

Paper for the 26 August 2006 Talk on Corruption
City Budget Office, Iloilo City
1:00 to 5:00 p.m.

NATURE OF CORRUPTION

CAUSES OF CORRUPTION

MEASURES TO FIGHT CORRUPTION

STRENGTHENING RULE OF LAW THROUGH ANTI-CORRUPTION

Evolving Lessons from Recent Philippine Experience

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ROLE - USAID

Five parts of the Presentation:

1. Corruption and Rule of Law in East Asia
* This is just to situate Philippines.
2. Philippines' declining governance indicators
* Here, improvements and decline will be shown.
3. Failure of past Philippine efforts
* Current efforts are not isolated. It is important to look at history so we would not repeat the mistakes.
4. Impact of current reforms and challenges ahead
5. Evolving lessons from Philippine experience

Explaining Corruption

Corruption is a common word. There are many explanations to it: structural, political, economic, social, cultural, rational, etc. Of these explanations, two are particularly persuasive for.

1. Structural explanation/equation
Corruption = Monopoly + Discretion – Accountability

This is a structural explanation offered by Robert Klitgaard: that corruption is the result of monopoly plus discretion minus accountability. *Such monopoly is prevalent in

government. If citizens are unsatisfied, there is no other government to go to. Because of the problem on discretion, there are lots of opportunities for corruption.

2. Rational explanation/equation

$$\text{Corruption} = \text{Rewards} + \text{Opportunities} > \text{Risks} + \text{Penalties}$$

This is the rational explanation: that corruption occurs when perceived probability of rewards and opportunities exceed perceived probability of risks and penalties. Individuals commit corruption because they decide to commit corruption. It's a decision made based on one's calculations.

These two explanations underpin, more or less explicitly, the logic of anticorruption strategies.

Tackling Corruption

Based on the preceding definitions of corruption, tackling corruption may thus take two approaches:

1. *Structural approach:*

An anticorruption strategy based on the structural approach focuses on reducing monopolies and discretionary activities and increasing accountability.

2. *Rational Approach*

An anticorruption strategy based on a rational approach focuses on making corruption a high-risk and low-reward activity.

*e.g. Ombudsman Marcelo is so aggressive in his anti-corruption campaign so that people would think twice before engaging in corrupt practices.

There are, to be sure, other kinds of anticorruption strategies based on different theories of corruption, but Dr. Bolongaita submits that these appear to be the more compelling based on the global experience, the Philippines included.

Basic Types of Corruption

There are two basic types of corruption:

1. State capture/grand corruption

This is the condition when institutions, policies and regulations of the state are subject to purchase by private interests, which involve enormous amounts of ill-gotten wealth. *This involves high amounts and high-ranking officials*

2. Petty/administrative corruption

This involves small amounts for payments of routine public services to be delivered or expedited, or for payoffs for small infractions.

e.g Getting license, etc.

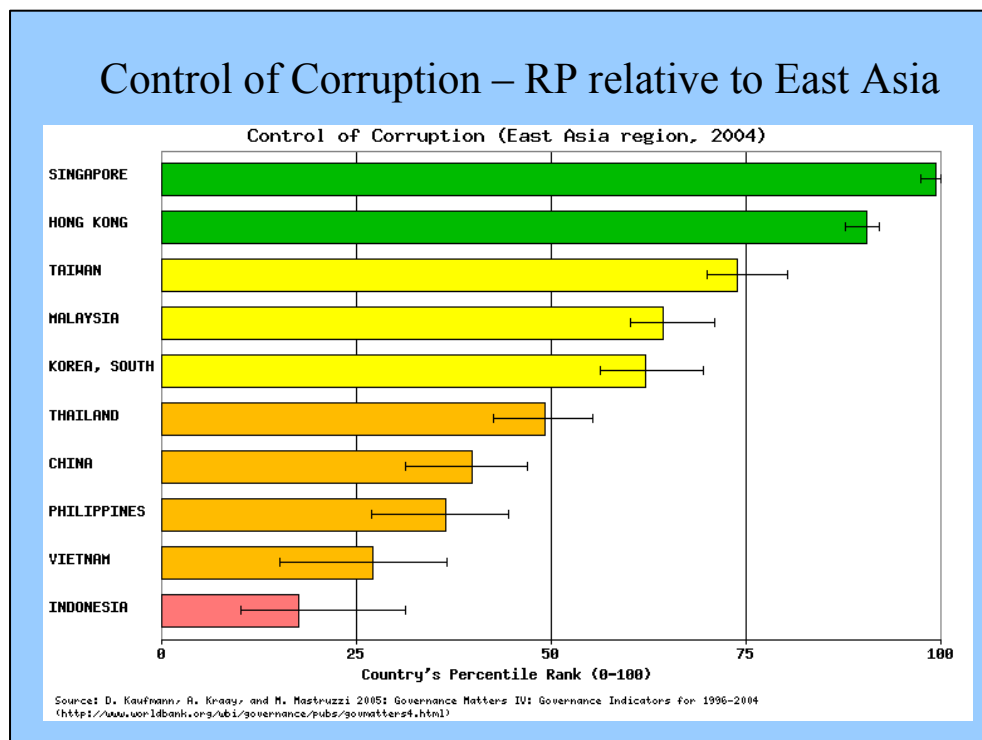
Countries differ in terms of their types and levels of corruption. Broadly speaking, the Philippines suffers medium to high levels of state capture and grand corruption, and relatively high levels of petty/administrative corruption.

