

Overall Score:

67 - Weak

Legal Framework Score:

87 - Strong

Actual Implementation Score:

49 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁶⁹Civil Society Organizations

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

67

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

YES | NO

References:

The right of the people to form unions, associations, or societies for purposes not contrary to law is covered in the Constitution, Art. III, Sec.8.

www.lawphil.net

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

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

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

YES | NO

References:

There is no law against it.

Transparency International National Integrity Systems Country Study Report: Philippines 2006, by Gabriella Quimson (www.transparency.org): page 31: Civil society is not regulated by law.”

www.lawphil.net

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

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

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

YES | NO

References:

There is no law against it.

Transparency International National Integrity Systems Country Study Report: Philippines 2006, by Gabriella Quimson (www.transparency.org): page 31: Civil society is not regulated by law.”

www.lawphil.net

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

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

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

83

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

Comments:

The TI report says, page 31: Civil society is not regulated by law.”

References:

Transparency International National Integrity Systems Country Study Report: Philippines 2006, by Gabriella Quimson (www.transparency.org).

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, Quezon City.

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

75:

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

25:

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

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

References:

Transparency International National Integrity Systems Country Study Report: Philippines 2006, by Gabriella Quimson (www.transparency.org), Executive Summary, page 8: Civil society in the Philippines is among the most vibrant worldwide.”

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, Quezon City.

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

75:

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

25:

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

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

YES | NO

References:

Transparency International National Integrity Systems Country Study Report: Philippines 2006, by Gabriella Quimson (www.transparency.org), has no mention of any CSO closed by government.

Vincent Lazatin, executive director of Transparency and Accountability Network, said he is not aware of any such closing. (Interview, Sept. 11, 2007, Quezon City.)

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

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

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

100

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

YES | NO

References:

Transparency International National Integrity Systems Country Study Report: Philippines 2006, by Gabriella Quimson (www.transparency.org), has no mention of such imprisonment.

Vincent Lazatin, executive director of Transparency and Accountability Network, is not aware of any such imprisonment. (Interview, Sept. 11, 2007, Quezon City.)

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

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to

include any abuses of power, not just the passing of bribes. Imprisoned” is defined here as detention by the government lasting more than 24 hours.

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

YES | NO

Comments:

There are many reports of abductions of activists linked with leftist and with political oppositionist groups, but it is not clear that any of these cases was specifically linked to work on corruption.

References:

Transparency International National Integrity Systems Country Study Report: Philippines 2006, by Gabriella Quimson (www.transparency.org), has no mention of any civil society activist working on corruption being harmed.

Vincent Lazatin, executive director of Transparency and Accountability Network, said he is not aware of any civil society activist working on corruption being harmed. (Interview, Sept. 11, 2007, Quezon City.)

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

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

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

YES | NO

Comments:

There are many reports of killings of activists linked with leftist and with political oppositionist groups, but it is not clear that any of these cases was specifically linked to work on corruption.

References:

Transparency International National Integrity Systems Country Study Report: Philippines 2006, by Gabriella Quimson (www.transparency.org), has no mention of any civil society activist working on corruption being killed.

Vincent Lazatin, executive director of Transparency and Accountability Network, said he is not aware of any civil society activist working on corruption being killed. (Interview, Sept. 11, 2007, Quezon City.)

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

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

corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

88

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

YES | NO

References:

Freedom of association, Constitution, Art. III, Sec.8.

www.lawphil.net

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

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

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

100 | 75 | 50 | 25 | 0

Comments:

The DOLE website has statistics on trade unions.

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Department of Labor and Employment (DOLE) website, <http://www.dole.gov.ph>

100: Trade unions are common and are an important part to 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.

I-2. Media

5. Are media and free speech protected?

100

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

YES | NO

References:

No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances. Constitution, Art.III, Sec.4.

www.lawphil.net

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

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

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

YES | NO

References:

No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances. Constitution, Art. III, Sec. 4.

www.lawphil.net

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.

6. Are citizens able to form print media entities?

94

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

100 | 75 | 50 | 25 | 0

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, Quezon City.

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

75:

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

25:

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

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

YES | NO

References:

Print media need no license.

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

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

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

100 | 75 | 50 | 25 | 0

Comments:

Print media need no license.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, Quezon City.

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

75:

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

25:

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

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

100 | 75 | 50 | 25 | 0

Comments:

Print media need no license.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, Quezon City.

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

75:

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

25:

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

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

56

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

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

Comments:

Establishment of a broadcast entity requires a legislative franchise.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, Quezon City.

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

75:

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

25:

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

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

YES | NO

Comments:

What a media entity requires is not a license granted by an administrative body, but a FRANCHISE granted by a special law, approved by Congress and signed by the President. If a franchise-bill is introduced, but the legislature does not pass it, then the media-organizers can try again to introduce a new bill for the purpose. Although such a new bill would not be termed an appeal, it is in effect an appeal to a new Congress. The failure of the old bill would not serve like a juridical precedent to forever deny passage of a new bill.

If an existing media-franchise is REVOKED, then the media-entity has recourse to the courts if it feels that the revocation is unjust.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

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

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

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

100 | 75 | 50 | 25 | 0

Comments:

It usually takes several months to get a bill for a broadcast franchise passed by Congress.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, 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.

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

100 | 75 | 50 | 25 | 0

Comments:

Getting a bill for a broadcast franchise passed by Congress requires a visit to the national capital.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, Quezon City.

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

75:

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

25:

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

8. Can citizens freely use the Internet?

100

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

100 | 75 | 50 | 25 | 0

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, Quezon City.

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

75:

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

25:

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

8b. In practice, the government does not censor citizens creating content online.

100 | 75 | 50 | 25 | 0

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, Quezon City.

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.

9. Are the media able to report on corruption?

83

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

YES | NO

References:

Penal Code, Art.361: In every criminal prosecution for libel, the truth may be given in evidence to the court and if it appears that the matter charged as libelous is true, and, moreover, that it was published with good motives and for justifiable ends, the defendants shall be acquitted.”

www.lawphil.net

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

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

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

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

Comments:

There is self-censorship in government media and in some private media.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, Quezon City.

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

75:

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

25:

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

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

Comments:

This refers to private media publishing.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, Quezon City.

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

75:

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

25:

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

10. Are the media credible sources of information?

45

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

YES | **NO**

Comments:

The disclosure would only be required of publicly listed companies. Non-public corporations also are supposed to inform the Securities and Exchange Commission, in a General Information Sheet (GIS), of changes in ownership from the original incorporators, but they rarely do so. Proprietorships are not required to file a GIS.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

YES: A YES score is earned if print media companies are required by law to 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 disclosed.

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

YES | NO

Comments:

Broadcast entities would have to disclose their ownership in order to acquire a legislative franchise. According to Yvonne Chua (Jan 8, 2008 Quezon City interview), there are cases where a franchisee issues a sub-franchise (for example, for operating a radio station in a provincial area) to another company, without publicly disclosing the ownership of the sub-franchisee.

References:

The Constitution, Art XVI, Sec 1 (1), requires ownership of media entities to be entirely Filipino. The Corporation Code (B.P. 68, Sec. 14) requires disclosure of the ownership of corporations to the Securities and Exchange Commission. Proprietorship must be registered with the Department of Trade and Industry. See www.lawphil.net

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now Professor of Mass Communications, University of the Philippines), September 12, 2007, and Jan. 8, 2008 Quezon City.

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

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

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

100 | 75 | 50 | 25 | 0

References:

Center for Media Freedom and Responsibility Monitor of Media Coverage of the 2007 Elections, 2007 (www.cmfr-phil.org)

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

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:

This is a big improvement from the 2004 election.

References:

Center for Media Freedom and Responsibility Monitor of Media Coverage of the 2007 Elections, 2007 (www.cmfr-phil.org)

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines).

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

References:

Center for Media Freedom and Responsibility Monitor of Media Coverage of the 2007 Elections, 2007 (www.cmfr-phil.org)

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

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.

11. Are journalists safe when investigating corruption?

0

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

YES | **NO**

Comments:

Alex Adonis, broadcaster of Bombo Radyo, was jailed for libel against Davao Rep. Prospero Nograles. The Committee to Protect Journalists, Reporters Without Borders, the International Federation of Journalists and the World Association of Community Radio Broadcasters condemned the incident and called for the immediate release of Adonis.

References:

Broadcaster lands in jail," by Jose Bimbo F. Santos, PJR Reports, April 2007, pages 32-34.

Center for Media Freedom and Responsibility Website: <http://www.cmfr.com.ph>

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

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:

I assume that not all attempts to kill journalists were successful; these attempts may be classified as assault.

References:

Transparency International National Integrity Systems Country Study Report: Philippines 2006, by Gabriella Quimson (www.transparency.org), page 30: "Because the media is a watchdog against corruption, politicians have tried to muzzle it through regulations. Even more seriously, its enemies have resorted to murdering journalists."

