shall specifically state the date of the decision appealed from and the date of receipt thereof. It shall also specifically set forth clearly the grounds relied upon for excepting from the decision.

(b) A petition for reconsideration shall be based only on any of the following grounds: (1) new evidence has been discovered which materially affects the decision rendered; (2) the decision is not supported by the evidence on record; or (3) errors of law or irregularities have been committed prejudicial to the interest of the respondent: Provided, That only one petition for reconsideration shall be entertained.

**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, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

Yes

No

**Comments:**

The penalty prescribed by law for erring public officers and employees is stringent, as it mandates perpetual prohibition.

**References:**

Section 9(a) of Republic Act 3019 also known as the Anti Graft and Corrupt Practices Act provides:

Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3 of this Act shall be punished with imprisonment for not less than six years and one month, nor more than 15 years, perpetual disqualification from public office and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

**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.

---

## 45. Is the law governing the administration and civil service effective?

44

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

**Comments:**

NO, since heads of agencies are appointed by the president, political affiliation becomes a major consideration. And there are times when politicians used their power to influence actions/policies of government agencies.

Dr. Morada rates it at 25 percent.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview

**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:**

NO, even with the Performance Evaluation System of the Civil Service, ratings and evaluation are still based on the discretion of the Rater (which in most cases, subjective). And appointments are still based on the confidence of the appointing official, who may also be subjective.

Dr. Morada rates it 50 percent.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview

**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:**

NO, discretion of the appointing official is still the major factor in hiring/firing and promotions. Thus, it is subjective.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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:**

NO, while civil servants are given a copy of their job descriptions, they are not really apprised clearly of their functions/responsibilities.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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:**

NO, the amount of bonuses varies per agency involved. In some agencies (like revenue-generating offices and Government Owned and Controlled Corporations and Government Financial Institutions), bonuses depend on the agency revenue or savings,

which may be more substantial as compared to non-revenue generating agencies. Also, some bonuses may come in non-monetary forms such as rice.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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:**

More often than not, vacancies are published long after the position has been filled.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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:**

NO, redress mechanisms, while mandated to be available in government agencies, are not really functioning the way they should.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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:**

The budget for government officials/ employees' salaries is submitted with the Department of Budget & Management a year in advance and is included in the General Appropriations Act (GAA).

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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:**

The Civil Service Commission verifies the credentials, qualifications, disqualifications, papers and documents submitted by applicants who wish to join government service.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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?

44

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | No

**Comments:**

This requirement is mandatory among all public officers and employees, with no distinction as to rank and seniority. The implementation of this requirement is satisfactory, as most if not all comply yearly with this mandate.

**References:**

Section 8 of Republic Act No. 6713, also known as the Code of Conduct and Ethical Standards for Public Officials and Employees states:

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

**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

**Comments:**

Unfortunately, this law lacks force and effect as most violators of office policies are the very same public officers who promulgated them.

**References:**

Section 4 of Republic act 6713 also known as Code of Conduct and Ethical Standards for Public Officials and Employees state:

(A) Every public official and employee shall observe the following standards of personal conduct in the discharge and execution of official duties:

(a) Public officials and employee shall always uphold the public interest over and above their personal interest. All government resources and powers of their respective offices must be employed and used efficiently, effectively, honestly and economically, particularly to avoid wastage in public funds and revenues.

(b) Public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and dedication to duty. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.

**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:**

By law there is a prohibition. However, it is loosely implemented. If there are no complainants, the former public officer or employee continues to work for the new employer.

**References:**

Republic Act 6713 also known as Code of Conduct and Ethical Standards for Public Officials and Employees provides:

Section 7. Prohibited Acts and Transactions. – In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

(a) Financial and material interest. – Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office.

(b) Outside employment and other activities related thereto. – Public officials and employees during their incumbency shall not:

(1) Own, control, manage or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law;

(2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions; or

These prohibitions shall continue to apply for a period of one (1) year after resignation, retirement, or separation from public office, except in the case of subparagraph (b) (2) above, but the professional concerned cannot practice his profession in connection with any matter before the office he used to be with, in which case the one-year prohibition shall likewise apply.

**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:**

This ethical standard is not strictly followed.

**References:**

Republic Act 6713 also known as Code of Conduct and Ethical Standards for Public Officers and Employees provide:

Section 7. Prohibited Acts and Transactions. – In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

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

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

(i) The acceptance and retention by a public official or employee of a gift of nominal value tendered and received as a souvenir or mark of courtesy;

(ii) The acceptance by a public official or employee of a gift in the nature of a scholarship or fellowship grant or medical treatment; or

(iii) The acceptance by a public official or employee of travel grants or expenses for travel taking place entirely outside the Philippine (such as allowances, transportation, food, and lodging) of more than nominal value if such acceptance is appropriate or consistent with the interests of the Philippines, and permitted by the head of office, branch or agency to which he belongs.

**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**

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

**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:**

NO, once they become private citizens, they can be employed in the private sector immediately after leaving public office.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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:**

NO, graft and corruption are hard to prove in the Philippines.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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

**Comments:**

NO, sadly, but Filipinos have creative minds to bend laws in order for personal interests to be satisfied.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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:**

NO, seldom is the Statement of Assets and Liabilities actually audited.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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?

44

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | No

**Comments:**

Recently, the public was outraged when Ombudsman Merceditas Gutierrez refused to investigate on the Statement of Assets, Liabilities and Net Worth of Representative Juan Miguel and Diosdado Arroyo, son of former President Gloria Arroyo. This proves the partiality and loyalty of the Ombudsman to the appointing power, not to her oath of office.

**References:**

Republic Act 6713 also known as Code of Conduct and Ethical Standards of Public Officials and Employees provide:

Section 8. Statements and Disclosure. – Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

(C) Accessibility of documents. –

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

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

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

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

**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

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

**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

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

**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 NGOs. 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 NGOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

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

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

**100:** The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

**75:**

**50:** The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

**25:**

**0:** The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

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## 4.2. Whistle-blowing Protections

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48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

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:**

Sometime in February 2010, President Benigno Aquino III announced that the Whistle Blower's Act is included in the priority bills it will submit for approval with the Legislative-Executive Development Advisory Council (Ledac) meeting. The inclusion aims to add measures that would protect government witnesses and whistle blowers.

**References:**

REPUBLIC ACT NO. 6981 also known as AN ACT PROVIDING FOR A WITNESS PROTECTION, SECURITY AND BENEFIT PROGRAM provides:

Sec. 2. Implementation of Program. — The Department of Justice, hereinafter referred to as the Department, through its Secretary, shall formulate and implement a "Witness Protection, Security and Benefit Program", hereinafter referred to as the Program, pursuant to and consistent with the provisions of this Act.

The Department may call upon any department, bureau, office or any other executive agency to assist in the implementation of the Program and the latter offices shall be under legal duty and obligation to render such assistance. chan robes virtual law library.

Sec. 3. Admission into the Program. — Any person who has witnessed or has knowledge or information on the commission of a crime and has testified or is testifying or about to testify before any judicial or quasi-judicial body, or before any investigating authority, may be admitted into the Program:

Provided, That:

- (a) the offense in which his testimony will be used is a grave felony as defined under the Revised Penal Code, or its equivalent under special laws;
- (b) his testimony can be substantially corroborated in its material points; chan robes virtual law library;
- (c) he or any member of his family within the second civil degree of consanguinity or affinity is subjected to threats to his life or bodily injury or there is a likelihood that he will be killed, forced, intimidated, harassed or corrupted to prevent him from testifying, or to testify falsely, or evasively, because or on account of his testimony; and
- (d) he is not a law enforcement officer, even if he would be testifying against the other law enforcement officers. In such a case, only the immediate members of his family may avail themselves of the protection provided for under this Act.

**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:**

It is very rare for public servants to blow the whistle.

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview

**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:**

The law does not make any distinction as to the type of employee that may be covered by the Witness Protection Program, as Section 3 of RA 6981 states any person, subject to some exceptions laid down by the same section.

**References:**

REPUBLIC ACT NO. 6981 also known as AN ACT PROVIDING FOR A WITNESS PROTECTION, SECURITY AND BENEFIT PROGRAM provides:

Sec. 2. Implementation of Program. — The Department of Justice, hereinafter referred to as the Department, through its Secretary, shall formulate and implement a “Witness Protection, Security and Benefit Program”, hereinafter referred to as the Program, pursuant to and consistent with the provisions of this Act.

The Department may call upon any department, bureau, office or any other executive agency to assist in the implementation of the Program and the latter offices shall be under legal duty and obligation to render such assistance. chan robes virtual law library

Sec. 3. Admission into the Program. — Any person who has witnessed or has knowledge or information on the commission of a crime and has testified or is testifying or about to testify before any judicial or quasi-judicial body, or before any investigating authority, may be admitted into the Program:

Provided, That:

(a) the offense in which his testimony will be used is a grave felony as defined under the Revised Penal Code, or its equivalent under special laws;

(b) his testimony can be substantially corroborated in its material points; chan robes virtual law library;

(c) he or any member of his family within the second civil degree of consanguinity or affinity is subjected to threats to his life or bodily injury or there is a likelihood that he will be killed, forced, intimidated, harassed or corrupted to prevent him from testifying,

or to testify falsely, or evasively, because or on account of his testimony; and

(d) he is not a law enforcement officer, even if he would be testifying against the other law enforcement officers. In such a case, only the immediate members of his family may avail themselves of the protection provided for under this Act.

**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.

100 | 75 | 50 | 25 | 0

**Comments:**

NO, “whistle blowers” tend to fear for their lives when they go out in the open to report corruption and abuses of government officials. Some even have to leave the country to protect themselves and their families.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview

**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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49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49a. 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:**

This mode lacks feedback mechanism. Most of the time upon follow-up of the status of the case, the person answering the call would ask for details, such as contact number, nature of the complaint, date of occurrence, then say they will call back, but they never will.

**References:**

Philippines Ombudsman's "Lifestyle Check Hotline" Project Launched

Nov. 21, 2007

To increase awareness and promote active participation of the public in the fight against graft and corruption, particularly in the conduct of lifestyle check investigation, the Field Investigation Office (FIO) has launched the OMB Lifestyle Check Hotline (OMB LSC Hotline) on Dec. 9, 2006.

The OMB LSC Hotline opens its line of communication to encourage the public to report incidents of corruption, especially of the ill-gotten or unexplained wealth of government officials and employees.