Fighting corruption demands a choice as to which one to fight first, or to fight both at the same time. This depends greatly on resources and opportunities available.

*e.g. On the part of the ombudsman, the higher you go, the more impact you make.

The following graphs / charts situate the Philippines, among other countries in the region, in terms of corruption and rule of law.

Control of Corruption – RP relative to East Asia

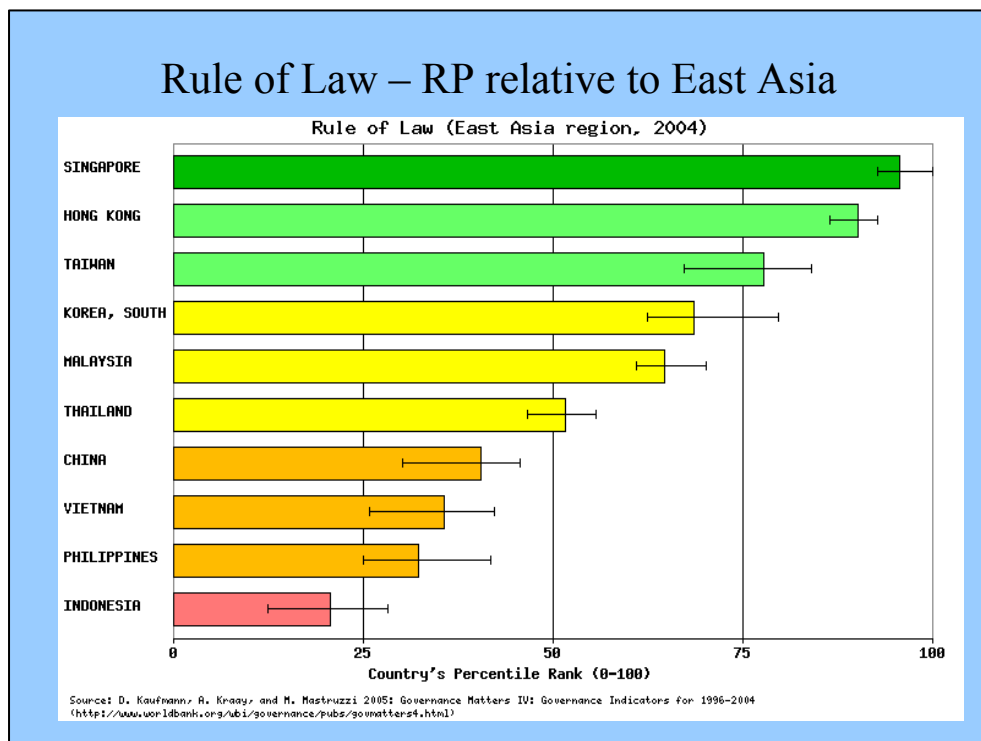


In the World Bank's 2004 governance indicators report, the Philippines' percentile ranking in the control of corruption governance indicator, as this graph shows,

is 36.5, meaning that 63.5% of the countries covered scored higher or are *better than Philippines.* In the region, it is at lower end, faring slightly better than Indonesia and Vietnam. *The Philippines is at the bottom fourth*.