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

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

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

YES | **NO**

Comments:

TI says, p.30: "Because the media is a watchdog against corruption, politicians have tried to muzzle it through regulations. Even more seriously, its enemies have resorted to murdering journalists." The Philippines is Asia's most dangerous country for reporters. It cites the RSF survey as reporting that 25 have been killed in corruption-related slayings since 2004.

References:

Transparency International National Integrity Systems Country Study Report: Philippines 2006, by Gabriella Quimson (www.transparency.org).

Asia News Report Survey 2006, The Annual Report Asia 2005, Reporters Sans Frontieres (RSF), Paris 2005.

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.

68

I-3. Public Access to Information

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

67

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

YES | NO

References:

Constitution, Art.III, Sec.7. Constitutional right of the people to information on matters of public concern. 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.

www.lawphil.net

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

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

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

YES | NO

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University, Sept. 14, 2007. Citizens have the right to petition the Supreme Court for redress of any unconstitutional act.

Republic Act 6713, Code of Conduct and Ethical Standards for Public Officials and Employees”, 1989: Sec. 5(a) specifies acting promptly on letters and requests as an obligation of such officials and employees.

www.lawphil.net

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:

There is no central institution to accept such requests. A citizen must direct such a request to the agency concerned. If the request is denied then the citizen's recourse is to seek judicial action. Only a few, (definitely a minority), have set-up specific Public Information Offices of their own.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, Quezon City.

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.

13. Is the right of access to information effective?

40

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

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

Comments:

The full report of the Armed Forces of the Philippines' Fact-Finding Board, headed by Vice-Admiral Mateo Mayuga, on the alleged participation of several generals in the 2004 election scandal due to the exposure of wiretapped conversations allegedly between Commission on Elections official V. Garcillano and President Gloria Macapagal-Arroyo is still undisclosed. Farolan says: When the Mayuga Report on the 'Hello Garci' controversy was completed, its summary [two pages] — not the whole report — was released under the most unusual circumstances. No copies of the summary were made available to the media and today it remains one of the most closely guarded documents in AFP history." The summary only stated that no witnesses were found who had direct knowledge of participation of the generals in election fraud.

References:

What is happening to the Armed Forces?" by Ramon J. Farolan, Philippine Star, Aug. 13, 2007, page A15.

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, Quezon City.

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

75:

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

25:

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

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

100 | 75 | 50 | 25 | 0

Comments:

Cost is not being used as a means to restricting information. All those I have consulted agree that, as long as access is granted, photocopying cost is all that needs to be shouldered.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, 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.

75:

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

25:

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

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

100 | 75 | 50 | 25 | 0

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, Quezon City.

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

75:

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

25:

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

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

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

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City

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

75:

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

25:

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

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

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

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

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

75:

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

25:

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

Category II. Elections

II-1. ⁵⁷Voting & Citizen Participation

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

References:
Constitution, Art. V.

www.lawphil.net

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

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

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

YES | NO

References:

Constitution, Art. VI (Legislature), VII (Executive), and X (Local Government).

www.lawphil.net

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.

15. Can all citizens exercise their right to vote?

75

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

100 | 75 | 50 | 25 | 0

Comments:

In the 2004 election, voters in a few Mindanao towns were prevented from voting by local warlords.

References:

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, Quezon City.

Interview with Atty. Marlon Manuel, Executive Director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; September 14, 2007, Quezon City.

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.

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Social Weather Stations, "The 2007 Surveys of Citizens and Pollworkers on Electoral Reform," presentation for the Civil Society Organizations' Post-Election Summit, organized by the Ateneo School of Government, Sept. 5-7, 2007, Discovery Suites, Ortigas Center, Pasig City.

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:

Very good so far, but the current administration was threatening not to hold elections scheduled for 2007. The lower House recently passed a bill to postpone the October 2007 barangay (village) elections for one year; it remained to be seen if the Senate will pass a counterpart bill.

References:

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, Quezon City.

Interview with Atty. Marlon Manuel, Executive Director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; September 14, 2007, Quezon City

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?

85

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

YES | NO

References:

Constitution, Art III, Bill of Rights

www.lawphil.net

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:

Literacy in the Philippines is extremely high — at least 90%. The constitutional requirement sees to it that the few illiterate are still allowed to vote. No one has bothered to challenge the election code requirements for candidates as unconstitutional. There are simply no illiterate persons who run for elective office.

References:

The right of suffrage (Constitution, Art. V) includes both the right to vote and the right to be voted for. The Constitution stipulates that there should be no literacy, property or other substantive requirement set for suffrage.

www.lawphil.net

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

References:

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, Quezon City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

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

References:

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, Quezon City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

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.

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

References:

Transparency International National Integrity Systems Country Study Report: Philippines 2006, by Gabriella Quimson (www.transparency.org).

Interview with Yvonne Chua, professor of mass communications, University of the Philippines, Sept. 12, 2007, Quezon City.

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.

II-2. Election Integrity

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

100

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

YES | NO

References:

The Commission on Elections is an independent commission established by the Constitution, Article IX, Part C., Sections 1-11. (www.lawphil.net)

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 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.

18. Is the election monitoring agency effective?

50

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

YES | NO

References:

Constitution, Art. IX-A

www.lawphil.net

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:

The statement of Archbishop Lagdameo, President of the Catholic Bishops Conference of the Philippines, calls for a full revamp of the Commission of Elections.

The PPCRV statement calls for good replacements of the Comelec chairman and 2 commissioners who will retire in Feb 2008; also for thorough housecleaning of rank and file.

The TI Report, page 22, states: The 2005 'Hello Garci' tape scandal, in which President Arroyo was caught talking to Comelec Commissioner Virgilio Garcillano during the vote-counting for the presidential election in 2004, exposes the endemic and

pervasive nature of corruption within the commission.”

References:

Angel N. Lagdameo, D.D., BCP Pastoral Statement on the 2007 National Elections.” July 9, 2007. <http://www.adzu.edu.ph/07/news/offcampusnews.php?id=658>.

Parish Pastoral Council for Responsible Voting, “PPCRV Recommendations After Elections 2007,” Aug. 23, 2007. <http://www.ppcrv.org/main/news.php>

Transparency International National Integrity Systems Country Study Report: Philippines 2006, by Gabriella Quimson (www.transparency.org),

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:

It is common knowledge that the Comelec has had a professional full-time staff for many decades. There has been no change in this.

References:

Interview with Telibert Laoc, former executive director of the National Movement for Free Elections (2003).

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University, Sept. 14, 2007

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

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

Social Weather Stations Librarian Jeanette Ureta , Sept. 14, 2007, Quezon City.

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:

The most notorious anomaly in 2007 was the failure in the province of Maguindanao of election officials, headed by provincial election supervisor Lintang Bedol, to provide the authorized citizens' arm, NAMFREL, with its copies of election returns. This failure did not occur in any other province. The 12th winning slot in the senatorial elections hinged on the results of Maguindanao; it went to the administration party on account of the election returns submitted, after a very long delay, by Bedol. Bedol at first claimed that he had lost the returns, but later claimed he found them; he was not penalized by Comelec.

References:

CODE-NGO Bantay Canvass Report on the May 2007 Elections – <http://www.codengo.org/main.php3?action=displayarticle&articleid=654>.

Lintang Bedol free again. Comelec does not confront him." By Nikko Dizon, Jocelyn Uy, Inquirer, July 4, 2007. http://newsinfo.inquirer.net/inquirerheadlines/nation/view_article.php?article_id=74667

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.

19. Are elections systems transparent and effective?

63

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

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

Comments:

There were no significant changes in voter registration procedures from 2006 to 2007.

References:

Social Weather Stations national survey, June 2006: Only 43% of adults are aware that the Comelec allows voters to register at any time, not only on a special registration day.

Social Weather Stations, "The 2007 Surveys of Citizens and Pollworkers on Electoral Reform," presentation for the Civil Society Organizations' Post-Election Summit, organized by the Ateneo School of Government, Sept. 5-7, 2007, Discovery Suites, Ortigas Center, Pasig City.

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 ghostⁿ voting by non-existent voters is common.

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

YES | NO

References:

Batas Pambansa 881- OMNIBUS ELECTION CODE OF THE PHILIPPINES, 1985 .
www.lawphil.net/statutes/bataspam/bp1985/bp_881_1985.html

www.lawphil.net

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

References:

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, Quezon City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

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:

The media report is about a teacher and a poll watcher, both women, who died in a school torched by policemen in the province of Batangas, just as they were finishing their duties in the May 14, 2007, election. They were given the Order of the Golden Award by the president.

The rating of 25 is midway between a 50 for the military and a zero for the police.

References:

Dead teacher, poll watcher given highest honors,” by Juliet Labog-Javellana, Philippine Daily Inquirer, Aug. 9, 2007.

Social Weather Stations, “The 2007 Surveys of Citizens and Pollworkers on Electoral Reform,” presentation for the Civil Society Organizations’ Post-Election Summit, organized by the Ateneo School of Government, Sept. 5-7, 2007, Discovery Suites, Ortigas Center, Pasig City.