FIO investigators, particularly the Associate Graft Investigation Officers and the Legal Assistants serve as Hotline Agents on a daily rotation basis, from eight in the morning until five in the afternoon.

The actual operation of the OMB LSC Hotline started on Dec. 11, 2006. Since then, numerous calls and complaints have been received by the Hotline agents. Aside from requests for the conduct of lifestyle check investigation, complaints received include bribery/extortion and requests for public assistance, among others. Follow-up calls were also received. The OMB LSC Hotline numbers are 927-4102 and 927-2404 (telefax).

Posted by the Office of the Ombudsman at AOA Blog, Nov. 21, 2007

**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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50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

50

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100

75

50

25

0

**Comments:**

YES, hot-lines for each agency are required. But as to whether the reports are acted upon is another matter.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising

**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:**

YES, the budget for the Office of the Ombudsman is included in the General Appropriations Act.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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

**References:**

Marites D. Vitug – Chairperson, Newsbreak Advisory Council, phone interview, Jan. 5, 2011

**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

**References:**

Marites Vitug, Chairperson of the advisory board of Newsbreak, telephone interview, Jan. 5, 2011

**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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67  
4.3. Government Procurement: Transparency, Fairness, and  
Conflicts of Interest Safeguards

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51. Is the public procurement process effective?

90

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes

No

**Comments:**

The Procurement Service of the Department of Budget and Management (PS-DBM) is the implementing agency of RA 9184 tasked to sign contracts on behalf of all government agencies. It is also the sole repository of all funds and acts as the final check before fund is released to a certain government agency.

The volume of procurement transactions concentrated upon this single entity certainly created and will continue to create lapses and hitches in the system.

**References:**

Republic Act 9184 or the Government Procurement Reform Act of 2003 states:

Article VX, Section 47. Disclosure of Relations. – In addition to the proposed contents of the Invitation to Bid as mentioned under Section 21 of this Act, all bidding documents shall be accompanied by a sworn affidavit of the bidder that he or she or any officer of their corporation is not related to the Head of the Procuring Entity by consanguinity or affinity up to the third civil degree. Failure to comply with the aforementioned provision shall be a ground for the automatic disqualification of the bid in consonance with Section 30 of this Act

Article XXIII, Section 70. Preventive Suspension. – The head of the procuring entity may preventively suspend any member of the Technical Working Group of the Secretariat, or the BAC if there are strong reasons or prima facie evidence showing that the officials or employees concerned are guilty or the charges filed against them under Articles XXI and XXII of this Act or for dishonesty as defined by the Civil Service Laws. In all cases, procedural and substantive due process as mandated by the Constitution and Civil Service Laws, rules and regulations, shall be strictly observed.

**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:**

The last recorded official training of trainers was held on Sept. 2-4, 2009, that included Professionalization Modules and mock presentation of a Pre-Bid Conference where the participants were asked to identify common mistakes made by the bidders and the BAC.

**References:**

Republic Act 9184 provides:

Section 16. Professionalization of Bids and Awards Committee (BAC) – BAC Secretariat and Technical Working Group Members.- The Government Procurement Policy Board (GPPB) shall establish a sustained training program for developing the capacity of the BAC's, BAC Secretariats and technical Working Groups of Procuring Entities, and professionalize the same.

Further:

Section 13. Observers.- To enhance the transparency of the process, the BAC shall, in all stages of the procurement process, invite, in addition to the representative of the Commission on Audit, at least two(2) observers to sit in its proceedings, one(1) from a duly recognized private group in a sector or discipline relevant to the procurement at hand, and the other from a non-government organization: Provided, however, That they do not have any direct or indirect interest in the contract to be bid out. The observers should be duly registered with the Securities and Exchange Commission and should meet the criteria for observers as set forth in the IRR.

**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:**

Yes, under Republic Act 9184.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, 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:**

All public officials/employees are mandated by law (Constitution, RA 6713, RA 3019) to submit under oath a statement of his assets, liabilities and net worth every year under pains of administrative and criminal sanction. Also, said employees may be subjected to a "life-style check" in keeping with the requirement of law that they and their families shall lead modest lives appropriate to their positions and income. They shall not indulge in extravagant or ostentatious display of wealth in any form.

**References:**

Sec. 17 of Article XI of the Constitution provides:

A public officer or employee shall, upon assumption of public office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth.

Sec. 13 of the same article further provides:

Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

**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

**References:**

RA 9184 – ARTICLE IV COMPETITIVE BIDDING

Competitive Bidding (refers to a method of procurement which is open to participation by any interested party and which consist of the following processes: advertisement, pre-bid conference, eligibility screening of bids, evaluations of bids, post – qualification, and award of contract, the specific requirements and mechanics of which shall be defined in the IRR to be promulgated under this Act.0

Section 10 . – All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.

**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

**References:**

As a general rule under Section 10 of Republic act 9184, all Procurement shall be done through competitive bidding.

ARTICLE XVI, Section 48 of the same Act provides for the exception: Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

b. Direct Contracting, otherwise known as Single Source Procurement – a method of Procurement that does not require elaborate Bidding Documents because the supplier is simply asked to submit a price quotation or a pro-forma voice together with the conditions of sale, which offer may be accepted immediately or after some negotiations.

**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:**

Irregularities and corruption may also be detected in the course of complaint procedures. Such procedures, which may also help bolster bidders' trust in the fairness of the procedures, exist in the administrative level and, if administrative remedies do not suffice or remain fruitless, an appeal may be elevated to the judiciary.

**References:**

ARTICLE XVII of Republic Act 9184 provides for Protest Mechanism:

Section 55. Protests on Decisions of the BAC.- Decisions of the BAC in all stages of procurement may be protested to the head of the procuring entity and shall be in writing. Decisions of the BAC may be protested by filing a verified position paper and paying a non-refundable protest fee. The amount of the protest fee and the periods during which the protests may be filed and resolved shall be specified in the IRR.

Section 56. Resolution of Protests. – The protest shall be resolved strictly on the basis of records of the BAC. Up to a certain amount to be specified in the IRR, the decisions of the Head of the Procuring Entity shall be final.

Section 57. Non-interruption of the Bidding Process.- In no case shall any protest taken from any decision treated in this Article stay or delay the bidding process. Protests must first be resolved before any award is made.

Section 58. Report to Regular Courts; Certiorari.- Court action may be resorted to only after the protests contemplated in this Article shall have been completed. Cases that are filed in violation of the process specified in this Article shall be dismissed for lack of jurisdiction. The regional trial court shall have jurisdiction over final decision of the head of the procuring entity. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure.

This provision is without prejudice to any law conferring on the Supreme court the sole jurisdiction to issue temporary restraining orders and injunctions relating to Infrastructure Projects of Government.

**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:**

The Philippine legal system adheres to the principle of hierarchy of courts, and as such parties to a controversy must first exhaust all administrative remedies before seeking redress with courts of law.

**References:**

Section 58, Article XVII of RA 9184 provides: Report to Regular Courts; Certiorari.- Court action may be resorted to only after the protests contemplated in this Article shall have been completed. Cases that are filed in violation of the process specified in this Article shall be dismissed for lack of jurisdiction. The regional trial court shall have jurisdiction over final decision of the head of the procuring entity. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure.

This provision is without prejudice to any law conferring on the Supreme court the sole jurisdiction to issue temporary restraining orders and injunctions relating to Infrastructure Projects of Government.

**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:**

The enactment of Republic Act 9184 may have curbed graft and corrupt practices, but did not altogether eradicate corruption. Civil Society groups could play a major role in monitoring and safeguarding the procurement processes and report on whether the law on procurement is being strictly implemented.

The mandatory provision on black-listing private individuals or corporations permanently should be given more force and effect in order to deter future infractions of the law.

**References:**

Article XXI, Section 65 of republic Act 9184 provides:

(a) Without prejudice to the provisions of Republic Act No. 3019, otherwise known as the "Anti-Graft and Corrupt Practice Act" and other penal laws, public officers who commit any of the following acts shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day, but not more than fifteen (15) years:

1. Open any sealed Bid including but not limited to Bids that may have been submitted through the electronic system and any and all documents required to be sealed or divulging their contents, prior to the appointed time for the public opening of Bids or other documents.
2. Delaying, without justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and awarding of contracts beyond the prescribed periods of Bids or other documents.
3. Unduly influencing or exerting undue pressure on any member of the BAC or any officer or employee of the procuring entity to take a particular bidder.
4. Splitting of contracts which exceed procedural purchase limits and competitive bidding.

5. When the head of the agency abuses the exercise of his power to reject any and all bids as mentioned under Section 41 of this Act with manifest preference to any bidder who is closely related to him in accordance with Section 47 of this Act.

When any of the foregoing acts is done in collusion with private individuals, the private individuals shall likewise be liable for the offense.

In addition, the public officer involved shall also suffer the penalty of temporary disqualification from public office, while the private individual shall be permanently disqualified from transacting business with the government.

**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:**

NO, while blacklisting is available, companies have creative means to be able to participate. In most cases, they simply change their names, or some of the incorporators to be able to participate anew.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, 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?

100

52a. In law, citizens can access public procurement regulations.

Yes

No

**Comments:**

According to the report of Deana Perez on The Second Regional Seminar on Good Governance for South East Asian Countries held in Japan in December 2008, the enhancement of the electronic procurement system in the Philippines, has increased the registration of government agencies from 5,091 at the end of 2006 to 6,947 in 2008, or 84 percent of national government agencies, 92 percent of state colleges and universities, 51 percent of the government owned or controlled corporations and 5.5 percent of the local government units.

Registered suppliers also increased from 16,851 in 2006 to 29,330 in 2008. Through the government electronic procurement system, currently hosted by the Procurement Service of the Department of Budget and Management, 76,213 procurement opportunities have been processed while current opportunities stand at 6,383.

**References:**

ARTICLE III of Republic Act 9184 provides:

**PROCUREMENT BY ELECTRONIC MEANS**

Section 8. Procurement By Electronic Means.- To promote transparency and efficiency, information and communications technology shall be utilized in the conduct of procurement procedures. Accordingly, there shall be single portal that shall serve as the primary source of information on all government procurement. The G-EPS shall serve as the primary and definitive source of information on government procurement. Further, the GPPB is authorized to approve changes in the procurement process to adapt to improvements in modern technology, provided that such modifications are consistent with provisions of Section 3 of this Act.

