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## Measuring the Concept of Civilian Observers Under Philippine Procurement Law Against International Procurement Instruments: A Compatibility Analysis

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Procurement systems of the world are creating a new world order that propagates the principles of transparency and integrity. The Filipino contribution is a concept of involving civilians in the entire procurement process. Specifically referred to as civilian observers, the presence of these non-governmental and private organizations was originally intended as a transparency measure to monitor the observance of procurement rules throughout the bidding process. This paper presents this unique concept of the Filipino procurement system and measures it against international procurement instruments like the World Trade Organization Government Procurement Agreement, the World Bank Procurement Rules, the Organization for Economic Cooperation and Development Country Models and the United Nations Convention Against Corruption. This comparison is intended to show its compatibility with international norms.

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### Introduction

**T**he basic task of the Medium Term Philippine Development Plan for the period 2004-2010 is to fight poverty and build prosperity for the greatest number of the Filipino people. We must open up economic opportunities, maintain socio-political stability, and promote good stewardship—all to ensure a better quality of life for all our citizens. We will focus on strategic measures and activities that will spur economic growth and create jobs. This can only be done with a common purpose to put our economic house back in working order.

-Pres. Gloria Macapagal-Arroyo  
Republic of the Philippines<sup>22</sup>

Integrity and transparency in public procurement is a worldwide concern. Developing countries like the Philippines<sup>3</sup> has its own share of procurement issues and corruption scandals. Even in first world countries like the United States, corruption scandals continue to unfold.<sup>4</sup> Any democratic nation in the world has channeled its efforts at ensuring accountability of the players in public procurement. In the Philippines, institutional reforms are part of the national government's medium term goals.<sup>5</sup> Government has bonded with the private sector to establish a sound procurement system founded on integrity, transparency and accountability.

In 1999, the Philippine government launched a procurement reforms agenda aimed towards the enactment of a procurement code to serve as a "substantive [step]...to address the legal mess that was government procurement."<sup>6</sup> Civil society groups were mobilized to ensure the passage of a procurement code.<sup>7</sup> Such groups consist primarily of anti-corruption non-governmental organizations<sup>8</sup> like Procurementwatch, Inc.,<sup>9</sup> the Coalition Against Corruption,<sup>10</sup> the Transparency and Accountable Network<sup>11</sup> and even the Roman Catholic Church. They lobbied media, Congress and civilians for support of the passage of a Procurement Reforms Code.

Civil society groups were then given a major role in shaping the proposed reform agenda. Thus, for the first time in the history of procurement law, the concept of civilian observers in the public procurement system was enacted into legislation with Section 13, Article V of Republic Act 9184, otherwise known as the Procurement Reforms Code of 2003 (the Reforms Code).<sup>12</sup> Civilian observers are used to enhance the transparency of the bidding process<sup>13</sup> through public monitoring and implementation of the contracts. The law further indicates that those involved in the acquisition process<sup>14</sup> must conform to the general principle of accountability.<sup>15</sup>

The concept of civilian participation in government acquisition champions the significant role of civil society in national development. The Reforms Code mandates that they participate in the entire procurement process which includes:

- I. Pre-Procurement Conference
- II. Invitation to Bid
- III. Receipt and Opening of Bids
- IV. Bid Evaluation
- V. Post-Qualification
- VI. Award

The magnanimity of the civilian observers' participation in the procurement process, however, raises certain issues concerning their accountability that must be addressed by the government. If the Philippine government is serious about establishing a sound procurement system, it must go beyond measures of integrity and transparency. It must also address competition, trade barriers, and international trade policies. These principles form the new world order of public procurement. The size of the world public procurement market<sup>16</sup> has increased through the years to the point that it can

have a significant impact on the social and economic development of any country.<sup>17</sup>

This paper presents the Philippine concept of civilian observers in public procurement and measures the same against international procurement instruments including the World Bank procurement rules, the Organization for Economic Cooperation and Development (OECD)<sup>18</sup> Country Assessment Strategy, the United Nations Convention Against Corruption and the World Trade Organization (WTO)<sup>19</sup>-Government Procurement Agreement. Specifically, the paper argues that civilian observer provisions of the Reforms Code are compatible with these international procurement instruments. These comparisons are made to show that the concept can be used by different jurisdictions as a tool for establishing a sound procurement system.

### **The Philippine Concept of Civilian Observers in Public Procurement<sup>20</sup>**

#### **Brief Historical and Policy Background**

The roots of community participation in Philippine governance may be traced in the *bayanihan*, a "traditional system of cooperation wherein community members join hands in undertaking an activity that cannot be done by just one or a few individuals, each one contributing labor or materials in accordance with individual capacities and need of the undertaking."<sup>21</sup> This system was first used during the administration of Pres. Ramon Magsaysay from 1954-57. He mobilized the people to help implement a community development program aimed at combating the growing communist insurgency in the countryside at that time.<sup>22</sup> The program made use of an organization in the *barangay*<sup>23</sup> called the *Barangay Development Workers (BDW)* whose members were assigned to coordinate the delivery of public services in the *barangays*. The program adopted a "self-help" approach wherein projects were "identified, planned and implemented by community members based on their expressed "felt-needs."<sup>24</sup>

The growth of civil society began when the Philippines was placed under martial law regime by then President Ferdinand Marcos in 1972.<sup>25</sup> People's organizations, NGOs and the private sector banded together to fight the dictator.<sup>26</sup> Pres. Marcos was ousted from power in 1986 through the famous People Power Revolution, catapulting the Philippines' first woman President, Corazon Aquino, into power.