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

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

75:

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

25:

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

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

YES | NO

References:

Batas Pambansa 881- OMNIBUS ELECTION CODE OF THE PHILIPPINES, 1985 .
www.lawphil.net/statutes/bataspam/bp1985/bp_881_1985.html

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:

Observers are free to operate in places where they are allowed to go; there, they are much appreciated by voters and by pollworkers. However, the observers are prevented from going to areas such as Maguindanao, where the worst anomalies happen.

References:

Social Weather Stations, "The 2007 Surveys of Citizens and Pollworkers on Electoral Reform," presentation for the Civil Society Organizations' Post-Election Summit, organized by the Ateneo School of Government, Sept. 5-7, 2007, Discovery Suites, Ortigas Center, Pasig City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University, Sept. 14, 2007.

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.

71 II-3. Political Financing

20. Are there regulations governing political financing?

43

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

YES

NO

Comments:

The Omnibus Election Code restricts EXPENDITURES by a political party but is silent on CONTRIBUTIONS to the party.

References:

Batas Pambansa 881- OMNIBUS ELECTION CODE OF THE PHILIPPINES, 1985 .
www.lawphil.net/statutes/bataspam/bp1985/bp_881_1985.html

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

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

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

YES | **NO**

Comments:

The Omnibus Election code restricts EXPENDITURES by a political party but is silent on CONTRIBUTIONS to the party.

References:

Batas Pambansa 881- OMNIBUS ELECTION CODE OF THE PHILIPPINES, 1985 .
www.lawphil.net/statutes/bataspam/bp1985/bp_881_1985.html

YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is 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/candidates in a discriminatory manner.

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

YES | **NO**

Comments:

The Omnibus Election code restricts EXPENDITURES by a political party but is silent on CONTRIBUTIONS to the party.

References:

Batas Pambansa 881- OMNIBUS ELECTION CODE OF THE PHILIPPINES, 1985 .
www.lawphil.net/statutes/bataspam/bp1985/bp_881_1985.html

YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

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

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

YES | NO

Comments:

Limits are set on spending for elections specifically. The limits are on spending of the candidate (PHP 1.50 per voter) and on spending of the party (also PHP 1.50 per voter). There are no limits on political party spending for other purposes besides elections. There are no limits on donations, whether by an individual or a corporation, to a political party.

References:

Batas Pambansa 881- OMNIBUS ELECTION CODE OF THE PHILIPPINES, 1985, Sec. 100-101.
www.lawphil.net/statutes/bataspam/bp1985/bp_881_1985.html

YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

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

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

YES | NO

References:

Batas Pambansa 881- OMNIBUS ELECTION CODE OF THE PHILIPPINES, 1985 .
www.lawphil.net/statutes/bataspam/bp1985/bp_881_1985.html

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

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

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

YES | NO

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University, Sept. 14, 2007.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. 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 and candidates or if such requirements exist but allow for candidates or parties to self-audit.

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

YES | NO

References:

The Commission on Elections, created by the Constitution, Art. IX, Part C. One of its functions is to oversee election financing, as described in the Omnibus Election Code, BP881, 1985. (www.comelec.gov.ph/laws/oec.html)

www.lawphil.net

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 political financing. 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.

21. Are the regulations governing political financing effective?

0

21a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

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

Comments:

There are no such limits.

References:

Interview with Calixto Chikiamco, member of the campaign team of a 2004 presidential candidate, Sept. 15, 2007, Makati City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University, Sept. 14, 2007.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or 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 candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or 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 candidate or party; unregulated loans to candidates or 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 candidate or 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.

21b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

Comments:

There are no such limits.

References:

Interview with Calixto Chikiamco, member of the campaign team of a 2004 presidential candidate, Sept. 15, 2007, Makati City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University, Sept. 14, 2007.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or 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 candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making to donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or 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 a candidate or 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.

21c. 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:

Chikiamco: No one has ever been prosecuted for a violation.”

References:

Interview with Calixto Chikiamco, member of the campaign team of a 2004 presidential candidate, Sept. 15, 2007, Makati City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University, Sept. 14, 2007.

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.

21d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

This would be the role of the Commission of Elections, but it has never done it.

References:

Interview with Calixto Chikiamco, member of the campaign team of a 2004 presidential candidate, Sept. 15, 2007, Makati City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University, Sept. 14, 2007.

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

75:

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

25:

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

21e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

This would be the role of the Commission of Elections but it has never done it.

References:

Interview with Calixto Chikiamco, member of the campaign team of a 2004 presidential candidate, Sept. 15, 2007, Makati City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University, Sept. 14, 2007.

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

75:

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

25:

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

21f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

Comments:

This would be the role of the Commission of Elections, but it has never done it.

References:

Interview with Calixto Chikiamco, member of the campaign team of a 2004 presidential candidate, Sept. 15, 2007, Makati City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University, Sept. 14, 2007.

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

75:

50: Political party and candidate 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 or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party and candidate 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.

22. Can citizens access records related to political financing?

0

22a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with Calixto Chikiamco, member of the campaign team of a 2004 presidential candidate, Sept. 15, 2007, Makati City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University, Sept. 14, 2007.

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

75:

50: Political parties and 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: Political parties and 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.

22b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no access at all.

References:

Interview with Calixto Chikiamco, member of the campaign team of a 2004 presidential candidate, Sept. 15, 2007, Makati City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University, Sept. 14, 2007.

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.

22c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no access, at any price.

References:

Interview with Calixto Chikiamco, member of the campaign team of a 2004 presidential candidate, Sept. 15, 2007, Makati City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University, Sept. 14, 2007.

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

75:

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

25:

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

III-1. Executive Accountability

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

100

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

YES | NO

Comments:

There is judicial redress since one can petition the Supreme Court to declare the act of any branch or instrumentality of government as a violation of a fundamental right or as a grave abuse of discretion." Such declaration is within the judicial power as set out by the Constitution.

References:

Constitution, Art. VIII, Judicial Department", Sec. 1.

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Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University, Sept. 14, 2007.

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.

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

56

24a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

The only legal requirement is that the president must explain any veto of legislation. Nonetheless, executives do have to relate to the public, through media, and thus issue statements about their decisions, especially if controversial. I agree with my sources' subjective evaluation that at present the quality of the reasons given for decisions is often very poor.

References:

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, Quezon City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, 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.

24b. In law, the judiciary can review the actions of the executive.

YES | **NO**

Comments:

There is judicial redress since one can petition the Supreme Court to declare the act of any branch or instrumentality of government as a violation of a fundamental right or as a grave abuse of discretion." Such declaration is within the judicial power as set out by the Constitution.

References:

Constitution, Art. VIII, Judicial Department", Sec. 1.

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Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

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).

24c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

See the Supreme Court's rulings in G.R. 169777, April 20, 2006, against Executive Order 464 (Sept. 2005), which restricted cabinet members and other officials from testifying before the Senate, and in G.R. 171396, May 3, 2006, against Presidential Proclamation 1017 ordering the armed forces to obey decrees issued by the president.

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.

24d. 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:

Despite the Supreme Court's rulings in G.R. 169777, April 20, 2006, against Executive Order 464 (Sept. 2005), which restricted cabinet members and other officials from testifying before the Senate, the executive secretary has nearly always stonewalled against Senate calls for certain executive officials to come to hearings. Taking advantage of a loophole in the Supreme Court ruling regarding executive privilege, MC 108 lists numerous situations wherein executive officials may refuse to make disclosures or may appeal for time to ask the president whether certain materials requested for disclosure are covered by executive privilege.

A recent example happened on Nov 8, 2007, when Executive Order 671 was issued, which dissolved the Philippine Council for NGO certification of its function to certify NGOs and non-stock, non-profit corporations for donee institution status. This order was issued without even the knowledge of the Secretary of Finance, who supervises the Bureau of Internal Revenue which gives final approval of donee institution status.

References:

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, Quezon City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, 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.

25. Is the executive leadership subject to criminal proceedings?

100

25a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

References:

Constitution, art. XI, Secs 2 and 7: 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. Judgement in cases of impeachment shall not extend further than removal from office and disqualification to hold any office under the Republic of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial and punishment according to law.

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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.

25b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

References:

Constitution, Art. XI, Sec. 2: Aside from the President, Vice-President, Supreme Court Justices, Members of the Constitutional Commissions, and the Ombudsman, all other public officers and employees may be removed from office as provided by law, but not by impeachment.

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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.

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

63

26a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:

Constitution, Art. XI, Sec. 17: 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.

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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.

26b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

Constitution, Art. XI, Sec. 17: 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.

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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.

26c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:

Republic Act 3019: Anti-Graft and Corrupt Practices Act

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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.

26d. 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:

No change in law from 2006 to 2007. There is no legal requirement that disclosures be certified by independent/external auditors, though officials must swear to their accuracy.

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University, Sept. 14, 2007.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

26e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

Comments:

All officials, elective or appointive, who leave their positions are banned from practicing their professions in connection with any matter before their former offices for a period of one year.

References:

Republic Act 6713, Code of Conduct and Ethical Standards for Public Officials and Employees, 1989: Sec. 7: Prohibited Acts and Transactions.

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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.

