

CITIZEN REFORM AGENDA 2010

Agenda on Anti-Corruption

For Candidates and Political Parties of the Upcoming 2010 Elections

*Corruption has never been this worse. We must end it.
It is time to repair the damaged institutions.*

*We need to establish a government that is
transparent and accountable.*

Citizen Reform Agenda 2010 or CReforms 2010 is a consultation process initiated by the Ateneo School of Government (ASoG) through its PODER program that aims to bring together the broadest possible representation of citizen organizations in the country to identify key reform agenda or issues that candidates and political parties must address come 2010 elections.

PODER is ASoG's transforming politics program that focuses on reforming and strengthening key democratic institutions such as the Constitution, elections and political parties. PODER provides spaces and produces action-oriented knowledge products that aim to facilitate the engagement of key political players in dialogues that facilitate their common understanding and consensus points on key institutional reform issues.

Executive Summary

Recent reports on development in the Philippines point to governance and corruption as constraints to poverty reduction and development. In its report, *Philippines: Critical Development Constraints*, the Asian Development Bank concludes that the worsening perception of corruption partly explains the low level of investments in the Philippines and that corruption is largely to blame for weak tax administration. Poor governance, it said, was found to translate into higher lending rates, making it more expensive to do business in the Philippines. In the end it concluded that one of the steps necessary to improve development is for the Philippine government to prioritize good governance.

The recently released Human Development Report for the Philippines, *Institutions, Politics and Human Development*, says that institutions, broadly defined, are “the incentive systems that structure human interaction. They are the humanly devised ‘rules of the game’ in a society – the formal rules, informal constraints and their enforcement characteristics, which reduce uncertainty, generate regularity in behavior and allow people to get on with everyday business.” Since the incentive systems are what structure human behavior, then there must be sufficient incentive for individuals to “follow the rules”.

Non-compliance must therefore have some consequence, and in our system of government the ones that provide that consequence for non-compliance are the oversight and judicial/quasi-judicial bodies such as the Commission on Audit, the Civil Service Commission, the Supreme Court, and the Ombudsman, to name a few. So it is these institutions (which are themselves defined by a set of formal rules) that must be functioning properly in order to maintain the correct distribution of power.

In November of 2008 a roundtable discussion-workshop was sponsored by the Ateneo School of Government (ASoG) to gather concerned public interest groups, non-government organizations and civil society organizations with experience or concern in anti-corruption to formulate an anti-corruption agenda for candidates running in the 2010 elections. The discussions brought in varied perspectives and viewpoints to the issue of formulating a common anti-corruption agenda.

Not surprisingly, given the experiences and expertise of the participants, the discussion centered on several key issues: 1) access to information and citizen participation; 2) justice reform; 3) strengthening of institutions; 4) professionalizing the bureaucracy; 5) local government autonomy; and 6) political and electoral reforms. The last topic, political and electoral reforms, is recognized by the organizers as an important enough issue to have been separated out and covered in another discussion-workshop. So in this paper, we will defer to separate agenda paper for political and electoral reform, but shall include discussion here where it is additive.

Introduction

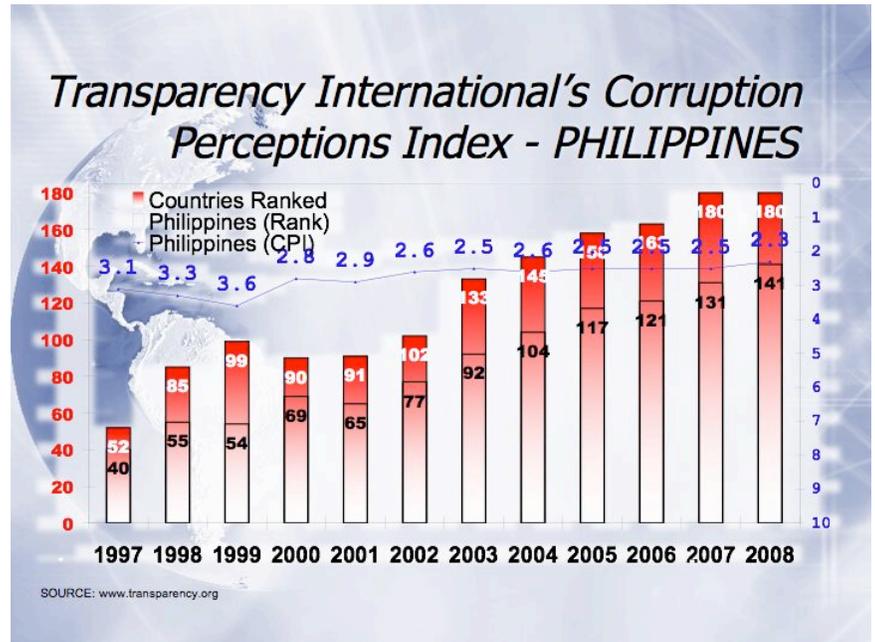
Corruption is not a new problem in the Philippines. It has been an issue for many administrations dating back to post-War Philippines. Issues of corruption have dogged many presidents, and has been the central issue for 3 of the last 5 presidents. Presidents Ferdinand Marcos and Joseph Estrada both left office amidst charges of corruption. (Estrada was eventually convicted of plunder, but pardoned less than a month after the conviction was announced.) President Gloria Macapagal-Arroyo's administration has been rocked by numerous corruption scandals, almost all of which remain unresolved up to this day. Though not proven, many of these scandals are said to lead to the doorstep of the First Family. All three presidents have been accused of benefiting from some of the corruption controversies.