As a concept, civilian participation in governance finds basis in the fundamental laws of the Philippines, the most recent of which is the 1987 Philippine Constitution which expressly embraces the principle of sovereignty. Thus, Section 1 of the Declaration of Principles and State Policies specifies that "Sovereignty resides in the people and all government authority emanates from them." To underscore its importance, this mandate is the very first declaration in the Constitution.

The Constitution then goes on to recognize the indispensable role of the

private sector in nation-building,<sup>27</sup> the inherent right of the people to directly propose and enact or reject and oppose laws enacted by Congress<sup>28</sup> or by a local legislative body<sup>29</sup> and the right of the different sectors among the constituency to have a voice in the legislative body.<sup>30</sup>

Basis for civilian observers in public procurement is also found in constitutional mandates recognizing the role of civil society groups such as people's organizations,<sup>31</sup> non-governmental organizations, community-based or sectoral conglomerations that promote the welfare of the nation.<sup>32</sup> In fact, the formulation of the Reforms Code included a coalition of government and civil society groups composed of anti-corruption non-governmental organizations.<sup>33</sup>

### Civilian Observer Regulation

The most significant feature of the Reforms Code is Section 13, Article V, which mandates the presence of civilian observers in all stages of the procurement process. There is a general prohibition against any direct or indirect interest of the civilian observers in the bidding process.<sup>34</sup> These observers are required to be members of either a duly recognized private group in a sector relevant to the procurement at hand or a Non-Governmental Organization (NGO). The Implementing Rules and Regulations (IRR) of the Code enumerate examples of what constitute "duly recognized private groups related to the procurement." For infrastructure projects, the following entities are recognized: (1) the National Constructors Associations duly recognized by the Construction Industry Authority of the Philippines (CIAP)<sup>35</sup> and (2) the Philippine Institute of Civil Engineers (PICE). With respect to the procurement of goods, the IRR allows for observation by "any specific relevant chamber-member of the Philippine Chamber of Commerce and Industry". Finally, for consulting services, the IRR stipulates that only a recognized project-related professional organization accredited or duly recognized by the Professional Regulation Commission (PRC) or the Supreme Court,<sup>36</sup> or the Confederation of Filipino Consulting Organizations (COFILCO) may observe the procurement process. Philippine law<sup>37</sup> prohibits the chief accountant and personnel of any accounting unit of a government agency to be a member of the Bids and Awards Committee (BAC). There is no listing for NGOs.

Moreover, these private sector observers must register with the Securities and Exchange Commission, must meet certain character criteria,<sup>38</sup> and must generally be notified at least two days before the stages<sup>39</sup> of the procurement where their presence is required. The absence of observers in the stages mentioned will not, however, nullify the BAC proceedings, provided that invitations in writing were duly sent. Neither the Code nor the IRR requires presentation of proof as to whether or not invitations were received. However, if no observers are present during any stage of the procurement process, the BAC may request bidders to identify an individual who shall act as a third-party witness.<sup>40</sup> There are no other details on how this exercise will

be undertaken. It would seem that the BAC members and the bidders present during the procurement process are given wide discretion in its implementation.

#### Analyzing the Nature and Extent of Civilian Observer Participation<sup>41</sup>

The responsibilities of the observers include the assessment of the extent of the BAC's compliance with the provisions of the Code and its implementing rules and regulations as well as recommendation of areas that can be improved.<sup>42</sup>

Civilian participation is also mandated for electronic procurement done through the government portal called the G-EPS. Civilian observers are required to monitor the on-line proceedings.<sup>43</sup>

The participation of civilians as observers in public procurement was originally intended as a transparency measure.<sup>44</sup> Procurement experts have seen transparency as integral to a sound procurement system. Professor Steven Schooner posits that transparency is a system that "employs procedures by which offerors and contractors (and even the public at large) ensure that government business is conducted in an impartial and open manner."<sup>45</sup> Transparency has also been referred to as "the ability of all interested participants to know and understand the actual means and processes by which contracts are awarded and managed ... and requires the release, as a minimum, of all information to allow the average participant to know how the system is intended to work, as well as how it is actually functioning."<sup>46</sup>

Experts enunciate that the principle of transparency necessitates the existence of an appropriate oversight, which may include Inspectors General under the U.S. system,<sup>47</sup> or a Parliament watchdog to look into conflicts of interest<sup>48</sup> or civilian observers in the Philippine and Peruvian systems<sup>49</sup>.

The benefits of a transparent system have been repeated time and again. It enhances the predictability of procurement decision and observance of rules,<sup>50</sup> fosters competition,<sup>51</sup> curbs corruption and helps attract more investments.<sup>52</sup> As a measure, however, there are those who see it negatively. For example, there are proponents who posit that a transparent system where the bids are opened publicly will promote corruption, as it allows members of a bid rigging cartel to "detect whether its members have complied with their private agreement."<sup>53</sup> During the DOHA Round negotiations of the World Trade Organization, developing countries refused to negotiate on transparency measures for "fear that a multilateral agreement would be used to address questions of market access and therefore only serve the export interests of developed countries."<sup>54</sup>

As an anti-corruption measure, however, the need for transparency in public procurement cannot be overestimated. In fact, for developing economies like the Philippines which places a high premium on curbing corruption, maximum oversight both from the government and civilian sectors is deemed imperative.