26f. 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 required waiting period is only for one year and has never been known to have been violated at the ministerial or head-of-state level. Thus the restriction is de facto very strictly enforced.

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University, Sept. 14, 2007.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no 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.

26g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

Interview with Ramon Ereñeta, former Civil Service Commissioner, Sept. 15, 2007, Makati City.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. 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.

26h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

References:

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007.

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

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.

27. Can citizens access the asset disclosure records of the heads of state and government?

83

27a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

Comments:

See also Republic Act 6713, Code of Conduct and Ethical Standards for Public Officials & Employees,” Sec. 8, “Statements and Disclosure”.

References:

Constitution, Art.III, Sec.7: freedom of information

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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.

27b. 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:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, 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.

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.

27c. 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

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, 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.

75:

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

25:

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

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

50

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

100 | 75 | 50 | 25 | 0

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network, Sept. 11, 2007, 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.

III-2. Legislative Accountability

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

92

29a. In law, the judiciary can review laws passed by the legislature.

YES | NO

Comments:

The Supreme Court can declare acts of Congress or of the president unconstitutional. Judicial power includes the power 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.

References:

J. Bernas The 1987 Constitution of the Republic of the Philippines: A Commentary", page 602-603: Separation of Powers;

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).

29b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | 0

Comments:

There are significant cases of Supreme Court declarations of laws or portions thereof as unconstitutional. In particular, in 2001 the Supreme Court ruled very swiftly, within three weeks of the petition, that a provision to ban publication of surveys prior to elections is an infringement of freedom of expression.

References:

Mahar Mangahas Election Freedom in the Philippines," International Journal of Market Research, Vol. 46, Quarter 1, 2004; (Justice) Artemio Panganiban A Centenary of Justice Supreme Court Press, 2001.

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.

29c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

Immunity is limited to partial protection from arrest, connected to less serious offenses: 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." This is intended to prevent disruption of congressional work by arrest of a member for a minor charge. When Congress is in recess, the immunity is not in force.

References:

Constitution, Art. VI, Sec. 11

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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.

30. Are there regulations governing conflicts of interest by members of the national legislature?

50

30a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

Comments:

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. ... A public officer or employee shall upon assumption of office and as often thereafter may be required by law, to 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.”

References:

Constitution, Art. VI, Sec. 12, and Art. XI, Sec.17

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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.

30b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

Comments:

All officials, elective or appointive, who leave their positions are banned from practicing their professions in connection with any matter before their former offices for one year.

References:

Republic Act No. 6713, Code of Conduct and Ethical Standards for Public Officials and Employees”, 1989: Sec.7: “Prohibited Acts and Transactions”.

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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.

30c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

References:

Republic Act 3019, Anti-Graft and Corrupt Practices Act

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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.

30d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University, Sept. 14, 2007.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), 2006.

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.

30e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University, Sept. 14, 2007.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no 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.

30f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University, Sept. 14, 2007.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

30g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University, Sept. 14, 2007.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

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

75

31a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | NO

References:

Constitution, Art.III, Sec.7: freedom of information

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

31b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

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

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

31c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

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

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications at University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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

75:

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

25:

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

32. Can citizens access legislative processes and documents?

83

32a. In law, citizens can access records of legislative processes and documents.

YES | NO

References:

Constitution, Art.III, Sec.7, and Art. VI. Sec.20. In addition to freedom of information, the Constitution provides: 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.”

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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 exemptions to the general right that are not clearly defined by formal rules.

32b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

I do not score this at 100 because the records are often posted only after considerable delay.

References:

Experience of Jeanette Ureta, Social Weather Stations (SWS) librarian.

House of Representatives: <http://www.congresss.gov.ph>

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

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.

32c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Not all documents are available online or in a timely fashion.

References:

Experience of Jeanette Ureta, Social Weather Stations (SWS) librarian

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, 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.

75:

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

25:

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

75
III-3. Judicial Accountability

33. Are judges appointed fairly?

33a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

The Judicial and Bar Council do submit, as required by law, at least three nominees to the president to appoint to fill a vacancy. How the council selects the nominees is not fully transparent, but at least the qualifications of the nominees are reported to the public.

References:

Constitution, Art. VIII, Sec. 9

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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.

33b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

The news item shows that the Supreme Court can find a way to reject an unwanted appointee: Sandiganbayan Justice Gregory Ong is barred from serving in the highest court of the land until he has shown he is a natural-born Filipino and corrected through the courts the entry in his birth certificate that states his citizenship is Chinese, the Supreme Court said Tuesday (July 3, 2007) in a unanimous decision.”

An indication of use of professional criteria was the July 2007 visit to Social Weather Stations by a delegation from the Judicial and Bar Council, on their own initiative. The purpose was to consult SWS on the use of surveys on opinions of peers, as is being done in California, USA. SWS gave a specially prepared pro bono presentation of principles to observe in using such surveys.

References:

http://newsinfo.inquirer.net/breakingnews/nation/view_article.php?article_id=74655: High court rejects Ong appointment,” by Leila Salaverria, Inquirer, July 4, 2007.

Mahar Mangahas, “The assessment of applicants for the judiciary partially on the basis of a survey of opinions of peers: Suggestions for the Judicial and Bar Council,” Presentation to JBC, Social Weather Stations, July 27, 2007.

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.

33c. 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 members of the Supreme Court and judges of the 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.

References:

Constitution, Art. VIII, Sec. 9

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YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

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

83

34a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

Comments:

No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based. No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.”

References:

Constitution, Art. VIII., Sec. 14

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).

34b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

In some instances they may give minute decisions.

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007.

Interview with Evelyn Dumdum, program director of the Program Management Office of the Supreme Court of the Philippines, Sept. 11, 2007, Quezon City.

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.

34c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

Comments:

The constitutional provision on accountability of public officers gives sweeping jurisdiction to the ombudsman, to include the judicial system. There is no separate ombudsman for the judicial system. Most of the disciplining of the judiciary is done internally, by the Office of the Court Administrator of the Supreme Court.

References:

Constitution, Art.XI, Sec.13

Interview with Evelyn Dumdum, program director of the Program Management Office of the Supreme Court of the Philippines, Sept. 11, 2007, Quezon City.

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

34d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

There is an independent ombudsman, with general jurisdiction over all parts of government, not just the judiciary.

References:

Constitution, Art. XI, Sec. 5

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is operationally independent from political interference by the executive, legislative and judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry, legislative committee, or by an internal judiciary committee or council that can only act with the approval of judges themselves.

34e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman is too overloaded with cases to be able to initiate, *motu proprio*, investigations specifically into judicial accountability. The Office of the Court Administrator can and does initiate investigations from time to time.

References:

Interview with Evelyn Dumdum, program director of the Program Management Office of the Supreme Court of the Philippines, Sept. 11, 2007, Quezon City.

Monitoring the State of the Judiciary and the Legal Profession,” by Mahar Mangahas et al., Social Weather Stations and Cordillera Studies Center, University of the Philippines College Baguio, 1996.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

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.

34f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

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

Comments:

The Supreme Court is already quite active in disciplining offenders, thus relieving the ombudsman of much of the chore.

References:

Interview with Evelyn Dumdum, program director of the Program Management Office of the Supreme Court of the Philippines, Sept. 11, 2007, Quezon City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

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.

35. Are there regulations governing conflicts of interest for the national-level judiciary?

35a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

Comments:

On April 27, 2006, the Supreme Court issued a media backgrounder entitled: Requests for Copies of the Statements of Assets and Liabilities of Justices, Judges and Court Personnel,” which courses all such requests to the court administrator. Per Sept. 11, 2007, interview with Evelyn Dumdum, program director of the Supreme Court’s Program Management Office, the backgrounder makes it extremely difficult to access the assets and liabilities statements filed by the Supreme Court justices in particular.

References:

Constitution, Art. XI, Sec. 17: 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.

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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.

35b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

References:

2002 Code of Conduct for Court Personnel; 2002 Professional Code of Ethics for Justices, Judges and Lawyers. (www.supremecourt.gov.ph)

Information provided by Evelyn Dumdum, program director of the Program Management Office of the Supreme Court of the Philippines, Sept. 11, 2007, Quezon City.

www.lawphil.net

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.

35c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | **NO**

References:

Interview with Evelyn Dumdum, program director of the Program Management Office of the Supreme Court of the Philippines, Sept. 11, 2007, Quezon City.

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.

35d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

References:

Interview with Evelyn Dumdum, program director of the Program Management Office of the Supreme Court of the Philippines, Sept. 11, 2007, Quezon City.

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.

35e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

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

References:

According to Evelyn Dumdum, program director of the Program Management Office of the Supreme Court of the Philippines, there are no restrictions (see Q35d).

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no 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.

35f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

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

Comments:

The rules are said to be somewhat relaxed at Christmastime.

References:

Social Weather Stations, *Insiders' Views of the Judiciary and the Legal Profession: the Philippines*" forthcoming 2008

Interview with Evelyn Dumdum, program director of the Program Management Office of the Supreme Court of the Philippines, Sept. 11, 2007, Quezon City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to judges. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

35g. In practice, national-level judiciary asset disclosures are audited.