To take advantage of the significant built-in-efficiencies of the G-EPS and the volume discounts inherent in bulk purchasing, all Procuring Entities shall utilize the G-EPS for the procurement of common supplies in accordance with the rules and procedures to be established by the GPPB. With regard to the procurement of non-common use items, infrastructure projects and consulting services, agencies may hire service providers to undertake their electronic procurement provided these service providers meet the minimum requirements set by the GPPB.

Section 9. Security, Integrity and Confidentiality.- The G-EPS shall ensure the security, integrity and confidentiality of documents submitted through the system. It shall include feature that provides for an audit trail for on-line transactions and allow the Commission on Audit to verify the security and integrity of the systems at any time.

**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:**

According to Deana P. Perez' report in the 2nd Regional Seminar on Good Governance for South East Asian Countries held in Japan in December 2008, more reforms are needed to further the success of Republic Act 9184.

One significant proposal is to strengthen transparency by posting the criteria, ratings and calculations of bids used by the bids and awards committee in the procuring agency's web site or that of the Government Procurement Policy Board.

The Office of the Ombudsman in 2006 designated resident ombudsmen to handle reports of fraud pertaining to procurement activities of government agencies. In partnership with the Procurement Watch, Inc., the Ombudsman developed the Observers'

Feedback and Complaint Handling Mechanism to provide observers of the bids and awards committee guidelines in the submission of observation reports to the resident ombudsman in each agency.

**References:**

ARTICLE XI of republic Act 9184 provides:

Section 37. Notice and Executive of Award. – Within a period not exceeding fifteen (15) calendar days from the determination and declaration by the BAC of the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, and the recommendation of the award, the Head of the Procuring Entity or his duly authorized representative shall approve or disapprove the said recommendation. In case of approval, the Head of the Procuring Entity or his duly authorized representative shall immediately issue the Notice of Award to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.

Within ten (10) calendar days from receipt of the Notice of Award, the Winning bidder shall formally enter into contract with the Procuring Entity. When further approval of higher authority is required, the approving authority for the contracts shall be given a maximum of twenty (20) calendar days to approve or disapprove it.

In the case of government-owned and/or -controlled corporations, the concerned board shall take action on the said recommendation within thirty (30) calendar days from receipt thereof.

The Procuring Entity shall issue the Notice to Proceed to the winning bidder not later than seven (7) calendar days from the date of approval of the contract by the appropriate authority. All notices called for by the terms of the contract shall be effective only at the time of receipt thereof by the contractor.

Article II Section 8 of the same Act further provides:

Procurement By Electronic Means.- To promote transparency and efficiency, information and communications technology shall be utilized in the conduct of procurement procedures. Accordingly, there shall be single portal that shall serve as the primary source of information on all government procurement. The G-EPS shall serve as the primary and definitive source of information on government procurement. Further, the GPPB is authorized to approve changes in the procurement process to adapt to improvements in modern technology, provided that such modifications are consistent with provisions of Section 3 of this Act.

To take advantage of the significant built-in-efficiencies of the G-EPS and the volume discounts inherent in bulk purchasing, all Procuring Entities shall utilize the G-EPS for the procurement of common supplies in accordance with the rules and procedures to be established by the GPPB. With regard to the procurement of non-common use items, infrastructure projects and consulting services, agencies may hire service providers to undertake their electronic procurement provided these service providers meet the minimum requirements set by the GPPB.

Section 9. Security, Integrity and Confidentiality.- The G-EPS shall ensure the security, integrity and confidentiality of documents submitted through the system. It shall include feature that provides for an audit trail for on-line transactions and allow the Commission on Audit to verify the security and integrity of the systems at any time.

**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:**

YES, under RA 9184, public procurement should be published on the agency web site or through the web sites of the GPPB and Philgeps (<http://www.gppb.gov.ph> or <http://www.philgeps.net>)

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, 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:**

YES, through the internet (<http://www.gppb.gov.ph> or <http://www.philgeps.net>)

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, 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 NGOs. 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 NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

**Comments:**

YES, under RA9184, through the agency website, newspaper and <http://www.gppb.gov.ph> or <http://www.philgeps.net>)

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon 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:**

YES, through <http://www.philgeps.net> or <http://www.gppb.gov.ph>

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, 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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#### 4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

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## 53. Is the privatization process effective?

67

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes

No

### Comments:

There is now a call to review this existing law, in the wake of impending escalation of fees in utility costs, toll and train fare to protect the consumers.

Representative Teodoro Haresco of Kasangga Party list proposes an imposition of a cap on the frequency of increase on the service charges passed on to the consumers.

\* Source: Philippine Daily Inquirer , Jan. 6, 2011

### References:

Republic Act 7718 also known as an Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector provides:

Sec. 1.1. Policy. – It is the policy of the State to encourage the private sector as the nation’s main engine for growth and development to engage in or undertake the financing, construction, operation and maintenance of private sector infrastructure and development projects, as hereunder defined. Towards this end, the Government shall provide appropriate incentives, such as, but not limited to, financial incentives as provided by law, a climate of minimum regulations and procedures, and specific government undertakings in support of the private sector.

#### Section 1.3

s. Project Proponent – Refers to the private sector entity which shall have contractual responsibility for the project and which shall have an adequate financial base to implement the said project consisting of equity and firm commitments from reputable financial institutions to provide, upon award, sufficient credit lines to cover the total estimated cost of the project.

Sec. 2.5. Registration of Project Proponents. – Project proponents may register with the Agency/LGU, indicating which projects are of interest to them, and for this purpose submit its company profile in the form prescribed under Annex A. Duly registered project proponents shall be officially notified and furnished by the Agency/LGU a copy of the list of their respective priority projects and corresponding project updates at least once every six (6) months.

**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 Ethics for Government Officials, Anti-Corrupt Practices Act

**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

**Comments:**

NO, in most privatization procedures, citizens are not well informed, thus actions of government officials can go unnoticed.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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.

---

54. Can citizens access the terms and conditions of privatization bids?

60

54a. In law, citizens can access privatization regulations.

Yes | No

**References:**

Republic Act 7181 also known as AN ACT EXTENDING THE LIFE OF THE COMMITTEE ON PRIVATIZATION AND THE ASSET PRIVATIZATION TRUST.

Sec. 2. The following conditions shall be adhered to in privatization:

(a) In the disposition of assets in corporate form, there shall be no undue dislocation of labor unless all benefits as provided by existing laws or Collective Bargaining Agreement (CBA) shall be complied with.

(b) Assets for disposal shall not revert to previous owners who after final judgment by the proper agency or a court of law have been found to have mismanaged or diverted the resources of the assets which resulted in loss and bankruptcy: Provided, That if assets are to be reverted back to the previous owners, the price shall not be less than the original transfer price.

(c) Privatization of Government assets classified as a strategic industry by the National Economic and Development Authority shall first be approved by the President of the Philippines.

(d) A minimum of ten (10) percent of the sale of assets in corporate form shall first be offered to small local investors including Filipino Overseas Workers and where practicable also in the sale of any physical asset.

(e) Sale of all assets shall be published in at least three (3) national newspapers of general circulation for three (3) consecutive days: Provided, That the first publication shall occur at least ten (10) days prior to the scheduled bidding date or date of negotiation.

(f) A loss recovery provision must be included in the terms and conditions of the sale of any asset sold below the transfer price.

**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:**

Privatization notices/Adverts not written or worded for the general public; too technical; e..g. privatization of MRT lines and operations may have impact on fare hikes but the commuting public does not see this; privatization is just touted by government to enhance efficiency. Most often, the general public gets informed of privatization outcomes through mass media.

**References:**

TO, reporter for a foreign news organization, April 21, 2011, telephone interview (name withheld upon request; could supply full name if necessary)

**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

**References:**

Section 1 paragraph (b) of Republic Act 7661 provides:

“All assets held by the Asset Privatization Trust, all moneys and other properties belonging to it, and all its liabilities outstanding upon the expiration of its term shall revert to and be assumed by the National Government. The President of the Philippines shall designate by an executive order the government office or entity to which the assets and liabilities of the Asset Privatization Trust shall be transferred.

In addition, Section 2 paragraph (g) provides:

“(g) Sale of all assets shall be published in at least three (3) national newspapers of general circulation for three (3) consecutive days: Provided, That the first publication shall occur at least ten (10) days prior to the scheduled bidding date or date of negotiation.”

**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:**

Even journalists do not normally have access to privatization regulations within a reasonable time period.

**References:**

TO, reporter for a foreign news organization, April 21, 2011, telephone interview (name withheld upon request; could supply full name if necessary)

**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:**

TO, reporter for a foreign news organization, April 21, 2011, telephone interview (name withheld upon request; could supply full name if necessary)

**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 NGOs. 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 NGOs trying to access this information.

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## Category 5. Government Oversight and Controls

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### 5.1. <sup>57</sup>National Ombudsman

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55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. 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 Office of the Ombudsman serves as the watchdog for public officials and employees committing graft and corrupt practices. The Ombudsman is mandated to investigate and file criminal charges against said officials upon finding probable cause.

The Commission on Human Rights on the other hand is mandated to investigate all forms of human rights violations, involving civil and political rights.

**References:**

Article XI of the Constitution provides for the creation of the Office of the Ombudsman charged with the following powers, functions and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

(2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.

(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.

(6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.

(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.

(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

Section 18, Article XIII of the Constitution also provides:

The Commission on Human Rights shall have the following powers and functions:

(1) Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;

(2) Adopt its operational guidelines and rules of procedure, and cite for contempt for violations thereof in accordance with the Rules of Court;

(3) Provide appropriate legal measures for the protection of human rights of all persons within the Philippines, as well as Filipinos residing abroad, and provide for preventive measures and legal aid services to the under-privileged whose human rights have been violated or need protection;

(4) Exercise visitorial powers over jails, prisons, or detention facilities;

(5) Establish a continuing program of research, education, and information to enhance respect for the primacy of human rights;

(6) Recommend to Congress effective measures to promote human rights and to provide for compensation to victims of violations of human rights, or their families;

(7) Monitor the Philippine Government's compliance with international treaty obligations on human rights;

(8) Grant immunity from prosecution to any person whose testimony or whose possession of documents or other evidence is necessary or convenient to determine the truth in any investigation conducted by it or under its authority.

**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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## 56. Is the national ombudsman effective?

36

56a. In law, the ombudsman is protected from political interference.