While other jurisdictions may have their own system of oversight, what really differentiates the Philippine concept of civilian observers is the use of a third person, who virtually has no participation or interest in the procurement process. This independence creates credibility, integrity, and authority necessary to an effective control system.

Civilian observers contribute to the transparency of the Philippine procurement system by assessing the extent of the BAC's compliance with the provisions of the law<sup>55</sup> and providing proposals for the improvement of the proceedings that will be contained within a report. They are also required to sign the abstract of bids to signify that the procedures have been followed, and to sign the post-qualification summary report if they are amenable to the results. These provisions imply a "whistleblower"<sup>56</sup> role for civilian observers. In fact, the law allows the observer to submit a report to the Ombudsman if in his or her judgment there is a justifiable ground that the award will not redound to the benefit of the government.

There is no regulation in the Philippines equivalent to the *qui-tam* rules<sup>57</sup> under the U.S. system. However, there are persons who report unlawful acts of public officers. For these persons, the only protection afforded by the law is under the Witness Protection, Security and Benefit Program Law.<sup>58</sup> This is probably the reason why almost no one reports violators of the law to the government. A legal hiatus is then created that needs to be filled. There are currently eight pending whistle blowing bills in the Philippines before Congress. None has yet been passed since 2001.<sup>59</sup> The author recommends that the Philippine Congress enact a whistleblower law that can be implemented effectively. The Philippine Legislature should study the U.S. False Claims Act<sup>60</sup> especially provisions giving the relator a certain percentage of what government collects from the violator and a Draconian penalty such as three times the value of the contract subject to the violation. It is also highly recommended that the law provide a mechanism to ensure the safety and security of relators<sup>61</sup> and their families.

Under the Implementing Rules of the Reforms Code, oversight of the procurement process is done by two parties: the Commission on Audit and Civilian Observers.<sup>62</sup> The latter (civilian observers) must come from two groups: (1) a duly recognized private sector or discipline relevant to the procurement at hand and (2) a non-governmental organization. Any such organization must be registered with the Securities and Exchange Commission.

The Commission on Audit (COA) is a constitutional commission tasked with examining, auditing, and settling all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government of the Philippines as all its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations.<sup>63</sup> It generally conducts post-audit of government transactions, with the exception of autonomous regions, state universities and colleges, and NGOs receiving funding directly or indirectly from the government.<sup>64</sup> Thus, the COA expertise is only on internal control over the

public funds. In most cases, their representatives do not inherently have any expertise on the conduct of the procurement or its technicalities.

The composition of civilian observers is a mechanism intended to determine substantial compliance with procurement laws. The presence of a member of a private sector relevant to the procurement at hand is necessary to determine whether the technical evaluation conducted by the BAC is satisfactory. The BAC composition provides that all three members must presumably have knowledge, experience, and expertise in procurement. One of them is supposed to have a legal or administrative background and another, on the financial aspect. There are also provisional members who should have technical expertise as well as a representative from the procuring entity. These regulations indicate that the legislature saw that the BAC cannot ensure the necessary technical expertise in a particular procurement. The presence of civilian observers who are practicing the field involved in procurement is expected to fill the technical gap. Those in the private sector may be more up-to-date with the newest trends in the procurement such as the availability of new construction materials and their present market prices and efficiencies. Second, those in the practice of their profession (contractors, architects, engineers for construction contracts, consultants and consulting organizations for services) are usually more extensively exposed to the most cost-effective mechanisms of a particular procurement. Lastly, including these firms as observers on a voluntary basis instead of hiring them as consultants would save the Philippine government financial resources that may be funneled to appropriate government programs.

On the other hand, there are issues as to whether this group of civilian observers will serve their purpose: disclosing unlawful practices of contractors. The list in the Implementing Rules includes organizations like the Chamber of Commerce ("Chamber"), and the Association of Architects and Engineers, Consultants and Constructors.<sup>65</sup> A scenario of conflict can be created simply with a reading of these types of organizations. A member of the Chamber may participate in the procurement of goods. By including the Chamber as observer, the law establishes the situation of a member of the Chamber observing or evaluating a fellow member. Not only is the interest clear, the conflict is also as pristine. This situation can be applied in construction contracts as regards construction, architect and engineer contractors and observers, and consultancy firms and observers. This is not to say that all contractors are members of their field's professional organizations. It is intended to establish that the propensity of their alliance is very high in the Philippine setting, especially in local governments where "everybody seems to know everybody."

NGO representatives have a lot to do with government's anti-corruption efforts. They are intended to provide additional oversight that may be provided by the other private sector representatives. Unlike the first group, however, whose presence might spur an obvious conflict of interest issue, NGOs often exist for advocacy. By definition, they are presumed to have no interest in the

procurement process as they are normally not engaged in any business, nor are their members usually involved in procurement activities. This is, however, not to indicate that they may not know (by friendship, acquaintance or support) any bidder or that their family members cannot be involved as potential bidders. If the extent of their interest in the procurement they are observing is adequately defined so that ethical boundaries are established, they will certainly serve the purpose for which they are intended.