References:

Transparency International National Integrity Systems Country Study Report: Philippines 2006, by Gabriella Quimson (www.transparency.org).

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

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

67

36a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

References:

Interview with Evelyn Dumdum, program director of the Program Management Office of the Supreme Court of the Philippines, Sept. 11, 2007, Quezon City.

Except for asset statements of Supreme Court justices, the statements of other members of the judiciary may be requested at the Clerk of Court or at the Office of Administrative Services of the Supreme Court.

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.

36b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Note that the Supreme Court justices' statements are not allowed to be disclosed. The TI study says, in June 2004 PCIJ [Phil Center for Investigative Journalism] requested the justices' SALNs (Statement of Assets, Liabilities & Net Worth) to order to use them as 'reference material' on its website, but this request was denied." (Page 24) The Dumdum interview pertains to the disclosure of the asset statements of other members of the judiciary.

References:

Interview with Evelyn Dumdum, program director of the Program Management Office of the Supreme Court of the Philippines, Sept. 11, 2007, Quezon City.

Transparency International National Integrity Systems Country Study Report: Philippines 2006, by Gabriella Quimson (www.transparency.org).

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.

36c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This question is NOT APPLICABLE to Supreme Court justices since access to their asset statements is restricted. For the asset statements of other members of the judiciary, the cost is only that of photocopying, according to Dumdum.

References:

Transparency International National Integrity Systems Country Study Report: Philippines 2006, by Gabriella Quimson (www.transparency.org).

Interview with Evelyn Dumdum, program director of the Program Management Office of the Supreme Court of the Philippines, Sept. 11, 2007, 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.

75:

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

25:

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

III-4. Budget Processes

37. Can the legislature provide input to the national budget?

67

37a. In law, the legislature can amend the budget.

YES | NO

Comments:

It may only decrease, and not increase, the appropriations recommended by the president for the operation of the government as specified in the budget. However, Congress may also enact special appropriations bills for special purposes.

References:

Constitution, Art. VI, Sec. 25

www.lawphil.net

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.

37b. In practice, significant public expenditures require legislative approval.

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

Comments:

Expenditures from collections of Philippine Amusement and Gaming Corp. (PAGCOR), the agency that oversees legal casino gambling, and from the Philippine Charity Sweepstakes Office (PCSO) are significant but do not require congressional approval. These are very significant exceptions.

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

Interview with Calixto Chikiamco, economist, co-founder of Foundation of Economic Freedom, Sept. 15, 2007, Makati City.

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.

37c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

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

References:

Interview with Calixto Chikiamco, economist, co-founder of Foundation of Economic Freedom, Sept. 15, 2007, Makati City.

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

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.

38. Can citizens access the national budgetary process?

38a. 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:

Congressional budget committee hearings and plenary debates are open to the public and regularly attended by media.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Calixto Chikiamco, economist, co-founder of Foundation of Economic Freedom, Sept. 15, 2007, Makati City.

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.

38b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

Relevant citizens groups are often invited to give input.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Calixto Chikiamco, economist, co-founder of Foundation of Economic Freedom, Sept. 15, 2007, Makati City.

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

38c. In practice, citizens can access itemized budget allocations.

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

Comments:

Once the budget is approved, yes. But while changes are still being made, it's difficult without inside connections.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Calixto Chikiamco, economist, co-founder of Foundation of Economic Freedom, Sept. 15, 2007, Makati City.

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

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

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

100

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

YES | NO

Comments:

The House and Senate have pertinent committees set up according to their internal rules.

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007.

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).

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

63

40a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

It also depends on the extent to which the legislators would like to scrutinize a particular department's budget.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, 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.

40b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

Chairmanship is a plum post that the majority always assigns to one of its own members.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, 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.

40c. In practice, this committee is protected from political interference.

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

Comments:

The membership is allocated by political rules.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75:

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25:

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

40d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

Congressional investigations into irregularities are very common, though they may be done by a variety of committees, not necessarily the budget committee.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, 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.

Category IV. Administration and Civil Service

IV-1. ⁷³Civil Service Regulations

41. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

41a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

Comments:

The Civil Service Commission is an independent body set up by the constitution.

References:

Constitution, Art. IX-A, Sec. 1

www.lawphil.net

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.

41b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

Administrative Code, the Anti-Graft Act (RA 3019); Code of Conduct and Ethical Standards (RA6713)

www.lawphil.net

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.

41c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

Grievances should be taken to the Civil Service Commission.

References:

Administrative Code, the Anti-Graft Act (RA 3019); Code of Conduct and Ethical Standards (RA6713)

www.lawphil.net

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. Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

41d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

References:

Administrative Code, the Anti-Graft Act (RA 3019); Code of Conduct and Ethical Standards (RA6713)

www.lawphil.net

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.

42. Is the law governing the administration and civil service effective?

67

42a. In practice, civil servants are protected from political interference.

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

References:

Interview with Ramon Ereñeta, former Civil Service Commissioner, Sept. 15, 2007, Makati City.

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

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.

42b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

They would meet minimum professional standards, but often they are not the best in the profession.

References:

Interview with Ramon Ereñeta, former Civil Service Commissioner, Sept. 15, 2007, Makati City.

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

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.

42c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

References:

Interview with Ramon Ereñeta, former Civil Service Commissioner, Sept. 15, 2007, Makati City.

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, 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.

42d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

References:

Interview with Ramon Ereñeta, former Civil Service Commissioner, Sept. 15, 2007, Makati City.

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) 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.

42e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, 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.

42f. 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:

No improvement from 2006 to 2007.

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

42g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

References:

Interview with Ramon Ereñeta, former Civil Service Commissioner, Sept. 15, 2007, Makati City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, 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.

42h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

According to former Commissioner Ereñeta, there are many instances of late payments to teachers, especially those based in rural areas, and to local government employees. National government employees are generally paid on time.

References:

Interview with Ramon Ereñeta, former Civil Service Commissioner, Sept. 15, 2007, and January 8, 2008 Makati City.

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig 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.

42i. In practice, civil servants convicted of corruption are prohibited from future government employment.

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

References:

Interview with Ramon Ereñeta, former Civil Service Commissioner, Sept. 15, 2007, Makati City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, 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.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

43. Are there regulations addressing conflicts of interest for civil servants?

58

43a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

References:

RA 3019: Anti-Graft and Corrupt Practices Act, and RA 6713: Code of Conduct and Ethical Standards for Public Officials and Employees.

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.

43b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

References:

Republic Act 6713: Code of Conduct and Ethical Standards for Public Officials, Sec.7. The prohibitions on conflict of interest continue to apply for one year after a public servant has left office.

www.lawphil.net

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.

43c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

Republic Act (RA) 3019: Anti-Graft and Corrupt Practices Act, Republic Act (RA) 6713: Code of Conduct and Ethical Standards for Public Officials

www.lawphil.net

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.

43d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with Ramon Ereñeta, former Civil Service Commissioner, Sept. 15, 2007, Makati City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no 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.

43e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

100: The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. 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.

43f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

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

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

44. Can citizens access the asset disclosure records of senior civil servants?

67

44a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

References:

Constitution, Art. III, Sec. 7: freedom of information

www.lawphil.net

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.

44b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Delays are due to the problems of record retrieval, not due to deliberate withholding of information.”

References:

Interview with Ramon Ereñeta, former Civil Service Commissioner, Sept. 15, 2007, Makati City.

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, 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.

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.

44c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Ramon Ereñeta, former Civil Service Commissioner, Sept. 15, 2007, Makati City.

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, 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.

75:

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

25:

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

IV-2. Whistle-blowing Measures

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

0

45a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

Comments:

There is no whistleblowers act

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

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.

45b. 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:

Lazatin cited cases of two undersecretaries and one secretary who, he says, were transferred for not cooperating with corrupt transactions.

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila

University; Sept. 14, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

45c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | **NO**

Comments:

There is no whistleblowers act.

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

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.

45d. 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:

At a focus group in late 2006, which prepared for the 2007 Transparent Accountable Governance survey of enterprises on corruption, a prominent businessman disclosed how he was harassed by the Bureau of Internal Revenue after he had blown the whistle on an attempt to solicit a bribe from him. I presided over this focus group.

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

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

100

46. 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

References:

The constitution, in Art. XI, Secs. 5-14, covers the Office of the Ombudsman, whose duty it is respond to such complaints. (www.lawphil.net)

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.

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

56

47a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

This refers to the Office of the Ombudsman. Lazatin sees the morale of the ombudsman staff as much weakened due to the continued failure of its head to prosecute anyone in the Commission on Elections in the 2004 automatic counting machines scandal, contrary to the recommendations of the staff's investigative report.

References:

Interview with Ramon Ereñeta, former Civil Service Commissioner, Sept. 15, 2007, Makati City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

47b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The funding is regular, but very inadequate — a problem of all government offices, not only of the ombudsman. I am keeping the score unchanged from 2006 since I think that lack of funding is not an excuse for the drop in the ombudsman's performance.