Yes

No

### References:

Republic Act No. 6770, or The Ombudsman Act of 1989 (An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, And For Other Purposes)

Sec. 14, Art. XI of the Constitution provides that “[T]he Office of the Ombudsman shall enjoy fiscal autonomy. Its approved annual appropriations shall be automatically and regularly released”.

**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:

NO, the performance of the Office of the Ombudsman is often times influenced by politicians.

### References:

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scored it 0 percent.

**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 incumbent Ombudsman has been the subject of three impeachment attempts in the last three years, and it is only now under the new administration that the article of impeachment was successfully transmitted by the House of Representatives to the Senate.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scored it at 100 percent.

**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

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011

**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:**

NO, the Ombudsman has lost its independence in recent years, owing to his/her loyalty to the appointing power.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scored it at 25 percent.

**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:**

The Office of the Ombudsman is included in the national budget.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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:**

NO, that is why the Office of the Ombudsman is under fire regarding its performance and failure to disclose important cases to the public.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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:**

According to Atty Tamayo, the incumbent Ombudsman is presently being impeached, and one of the grounds for her impeachment is the very low conviction rate and slow disposition of cases, as well as refusing to prosecute cases filed against known allies of former President Gloria Arroyo.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview

**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:**

NO, it does not have the mandate to penalize, but only to file charges in court (like the Sandiganbayan). – Atty Tamayo

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scored it at 0 percent.

**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:**

The moment the Ombudsman finds probable cause, a criminal case is immediately filed in court. – Atty Tamayo

Dr. Morada rates it at 25 percent.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scored it at 0 percent.

**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:**

NO, especially if it concerns a top government official. Said cases may not be acted upon at all. – Atty. Tamayo

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scores it at 0 percent.

**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?

0

57a. In law, citizens can access reports of the ombudsman(s).

Yes

**No**

**References:**

Sec. 6 Art. 13 of the Philippine Constitution provides:

The Office of the Ombudsman shall have the following powers, functions and duties:

Publicize matters covered by its investigations when circumstances so warrant and with due prudence.

**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.

**Comments:**

NO, the Ombudsman acts with confidentiality during investigation stage. – Atty. Tamayo

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scores it at 0 percent.

**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.

**Comments:**

NO especially if still during the investigation stage. – Atty. Tamayo

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

Filipino Journalist (name withheld upon request) – phone interview, April 3, 2011 – scores it at 0 percent.

**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 NGOs. 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 NGOs trying to access this information.

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## 5.2. Supreme Audit Institution

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58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58a. 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 agency tasked to audit the accounts/ expenditures of all government agencies/ entities.

**References:**

Art. IX of the Constitution provides for the establishment of a Commission on Audit (COA).

The said article further reads:

Section 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

(2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.

**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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## 59. Is the supreme audit institution effective?

72

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

### References:

Art. IX of the Constitution provides for the establishment of independent constitutional commissions, the Commission on Audit included.

**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:

Heads of Constitutional Commissions, such as the Commissioner of the Commission on Audit, may only be removed from office through impeachment.

### References:

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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:**

The Commission on Audit implements the requirements of the law regarding qualifications of staff.

**References:**

Liling Briones, former Treasurer of the Republic of the Philippines and Professor, UP National College of Public Administration, April 7, 2011, UP NCPAG

**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:**

In the main, appointments are political; good if the leadership is reformist; hell if the political leadership is corrupt. – Sta. Ana

Briones rates it at 75 percent. According to her, this is not true for the COA chair and commissioners of COA since they are presidential appointees albeit with fixed terms.

**References:**

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview

Filomeno III Sta Ana

Liling Briones, former Treasurer of the Republic of the Philippines and Professor, UP National College of Public Administration, April 7, 2011, UP NCPAG

**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:**

The Commission on Audit is part of the national budget and enjoys fiscal autonomy. – Atty Tamayo

Sta. Ana scores it at 75 percent and opines that it is also subject to politicking.

Briones rates it 100 percent. She further stated that in addition to regular budget allocations, COA charges fees and others incidentals.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview

Filomeno III Sta. Ana –

Liling Briones, former Treasurer of the Republic of the Philippines and Professor, UP National College of Public Administration, April 7, 2011, UP NCPAG

**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:**

Sta Ana said that there is no institutionalized mechanism for transparency.

Briones scores it at 100 percent. She opines that there is a problem regarding accessibility; not everyone will bother to go to the COA web site where the reports are posted.

**References:**

Filomeno III Sta Ana

Liling Briones, former Treasurer of the Republic of the Philippines and Professor, UP National College of Public Administration, April 7, 2011, UP NCPAG

**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:**

Sta Ana scores it 50 percent, and says it depends on the political leadership, whether honest or corrupt, reformist or conservative.

Briones rates it 25 percent and says government only acts when there is massive publicity regarding particular findings of the audit agency.

**References:**

Filomeno III Sta Ana

Liling Briones, former Treasurer of the Republic of the Philippines and Professor, UP National College of Public Administration, April 7, 2011, UP NCPAG

**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:**

According to Sta Ana, it depends on the political leadership.

Briones says legally and theoretically it can do so, but it's up to COA chair. Former chairs Carague and Gangan were not proactive.

**References:**

Filomeno III Sta Ana

Liling Briones, former Treasurer of the Republic of the Philippines and Professor, UP National College of Public Administration, April 7, 2011, UP NCPAG

**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?

0

60a. In law, citizens can access reports of the audit agency.

Yes | **No**

**Comments:**

This is an example of the limitation set forth in Section 7 of Article III of the Constitution (The right of the people to information on matters of public concern shall be recognized. 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).

**References:**

Rule III of the 2009 Revised Rules of Procedure of the Commission on Audit provides:

Section 2. Role of the Auditor. – The Auditor shall maintain complete independence and exercise professional care and be guided by the applicable laws, regulations and the generally accepted principles of auditing and accounting in the performance of the audit work as well as in the preparation of audit and financial reports.

Section 6. Number of Copies and Distribution. – The ND, NC, NS or other order or decision of the Auditor shall be prepared in such number of copies as may be necessary for distribution to the following: (1) original copy -to the head of agency being audited; (2)duplicate copy – to the Auditor for his record; (3) other copies to the agency officials directly affected by the results of the audit for whom specified action or a response from the results of audit and from whom specified action or a response from the results of audit is expected as may be provided by law or the pertinent rules and regulations of the Commission.

Section 7. Service of Copies of ND/NC/NS, Order or Decision – The ND, NC, NS, order, or decision shall be served to each of the persons liable/responsible by the Auditor, through personal service, or if not practicable through registered mail. In case there are several payees, as in the case of disallowed payroll, service to the accountant who shall be responsible for informing all payees concerned, shall constitute constructive service to all payees listed in the payroll.

**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:**

Sta Ana opines that there is no enabling law on information law and scores it at 25 percent.

Briones rates it 75 percent, stating that many times the COA web site is down.

**References:**

Filomeno III Sta Ana

Liling Briones, former Treasurer of the Republic of the Philippines and Professor, UP National College of Public Administration, April 7, 2011, UP NCPAG

**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:**

To repeat, there is no enabling law on information disclosure, thus making access more costly.

Briones scores it 75 percent, and reiterated that the COA web site is down many times.

**References:**

Filomeno III Sta Ana

Liling Briones, former Treasurer of the Republic of the Philippines and Professor, UP National College of Public Administration, April 7, 2011, UP NCPAG

**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 NGOs. 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 NGOs trying to access this information.

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57  
5.3. Taxes and Customs: Fairness and Capacity

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61. In law, is there a national tax collection agency?

100

61a. In law, is there a national tax collection agency?

Yes | No

**Comments:**

The Bureau of Internal Revenue, under the control and supervision of the Department of Finance, has the exclusive jurisdiction to levy and collect taxes.

**References:**

Sec. 2 , Republic Act No. 8424, or the National Internal Revenue Code, stipulates that “[T]he Bureau of Internal Revenue shall be under the supervision and control of the Department of Finance and its powers and duties shall comprehend the assessment and collection of all national internal revenue taxes, fees, and charges, and the enforcement of all forfeitures, penalties, and fines connected therewith, including the execution of judgments in all cases decided in its favor by the Court of Tax Appeals and the ordinary courts. The Bureau shall give effect to and administer the supervisory and police powers conferred to it by this Code or other laws”.

**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.

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## 62. Is the tax collection agency effective?

63

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**References:**

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview

**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

**References:**

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview

**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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### 63. In practice, are tax laws enforced uniformly and without discrimination?

0

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

#### References:

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview

**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. In law, is there a national customs and excise agency?

100

64a. In law, is there a national customs and excise agency?

Yes

No

**Comments:**

The Bureau of Customs is under the direct control and supervision of the Department of Finance.

**References:**

Sec. 602, REPUBLIC ACT NO. 1937 (AN ACT TO REVISE AND CODIFY THE TARIFF AND CUSTOMS LAWS OF THE PHILIPPINES) specifies the functions of the Bureau of Customs:

- a. The assessment and collection of the lawful revenues from imported articles and all other dues, fees, charges, fines and penalties accruing under the tariff and customs laws.
- b. The prevention and suppression of smuggling and other frauds upon the customs.
- c. The supervision and control over the entrance and clearance of vessels and aircraft engaged in foreign commerce.
- d. The general supervision, control and regulation of vessels engaged in the carrying of passengers and freight or in towage in coastwise trade and in the bays and rivers of the Philippines.
- e. The prohibition and suppression of unnecessary noises, such as explosion of gasoline engines, the excessive blowing of whistles or sirens, and other needless and disturbing sounds made by water craft in the ports of the Philippines or in parts of rivers included in such ports.
- f. The exclusion, if the conditions of traffic should at any time so require, of vessels of more than 150 tons from entering, berthing or mooring in the Pasig River.
- g. The admeasurement, registration, documenting and licensing of vessels built or owned in the Philippines, the recording of sales, transfers and encumbrances of such vessels, and the performance of all the duties pertaining to marine registry.
- h. The inspection of Philippine vessels, and supervision over the safety and sanitation of such vessels.
- i. The enforcement of the lawful quarantine regulations for vessels entering Philippine ports.
- j. The enforcement of the tariff and customs laws and all other laws, rules and regulations relating to the tariff and customs administration.
- k. The licensing of marine officers who have qualified in the examination required by law to be carried on Philippine vessels, the determination of the qualifications of pilots, the regulation of this service, and the fixing of the fees which they may charge.
- l. The supervision and control over the handling of foreign mails arriving in the Philippines, for the purpose of the collection of the lawful duty on dutiable articles thus imported and the prevention of smuggling through the medium of such mails.