Indeed, the disclosure of government procurement information to civilian observers is necessary to achieve transparency. This enflashes the right of the public as stakeholders to know what government considers in its contracts necessary as effective assessment of the procurement.<sup>66</sup> Procurement experts Nash and Cibinic (1998) emphasized that the disclosure of information to the public permits it to evaluate whether government is getting best value out of taxpayer's funds or whether they have succumbed to waste and abuse of the public trust.<sup>67</sup> Caution should, however, be made that this disclosure will serve its purpose of deterring corruption. It is deemed necessary that, in order for transparent information to achieve its purpose of curbing graft, it should be properly defined as to (a) what type of information is released, (b) to whom it is released, and (c) at what stage of the procurement process is the release made.<sup>68</sup>

Additional and independent oversight in the procurement process enables government to assure its taxpayers that government action is for their benefit. Such monitoring, when done by stakeholders themselves, creates a culture of unity towards the goals of national development. To maximize the civilian observers' role in transparency, their independence must be unquestionable. It also becomes necessary that they become adept on the procurement process.

### **The Concept of Civilian Observers: Assessing Compliance with International Procurement Instruments<sup>69</sup>**

#### **The WTO Government Procurement Agreement**

The Government Procurement Agreement (GPA) is a plurilateral agreement entered into by members of the World Trade Organization. It was developed in parallel with the Uruguay Round of multilateral trade negotiations and is intended to replace and supersede the "more limited agreement or "code" on government procurement of goods that was developed in the course of the Tokyo Round of multilateral trade negotiations in the 1970s."<sup>70</sup>

The GPA includes general rules by which the country signatories abide like non-discrimination, transparency and technical specifications for tendering and delivery. Member countries may, however, define their coverage under the Agreement in Appendix I which includes five annexes: Annex 1 (central government agencies), Annex 2 (sub-central government entities),



Annex 3 (all other entities that procure), Annex 4 (services) and Annex 5 (construction services).

The main focus of the GPA is on non-discrimination, competition and transparency. There are, however, provisions that relate to integrity in relation to competition. For example, Section 4 of Article VI prohibits entities from seeking or accepting advice which may be used in the preparation for specifications of a specific procurement from a firm that may have a commercial interest in the procurement, which act may have the effect of precluding competition. Entities are also prohibited from providing any suppliers with information regarding a specific procurement that may have the effect of precluding competition.<sup>71</sup> This regulation may be replicated in specific integrity provision for the Contracting Officer under Philippine Law, in addition to already-existing provisions on integrity violations of private persons who participate in the procurement process and who collude with public officials and employees.

There is an entire chapter in the GPA devoted specifically to transparency<sup>72</sup> that spans provisions encouraging all parties to indicate all terms and conditions as well as deviations from competitive tendering, publication of procurement notices, and ensuring that procurement regulations should not change during the procurement. What is most interesting about the transparency provisions is the recognition that they apply to suppliers situated in countries that are not parties to the agreement and that non-parties that comply with these conditions may participate as observers.<sup>73</sup> This is probably the only provision that is relevant to the Philippines as, to date, the Philippines has not yet acceded to the Government Procurement Agreement. The Philippines was, however, among those that entered into the Government Agreement against Tariffs and Trade Uruguay Round, and it is a member-country of the World Trade Organization (WTO).<sup>74</sup> The United States is its major trading partner, accounting for roughly 17-18% of its total exports and imports.<sup>75</sup>

Table 1. Country Table: Philippines (Merchandise Table)<sup>76</sup>

Breakdown in the Country's Total Exports		Breakdown in the Country's Total Imports	
By Main Destination		By Main Origin	
United States	18.0	United States	17.5
Japan	17.5	Japan	17.1
European Union	17.0	Singapore	7.9
China	9.9	European Union	7.8
Hongkong, China	8.1	Taipei, Chinese	7.3

In the conduct of negotiations, integrity is preserved by a mandate under the Government Procurement Agreement that all entities must treat tenders in confidence and are mandated not to provide any information intended to assist specific participants in bringing their tenders up to the level of other participants.<sup>77</sup> This is very akin to the regulations under both U.S. and Philippine procurement systems on maintaining the integrity of the procurement process and preventing bid rigging.

### UN Convention Against Corruption

The United Nations Convention Against Corruption (Anti-Corruption Convention) is primarily about integrity and transparency. This is clearly stated in the preambulatory clauses. The Convention was adopted by the General Assembly of the United Nations unanimously on October 31, 2003. To date, it has been signed by 140 countries and ratified by 38 countries, leading to its entry into force on December 14, 2005.<sup>78</sup> The concept of civil society participation in public procurement is most amplified in this international agreement. In its preambulatory clause, the Convention recognizes the support and involvement of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations.<sup>79</sup> The role of the private sector is discussed in Article 12 of the Convention, which acknowledges the involvement of the private sector in the fight against corruption. Among the specific measures recommended towards this end is the promotion of standards and procedures to safeguard the integrity of relevant private entities including the prevention of conflict of interest.<sup>80</sup>

The most relevant provision in the Convention relating to the concept of civilian observers is the entire article on the participation of society.<sup>81</sup> As in the rationale on civilian observers, this part of the Convention recognizes the participation of individuals and groups outside the public sector such as civil society, non-governmental organizations and community-based organization in the fight against corruption. In relation to curbing corruption in public procurement therefore, the concept of civilian observers under the Philippines Procurement Reforms Code is clearly in application with this provision. Further, the Convention recognizes that society participation has contributed to good decision-making processes, effective access to information and non-tolerance methods.<sup>82</sup> Anti-corruption bodies are also encouraged to proliferate.<sup>83</sup> Presidential Commission for Good Government Chair Nicasio Conti, in a speech delivered before the Global Organization of Anti-Corruption Parliamentarian, emphasized the unique application of this provision: Article 13 on Participation of Society is a confirmation of our working philosophy that no anti-corruption campaign will ever succeed without the direct and active involvement of civil society, the NGO's, and community-based organizations as well as all those outside the

mainstream of the public sector. After all, the ill effects of dishonesty in public service jeopardize every sector of society.<sup>84</sup>