References:

Interview with Ramon Ereñeta, former Civil Service Commissioner, Sept. 15, 2007, Makati City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

47c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with Ramon Ereñeta, former Civil Service Commissioner, Sept. 15, 2007, Makati City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

47d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

52 IV-3. Procurement

48. Is the public procurement process effective?

88

48a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

Comments:

Divestment requirement: A public official or employee shall avoid conflicts of interest at all times. When a conflict of interest arises, he shall resign from his position, in any private business enterprise within thirty (30) days from his assumption of office and/or divest himself of his shareholdings or interest within sixty (60) days from such assumption. The same rule shall apply where the public official or employee is a partner in a partnership." RA 6713, Sec. 9.

References:

Republic Act (RA) 9184, Modernization, Standardization and Regulation of the Procurement Activities of the Government; RA 6713, Code of Conduct and Ethical Standards for Public Officials and Employees.

www.lawphil.net

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.

48b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

The training is required in law. However, actual training is sporadic, according to Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

References:

Government Procurement Reform Act, RA 9184, 2002; Article V, Bids and Awards Committee": Sec. 16, "Professionalization of BAC, BAC Secretariat and Technical Working Group Members." (www.lawphil.net)

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

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.

48c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

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

Comments:

Manuel recommended 50, but I chose Lazatin's recommended score of 25 since his work is more focused on corruption than Manuel's.

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

48d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

Comments:

It's the same general mechanism applicable to government officials in general, and not specific to procurement officials in particular. But income and spending are not included — only balance sheet items.

References:

Constitution, Art. VI, Sec. 12, and Art. XI, Sec. 17. Also RA 6713, Code of Conduct and Ethical Standards for Public Officials and

Employees”

www.lawphil.net

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.

48e. In law, major procurements require competitive bidding.

YES | NO

Comments:

But this year the very dubious National Broadband Network” project is being justified by the executive as exempt from bidding on the basis that it is a government-to-government contract. See “The legal dimensions of a scandalous contract,” by Josefina T. Lichauco, Philippine Star, Sept. 8, 2007.

References:

The Procurement Law: RA 9184, Art. IV, Sec. 10, and Art. XVI, Alternative Methods of Procurement.”

www.lawphil.net

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).

48f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

Republic Act (RA) 9184, Art. XVI, Sec. 48-53

www.lawphil.net

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.

48g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:

Republic Act (RA) 9184, Art. XVII, Protest Mechanism”

www.lawphil.net

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.

48h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

Comments:

It often happens; courts are fond of issuing temporary restraining orders (and are also suspected of being corrupt). The Procurement Law passed in December 2002 requires that its protest mechanism be used first before resort to court action.

References:

Republic Act (RA) 9184, Art. XVII, Sec. 58

www.lawphil.net

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.

48i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

Comments:

Private individuals will be penalized by perpetual disqualification. If a corporation, the penalty is imposed on the offending

directors, officers or employees. It is not clear if the companies themselves are also prohibited.

References:

Republic Act (RA) 9184, Art. XXI, Penal Clause”

www.lawphil.net

YES: A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

48j. 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:

Bernardo; In the first place, no one has been found guilty.”

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

49. Can citizens access the public procurement process?

75

49a. In law, citizens can access public procurement regulations.

YES | NO

References:

Republic Act (RA) 9184, Art. VII, Invitation to Bid,” Sec. 21. “In line with the principle of transparency and competitiveness, all Invitations to Bid for contracts under competitive bidding shall be advertised by the Procuring Entity in such manner and for such length of time as may be necessary.”

www.lawphil.net

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.

49b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

Republic Act (RA) 9184, the Government Procurement Reform Act

www.lawphil.net

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.

49c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Regulations for national projects take much longer, Bernardo said.

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

49d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

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

25:

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

49e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

A Transparency and Accountability Network study of compliance with procurement law found that adherence with publication rules is spotty and inefficient.

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

49f. In practice, citizens can access the results of major public procurement bids.

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

Comments:

A Transparency and Accountability Network study of compliance with procurement law found that adherence with publication rules is spotty and inefficient.

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

IV-4. Privatization

50. Is the privatization process effective?

83

50a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

Comments:

The law on the Asset Privatization Trust says, as amended: In the best interest of the government and the small local investors and for the development of the domestic capital market, no offer of sale to large investors shall be undertaken until after a minimum of ten percent (10 percent) of the sale of assets in corporate form shall have been offered to small local investors, including Filipino overseas workers. ... Where this is not practicable or in the best interest of the public, at least ten percent (10 percent) in any event shall be reserved for small local investors to be offered to them at the same price within one hundred twenty (120) days from the approval of the sale. This rule shall likewise apply when there are no takers, in whole or in part, when the first offer was made. The Committee on Privatization shall formulate guidelines that provide specific preference for such small local investors.”

References:

Republic Act (RA) 7886 (Committee on Privatization and the Asset Privatization Trust)

www.lawphil.net

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.

50b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

References:

RA 3019, Anti-Graft and Corrupt Practices Law; Proclamation 50, creating the Asset Privatization Trust

www.lawphil.net

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.

50c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

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

Comments:

To be conservative, I used the lower of the scores suggested by my sources.

References:

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig 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.

51. Can citizens access the terms and conditions of privatization bids?

85

51a. In law, citizens can access privatization regulations.

YES | NO

References:

Constitution, Art. III, Sec. 7: freedom of information

www.lawphil.net

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.

51b. In practice, privatizations are effectively advertised.

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

Comments:

It depends on what is being privatized. The privatization of the Metropolitan Manila water system was much better done than the sale of government shares in a private bank.

References:

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

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.

51c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

These are very well covered in the business papers.

References:

Republic Act (RA) 7886 (Committee on Privatization and the Asset Privatization Trust)

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.

51d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

To be conservative, I have used the lower of the scores suggested by my sources.

References:

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

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.

51e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

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

25:

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

Category V. Oversight and Regulation

V-1. ⁶⁵National Ombudsman

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

52. 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 is a constitutional creation.

References:

Constitution, Art. XI, Secs. 5-14

www.lawphil.net

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.

53. Is the national ombudsman effective?

53a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:

It is created as an independent body.

References:

Constitution, Art. XI, Secs. 5-14

www.lawphil.net

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.

53b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The researcher considers the resignation for health reasons” of Ombudsman Simeon Marcelo in 2005 as very suspicious and a sign of probable political interference. In practice, there is no protection from political interference at the ombudsman’s office. Immediately prior to her appointment, the current ombudsman, Merceditas Gutierrez, was the chief presidential legal counsel to President Gloria Macapagal-Arroyo. In late Sep 2006, the ombudsman came out with a finding that no one could be charged for wrongdoing in the Comelec-Mega Pacific deal.

References:

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

Ombudsman Ignored Supreme Court” by Norman Bordadora, Juliet Labog-Javellana and Philip Tubeza in the Philippine Daily Inquirer, Oct. 4, 2006.

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.

53c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

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

Comments:

The previous ombudsman, who had a very good reputation in NGO circles, resigned suddenly and under suspicious circumstances in late 2005 (giving health as an excuse), even though his term still had a few years remaining.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

53d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

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

Comments:

The past ombudsman, Simeon Marcelo, decried in particular the severe lack of legal investigators.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

53e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

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

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

53f. In practice, the ombudsman agency (or agencies) receives regular funding.

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

Comments:

The funding is regular and has been increased in recent years but is still far from adequate.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

53g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

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

Comments:

Over the past 12 months, information has been shut off.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

53h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

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

Comments:

The ombudsman's foot-dragging on the Commission on Elections 2004 automated counting-machine contract with MegaPacific, which the Supreme Court voided and the directed to the ombudsman for investigation, is a great national scandal. To this day, the ombudsman has not held anyone from the Commission on Elections accountable for the contract.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

53i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now Professor of Mass Communications, University of the Philippines), September 12, 2007, Quezon City; Interview with Vincent Lazatin, Executive Director of Transparency and Accountability Network, September 11, 2007, Quezon City.

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.

53j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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 politicallally sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

53k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

54. Can citizens access the reports of the ombudsman?

54a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

The freedom of information applies to the ombudsman also. In addition, the ombudsman has the power to publicize matters covered by its investigation when circumstances so warrant and with due prudence.”

References:

Constitution, Art. XI, Sec. 13(6)

www.lawphil.net

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

54b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

A simple way to delay a report is to claim that it is still incomplete.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

54c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

That is, if the report is available at all.

References:

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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

75:

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

25:

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

V-2. Supreme Audit Institution

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

References:

Constitution, Art. IX-D on the Commission on Audit

www.lawphil.net

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.

56. Is the supreme audit institution effective?

88

56a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

The Commission on Audit is created by the constitution as an independent institution.

References:

Constitution, Art. IX-A, Sec. 1

www.lawphil.net

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.

56b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, 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.

56c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

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.

56d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The audit agency is presently under excellent leadership, whose political connections should not be begrudged

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

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.

56e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

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.

56f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The Commission on Audit has a Web site: <http://www.coa.gov.ph>

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

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.

56g. In practice, the government acts on the findings of the audit agency.

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

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

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.

56h. In practice, the audit agency is able to initiate its own investigations.