**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.

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## 65. Is the customs and excise agency effective?

38

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

**Comments:**

Sta. Ana notes the widespread perception that it is difficult to weed out the corrupt employees in the Bureau of Customs.

**References:**

Filomeno III Sta Ana, Action for Economic Reforms

**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:**

Sta Ana: The real question is whether the amount appropriated by Congress is sufficient.

**References:**

Filomeno III Sta Ana

**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.

---

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

0

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

**Comments:**

Sta. Ana: There are too many institutional barriers—lack of information, culture of corruption, patronage, too much discretion given to officials, low pay, etc.

**References:**

Filomeno III Sta Ana, ED, Action for Economic Reform

**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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## 5.4. Oversight of State-Owned Enterprises

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67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes | No

**Comments:**

Under the new administration of President Benigno Aquino III, priority bill regarding the review of the charters of Government Owned and Controlled Corporations was included and submitted with the LeDaC on account of the many abuses and excesses committed by Heads of these agencies and members of their Board.

At present, it is the Government Corporate Monitoring and Coordinating Committee that chiefly monitors all government owned and controlled corporations (GOCC) and Government Financial Institutions (GFI),

The Commission on Audit is tasked to audit and review the expenditures and disbursements of GOCCs and GFIs.

**References:**

Art. XI of the 1987 Philippine Constitution provides for the establishment of a Commission on Audit (COA) tasked with this function.

The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis.

Further, EXECUTIVE ORDER NO. 236 July 22, 1987 (STRENGTHENING THE GOVERNMENT CORPORATE MONITORING AND COORDINATING COMMITTEE AND FOR OTHER PURPOSES) provides:

“The Government Corporate Monitoring Committee created under Executive Order No. 936 dated Feb. 29, 1984, and reconstituted as the Government Corporate Monitoring and Coordinating Committee under Memorandum Circular No. 10 dated May 19, 1986, hereinafter referred to as the Committee, is hereby reaffirmed as the monitoring and coordinating body for all government-owned or controlled corporations attached to the different Departments which are represented in the Committee and which demand a heavy burden on the National Treasury.”

**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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## 68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

75

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes

No

**Comments:**

The previous administration of President Gloria Macapagal-Arroyo appointed staunch allies to government owned and controlled corporations, most of whom are not exactly qualified under the law.

During President Benigno Aquino III's first State of the Nation Address, he denounced the blatant anomalies had by the heads of these agencies, from fat bonuses to misuse of funds directed to the coffers of Malacanang instead of the national treasury.

**References:**

ADMINISTRATIVE ORDER No. 16 Aug. 21, 2001, TRANSFERRING THE FUNCTIONS OF THE GOVERNMENT CORPORATE MONITORING AND COORDINATING COMMITTEE TO THE DEPARTMENT OF FINANCE

Sec. 2. Additional Functions of the Department of Finance. — The Secretary of Finance is mandated to monitor, coordinate, and evaluate principally the fiscal performance of GOCCs, formulate policies and guidelines, and recommend to the President actions to be taken in relation to GOCC performance.

Accordingly, the functions of the GCMCC as provided under Executive Order No. 936 dated Feb. 29, 1984, Memorandum Circular No. 10 dated May 19, 1986, Executive Order No. 236 dated July 22, 1987, Administrative Order No. 59 dated Feb. 16, 1988, Memorandum Order No. 266 dated November 28, 1989, Memorandum Order No. 320 dated Sept. 21, 1990, and Memorandum Circular No. 64 dated Aug. 16, 1993 implementing Executive Order No. 55 dated Feb. 8, 1993, shall hereafter be performed by the Department of Finance.

Sec. 4. Government Corporations Covered. — Upon approval by the President, all GOCCs, financial and non-financial, shall be subject to the mandate of the Department of Finance under this Administrative Order.

Sec. 7. Responsibility for GOCCs. — This Administrative Order in no way diminishes the powers and functions of the respective boards of GOCCs, nor of the respective departments of government to which the GOCCs are attached. Respective departments of government to which a GOCC is attached shall remain primarily responsible for the administrative supervision over the performance of GOCCs.

The respective departments or other supervising or oversight bodies of the government to which a GOCC reports may likewise recommend to the Department of Finance such actions relative to a GOCC's performance as they deem necessary.

**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.

100 | 75 | 50 | 25 | 0

**References:**

TO, reporter for a foreign news organization, April 21, 2011, telephone interview (name withheld upon request)

**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.

100 | 75 | 50 | 25 | 0

**Comments:**

The agency concerned, the Commission on Audit, is a constitutional body and is guaranteed an annual budget.

**References:**

TO, reporter for a foreign news organization, April 21, 2011, telephone interview (name withheld upon request)

**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:**

The COA is limited to auditing SOEs and will submit its findings to the proper authorities. It does not have the mandate to punish offenders. However, other agencies will have to rely on COA audits to run after wrong-doers in SOEs.

During the early months of President Benigno Aquino III, the COA brought to light several findings re the rather exorbitant salaries and allowances of board members and officials of several GOCCs.

**References:**

TO, reporter for a foreign news organization, April 21, 2011, telephone interview (name withheld upon request)

**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:**

The COA is limited to auditing SOEs and will submit its findings to the proper authorities. It does not have the mandate to punish offenders. However, other agencies will have to rely on COA audits to run after wrong-doers in SOEs.

During the early months of President Benigno Aquino III, the COA brought to light several findings re the rather exorbitant salaries and allowances of board members and officials of several GOCCs.

**References:**

TO, reporter for a foreign news organization, April 21, 2011, telephone interview (name withheld upon request)

**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?

60

69a. In law, citizens can access the financial records of state-owned companies.

Yes | No

**References:**

Article II, Section 28 of the 1987 Philippine Constitution provides that “[S]ubject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.”

Art. III, Sec. 7 provides that “[T]he right of the people to information on matters of public concern shall be recognized. 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.”

G.R. No. 74930 February 13, 1989 (Valmonte v. Belmonte), the Supreme Court ruled that “considering further that government-owned and controlled corporations, whether performing proprietary or governmental functions are accountable to the people, the Court is convinced that transactions entered into by the GSIS, a government-controlled corporation created by special legislation are within the ambit of the people’s right to be informed pursuant to the constitutional policy of transparency in government dealings.”

**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:**

TO wonders in fact if SOEs indeed share financial data as a matter of principle.

**References:**

TO, reporter for a foreign news organization, April 21, 2011, telephone interview (name withheld upon request)

**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 COA audits SOEs, but I am not yet sure that it does so according to exacting international standards.

**References:**

Amado Mendoza, Jr.

**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

**References:**

TO, reporter for a foreign news organization, April 21, 2011, telephone interview (name withheld upon request)

**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

**References:**

TO, reporter for a foreign news organization, April 21, 2011, telephone interview (name withheld upon request)

**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 NGOs. 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 NGOs trying to access this information.

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78

## 5.5. Business Licensing and Regulation

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70. Are business licenses available to all citizens?

63

70a. In law, anyone may apply for a business license.

Yes

No

**Comments:**

The equal protection clause enshrined in the Constitution guarantees every citizen of the Philippines to be free from discrimination by reason of gender, religion, denomination, political belief or affiliation, and race or ethnicity.

**References:**

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

**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:**

As in civil, criminal and administrative cases, appeal is a matter of right. An application for business permit or license if denied affords the applicant the remedy of appeal, subject to existing and established policies, laws and regulations.

**References:**

In case of local business, Executive Order 587 was promulgated, directing the Department of Trade and Industry (DTI) to Establish and Administer the Philippine Business Registry (PBR) Project, which was issued on 08 December 2006. DTI is mandated to coordinate with other stakeholders to establish the PBR system as a tool to facilitate business registration and application in the country.

In support of this mandate, an Inter-Agency Memorandum of Agreement (MOA) was also formulated to formalize the commitments of the concerned agencies to participate and cooperate in the efforts toward the establishment of the PBR. Aside from DTI, signatories to the MOA also include the Securities and Exchange Commission (SEC), Cooperative Development Authority (CDA), Bureau of Internal Revenue (BIR), Social Security System (SSS), Philippine Health Insurance Corporation (PhilHealth), Home Development Mutual Fund (Pag-IBIG Fund), the 17 local government units (LGUs) of the National Capital Region (NCR), League of Municipalities of the Philippines (LMP), League of Cities of the Philippines (LCP) and the Philippine Chamber of Commerce and Industry (PCCI).

In case of foreign business/ investment, Article 36 of the Omnibus Investments Code (Executive Order 226) provides: Appeal from Board's Decision. – Any order or decision of the Board shall be final and executory after thirty (30) days from its promulgation. Within the said period of thirty (30) days, said order or decision may be appealed. to the Office of the President. Where an appeal has been filed, said order or decision shall be final and executory ninety (90) days after the perfection of the appeal, unless reversed.

**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:**

DB 2011 reports that it takes 15 processes and 38 days to start a business in the Philippines.

**References:**

World Bank Doing Business 2011

**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:**

DB2011 ranked the Philippines as 150th amongst 183 economies as far as starting a business is concerned. The cost of starting a business is 29.7 percent of income per capita.

**References:**

World Bank Doing Business 2011

**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.

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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:**

The whole process of securing health, environmental and business permits/ licenses when opening a business that requires such permits entails a tedious and very circuitous process. More often than not, applicants resort to bribery and engaging the services of a "fixer" to avoid delay and red tape.

**References:**

COMMONWEALTH ACT NO. 146 – THE PUBLIC SERVICE LAW

(As amended, and as modified particularly by PD No. 1, Integrated Reorganization Plan and EO 546)

(b) The term "public service" includes every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier, railroad, street railway, traction railway, sub-way motor vehicle, either for freight or passenger, or both with or without fixed route and whether may be its classification, freight or carrier service of any class, express service, steamboat or steamship line, pontines, ferries, and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine railways, marine repair shop, [warehouse] wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system, gas, electric light, heat and power water supply and power, petroleum, sewerage system, wire or wireless communications system, wire or wireless broadcasting stations and other similar public services: Provided, however, That a person engaged in agriculture, not otherwise a public service, who owns a motor vehicle and uses it personally and/or enters into a special contract whereby said motor vehicle is offered for hire or compensation to a third party or third parties engaged in agriculture, not itself or themselves a public service, for operation by the latter for a limited time and for a specific purpose directly connected with the cultivation of his or their farm, the transportation, processing, and marketing of agricultural products of such third party or third parties shall not be considered as operating a public service for the purposes of this Act.