The UN Convention Against Corruption was signed by President Gloria Macapagal-Arroyo on February 25, 2005, on the occasion of the 19<sup>th</sup> Anniversary of the famous peaceful EDSA Revolution that brought democracy back to the Philippines.<sup>85</sup>

### World Bank Procurement Rules

The World Bank (the "Bank") requires conformity with procurement rules denominated as Guidelines for Procurement Under IBRD Loans and IDA Credits on every loan it offers to nations that will use the funds in the procurement of goods, works, and services.<sup>86</sup> This is done to "ensure that the proceeds of any loan are used only for the purposes for which the loan was granted, with due attention to consideration of economy and efficiency and without regard to political or other non-economic influences or considerations."<sup>87</sup>

While integrity does not appear among the four principles of the Bank, the rules on fraud and corruption emphasize that all borrowers, bidders, contractors and subcontractors must observe the highest standards of ethics during the procurement and execution of bank-supported contracts. There are provisions on confidentiality of bid information, and surprisingly, one on community participation in procurement. The Bank's description of instances where community participation is encouraged include (a) calling for participation of local communities and/or nongovernmental organizations (NGOS) in the delivery of services, (b) increasing the utilization of local know-how and materials, or (c) employ labor-intensive and other appropriate technologies, the procurement procedures which will be efficient and acceptable to the Bank.<sup>88</sup> This enumeration seems to indicate that the concept of community participation is a form of local set-aside and not indicative of the same principle as the Philippine concept of civilian observers.

Based on the concept outlined above, it would seem that the concept of civilian observers might have been formulated to conform to World Bank Rules. The Philippines has relied on the Bank's financial and technical assistance to fund public service projects.<sup>89</sup> A more careful reading of the way the provision has been phrased will, however, indicate some ambiguity. While it mentions the participation of local communities and NGOs from which civilian observers come, the Bank relates such organizations to the delivery of basic services. It is the intent of the Bank to involve civilians in the implementation of projects involving services (e.g., labor or employment) and not necessarily involvement in the procurement process. Nevertheless, it may be argued that the Bank also underscored that borrowers are encouraged to employ appropriate procurement procedures acceptable to the Bank. The concept may come within this principle and also within the Bank's general policy of promoting procurement systems with transparency and integrity.

In fact, no less than the World Bank Country Director for the Philippines Joachim von Amsberg hailed the Philippine public sector procurement framework as an international success story.<sup>90</sup>

### OECD Country Models

The Organization for Economic Cooperation and Development (OECD) has developed a tool to be used by borrower countries and borrower organizations with regard to their procurement system. Called the OECD Methodology for Assessment of National Procurement Systems, its goals include the capacity-building of beneficiary-countries to "improve its procurement system."<sup>91</sup>

The rules provide for four pillars, among which is the integrity of the procurement system. Aside from these pillars, there are several indicators and sub-indicators. The most relevant to this paper's discussion is that dealing with "a sustainable strategy and training capacity ... to provide training, advice and assistance to develop the capacity of government and private sector participants to understand the rules and regulations and how they should be implemented."<sup>92</sup> This provision relates very closely to the concept of civilian observers in Philippine public procurement who come from the private sector. In fact, the member nations of the OECD have recognized the participation of the private sector in procurement<sup>93</sup> and have even encouraged capacity building to maximize their role. Among its goals from sustainable development are trust and the engagement of stakeholders "to build their capacity to identify issues, include local values, and communicate their experience".<sup>94</sup>

In many of its projects, the OECD aims to incorporate civil society cooperation. For example, in a project in Namibia involving a partnership between the latter and Finland, the OECD cited the significant contribution of NGOs in the management and performance of the sectors involved by enhancing the level of education and increasing citizen awareness.<sup>95</sup> The OECD has, as a result, been cited as a top performer in its engagement with civil society by the 2006 Global Accountability Project, funded by One World Trust.<sup>96</sup>

In addition, government-members of the OECD in the Asia-Pacific region particularized their anti-corruption measures in government transactions through an Anti-Corruption Plan for Asia and the Pacific during a conference held in Manila, Philippines in October 1999 and in Seoul, South Korea in December 2000. The conferences identified three pillars for the said initiative: Pillar 1 on developing effective and transparent systems for public service, Pillar 2 on strengthening anti-bribery actions and promoting integrity in business operations, and Pillar 3 on supporting active public involvement. The said pillars specifically provide the enhancement of institutions for public scrutiny and oversight<sup>97</sup> and encourage the support of non-governmental organizations and civil society groups to promote integrity in government

transactions. The involvement of NGOs in monitoring public sector programs and activities is highly encouraged.<sup>98</sup>

### Measuring Compliance of Civilian Participation in Philippine Public Procurement

The foregoing demonstrates that the concept of civilian observers in Philippine procurement law is consistent with the principles of International Model systems and conventions. As a borrower-country of the World Bank and a grantee of OECD programs, the regulation specifically dealing with oversight by civilian groups of government acquisition is highly appreciated and is in fact encouraged. This will likely impact to an increased credibility of the Philippines to be a grantee of development projects from the major development banks and other international grant organizations. These financing institutions are often wary that the national governments they lend money to or whose projects they finance might not use the resources granted for the purposes for which they were given. Civilian oversight in the process becomes a valuable tool to ensure this goal.