Presidential links to corruption are not merely a figment of the imagination of their political rivals. In Transparency International's 2004 Global Corruption Report two Philippine presidents (Presidents Ferdinand Marcos and Joseph Estrada) appear on their list of top 10 most corrupt leaders in the world, the only country with that dubious distinction.

Corruption perception indicators over the last several years have been in decline. Transparency International's Corruption Perception Index (TI-CPI) for the Philippines, one of the most widely watched barometers of corruption, peaked in 1999 at 3.6¹ and has declined to its most recent level of 2.3. The low index level of the Philippines in the CPI

¹ The TI-CPI is an index with a scale of 0-10, where 0 indicates perceptions of very high levels of corruption and 10 indicates perceptions of little or no corruption.

Figure 1



has consistently ranked it among the bottom third of all countries surveyed (see Figure 1).

Likewise, the World Bank Institute releases its governance indicators annually, the Worldwide Governance Indicators. The Control of Corruption Indicator for the Philippine has also seen a steady decline, most notably a nearly 20 percentage point drop in its percentile ranking from about 40% to about 22% from 2003 to 2007 (see Figure 2).

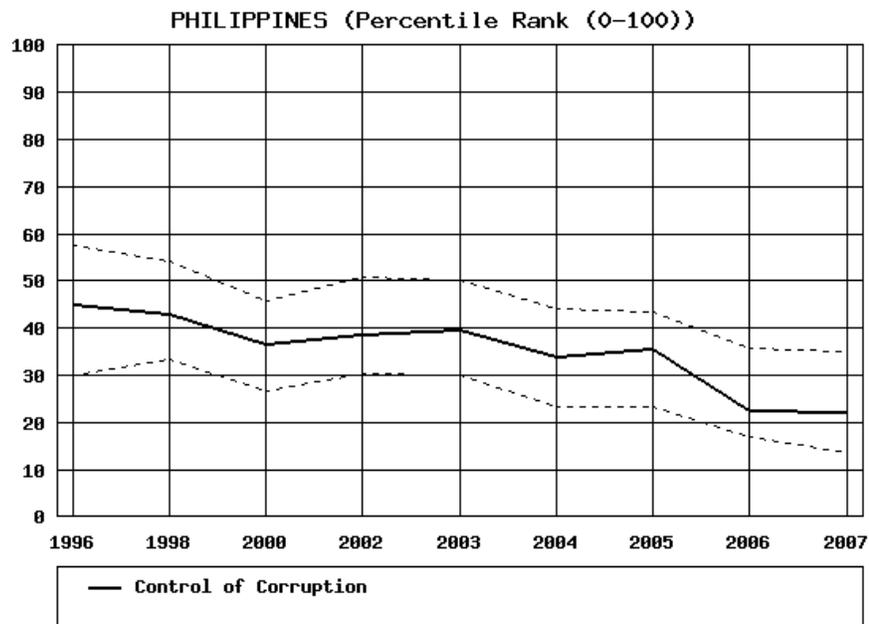
The worsening corruption situation in the country was put into sharp relief recently when the Millennium Challenge Corporation, a grant-giving US government corporation announced in December 2008 that it would not sign a grant agreement with the Philippines unless it improved its performance on the control of corruption indicator². This was diplomatic back-pedaling

² <http://www.mcc.gov/press/releases/documents/release-121108-selection.php>

from its earlier announcement made nine months prior when it said that the Philippines was eligible to apply for a compact and potentially receive hundreds of millions of dollars in aid money³.