However, there's a lag in the dataset of the WB 2004 governance indicators. The data used are mainly 2002/2003 reports and surveys, meaning that events during the past year are not taken into account. *It is therefore very likely that in the next surveys, if confusion is still unsatisfactory, we can even drop in the succeeding years.*

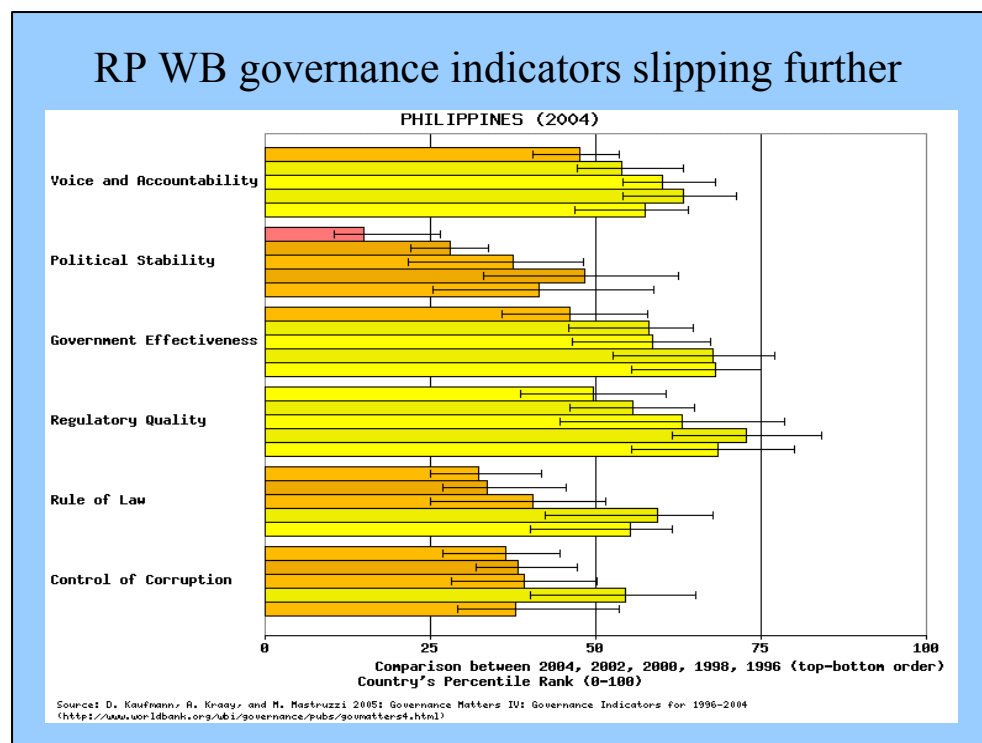
Rule of Law – RP relative to East Asia



In terms of rule of law, as this graph shows, the Philippines' 2004 percentile ranking is 32.4. The rule of law indicator measures the extent to which people have confidence in and abide by the rules of society. These include perceptions of the incidence of crime, the effectiveness and predictability of the judiciary, and the enforceability of contracts. Here the Philippines fares poorer, scoring less than Vietnam.

This is a particularly ironic indicator, considering that the Philippines has more lawyers per capita than other countries. On second thought, that may be the reason for this decline, according to Dr. Bolongaita.

RP WB governance indicators slipping further



As can be seen from the graph, in general, the Philippines' governance indicators have been slipping across the board, not just for control of corruption and rule of law, but also for **regulatory quality** (including measures of the incidence of market-unfriendly policies such as price controls or inadequate bank supervision, as well as perceptions of the burdens imposed by excessive regulation in areas such as foreign trade and business development), **government effectiveness** (responses on the quality of public service provision, the quality of the bureaucracy, the competence of civil servants, the independence of the civil service from political pressures, and the credibility of the government's commitment to policies), **political stability** (perceptions of the likelihood that the government in power will be destabilized or overthrown by possibly

unconstitutional and/or violent means, including domestic violence and terrorism), and **voice and accountability** (measuring various aspects of the political process, civil liberties, political and human rights, measuring the extent to which citizens of a country are able to participate in the selection of governments).