As to the WTO Government Procurement Agreement, this may not be relevant to the Philippines since the country has not acceded to this international agreement to date.

Determining positive compliance with international standards on integrity is, however, not enough. There is a greater mandate to ensure that civilian observers who play a significant role in acting as vanguards of a sound procurement system must also be of highest credibility and integrity. Such a mandate requires that the law must provide adequate mechanisms to protect the procurement process from civilian observers who might take advantage of their position, or who might betray the system for personal gain. To achieve the maximum benefit of oversight, the nature of civilian observers must be identified and the law scrutinized as to whether it has adequate provisions to protect the system from these circumstances.

### Conclusion

The concept of civilian observers appears revolutionary to many. The admiration which the international community has given to such an idea is largely due to emerging advocacies on anti-corruption and procurement ethics globally. While the Philippines may rightfully receive a pat on its shoulders for taking a lead on regulating private sector involvement in government acquisitions, such laurels should not lead its leaders to shun consideration of other important aspects of the procurement process. There are still issues like integrity, competition, best value and customer satisfaction that must be dealt with more seriously if its economy must develop. In fact, the most recent procurement and corruption scandals in the Philippines do not seem consistent with the laurels that have been given our procurement reforms law. Already,

lawmakers are working towards amending the procurement code to deter further scandals. While the world order is a more transparent and ethical system, the world also moves towards free trade and less stringent domestic barriers to commerce. For its procurement system to come in full circle, the Philippine government must look into accession to new world orders like the WTO Government Procurement Agreement, maximize the financial and technical assistance from projects funded by the World Bank and the Organization of Economic Cooperation for Development and endeavour to free itself from foreign debt dependency.

#### Endnotes

<sup>1</sup>Graduate, Master of Laws, Government Procurement, George Washington University Law School and Thelma Weaver Memorial Awardee (Most Outstanding ILLM), May 2007. The author wishes to thank Prof. Christopher Yukins and Prof. Dan Gordon of the George Washington University Law School.

<sup>2</sup>For a complete text of President Gloria Macapagal Arroyo's address regarding the Medium-Term Development Goals of the Philippines, please see <http://www.gov.ph/listings/mtpdp.asp>.

<sup>3</sup>The Philippines has been infamous as among the most corrupt nations in Asia. Transparency International's 2002-2004 Corruption Perception Index ("CPI") identified the Philippines as among the most corrupt nations in Asia, after Bangladesh and Indonesia. In 2007, the country's CPI remained at 2.5, the same rating given it in 2006. (For information on the ratings, please see [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi](http://www.transparency.org/policy_research/surveys_indices/cpi)). An estimated fifty billion US dollars have been lost to corruption over the past twenty years because of procurement problems. Of the total goods purchased by the government every year (ranging between 18 and 20 billion US dollars) and infrastructure (approximately 70 billion US dollars), approximately 20% have been lost to corruption. (See Transcript of Records, Committee on Constitutional Amendments, Revision of Code & Laws, Phil. Senate, May 28, 2002 at 3 and 4). Most of the corruption scandals in the Philippines date back to the era of the Marcos dictatorship. The most recent incidences include the election fiasco brought about by the tapping of President Gloria Macapagal Arroyo's telephone conversation with Commission on Elections Commissioner Garcillano, popularly dubbed as the "Hello Garci tape" and the most recent alleged overpriced contract entered into by the Philippine Government with the ZTE Corporation of China for the implementation of a \$330B US national broadband network (nbn) project. (For an overview of the Hello Garci tape fiasco, please see the Philippine Center for Investigative Journalism blog; for the ZTE-NBN deal, please see the Philippine Center for Investigative Journalism blog at <http://www.pcij.org/blog/?p=1958>).

<sup>4</sup>Recent procurement scandals in the United States include alleged bribery of foreign government officials to win contracts by Enron, please see *The Wall Street Journal*, page A1 (August 5, 2002) and that of U.S. Navy Officer Darlene Druyun, please see Stuart B. Nibley, *Jamming the Revolving Door, Making it More Efficient or Simply Making it Spin Faster: How is the Federal Acquisition Community Reacting To The Darlene Druyun and Other Recent Ethics Scandals*, 41 *SUM Procurement Law-1* (2006), Jeffrey Branstetter, *Darlene Druyun: An Evolving Case Study in Corruption, Power, and Procurement*, 34 *Pub. Cont. L.J.* 43 at 445 (citing Supplemental Statement of Facts at 1, *United States v. Druyun* (E.D. Va. 2004)(No. 04-150-S), Cf. *Wickwire Roundup, The Darlene Druyun Fallout*, <http://www.wickwire.com.com/files/wickwireroundupfebrayrt2005.pdf>., Cf. *U.S. v. Pirio*, *U.S. v. Olivero*, *U.S. v. Greenwood* at [http://www.usoge.gov/pages/daeograms/dgr\\_files/2005/do05014.txt](http://www.usoge.gov/pages/daeograms/dgr_files/2005/do05014.txt).

<sup>5</sup> See generally the Medium Term Development Plan at [www.gov.ph](http://www.gov.ph).