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

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

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.

57. Can citizens access reports of the supreme audit institution?

92

57a. In law, citizens can access reports of the audit agency.

YES | NO

Comments:

See www.coa.gov.ph.

References:

Constitution, Art. III, Sec. 7: freedom of information

www.lawphil.net

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.

57b. In practice, citizens can access audit reports within a reasonable time period.

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

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

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.

57c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

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

75:

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

25:

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

100

58. In law, is there a national tax collection agency?

YES | NO

Comments:

It is the Bureau of Internal Revenue (BIR).

References:

Republic Act (RA) 8424: National Internal Revenue Code

www.lawphil.net

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.

59. Is the tax collection agency effective?

88

59a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

A downgrade from last year due to realization that professionalism could still stand much improvement.

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

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.

59b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

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.

60. In practice, are tax laws enforced uniformly and without discrimination?

0

60. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Among enterprise managers, the Bureau of Internal Revenue (BIR) continues to have a very bad reputation for corruption.

References:

Seven rounds of Social Weather Stations surveys of enterprises on topic of corruption, 2000-07. (www.sws.org.ph).

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

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.

61. In law, is there a national customs and excise agency?

100

61. In law, is there a national customs and excise agency?

YES | NO

Comments:

It is the Bureau of Customs (BOC).

References:

Republic Act (RA) 1937, the National Tariff and Customs Code

www.lawphil.net

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.

62. Is the customs and excise agency effective?

75

62a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

A downgrade from 2006 due to realization that the professionalism could stand much improvement.

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

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 customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

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.

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

0

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

Comments:

Like the Bureau of Internal Revenue, the Bureau of Customs continues to have a very bad reputation among enterprise managers.

References:

Seven rounds of Social Weather Stations surveys of enterprises about corruption, 2000-07. www.sws.org.ph

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

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.

V-4. State-Owned Enterprises

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

0

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

YES

NO

Comments:

There is no one such agency, and no general mechanism. Depending on its charter, a state company may be subject to oversight — for example, the Philippine National Railways is answerable to the Department of Transportation and Communications. The Department of Finance has oversight over state financial companies. But other state companies are not subject to oversight at all — for example PAGCOR (Philippine Amusement and Gaming Corp.).

References:

Interview with Romeo Bernardo, business consultant (Lazaro Bernardo Tiu & Associates), vice chairman, Foundation for

YES: A YES score is earned if there is an agency or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. 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.

65. Is the agency or equivalent mechanism overseeing state-owned companies effective?

0

65a. In law, the agency or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | **NO**

Comments:

This question is not applicable because there is no such agency or general mechanism.

References:

Interview with Romeo Bernardo business consultant, vice chairman of Foundation for Economic Freedom, Sept. 11, 2001, Quezon City.

YES: A YES score is earned only if the agency 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 or equivalent mechanism is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

65b. In practice, the agency or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

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

Comments:

This question is not applicable because there is no such agency or general mechanism.

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

100: The agency or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65c. In practice, the agency or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

This question is not applicable because there is no such agency or general mechanism.

References:

Interview with Felipe Medalla, Professor of Economics, University of the Philippines, September 13, 2007, Quezon City.
Interview with Romeo Bernardo, former Undersecretary of Finance; Vice-Chairman of Foundation for Economic Freedom, September 13, 2007, Pasig City.

100: The the agency 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 the agency 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.

65d. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

This question is not applicable because there is no such agency or general mechanism. Investigations into a state-owned enterprise are more likely to be initiated by either House of Congress.

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

100: When irregularities are discovered, the agency or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively investigate financial irregularities or 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.

65e. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

This question is not applicable because there is no such agency or general mechanism.

References:

Interview with Romeo Bernardo, former undersecretary of finance; vice chairman of Foundation for Economic Freedom, Sept. 13, 2007, Pasig City.

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

100: When rules violations are discovered, the agency or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

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

25:

0: The agency or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. 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.

66. Can citizens access the financial records of state-owned companies?

66a. In law, citizens can access the financial records of state-owned companies.

YES | NO

References:

The Commission on Audit is an independent body created by the Constitution. Art. IX Constitutional Commissions”, Part D, Sec. 2 gives it the power to audit government-owned or controlled corporations.

www.lawphil.net

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.

66b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

References:

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

100: State-owned companies always 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, or file the information behind schedule.

25:

0: Financial data is not available, or is consistently superficial or otherwise of no value.

66c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

Comments:

They must observe standards of the Commission on Audit, which do not need to conform with international standards but may not be considered inferior to them.

References:

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, Quezon City.

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.

66d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

References:

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, 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.

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.

66e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Felipe Medalla, professor of economics, University of the Philippines, Sept. 13, 2007, Quezon City.

Interview with Yvonne Chua, journalist (formerly Philippine Center for Investigative Journalism, now professor of mass communications, University of the Philippines), Sept. 12, 2007, 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.

75:

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

25:

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

28
V-5. Business Licensing and Regulation

67. Are business licenses available to all citizens?

81

67a. In law, anyone may apply for a business license.

YES | NO

Comments:

This happens, except for certain lines of business, which have restrictions favoring Filipino ownership over foreign ownership.

References:

Constitution, Art. X, National Economy and Patrimony"; Art. XVI, "General Provisions"

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

67b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

Comments:

Business licensing is a local government matter, so the recourse is to appeal to the next higher local government official for administrative reconsideration. Different government entities (e.g., local governments, and regulatory agencies such as the Land Transportation Franchising and Regulatory Board have their respective mechanisms for resolving complaints concerning business licenses. While as a general rule, complaints should be resolved administratively, i.e., within the rules of the agency involved or with resort to a higher administrative agency, in some cases, issues can be resolved by having resort to the courts. Under the Local Government Code, erring local government officials may be disciplined, generally by the higher local government unit.

References:

See the Local Government Code, RA 7160, 1991.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

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.

67c. 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

References:

Doing Business in the Philippines," by SGV & Co., 2006 edition.

Interview with Louie Lopez, importer, Sept. 13, 2007, Quezon City.

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.

67d. 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:

It has become more expensive than last year due to added red tape.

References:

Doing Business in the Philippines," by SGV & Co., 2006 edition.

Interview with Louie Lopez, importer, Sept. 13, 2007, Quezon City.

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.

68. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

68a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

There are many laws applicable to business — the Labor Code, the Clean Air Act, the Solid Waste Management Act, etc. A useful general reference is: "Doing Business in the Philippines," 2006 Edition, published by SyCip Gorres Velayo & Co. (www.sgv.com.ph)

www.lawphil.net

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.

68b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

There are many laws applicable to business — the Labor Code, the Clean Air Act, the Solid Waste Management Act, etc. A useful general reference is: "Doing Business in the Philippines," 2006 Edition, published by SyCip Gorres Velayo & Co. (www.sgv.com.ph)

www.lawphil.net

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.

68c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:

There are many laws applicable to business — the Labor Code, the Clean Air Act, the Solid Waste Management Act, etc. A useful general reference is: "Doing Business in the Philippines," 2006 Edition, published by SyCip Gorres Velayo & Co. (www.sgv.com.ph)

www.lawphil.net

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.

69. Does government effectively enforce basic health, environmental, and safety standards on businesses?

33

69a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

The score is that suggested by the more recent interview.

References:

Interview with Hector Soliman, lawyer specializing in public interest issues, former undersecretary of agrarian reform, 2006.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

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.

69b. 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:

Same score in both interviews.

References:

Interview with Hector Soliman, lawyer specializing in public interest issues, former undersecretary of agrarian reform, 2006.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

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.

69c. 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:

The score is that in the more recent interview.

References:

Interview with Hector Soliman, lawyer specializing in public interest issues, former undersecretary of agrarian reform, 2006.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

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.

70. Is there legislation criminalizing corruption?

89

70a. In law, attempted corruption is illegal.

YES | NO

References:

Republic Act 3019: Anti-Graft and Corrupt Practices Act

www.lawphil.net

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

70b. In law, extortion is illegal.

YES | NO

References:

Republic Act 3019: Anti-Graft and Corrupt Practices Act

www.lawphil.net

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.

70c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

Republic Act 3019: Anti-Graft and Corrupt Practices Act

www.lawphil.net

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

Republic Act 3019: Anti-Graft and Corrupt Practices Act

www.lawphil.net

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70e. In law, bribing a foreign official is illegal.

YES | NO

Comments:

Even though the Philippines has ratified the UN Convention Against Corruption, the Convention may not be used to prosecute a legal case until the national law has been explicitly amended for that purpose.

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007 and Jan 8, 2008, Quezon City.

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

70f. In law, using public resources for private gain is illegal.

YES | NO

References:

Republic Act 3019: Anti-Graft and Corrupt Practices Act

www.lawphil.net

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.

70g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Republic Act 3019: Anti-Graft and Corrupt Practices Act

www.lawphil.net

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.

70h. In law, money laundering is illegal.

YES | NO

References:

Anti-Money Laundering Law, RA 9160, 2001. (www.chanrobles.com/republicactno9160rules.htm)

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.