Of these indicators, it is corruption that is arguably most critical, as it cuts across all dimensions in a fundamental way. Or as the WB has declared, it is the single greatest obstacle to economic development.

Long history of RP flawed executive-led efforts

Agency	President	Period	Duration
1. Integrity Board	Elpidio Quirino	1950	6 months
2. Presidential Complaints and Action Committee	Ramon Magsaysay	1955 - 1958	4 years and 7 months
3. Presidential Committee on Administrative Performance and Efficiency	Carlos Garcia	1958 - 1961	2 years and 5 months
4. Presidential Anti-Graft Committee	Carlos Garcia	1960 - 1961	1 year and 1 month
5. Presidential Anti-Graft Committee	Diosdado Macapagal	1962 - 1966	4 years
6. Presidential Agency on Reforms in Government Office	Ferdinand Marcos	1966	8 months
7. Presidential Complaints and Action Office	Ferdinand Marcos	1966 - 1967	1 year
8. Presidential Agency on Reforms and Government Operations	Ferdinand Marcos	1967 - 1970	2 years and 4 months
9. Complaints and Investigation Office	Ferdinand Marcos	1970 - 1986	16 years
10. Public Ethics and Accountability Task Force	Corazon Aquino	1986 - 1988	2 years
11. Presidential Commission on Good Government	Corazon Aquino	1986 -	15 years
12. Presidential Commission Against Graft and Corruption	Fidel Ramos	1994 - 2001	6 years
14. Inter-agency Anti-Graft Coordinating Council	Joseph Estrada	1999 - 2000	2 years
15. Presidential Anti-Graft Commission	Macapagal-Arroyo	April 2001 to date	

Source: Eric Batalla.

9

The Philippines certainly cannot be faulted for not trying, or appearing to try to fight corruption. Since its declaration as an independent state in 1945, the executive

branch has created 15 presidential anticorruption bodies, as the table shows, beginning with an Integrity Board in 1950 to the current Presidential Anti-Graft Commission under President Macapagal-Arroyo.

Long history of RP anticorruption legislative efforts

Long history of RP anticorruption legislative efforts	
1987 Constitution – Article XI: Accountability of Public Officers	
Republic Act No. 6770 – The Ombudsman Act of 1989	
Republic Act No. 3019 – The Anti-Graft and Corrupt Practices Act	
Republic Act No. 1379 – An Act Declaring the Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee	
Republic Act No. 6713 – Code of Conduct and Ethical Standards for Public Officials and Employees	
Revised Penal Code (Title II) – Crimes Against the Fundamental Laws of the State	
Revised Penal Code (Title VII) – Crimes Committed by Public Officers	
Presidential Decree 749 – Granting Immunity from Prosecution to Givers of Bribes and other Gifts and to their Accomplices in Bribery and other Graft cases against Public Officers	
Republic Act 7080 – An Act Defining and Penalizing the Crime of Plunder	
Republic Act 6190 – The Anti-Money Laundering Act	10

There is also no dearth of laws to combat the problem, as you can see in this slide. Prescribed penalties are actually quite severe for big-ticket corruption. Corruption over

P50 million can be prosecuted as a capital offense. But the laws have evidently not been implemented.

* It must be noted though that legislation is necessary but not sufficient.

2002/03: a critical juncture for RP?

In 2002 and 2003, the Philippines (in Dr. Bolongaita's view) entered a critical juncture. (*In a nation's history, there are moments in time wherein decisions of government can break or unbreak its trajectory*) Certain decisions were taken by the political leadership, with mixed, even mixed-up, motivations, that have turned out to be potentially among the most propitious in recent Philippine history. Among these are:

- Transition at the Ombudsman, appointment into office of Simeon Marcelo in October.
 - He helped secure biggest repatriation of ill-gotten wealth in history (\$680 million).
- Creation of Revenue Integrity Protection Service (RIPS) in DOF in November 2003; establishment of Transparency Group (TG) at the Office of the President in 2003.
- Lifestyle checks pursued by Ombudsman, RIPS, and TG against officials of high-risk agencies (particularly BIR, BOC, DPWH, and later military).
- Concerted action to undertake results-oriented campaign to make corruption a high-risk and low-reward activity.