<sup>6</sup>J. Edgardo Campos & Jose Luis Syquia, *World Bank Working Paper No. 70, Managing The Politics Of Reform, Overhauling The Legal Infrastructure Of Public Procurement In The Philippines* (2006) 26.

<sup>7</sup> *Id.*

<sup>8</sup> A non-governmental organization (NGO) is any non-profit, voluntary citizens' group which is organized on a local, national or international level. Task-oriented and driven by people with a common interest, NGOs perform a variety of service and humanitarian functions, bring citizen concerns to Governments, advocate and monitor policies and encourage political participation through provision of information. Some are organized around specific issues, such as human rights, environment or health. (Definition taken from <http://www.ngo.org/ngoinfo/define.html>.)

<sup>9</sup> PWI is a non-profit, non-partisan, civil society organization launched in 2001 by a group of concerned and seasoned individuals from the government, academe, legal profession, and the private sector, brought together by the challenge of reducing, if not eliminating, graft and corruption in government through procurement reform. PWI's primary objective is to promote transparency and accountability, as well as to assist in the streamlining of procedures in government procurement of goods, supplies, materials, services and infrastructure projects. See also <http://www.pwi.org.ph>.

<sup>10</sup> The Coalition Against Corruption is an alliance of the private sector, non-government organizations, and the Church that fights corruption. Launched in September 21, 2004, its mission is to implement and support counter-corruption projects, initially in the area of procurement and delivery of essential

public services, and inspire ordinary citizens to join in efforts to combat corruption. The members of the coalition are the Makati Business Club (MBC), Catholic Bishops' Conference of the Philippines (CBCP) and its National Secretariat for Social Action (NASSA), Bishops-Businessmen's Conference for Human Development (BBC), Caucus of Development NGO Networks (Code NGO), National Citizens' Movement for Free Elections (Namfrel), and the Transparency and Accountability Network (TAN), see [www.tan.org.ph](http://www.tan.org.ph).

<sup>11</sup>Ibid..

<sup>12</sup>Other jurisdictions like Peru have civilian observers in public procurement whose participation remains unregulated. See generally, <http://www.peru.gob.pe>.

<sup>13</sup> See R.A. 9184, § 13.

Section 13. Observers.-To enhance the transparency of the process, the BAC shall, in all stages of the procurement process, invite... at least two observers to sit in the proceedings...

<sup>14</sup>Ensuring integrity needs an adequate framework for transparency and accountability. Transparency can effectively deter corruption in public procurement if it is properly defined as to (a) what type of information is disclosed, (b) to whom is information disclosed and (c) at what stage should information be disclosed. See Janos Bertok, *Promoting Transparency and Integrity in Public Procurement: The Work of the OECD*, Pub. Proc. L. Rev. 188 (2006).

<sup>15</sup>R.A. 9184, op. cit., note 12, § 3 ((d) which specifically states as among the governing principles of Philippines Government Procurement to be: "(d) System of accountability where both the public officials directly or indirectly involved in the procurement process as well as in the implementation of procurement contracts and the private parties that deal with government are, when warranted by circumstances, investigated and held liable for their actions relative thereto.)"

<sup>16</sup>See Organization for Economic Cooperation and Development, *The Size of Procurement Markets*, available at <http://www.oecd.org/dataoecd/34/14/1845927.pdf>.

Total government procurement worldwide is estimated to be roughly equivalent to 82.3% of world merchandise and commercial services exports in 1998. Country-specific procurement estimates are detailed for 28 OECD countries and for 106 non-OECD countries. The ratios of government procurement markets that are potentially contestable are estimated at 7.57% or USD 1 795 billion for OECD countries and at 5.10% or USD 287 billion for non-OECD countries. The value of potentially



contestable government procurement markets worldwide is estimated at USD 2 083 billion, which is equivalent to 7.1% of world GDP or 30.1% of world merchandise and commercial services exports in 1998.

<sup>17</sup> R.B. Watermeyer, *Facilitating Sustainable Development Through Public and Donor Procurement Regimes: Tools and Techniques*, *Pub. Proc. Law Rev.* 1, 30-55 (2004).

<sup>18</sup> The OECD is an organization of twenty countries established on December 14, 1960, to bring mostly first-world countries to cooperation towards economic and social development and assist the world in policy formulation and execution. The membership has increased by 10 in recent years, bringing member-countries to 30. (For additional information on the organization, please see [www.oecd.org](http://www.oecd.org).)

<sup>19</sup> The WTO is the only international organization dealing with trade, trade issues and international trade policy. To date, it has 158 countries as members, including the Philippines and the United States. (For additional information on the organization, please see [ww.wto.org](http://ww.wto.org))

<sup>20</sup> Portions of this part are taken from a paper in the fall by the author entitled "Civilian Participation in Public Procurement: Case Studies from the Philippines," submitted in partial compliance of the course in Procurement Reforms Seminar (Fall 2006) under Prof. Christopher Yukins of the George Washington University Law School, Washington, D.C..

<sup>21</sup> Development Initiatives, Inc., *What Determines the Policy Impact of Local Negotiations? A Comparative Study in the Philippines*, Final Report (February 15, 2005) at 5.

<sup>22</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*, at 6.

<sup>26</sup> *Ibid.*

<sup>27</sup> PHIL. CONST., Art. II, § 20.

For a complete text of the 1987 Phil. Constitution, please see <http://www.chanrobles.com/philsupremelaw1.htm>.