If the public perception is accurate, and it is too consistent to think otherwise, it is not because the Philippines lacks anti-corruption laws or government agencies tasked with addressing corruption. There are at least 18 different laws, executive orders and codes dealing with the various aspects of corruption. Among them are Republic Act (RA) 1379 (passed in 1959) known as the ill-gotten wealth law, RA 3019 requiring assets determined to be ill-gotten to be forfeited to the state, RA 6713 defining a code of conduct and ethical behavior of public officials, and RA 9184 reforming government procurement by increasing transparency and limiting the discretion of procurement officials. The Office of the Ombudsman (created by RA 6770) is the lead government anti-corruption agency and is vested with the power to initiate and conduct investigations, and prosecute corruption cases against government officials. The Sandiganbayan, created by the 1973 Philippine Constitution, and later enhanced by subsequent laws, is the anti-graft court that hears cases involving high-level officials (salary grade 27 and above). Various anti-graft commissions have been created by the last three

Figure 2



Source: Kaufmann D., A. Kraay, and M. Mastruzzi 2007: Governance Matters VII: Governance Indicators for 1996-2007
 Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The aggregate indicators do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources or for any other official purpose.

presidents, the latest of which is the Presidential Anti-Graft Commission (PAGC), created by Executive Order 12. PAGC was originally tasked with investigating the administrative aspects of charges of wrongdoing by presidential appointees.

The laws and anti-graft bodies in the Philippines are, on paper, considered to be among the most advanced in the region, sometimes in the world. Yet, the Philippines continues to be ranked among the most corrupt. The 2009 Human Development Report rightfully focused its attention on institutions. In the report, the authors state that quality bureaucracy and the low risk of corruption as initial conditions have a significant and positive correlation to improvements in service delivery in the health and education sectors. Not surprisingly, therefore, institutions matter. Four of the six

³ <http://www.mcc.gov/press/releases/documents/release-031108-philippines.php>

issues identified in the discussion-workshop deal directly with strengthening institutions.

Anti-Corruption Agenda

Access to Information and Citizen Participation in Governance

The 1987 Philippine Constitution, in Article 3, Section 7, guarantees the people's right to information, to wit:

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.

In support of the people's right to information is the State's duty to disclose which is contained in Article 2, Section 28 and reads:

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.

Therefore, it is very clear from the Constitution that transparency is an important pillar of Philippine democracy. This is further bolstered by Section 5(e) of RA 6713, commonly known as the code of conduct and ethical standards for public officials, which states that public officials are duty bound to:

(e) Make documents accessible to the public. — All public documents must be made accessible to, and readily available for inspection by, the public within reasonable working hours.

Despite these constitutional guarantees, access to information is routinely denied. Release of information is highly discretionary, and is

subject to the opinion of the public official in charge of releasing the information as to what can be released and what cannot. Therefore a law is necessary, not so much to make the constitutional provision executory, because the Supreme Court has said that the right is self-executory, but to provide the necessary substantive procedural details that a law can provide. Namely, a law would need to outline, among other things, a uniform procedure for the timely release of information. It must also clearly and narrowly define exceptions to the right and the harm that would be caused if the information were to be released. Lacking too in the absence of a law, are clear criminal, administrative and civil liabilities for the unlawful denial of information. Lastly, the law should outline a simple, easily accessible procedure for redress.

As a campaign issue for 2010, right to information might be largely moot and academic if the current efforts to pass RTI legislation succeeds. If the law is passed in the 14th congress, then the issue should focus on implementation. Questions to the candidates should center around how they will support the effective implementation of the RTI law and promote openness in government. An additional concern would be the candidates' thoughts on the invocation of executive privilege. With a Supreme Court ruling on executive privilege granting the president wide latitude in invoking executive privilege⁴ it would be of particular interest how, if and when the candidate, should he/she become president, would invoke this privilege.

Closely associated with access to information is citizen participation in governance. A free flow of information facilitates meaningful participation in governance. At the local level, the local special bodies and development

⁴ Neri vs. Senate Blue Ribbon, GR 180643

councils are the formal mechanisms that allow for citizen participation in local governance. At the national level, most mechanisms for citizen participation are ad hoc and at the discretion of the government agency involved. Because of poor governance practices, citizen involvement and oversight in various government functions becomes necessary, especially, for example, in the area of budgeting.