Rapid organizational growth and alliance-building

The preceding concerted actions were taken even as the Ombudsman engaged in rapid organizational expansion and capacity-building:

- Increase in Ombudsman investigators
 - 135% increase in 2004; further 100% expansion for 2005
 - *The plan is to have 500 investigators
 - USAID provided training support in basic and advance investigation skills.
- Increase in Ombudsman prosecutors
 - 100% increase in 2004; further 100% expansion in 2005
 - USAID provided training support in basic and advance trial advocacy skills

- Solana Covenant among independent constitutional bodies (Ombudsman, COA, CSC)
This is formed among three constitutional bodies that resulted, among others, in a division of labor in investigation of administrative complaints between Ombudsman and CSC, cooperation in fraud investigation between Ombudsman and COA.
- Increased congressional appropriation for Ombudsman
 - 45% increase in 2005
 - This is the first significant increase in its history.

RP Making corruption a high-risk activity (1)

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Increased conviction rates in the Sandiganbayan of cases prosecuted by the Ombudsman.

2003	2004	2005 (1st Q)
13%	24%	42%

13

The effects of the decisions and actions taken in 2002/03 to date have been notable. For example, the conviction rate of the Ombudsman in the Sandiganbayan has increased from a low of 13% in 2003 to 42% in 1st quarter of 2005.

*If at least reach 50% could be reached, people will really think twice before engaging in a corrupt practice.

The conviction rate is expected to grow higher for the rest of 2005 and onwards because the cases that will be tried will increasingly be those exclusively prosecuted by the current Ombudsman. Cases decided in 2003 were those filed by the former Ombudsman.

RP Making corruption a high-risk activity (2)

Another notable result towards making corruption a high-risk activity is that more high-ranking officials in high-risk agencies have been suspended and dismissed by the Ombudsman in past two years than his predecessors combined. Among these are shown below:

RP Making corruption a high-risk activity (2)

More high-ranking officials in high-risk agencies suspended and dismissed by Ombudsman in two years than predecessors combined (examples of national/military officials below).

Dismissed from Office (and criminally charged)	Suspended while under investigation	Military officials under prosecution
<ul style="list-style-type: none"> • BIR Asst. Commissioner • BIR Revenue Officers • BOC Dep. Commissioner • BOC Division Chief • BOC Operations Officer • PPA District Manager • DPWH Undersecretary • BIR Revenue Collection Officer 	<ul style="list-style-type: none"> • BOC Deputy Commissioners • BOC Division Chief • BOC Human Resources Chief • BOC Special Deputy Collector • BOC Cashier's Office Acting Chief • BOC Administrative Officer • BIR Chief Revenue Officer • PA Colonel 	<ul style="list-style-type: none"> • General Garcia • Former AFP Chief of Staff • PAF Brigadier Generals (2) • PAF Colonel • PAF Major • PA Colonel

Source: Office of the Ombudsman.

14

B

RP anticorruption impact (1)

The impact of these aggressive investigations and prosecutions are arguably being felt, notably in reducing corruption in tax payments. Since 2000, SWS has been running its enterprise surveys, interviewing business managers if they have been asked for a bribe for certain services, including tax payments. In 2000, 52% of those interviewed in NCR said yes. In 2003, at the start of the lifestyle checks campaign, the number dropped to 43%. In 2005, it is now 30% (the coverage is NCR – including Cavite, Laguna, Batangas, and Cebu, Davao, Cagayan de Oro, and Iligan). To illustrate this better, a chart is shown in the next page.

* The question to ask is what accounts to the decline? If trend analysis is done, it will really continue to go lower. The thinking is that it is riskier now than before.*

RP anticorruption impact (2)

1. More petitions for civil forfeiture

- Assets of accused are being frozen and seized

2. More cases against tax evasion and smuggling filed against public officials and private businessmen

- Run After Tax Evaders (RATE) and Run After The Smugglers (RATS) campaign

3. Improving revenue collections

- As a result of RATE and RIPS, BIR collections in first five months of the year, up 14.6% year-on-year. April recorded the highest monthly collection in BIR history.