(c) The word "person" includes every individual, co-partnership, joint-stock company or corporation, whether domestic or foreign, their lessees, trustees, or receivers, as well as any municipality, province, city, government-owned or controlled corporation, or agency of the Government of the Philippines, and whatever other persons or entities that may own or possess or operate public services. (As amended by Com. Act 454 and RA No. 2677)

Sec. 15. With the exception of those enumerated in the preceding section, no public service shall operate in the Philippines without possessing a valid and subsisting certificate from the Public Service Commission known as "certificate of public convenience," or "certificate of public convenience and necessity," as the case may be, to the effect that the operation of said service and the authorization to do business will promote the public interests in a proper and suitable manner.

The Commission may prescribe as a condition for the issuance of the certificate provided in the preceding paragraph that the service can be acquired by the Republic of the Philippines or any instrumentality thereof upon payment of the cost price of its useful equipment, less reasonable depreciation; and likewise, that the certificate shall be valid only for a definite period of time; and that the violation of any of these conditions shall produce the immediate cancellation of the certificate without the necessity of any express action on the part of the Commission.

(b) To approve, subject to constitutional limitations any franchise or privilege granted under the provisions of Act No. Six Hundred and Sixty-seven, as amended by Act No. One Thousand and twenty-two, by any political subdivision of the Philippines when, in the judgment of the Commission, such franchise or privilege will properly conserve the public interests, and the Commission shall in so approving impose such conditions as to construction, equipment, maintenance, service, or operation as the public interests and convenience may reasonably require, and to issue certificates of public convenience and necessity when such is required or provided by any law or franchise.

(d) To fix just and reasonable standards, classifications, regulations, practices, measurement, or service to be furnished, imposed, observed, and followed thereafter by any public service.

(e) To ascertain and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, initial voltage, or other condition pertaining to the supply of the product or service rendered by any public service, and to prescribe reasonable regulations for the examination and test of such product or service and for the measurement thereof.

(f) To establish reasonable rules, regulations, instructions, specifications, and standards, to secure the accuracy of all meters and appliances for measurements.

(g) To compel any public service to furnish safe, adequate, and proper service as regards the manner of furnishing the same as well as the maintenance of the necessary material and equipment.

(h) To require any public service to establish, construct, maintain, and operate any reasonable extension of its existing facilities, where in the judgment of said Commission, such extension is reasonable and practicable and will furnish sufficient business to justify the construction and maintenance of the same and when the financial condition of the said public service reasonably warrants the original expenditure required in making and operating such extension.

**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:**

While PD 1152 provided the guidelines, requirements and limitations on the use, management and conservation of air, water, land, natural resources, protected areas and wild life, the problem lies, as in most of Philippine laws, on the strict enforcement and implementation of laws.

**References:**

Presidential Decree No. 1152 also known as the Philippine Environmental Code sets the basic parameters for air, water, land use and natural resources management and conservation.

**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

**References:**

Sec. 8. The Commission shall furnish the Secretary such of its findings and decisions as in its judgment may be of general public interest; the Secretary shall compile the same for the purpose of publication in a series of volumes to be designated "Reports of the Public Service Commission of the Philippines," which shall be published in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained without any further proof or authentication thereof.

Sec. 11. The Commission shall have the power to make needful rules for its Government and other proceedings not inconsistent with this Act and shall adopt a common seal, and judicial notice shall be taken for such seal. True copies of said rules and other amendments shall be promptly furnished to the Bureau of Printing and shall be forthwith published in the Official Gazette.

**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?

0

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

**Comments:**

The capacity of government to enforce various standards is uneven. While national and some sub-national (e.g. regional, provincial, city, municipal, and village) units may be capable, others (such as the ARMM and poorer and more remote jurisdictions) cannot enforce these standards. Some officials may be bribed or intimidated to look the other way. A special point of contention is the issuance of mining and logging permits in remote parts of the country.

**References:**

Laude (2011); Alave & Cabrera (2011). See my comments for full biblio information

**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.

100 | 75 | 50 | 25 | 0

**Comments:**

The capacity of government to enforce various standards is uneven. While national and some sub-national (e.g. regional, provincial, city, municipal, and village) units may be capable, others (such as the ARMM and poorer and more remote jurisdictions) cannot enforce these standards. Some officials may be bribed or intimidated to look the other way. A special point of contention is the issuance of mining and logging permits in remote parts of the country.

Co et. al. 2007 note the formal recognition of people's right to clean water and environmental security manifested in such legislation as the Clean Air Act of 1999 and the Clean Water Act of 1994. Alongside, however, are contradictory policies. First, implementation of said laws is a problem. Worst, government's "development" policies and programs (e.g. mining, big agro-industrial complexes, excessive road building and subsidies to motor vehicle owners and users through gas subsidies) are undoubtedly subversive of the environment.

**References:**

Edna Co, R. Fernan, & F. Sta. Ana. 2007. Philippine Democracy Assessment: Economic and Social Rights. Pasig City: Anvil Publishing (esp. Chapter 5, "The Right to Clean Water and the Quest for Environmental Security," pp. 86-115.

**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:**

I have observed several sub-standard public and private structures in many places within the country, such as roads, bridges, hotels, pensions, and restaurants. The sub-standard character of some of these structures have harmed several people due to fire, earthquakes, floods, and the like.

**References:**

Edna Co et. al. 2007. (see previous item for full biblio information)

**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 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

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## 6.1. ~~64~~ Anti-Corruption Law

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73. Is there legislation criminalizing corruption?

73a. In law, attempted corruption is illegal.

Yes | No

**Comments:**

On Nov. 8, 2006, the Philippine Senate ratified the United Nations Convention Against Corruption (UNCAC), making the Philippines the second Southeast Asian country and the fifth Asian country to ratify the international convention.

\* Source: Manila Bulletin, Nov. 8, 2006, "Senate OKs UN accord vs corruption"

**References:**

Sec. 3, Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act) lists the following as among the corrupt practices of public officials:

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

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

**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:**

On Nov. 8, 2006, the Philippine Senate ratified the United Nations Convention Against Corruption (UNCAC), making the Philippines the second Southeast Asian country and the fifth Asian country to ratify the international convention.

\* Source: Manila Bulletin, Nov. 8, 2006, "Senate OKs UN accord vs corruption"

**References:**

Sec 3(b) of RA 3019 provides:

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

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

In addition, Articles 210 & 211 of the Revised Penal Code states:

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

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

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

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

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

Indirect bribery. — The penalties of prison correctional in its medium and maximum periods, and public censure shall be imposed upon any public officer who shall accept gifts offered to him by reason of his office. (As amended by Batas Pambansa Blg. 872, June 10, 1985).

**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:**

On Nov. 8, 2006, the Philippine Senate ratified the United Nations Convention Against Corruption (UNCAC), making the Philippines the second Southeast Asian country and the fifth Asian country to ratify the international convention.

\* Source: Manila Bulletin, Nov. 8, 2006, " Senate OKs UN accord vs corruption"

**References:**

Sec. 4, Republic Act No. 3019 reads:

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

And Sec. 3, Republic Act No. 3019 reads:

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

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

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

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

(d) Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination.  
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(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

(f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

(i) Directly or indirectly becoming interested, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group. Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transaction or acts by the board, panel or group to which they belong.  
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(j) Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled.

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

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.

**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:**

Articles 210 & 211 of the Revised Penal Code provides:

Art. 210. Direct bribery. — Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of this official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of prison mayor in its medium and maximum periods and a fine [of not less than the value of the gift and] not less than three times the value of the gift in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.

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

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

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

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The provisions contained in the preceding paragraphs shall be made applicable to assessors, arbitrators, appraisal and claim commissioners, experts or any other persons performing public duties.

(As amended by Batas Pambansa Blg. 872, June 10, 1985).

Art. 211. Indirect bribery. — The penalties of prison correctional in its medium and maximum periods, and public censure shall be imposed upon any public officer who shall accept gifts offered to him by reason of his office.

(As amended by Batas Pambansa Blg. 872, June 10, 1985).

**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:**

The Philippines has yet to enact a law punishing bribery of a foreign public official.

**References:**

Gifts and entertainment – a guide to anti-bribery regulation in Asia;

Jose F. Justiniano, Partner, Doris Sharry P. Salazar, Associate; SSHG Law Centre, 105 Paseo de Roxas, Makati City, 1226 Philippines

**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

**References:**

Art. 217. Malversation of public funds or property – Presumption of malversation. – Any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same, or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property, shall suffer:

- 1) The penalty of prison correctional in its medium and maximum periods, if the amount involved in the misappropriation or malversation does not exceed two hundred pesos.
- 2) The penalty of prison mayor in its minimum and medium periods, if the amount involved is more than 200 pesos but does not exceed 6,000 pesos.
- 3) The penalty of prison mayor in its maximum period to reclusion temporal in its minimum period, if the amount involved is more than 6,000 pesos (US\$141) but is less than 12,000 pesos (US\$282).
- 4) The penalty of reclusion temporal in its medium and maximum periods, if the amount involved is more than 12,000 pesos but is less than 22,000 (US\$516) pesos. If the amount exceeds the latter, the penalty shall be reclusion temporal in its maximum period to reclusion perpetua.

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

**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

**References:**

Section 3 of RA 3019 provides:

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

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

**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 Council (AMLC) is composed of the Governor of the Bangko Sentral ng Pilipinas (BSP) as Chairman and the Commissioner of the Insurance Commission (IC), and the Chairman of the Securities and Exchange Commission (SEC) as members. It acts unanimously in the discharge of its functions.

The AMLC was created to protect and preserve the integrity and confidentiality of bank accounts; to ensure that the Philippines shall not be used as a money laundering site for proceeds of any unlawful activity and to extend cooperation in transnational investigation and prosecution of person involved in money laundering activities wherever committed.

**References:**

Republic Act No. 9160 otherwise known as The Anti-Money Laundering Act of 2001 was signed into law on Sept. 29, 2001 and took effect on Oct. 17, 2001. The Implementing Rules and Regulations took effect on April 2, 2002. On March 7, 2003, R.A. No. 9194 (An Act Amending R.A. No. 9160) was signed into law and took effect on March 23, 2003. The revised Implementing Rules and Regulations took effect on Sept. 7, 2003.