Questions for the candidates on access to information:

As president, how will you promote a culture of transparency and openness in government, support the people’s right to know, and fulfill the State’s duty to disclose? What are your thoughts on the invocation of executive privilege and under what circumstances do you think it can be justifiably invoked?

How will you engage citizens and citizen’s groups in governance?

Professionalizing and Strengthening the Bureaucracy

The Philippine bureaucracy is nearly 1.5 million people strong. A little more than two-thirds of government employees work for national government agencies (executive, legislative, judiciary, constitutional bodies), one-fourth for local government units, and the balance, about 7%, work for GOCCs or government financial institutions. The Department of Education is the single largest employer in government with nearly one third of government employees reporting to the DepEd, a vast majority of whom are teachers. Figure 3 shows the breakdown of the bureaucracy between career and non-career personnel.

The Civil Service Commission is the human resource manager of government. Its mandate spans administrative justice to policy formulation, eligibility examinations

to human resource development, public sector unionism to the career executive service⁵. As such, it is also meant to ensure that government employees occupy their positions based on merit and fitness. It is an independent commission composed of one chairman and two commissioners. To ensure the independence of the commission, the commissioners have a fixed term (a single seven-year term) and can be removed from office only through impeachment.

The problems of the government bureaucracy are wide, varied and complex. But no issue has so crystallized the problems of the bureaucracy in recent years as the abuse of the presidential power to appointment.

The Philippine president has the power to appoint approximately 10,000 people to government, including government owned or controlled corporations, and state universities and colleges, according to former chair of the Civil Service Commission, Karina David. More than 3,000 of these appointees cover Career Executive Officers, the core of the managerial and professional ranks in the bureaucracy. Presidential appointments in the executive branch start as high as the secretary and as deep into the bureaucracy as directors. The president has the power to appoint such a large number of personnel because of the

Figure 3

CAREER (1,316,166 or 89%)	NON-CAREER (159,533 or 11%)
1 st level (28%)	Executive (<1%)
2 nd level (70%)	Elective (13%)
3 rd level (1%)	Coterminous (11%)
* Executive (1%)	Casual (62%)
* Highly Specialized (<1%)	Contractual (13%)

Source: David, 2008

⁵ David, 2008

so-called residual powers of the president. Where the constitution is not clear who the appointing power is, the power is assumed to lie with the president.

Because presidential appointees serve at the pleasure of the appointing power, they are not protected by security of tenure and can be removed and/or replaced at the president's whim. Accordingly, large swaths of middle and upper management in the bureaucracy are beholden to the appointing power for their position.

According to David, during her tenure at the CSC the presidential power to appoint has been gravely abused. This is evidenced by the appointment of many non-eligible personnel to the bureaucracy. As of the end of December 2007, of the 222 undersecretaries and assistant secretaries, more than half (56%) are not CES qualified⁶. Therefore they occupy their position on qualifications other than fitness and merit. So grave has this problem become that the Career Executive Service Board, of which David was chair and which oversees the Career Executive Service, issued in March 2006 Resolution 619, a strongly worded resolution that went against the rampant practice of President Arroyo appointing "non-eligibles" to CES positions. Resolution 619 is viewed by many as an admonishment of President Arroyo for her blatant abuse of the power to appoint and for causing demoralization of the bureaucracy because of her politically motivated appointments.

In addition to the appointment of non-qualified personnel throughout the bureaucracy, another problem is the excess number of undersecretaries and assistant secretaries appointed throughout the cabinet. David says there are 81 undersecretaries and assistant secretaries whose existence are not supported

by any law. Most of whom are not qualified to occupy their positions based on merit and fitness.

Two pieces of legislation are contemplated to address this situation. First is the Career Executive System Bill (SB270), which seeks to professionalize the third level of the civil service. Third level covers executive, scientific, artistic, foreign service, technical and academic services of the civil service, of which the executive and managerial services constitute the largest portion. The bill seeks to ensure that only qualified individuals that have been granted Career Executive Officer rank are allowed to occupy positions in the Career Executive System. It seeks to limit the president's discretion in appointing non-Career Executive Officers to the Career Executive System, thereby protecting the professional ranks of the bureaucracy from political appointments. Second is the government compensation and classification bill, which seeks to bring government pay scales closer in line with the private sector in medium sized enterprises.