RP anticorruption impact (3)

Another effect is that the Ombudsman has increased its credibility. Its net sincerity rating in fighting corruption has risen sharply since 2000, which was at a low of -5 to a high of +28 in 2004. It has dipped, however, in 2005 to +22, together with the generalized slide of virtually all government agencies. The public appears to be recovering a sense of skepticism about what's going on.

RP anticorruption impact (3)

Net sincerity rating of the Ombudsman has sharply improved

2000	2001	2003	2004	2005
-5	+7	+21	+28	+22

Source: SWS 5th Enterprise Survey.

17

RP anticorruption impact (4)

In terms of trust, the Ombudsman is now seen as the most trusted government agency when it comes to reporting corruption. It has finally overtaken the category “cannot trust any”. That’s the good news. The bad news is that only 24% say so. As can be seen in the table below, other government agencies that should be repositories of trust are faring badly.

RP anticorruption impact (4)

Growing public credibility of Ombudsman

“If a company in your sector is harassed by corrupt government officials, to which gov’t agency can it trust to bring a complaint?”

	<u>2003</u> (NCR)	<u>2004</u> (NCR/C/D)	<u>2005</u> (5 areas)
Ombudsman	16%	22%	24%
Cannot trust any	22	23	23
Municipality/city gov’t	6	3	15
Office of the President	12	8	7
DOJ	12	7	6
Sandiganbayan	5	3	5
NBI	7	4	5
DTI	6	5	4
DILG	5	3	4
PAGC	5	5	4

18

Even as the Ombudsman, DOF, PAGC and other agencies are working on unprecedented bases at improving detection, investigation and prosecution of corruption, they are now facing the roadblock of the judiciary.

Congestion in Sandiganbayan

- About 1800 pending cases
- Average trial completion 6 years and 10 months
- Currently hearings are being scheduled about 1 hearing every 3 months
- Average number of hearings per case 21 hearings

This means, if current trends continue, most of Mr. Marcelo’s cases will be decided only during his last year in office in 2009. Such delays will surely impact on his batting average, as the longer a trial take, the more likely it will be that the prosecution will lose because witnesses lose heart, documents disappear, prosecutors change, etc.

Unblocking judicial obstacles

There are now several efforts to address this judicial obstacle:

- Bill to expand Sandiganbayan (triple its size) and enhance efficiency. (*by Mar Roxas*)
- Bill to streamline operations of Sandiganbayan (allowing justices to hear minor cases individually not by division).
- Installation of caseflow management software in the court

Other pending legislative initiatives

- Bill of whistleblowing promotion and protection
- Giving Ombudsman a percentage of assets forfeited
- Allowing Ombudsman to hire private lawyers to help in prosecution

Other ongoing reforms

Other ongoing reforms are:

- Ombudsman and PAGC application of IDR to 16 high-risk agencies (including AFP and DND).
- Ombudsman and DOF social advertising campaign to foster greater public participation in lifestyle checks (to be launched in two months)
- Ombudsman action center for rapid response to complaints and entrapment operations (also to be launched in two months time)

8 Evolving Lessons

Based on my analysis of the situation, there are at least 8 lessons that may be deduced from the Philippine experience that may be applicable to other countries similarly situated in terms of medium to high-levels of state capture/grand corruption as well as relatively high levels of petty/administrative corruption.

1. In medium- to high-capture countries (*like the Philippines*), promising entry points for reforms are through non-executive actors. * If we are committed, we can ask help from non-executive allies. In high-risk agencies, reformers are outnumbered. This point is important for us. We should learn from the experiences of other countries as well.

2. Focus first state capture/grand corruption – because change at the top cascades. *Given limited resources and opportunities allowed, it is more cost-effective.

3. Begin with deterrence – behavior adjusts quickly to punishments and payoffs. *Behavior can adjust quickly to punishments and pay-offs

4. Coalition matters – the broader, the better to shift balance of forces.
Safety and strength in numbers.

5. Resources count – the more, the better to even the match. *Anti-corruption is really a war, zero-sum game; very encouraging that Ombudsman and PAGC have been receiving grants*
Donors matter, because of their resources and credibility.

6. Follow and seize the money – more for the state is less for the enemy.
Asset freezing, civil forfeiture

7. Pay attention to systems reforms.
Fewer opportunities, fewer corruption.

8. Get the story out
Media can magnify public support, utterly indispensable to anticorruption.