The following are money laundering activities:

- \* Knowingly transacting or attempting to transact any monetary instrument/property which represents, involves or relates to the proceeds of an unlawful activity. Penalty is 7 to 14 years imprisonment and a fine of not less than P3M but not more than twice the value of the monetary instrument/property.
- \* Knowingly performing or failing to perform an act in relation to any monetary instrument/property involving the proceeds of any unlawful activity as a result of which he facilitated the offense of money laundering. Penalty is 4 to 7 years imprisonment and a fine of not less than P1.5M (US\$35,170) but not more than P3M (US\$70,340).
- \* Knowingly failing to disclose and file with the AMLC any monetary instrument/property required to be disclosed and filed. Penalty is 6 months to 4 years imprisonment or a fine of not less than P100,000 (US\$2,344) but not more than P500,000 (US\$11,723), or both.

**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:**

Because of the global character of terrorism, the Philippines has sought to strengthen its international linkages by signing the Joint Communiqué on international terrorism during the 1993 Conference of ASEAN Chiefs of Police (ASEANAPOL) and the Memorandum of Agreement on Counter-Terrorism with several countries and pursued various agreements with the USA, likewise establishing an INTERPOL-National Central Bureau. In 1996, the Philippines hosted the International Conference on Counter-terrorism (ICCT) in Baguio, which was attended by nineteen representatives from different parts of the world to enhance international cooperation against all forms of terrorism. The "Baguio Communiqué" took into consideration some fundamental principles such as: 1) there must be no sanctuary for terrorists; 2) there must be no compromise in the fight against terrorism; 3) the strengthening of multilateral and bilateral cooperation or coordination of policy and action against terrorism; etc..

\* Source: Severino H. Gana, Jr. – THE CURRENT SITUATION OF AND COUNTERMEASURES AGAINST TRANSNATIONAL ORGANIZED CRIME IN THE REPUBLIC OF THE PHILIPPINES

**References:**

Executive Order No. 295 provides that the Presidential Anti-Organized Crime Commission (PAOCC) shall have the authority to take cognizance of the following crimes including “[T]hose committed by organized/syndicated crime groups, including but not limited to gunrunning, illegal logging, robbery/hold-up, kidnapping for ransom, white slavery, illegal recruitment, carnapping, smuggling, piracy, drug trafficking, falsification of land titles and other government forms, large scale swindling, film piracy, counterfeiting and bank frauds”.

**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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## 6.2. Anti-Corruption Agency or Equivalent Mechanisms

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74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes

No

**References:**

Article XI, Secs. 4 & 5 of the Constitution provides:

Sec. 4 – The present anti-graft court known as the Sandiganbayan shall continue to function and exercise its jurisdiction as now or hereafter may be provided by law.

Section 5. There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed.

**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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75. Is the anti-corruption agency effective?

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes

No

**Comments:**

The Office of the Ombudsman by law is supposed to be beholden to the people, not to the appointing the power. The impeachment proceedings against the incumbent Ombudsman about to be had in the Senate speaks of the quality of her supposed independence, integrity and probity.

**References:**

Article XI of the Constitution provides:

Section 4. The present anti-graft court known as the Sandiganbayan shall continue to function and exercise its jurisdiction as now or hereafter may be provided by law.

Section 5. There is hereby created the independent Office of the Ombudsman, composed of the Ombudsman to be known as Tanodbayan, one overall Deputy and at least one Deputy each for Luzon, Visayas, and Mindanao. A separate Deputy for the military establishment may likewise be appointed.

Section 6. The officials and employees of the Office of the Ombudsman, other than the Deputies, shall be appointed by the Ombudsman, according to the Civil Service Law.

Section 7. The existing Tanodbayan shall hereafter be known as the Office of the Special Prosecutor. It shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution.

Section 8. The Ombudsman and his Deputies shall be natural-born citizens of the Philippines, and at the time of their appointment, at least forty years old, of recognized probity and independence, and members of the Philippine Bar, and must not have been candidates for any elective office in the immediately preceding election.

Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

Section 14. The Office of the Ombudsman shall enjoy fiscal autonomy. Its approved annual appropriations shall be automatically and regularly released.

**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:**

HDN Report 2008-2009 assessment of Ombudsman  
Code NGO assessment of the 2004-2010 MTTDP: TAN contributed the report on governance

Dr. Morada rates it at 50 percent.

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

Raul Pangalangan, Professor, UP College of Law, Nov. 13, 2010

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview

**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:**

Lazatin argues that the political leadership can either choose to remove or retain the Ombudsman despite the latter's fixed term.

Dr. Morada scores it at 75 percent.

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

Raul Pangalangan, Professor, UP College of Law, Nov. 13, 2010

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview

**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:**

There are professional criteria mandated under the constitution and law, but in practice there is little evidence that these criteria are adhered to, except for the pass-fail criteria, such as age, in the practice of law, etc.

Dr. Morada scores it at 50 percent.

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview

**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

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

**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:**

Lazatin: They receive regular funding but it is still subject to the political process of the budget, and therefore the anti-corruption agency is not completely fiscally autonomous.

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines; scores it at 75 percent.

Raul Pangalangan, Professor, UP College of Law, Nov. 13, 2010; scores it at 75 percent.

**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:**

The anti-corruption agency comes out with reports, but the quality of the reports is suspect.

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

**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 anti-corruption agency does not utilize the powers it has to carry out its mandate.

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines; scores it at 25 percent

Raul Pangalangan, Professor, UP College of Law, Nov. 13, 2010; scores it at 75 percent

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview; scores it at 75 percent

**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:**

Mega Pacific case: there's a crime but there were no criminals.

The anti-corruption agency has not shown any initiative to investigate independently cases of possible corruption.

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview; scores it at 75 percent.

**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.

---

## 76. Can citizens access the anti-corruption agency?

25

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

**Comments:**

The anti-corruption agency is notorious for allowing complaints to wither and die.

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

**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

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

**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.

---

53

### 6.3. Judicial Independence, Fairness, and Citizen Access to Justice

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77. Is there an appeals mechanism for challenging criminal judgments?

33

77a. In law, there is a general right of appeal.

Yes

No

**Comments:**

The accused convicted of a crime may avail himself of the right to appeal in accordance with the rules laid down by the Rules on Criminal Procedure.

**References:**

Rule 122 of the Rules of Court provides:

Section 1. Who may appeal. – Any party may appeal from a judgment or final order, unless the accused will be placed in double jeopardy.

Sec. 2. Where to appeal. – The appeal may be taken as follows:

(a) To the Regional Trial Court, in cases decided by the Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court;

(b) To the Court of Appeals or to the Supreme Court in the proper cases provided by law, in cases decided by the Regional Trial Court; and

(c) To the Supreme Court, in cases decided by the Court of Appeals.

(d) No notice of appeal is necessary in cases where the death penalty is imposed by the Regional Trial Court. The same shall be automatically reviewed by the Supreme Court as provided in section 10 of this Rule.

**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

**References:**

Supreme Court study on judicial reforms.

Marites Vitug's book about the Supreme Court

**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:**

NO, appeal is expensive. Mere filing of notice of appeal entails certain fees. Considering the time involved in appealing a case, the party may have to pay additional lawyer's fees.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**100:** In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney 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. Attorney 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. Attorney fees greatly discourage the use of the appeals process.

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## 78. In practice, do judgments in the criminal system follow written law?

50

78a. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

**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. In practice, are judicial decisions enforced by the state?

50

79a. In practice, are judicial decisions enforced by the state?

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

### References:

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

**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?

75

80a. In law, the independence of the judiciary is guaranteed.

**Yes** | No

### Comments:

Some legal luminaries believe that the law should be amended so as to divest the president of the right to appoint justices to the

Supreme Court. It is proposed that the Judicial and Bar Council shall have the authority to screen, nominate, and appoint justices of known independence, probity and integrity.

**References:**

Article VIII of the Constitution states:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Section 2. 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.

No law shall be passed reorganizing the Judiciary when it undermines the security of tenure of its Members.

Section 3. 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 5. The Supreme Court shall have the following powers:

- 1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for certiorari, prohibition, mandamus, quo warranto, and habeas corpus.
- (2) Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:
  - (a) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.
  - (b) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.
  - (c) All cases in which the jurisdiction of any lower court is in issue.
  - (d) All criminal cases in which the penalty imposed is reclusion perpetua or higher.
  - (e) All cases in which only an error or question of law is involved.
- (3) Assign temporarily judges of lower courts to other stations as public interest may require. Such temporary assignment shall not exceed six months without the consent of the judge concerned.
- (4) Order a change of venue or place of trial to avoid a miscarriage of justice.
- (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.
- (6) Appoint all officials and employees of the Judiciary in accordance with the Civil Service Law.

Section 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

**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 includes 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:**

Appointments to the national level courts is done through the Judicial and Bar Council (JBC) which submits a list of nominees from which the President chooses. The process by which the JBC makes its selection is considered by experts to be prone to political interference.

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview – scores it at 50 percent.

**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:**

The present set-up in distributing cases in the appellate (Court of Appeals, Sandiganbayan) and trial courts (Regional, Metropolitan and Municipal Trial Courts) is by way of raffle of cases (use of roulette where the choices are the branch numbers of the courts) supervised by the executive judge/ justice. The litigants are allowed to witness the procedure.

**References:**

Article VIII of the Constitution provides:

Section 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

Section 5. The Supreme Court shall have the following powers:

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same

grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

**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:**

There are numerous allegations against several justices of appellate courts, the most common of which is the Temporary Restraining Order (TRO) for sale. Unfortunately very few administrative cases have been filed and even fewer judges/ justices were found guilty and sanctioned by the Supreme Court.

\* Source: Rodel Rodis, Article on Pinoy Wired [SALN – A Weapon of Good Governance], posted on Aug. 12, 2010

**References:**

Rule 140 of the Rules of Court, as amended by A.M. NO. 01-8-10-SC, states:

SECTION 1. Proceedings for the discipline of judges of regular and special courts and Justices of the Court of Appeals and the Sandiganbayan may be instituted motu proprio by the Supreme Court or upon a verified complaint, supported by affidavits of person who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations, or upon an anonymous complaint, supported by public records of indubitable integrity. The complaint shall be in writing and shall state clearly and concisely the acts and omissions constituting violations of standards of conduct prescribed for Judges by law, the Rules of Court, or the Code of Judicial Conduct.