70i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

Comments:

In the cases of rebellion and terrorism, conspiracy itself is already a crime, even if there has not been an overt act.

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

Comments:

The prosecuting agency is the ombudsman. The anti-graft court is the Sandiganbayan.

References:

Constitution, Art. XII, Secs. 4-5

www.lawphil.net

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.

72. Is the anti-corruption agency effective?

61

72a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

Both the ombudsman and Sandiganbayan are independent agencies.

References:

Constitution, Art. XII, Secs. 4-5

www.lawphil.net

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.

72b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

I scored it between the recommendations of the two sources. Once appointed, the agency heads are rather independent, but problems happen when a poor appointment is made.

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

72c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

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

Comments:

I scored it between the recommendations of the two sources. There is less pressure on the justices of the Sandiganbayan (the court) than on the ombudsman (the prosecutor).

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

72d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The present ombudsman has come under greater criticism for his political connections from the NGO community than the previous one.

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

72e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The score considers both the ombudsman and the Sandiganbayan. The office of the ombudsman has good staff but they are too few — less than half the numbers of lawyers that it says it needs. The ombudsman's staff is reportedly getting demoralized because the evidence found by its Field Investigation Office in the MegaPacific case was ignored by the ombudsman.

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

72f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

72g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

72h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

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

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

72i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

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

Comments:

This refers to the ombudsman in particular, which has failed to consistently act on cases of corruption that have been exposed in Senate hearings.

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

73. Can citizens access the anti-corruption agency?

38

73a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

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

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

73b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

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

Comments:

Anonymous submissions are accepted. Businessmen surveyed by Social Weather Stations put futility, not reprisal, as their main reason for not reporting bribe-solicitations.

The existing Witness Protection Law, which Rep. H. Abad sought to improve, dates back to 1991. Her attempts to pass an updated law failed and she is no longer serving in Congress.

References:

The 2006-2007 SWS Surveys of Enterprises on Corruption,” Social Weather Stations, www.sws.org.ph.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

66
VI-3. Rule of Law

74. Is there an appeals mechanism for challenging criminal judgments?

50

74a. In law, there is a general right of appeal.

YES | NO

References:

Rules of Court (www.supremecourt.gov.ph)
www.lawphil.net

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.

74b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with attorney Hector Soliman, specialist on public issues and director, Justice Reform Initiatives Support Project (JURIS), Sept. 24, 2007, Pasig City.

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.

74c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with attorney Hector Soliman, specialist on public issues and director, Justice Reform Initiatives Support Project (JURIS), Sept. 24, 2007, Pasig City.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

75. In practice, do judgments in the criminal system follow written law?

50

75. In practice, do judgments in the criminal system follow written law?

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

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with attorney Hector Soliman, specialist on public issues and director, Justice Reform Initiatives Support Project (JURIS), Sept. 24, 2007, Pasig City.

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.

76. In practice, are judicial decisions enforced by the state?

50

76. In practice, are judicial decisions enforced by the state?

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

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

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.

77. Is the judiciary able to act independently?

88

77a. In law, the independence of the judiciary is guaranteed.

YES | NO

Comments:

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 [includes Rules of Court, appointment of judges and employees, etc.]. 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."

References:

Constitution, Art. VIII, Sec. 2-3

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YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

77b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with attorney Hector Soliman, specialist on public issues and director, Justice Reform Initiatives Support Project (JURIS), Sept. 24, 2007, Pasig City.

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.

77c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.=

Rules of Court cover such assignments (www.supremecourt.gov.ph)

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.

77d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

Comments:

The members of the Supreme Court and judges of lower courts shall hold office during good behavior, until they reach the age of

70 or become incapacitated to discharge the duties of their office. 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.

References:

Constitution, Art. VIII, Sec. 11

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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.

78. Are judges safe when adjudicating corruption cases?

0

78a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES

NO

Comments:

The Diagnostic Study, based on a mail referendum of 1,072 judges of all Regional Trial Courts and lower courts, says judges' physical security is now an important concern, with the great majority saying they need adequate life insurance and a personal firearm."

Dumdum says that one reason for the large number of vacant courts in Mindanao is the resignation of many judges due to death threats.

References:

Interview with Evelyn Dumdum, program director of the Program Management Office of the Supreme Court of the Philippines, Sept. 11, 2007, Quezon City.

New Diagnostic Study Sets Guideposts for Systematic Development of the Judiciary," by Mahar Mangahas, Linda Luz Guerrero and Marlon Manuel, Social Weather Stations, Dec. 6, 2006 (www.sws.org.ph).

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.

78b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

Comments:

Dumdum says there have been 14 unsolved murders of judges in the last 5 years, and that the issue of corruption is surely involved in some of them. One of the judges murdered was handling the so-called PIATCO case of the scandalously overpriced construction of a new terminal of the Manila International Airport.

References:

Interview with Evelyn Dumdum, program director of the Program Management Office of the Supreme Court of the Philippines, Sept. 11, 2007, Quezon City.

New Diagnostic Study Sets Guideposts for Systematic Development of the Judiciary," by Mahar Mangahas, Linda Luz Guerrero and Marlon Manuel, Social Weather Stations.

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.

79. Do citizens have equal access to the justice system?

75

79a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

There can be possible bias in cases involving Muslims or indigenous peoples. The Philippines is at least 90 percent Christian.

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with attorney Hector Soliman, specialist on public issues and director, Justice Reform Initiatives Support Project (JURIS), Sept. 24, 2007, Pasig 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.

79b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with attorney Hector Soliman, specialist on public issues and director, Justice Reform Initiatives Support Project (JURIS), Sept. 24, 2007, Pasig 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.

79c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

The Constitution, Art. III, Bill of Rights

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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.

79d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

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

Comments:

Researcher considers that public defenders are not too well-trained, but that nonetheless indigent defendants are quite pleased to be provided with them.

References:

Social Weather Stations Survey Data Bank: 2003 SWS Survey of Public Opinion on the Courts.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

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.

79e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

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

Comments:

Citizens complain more about cost than about any other problem of obtaining court justice. There is a network of alternative law groups that provide legal assistance to the poor and disadvantaged groups in many locations around the country.

References:

Social Weather Stations Survey Data Bank: 2003 SWS Survey of Public Opinion on the Courts.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

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.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

79f. In practice, a typical small retail business can afford to bring a legal suit.

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

Comments:

Plaintiffs and defendants come from all walks of life. Citizens complain more about cost than about any other problem of obtaining court justice.

References:

Social Weather Stations Survey Data Bank: 2003 SWS Survey of Public Opinion on the Courts.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

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.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

79g. In practice, all citizens have access to a court of law, regardless of geographic location.

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

Comments:

Rural usage of courts is only somewhat lower than urban usage.

References:

Social Weather Stations Survey Data Bank: 2003 SWS Survey of Public Opinion on the Courts.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, 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.

VI-4. Law Enforcement

80. Is the law enforcement agency (i.e. the police) effective?

50

80a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

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

Comments:

This refers to the Philippine National Police.

References:

Interview with Ramon Ereñeta, former Civil Service Commissioner, Sept. 15, 2007, Makati City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

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

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

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

80b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

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

Comments:

In general, the great majority of government agencies are underfunded.

References:

Interview with Ramon Ereñeta, former Civil Service Commissioner, Sept. 15, 2007, Makati City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

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.

80c. In practice, the law enforcement agency is protected from political interference.

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

Comments:

Being under the executive branch, it cannot avoid such interference.

References:

Interview with Ramon Ereñeta, former Civil Service Commissioner, Sept. 15, 2007, Makati City.

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

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.

81. Can law enforcement officials be held accountable for their actions?

67

81a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

There is a People's Law Enforcement Board, supervised by the National Police Commission; it has both NGO and government representatives.

References:

RA (Republic Act) 7160, The Local Government Code of 1991; RA 8551, The Philippine National Police Reform and Reorganization Act, 1998.

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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

81b. 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:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

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.

81c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

According to attorney Marlon Manuel, executive director of Alternative Legal Assistance Center Ateneo de Manila University, the initial tribunal, for lower-level offenders, is the National Police Commission. For higher-level offenders, it is the ombudsman, who can bring cases to the Sandiganbayan (anti-graft court).

References:

The general agency for the entire government is the ombudsman, created by the Constitution, Art. XI, Secs. 5-14.

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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.

81d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman is in fact giving very low priority to the investigation of corruption by law enforcement officials.

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007 and Jan. 8, 2008, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.

81e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

Comments:

There is no law exempting law enforcement officers in particular. A law such as Presidential Decree 749 can exempt whistleblowers from prosecution (if they cooperate as witnesses) but will not apply to the principle culprits in a given case.

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007 and Jan. 8, 2008, Quezon City.

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

81f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

Even high police officials have been jailed.

References:

Interview with attorney Marlon Manuel, executive director of Alternative Legal Assistance Center (SALIGAN) Ateneo de Manila University; Sept. 14, 2007, Quezon City.

Interview with Vincent Lazatin, executive director of Transparency and Accountability Network (TAN), Sept. 11, 2007.

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.