Questions for candidates on Professionalization of the Bureaucracy:

Would you prioritize the passage of the CES and GCC bills, and how would you protect the bureaucracy from political appointments to ensure appointments and promotions based on fitness and merit? How will you ensure transparency and accountability in your appointments?

Local Government Autonomy

Empowered by the Local Government Code of 1991, local government units are meant to enjoy local autonomy in the running of its local affairs. Recent experience has shown however, how this autonomy (from the national government) can be compromised through the delayed release of the internal revenue allotment. It is widely known that

⁶ *Institutions, Politics and Human Development, 2009*

local governments that are supportive of national leadership have their IRA released to them on a timely basis, while those local governments that are critical typically experience delays in the release of their funds from the national government. The IRA release is supposed to be automatic, however, in these highly politicized times, it has been observed that LGUs supportive of the current administration have no problem receiving their IRA. This has been observed in relief funds as well. In the disaster relief efforts in Bicol after typhoon *Reming* in 2007, it had been observed that local governments there supportive of the current administration received relief goods and funds, while LGUs viewed as being unsupportive got very little, if any at all.

The current administration has used funding as a carrot to reward pliant LGUs, and has withheld funding as a whip to LGUs critical to it. In this case, the release of funding (IRA, relief funding and others) has been used as a weapon to compromise the autonomy of the LGUs.

A related issue to LGU autonomy is the matter of capacity. Many LGUs have become dependent on national government funding but have rarely found ways to raise money locally. Some consider this to be a problem of lack of capacity.

Questions for the candidates on local government autonomy:

How will you work to ensure local government autonomy? How will you ensure the automatic release of the internal revenue allotment for the LGUs?

Justice Reform

The Philippine justice system suffers from many problems. The Action Program for Judicial Reform (APJR), a multi-year action program designed to address the problems of the

judiciary, identified several problems that need to be addressed. These are⁷:

- 1) case congestion and delay;
- 2) budget deficiency;
- 3) politicized system of judicial appointments;
- 4) lack of judicial autonomy;
- 5) human resource development issues;
- 6) dysfunctional administrative structure and operating systems;
- 7) insufficient public information and collaboration with society;
- 8) perceived corruption in the judiciary; and
- 9) perceived limited access to justice by the poor.

The lack of judicial autonomy can, to a great extent, be traced to inadequate funding and the politicization of the appointment process. Without adequate funding, the judiciary is handicapped in its ability to exercise its full independence. Likewise, the proliferation of politically motivated appointments compromises its ability to maintain objectivity and independence as well.

The judiciary, which is the third, independent branch of government, receives roughly less than 1% of the total national budget. This is disproportionately small compared to the vital function it performs. Because of this, the judiciary suffers from poorly paid magistrates resulting in a large number of vacancies in its roster of judges, dilapidated and/or deteriorating facilities, inability to invest in information technology to improve efficiency and case disposal, among many others. The courts have had to turn to international aid agencies and donors to fund almost half of its reforms under the APJR. The second branch of government, the legislature, on the other hand, is about one-fifth the size of the judiciary in terms of personnel, and yet has a

⁷ http://apjr.judiciary.gov.ph/apjr_about.html

budget that is approximately half the size of the judiciary's. Proportionately therefore, the congress receives about 2.5 times the budget the judiciary receives.

The APJR identifies the politicized system of appointments to the judiciary as a major problem afflicting the court system. The gatekeeper for the appointment process to the judiciary is the Judicial and Bar Council. The responsibility for ensuring quality appointments starts with the JBC. Once the JBC submits its shortlist to the president, there is no further vetting or screening process. Therefore, the JBC plays a critically vital role in ensuring quality appointments to the judiciary. The problem of judicial appointments has been noticed by many civil society groups. *Bantay Katarungan*, a justice-focused CSO, the Supreme Court Appointments Watch consortium and, more recently, the Bantay Korte Suprema consortium, have all focused their advocacies on the need to improve the JBC screening process.

Questions for the candidates on judicial reform:

What do you identify as being the biggest problems of the judiciary? How do you propose to address these problems? What will you do to ensure that the judiciary is appropriately funded, commensurate to the vital function it performs? What will you do to ensure a transparent and accountable appointment process to the judiciary, free from political interference?