SEC. 12. Confidentiality of proceedings. – Proceedings against Judges of regular and special courts and Justices of the Court of Appeals and the Sandiganbayan shall be private and confidential, but a copy of the decision or resolution of the court shall be attached to the record of the respondent in the Office of the Court Administrator.

**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?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

Yes | No

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

**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

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

**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?

64

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

**Comments:**

YES, not by racial or ethnic bias. However, financial capacity influences one's decision to go to court or not.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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 do not experience discrimination in the judicial system. Limitations in filing cases are not because of gender, racial or ethnic bias BUT because of financial capacity.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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:**

This constitutionally guaranteed right is very well in place in our judicial system. The court appoints a counsel de officio from the Public Attorney's Office in favor of a litigant who cannot afford the services of one. No trial could take place if a litigant with no counsel on account of poverty appears in court.

**References:**

Sections 11 and 12 of Article III of the Constitution provide:

Free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty.

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

**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

**References:**

Vincent Lazatin, Executive Director, Transparency and Accountability Network (TAN), Nov. 8, 2010, TAN office, Quezon City, Philippines

**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.

**Comments:**

Yes, if it is criminal cases. However, if one is filing for a civil case which involves claim for damages, ability to pay the filing fee may affect one's decision to file a case because the fee is dependent on the amount of damages one seeks to recover.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**100:** In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney 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. Attorney 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. Attorney 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.

**Comments:**

YES, in criminal cases; but if one is filing for a civil case which involves claim for damages, ability to pay the filing fee may affect one's decision to file a case because the fee is dependent on the amount of damages one seeks to recover.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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. Attorney 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. Attorney 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:**

It can be scored with 25 also given that the Action Program for Judicial Reforms (APJR), a comprehensive package of reform projects and activities, identified factors that hinder access to quality judicial services to poor citizens:

1. delays in judicial proceedings
2. erroneous decisions rendered by lower courts
3. prohibitive costs of litigation; and
4. inadequacy/lack of information about the judicial system

Delays also occur because the poor are too poor to hire lawyers.

The source of the above comment:

Edna Co, et. al. 2010. Philippine Democracy Assessment: Rule of Law and Access to Justice. Quezon City: Action for Economic Reform/International Idea for Democracy and Electoral Assistance, p. 8.

**References:**

Atty. Zona Russet M. Tamayo – Hearing Officer, Land Transportation Franchising and Regulatory Board (LTFRB), March 29, 2010, Quezon City

**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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## 6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

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83. Is the law enforcement agency (i.e. the police) effective?

33

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

**Comments:**

When the PNP law was enacted, this greatly reduced the interference of local government unit (LGU) officials such as mayors and governors in the choice of police chiefs at the town, city, and provincial levels.

**References:**

Lt. Col. Ed Mendoza (ret.), Philippine National Police, April 3, 2011, Lagro, Quezon City, Philippines

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview – rates it at 50 percent.

**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 budget for the law enforcement agency is thought to suffer from huge leakages in its disposal. The headline budget number for the national police agency is also considered inadequate to begin with.

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Lt. Col. Mendoza scores this item at 50 percent. He explains that while salaries for police officers are adequate, the budget is insufficient to purchase critical equipment like patrol cars, communications equipment, firearms and ammo. A number of policemen use their personal firearms, mobile phones, and vehicles. Through the use of these personal equipment, the performance of the police is somewhat enhanced despite the insufficiency of budget allocations.

**References:**

Vincent Lazatin – Executive Director, Transparency & Accountability Network (TAN) March 31, 2011, TAN office

Lt. Col. Ed Mendoza (ret.), Philippine National Police, April 3, 2011, Lagro, Quezon City, Philippines

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview – rates it at 50 percent.

**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:**

At the local level, local politicians have "control" over the appointment of key police officials.

Mendoza scores the item at 50 percent and intimates that local officials will always try to intercede on behalf of certain persons arrested for certain offenses. The police had learned to respond by saying that the matter is no longer in their hands since cases have already been filed in court.

**References:**

Vincent Lazatin – Executive Director, Transparency & Accountability Network (TAN) March 31, 2011, TAN office

Lt. Col. Ed Mendoza (ret.), Philippine National Police, April 3, 2011, Lagro, Quezon City, Philippines

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview

**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:**

The National Police Commission (NAPOLCOM) was established to police the ranks of the police. Its scope is national and civilian in character, taking care of the administrative and disciplinary aspects of the Philippine National Police. It may recommend the filing of criminal charges against an erring police with the ombudsman or the regular courts.

**References:**

Republic Act No. 8551 also known as AN ACT PROVIDING FOR THE REFORM AND REORGANIZATION OF THE PHILIPPINE NATIONAL POLICE

Section 2. Declaration of Policy and Principles. – It is hereby declared the policy of the State to establish a highly efficient and competent police force which is national in scope and civilian in character administered and controlled by a national police commission.

THE NATIONAL POLICE COMMISSION

Section 4. Section 13 of Republic Act No. 6975 is hereby amended to read as follows:

“SEC. 13. Creation and Composition. – A National Police Commission, hereinafter referred to as the Commission, is hereby created for the purpose of effectively discharging the functions prescribed in the Constitution and provided in this Act. The Commission shall be an agency attached to the Department for policy and program coordination. It shall be composed of a Chairperson, four (4) regular Commissioners, and the Chief of PNP as ex-officio member. Three (3) of the regular commissioners shall come from the civilian sector who are neither active nor former members of the police or military, one (1) of whom shall be designated as vice chairperson by the President. The fourth regular commissioner shall come from the law enforcement sector either active or retired: Provided, That an active member of a law enforcement agency shall be considered resigned from said agency once appointed to the Commission: Provided, further, That at least one (1) of the Commissioners shall be a woman. The Secretary of the Department shall be the ex-officio Chairperson of the Commission, while the Vice Chairperson shall act as the executive officer of the Commission.”

Section 5. Section 14 of Republic Act No. 6975 is hereby amended to read as follows:

“SEC. 14. Powers and Functions of the Commission. – The Commission shall exercise the following powers and functions:

“(a) Exercise administrative control and operational supervision over the Philippine National Police which shall mean the power to:

“3) Establish a system of uniform crime reporting;

“4) Conduct an annual self-report survey and compile statistical data for the accurate assessment of the crime situation and the proper evaluation of the efficiency and effectiveness of all police units in the country;

“5) Approve or modify plans and programs on education and training, logistical requirements, communications, records, information systems, crime laboratory, crime prevention and crime reporting;

“6) Affirm, reverse or modify, through the National Appellate Board, personnel disciplinary actions involving demotion or dismissal from the service imposed upon members of the Philippine National Police by the Chief of the Philippine National Police;

“7) Exercise appellate jurisdiction through the regional appellate boards over administrative cases against policemen and over decisions on claims for police benefits;

“9) Issue subpoena and subpoena duces tecum in matters pertaining to the discharge of its own powers and duties, and designate who among its personnel can issue such processes and administer oaths in connection therewith;

“10) Inspect and assess the compliance of the PNP on the established criteria for manpower allocation, distribution, and deployment and their impact on the community and the crime situation, and thereafter formulate appropriate guidelines for

maximization of resources and effective utilization of the PNP personnel;

12) Monitor and investigate police anomalies and irregularities.

**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

**References:**

Lt. Col. Ed Mendoza (ret.), Philippine National Police, April 3, 2011, Lagro, Quezon City, Philippines

**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 created under the auspices of the Department of Interior and Local Government handles the administrative and disciplinary aspects of the Philippine National Police.

**References:**

Republic Act No. 8551 AN ACT ESTABLISHING THE PHILIPPINE NATIONAL POLICE UNDER A RE-ORGANIZED DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT provides:

Section 39. Creation, Powers, and Functions. – An Internal Affairs Service (IAS) of the PNP is hereby created which shall:

- a) pro-actively conduct inspections and audits on PNP personnel and units;
- b) investigate complaints and gather evidence in support of an open investigation;
- c) conduct summary hearings on PNP members facing administrative charges;
- d) submit a periodic report on the assessment, analysis, and evaluation of the character and behavior of PNP personnel and units to the Chief PNP and the Commission;
- e) file appropriate criminal cases against PNP members before the court as evidence warrants and assist in the prosecution of the case;
- f) provide assistance to the Office of the Ombudsman in cases involving the personnel of the PNP.

**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

**References:**

Lt. Col. Ed Mendoza (ret.), Philippine National Police, April 3, 2011, Lagro, Quezon City, Philippines

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Center for the Responsibility to Protect, April 2, 2011, phone interview

**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:**

There are a significant number of criminal cases filed in regular courts against members of the Philippine National Police, where some had been convicted and dismissed from the service. However, many bigger fishes remain untouchable, as complainants are intimidated to file cases against them for fear of retaliation.

**References:**

Republic Act 6975, also known as the Department of Interior and Local Government Act of 1990 provides:

Section 46. Jurisdiction in Criminal Cases. – Any provision of law to the contrary notwithstanding, criminal cases involving PNP members shall be within the exclusive jurisdiction of the regular courts: Provided, That the courts-martial appointed pursuant to Presidential Decree No. 1850 shall continue to try PC-INP members who have already been arraigned, to include appropriate actions thereon by the reviewing authorities pursuant to Commonwealth Act No. 408, otherwise known as the Articles of War, as amended, and Executive Order No. 178, otherwise known as the Manual for Courts-Martial: Provided, further, That criminal cases against PC-INP members who may have not yet been arraigned upon the effectiveness of this Act shall be transferred to the proper city or provincial prosecutor or municipal trial court judge.

Section 47. Preventive Suspension Pending Criminal Case. – Upon the filing of a complaint or information sufficient in form and substance against a member of the PNP for grave felonies where the penalty imposed by law is six (6) years and one (1) day or more, the court shall immediately suspend the accused from office until the case is terminated. Such case shall be subject to continuous trial and shall be terminated within ninety (90) days from arraignment of the accused.

**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

**References:**

Lt. Col. Ed Mendoza (ret.), Philippine National Police, April 23, 2011, Lagro, Quezon City, Philippines

Noel M. Morada, Ph D. – Executive Director, Asia Pacific Centre for the Responsibility to Protect, April 2, 2011, phone interview – rates it at 50 percent.

**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.

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