<sup>28</sup> *Ibid.*, Art. VI, § 32.

<sup>29</sup> *Ibid.* See also *op. cit.* note 20, Chap. II, Title IX, §§ 120-127.

<sup>30</sup>PHIL. CONST., *op. cit.* note 24, Art VI, § 5 (2) (Twenty percent of members of the House of Representatives must be sectoral representatives).

<sup>31</sup>*Ibid.* Art XIII, § 15 (Bonafide associations of citizens with demonstrated capacity to promote the public interest with identifiable leadership, membership and structure).

<sup>32</sup>*Ibid.*, Art II, § 23.

<sup>33</sup>J. EDGARDO CAMPOS & JOSE LUIS SYQUIA, *op. cit.* note 5, at 5.

<sup>34</sup>Imp. Rules and Reg., R.A. 9184, §13, Observers.- To enhance the transparency of the process, the BAC shall, in all stages of the procurement process, invite, in addition to the representative of the Commission on Audit, at least two (2) observers to sit in its proceedings, one (1) from a duly recognized group in a sector or discipline relevant to the procurement at hand, and the other from a non-government organization: Provided, however, That they do not have any direct or indirect interest in the contract to be bided out. The observers should be duly registered with the Securities and Exchange Commission and should meet the Criteria for observers set forth in the IRR. For a complete text of the IRR, please see [http://www.neda.gov.ph/references/RAs/Approved%20IRRA%20of%20R.A.%209184 \(July%2011,%202003\).pdf](http://www.neda.gov.ph/references/RAs/Approved%20IRRA%20of%20R.A.%209184%20(July%2011,%202003).pdf).

<sup>35</sup>Construction groups who can act as civilian observers are listed to include but not limited to, Philippine Constructors Association, Inc. ("PCA") and the National Constructors Association of the Philippines ("NACAP").

<sup>36</sup>Civilian observers groups of engineers are listed as but not limited to, the Philippine Institute of Civil Engineers ("PICE") and the Philippine Institute of Certified Public Accountants ("PICPA").

<sup>37</sup>COA Cir. No. 2003-0204, GPPB Cir. 03-2003 (Dec. 1, 2003), a complete text of which is available at [www.gppb.gov.ph/cgi-bin/issuances/files/03-2003\\_2.pdf](http://www.gppb.gov.ph/cgi-bin/issuances/files/03-2003_2.pdf).

<sup>38</sup>R.A. 9184, I.R.R., *op. cit.* note 31, 13.2.

Observers should meet the following criteria: (1) knowledge, experience or expertise in procurement or in the subject matter of the contract to be bid, (2) absence of direct or indirect interest in the contract to be bid out, and (3) any other criteria that may be determined by the BAC.

<sup>39</sup>*Id.*, § 32

Pre-bid conference, opening of bids, post-qualification, contract award and special meeting of the BAC.

<sup>40</sup>GPPB Manual for Procuring Good and Services, a complete of text of which is available at <http://www.gppb.gov.ph/downloadables/forms/GPM%20-%20Vol.2.pdf>.

<sup>41</sup>This portion will be part of a thesis entitled *Civilian Observers in Government Procurement: Initiatives for a Sound Public Procurement System* submitted in partial fulfillment of an LLM in Government Procurement Law, the George Washington University Law School, Spring 2007.

<sup>42</sup>R.A. 9184, I.R.R., *op. cit.* note 31, § 13.4

Responsibilities of the Observers include:

1. Preparation of the report either jointly or separately indicating their observations made on the bidding activity conducted by the BAC for submission to the Head of the Procuring entity, copy furnished the BAC chairman. The report shall assess the extent of the BAC's compliance with the provisions of the IRR-A and areas of improvement in the BAC's proceedings. For this purpose, the BAC shall furnish them with a copy of the following documents upon this request:

- a. Minutes of related proceedings of BAC meetings;
- b. Abstract of bids;
- c. Post-qualification summary report;
- d. APP and related PPMP; and
- e. Copies of "opened" proposals.

Observers may also give a copy of their report to the Office of the Ombudsman/Resident Ombudsman if the BAC is found to have failed in following the prescribed bidding procedures or for any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the Government as defined in this IRR-A.

2. To sign the abstract of bids, if, in their independent observation, the bidding activity conducted by the BAC followed the correct procedure as indicated in this IRR-A; and

3. To sign the post-qualification summary report if, in their independent observation, the BAC followed the procedure as indicated in this IRR-A and that the observer is amenable to the results of the post-qualification.

<sup>43</sup>*Ibid.* § 8.7

Observers- The G-EPS shall allow observers, duly authorized by the BAC, to monitor the procurement proceedings on-line; Provided, however, That such observers do not have any direct or indirect interest in the contract to be bid. See also RA 9184, § 8.

<sup>44</sup>R.A. 9184, *op. cit.* note 12, § 13 (Observers- To enhance the transparency of the process, the BAC shall, in all stages of the procurement process, invite, in addition to the representative of the Commission on Audit..."); see also *ibid.* § 3(a); see R.A. 9184 I.R.R., *op. cit.*, note 55 §§ 13.1-13.4.

<sup>45</sup>Steven L. Schooner, *Desiderata: Objectives of a Sound Procurement System*,

11 *Pub. Proc. Law Rev.* 103 (2002) (citing Sue Arrowsmith, *Towards a Multilateral Agreement on Transparency in Government Procurement*, 47 *Int'l & Comp. Law Q.* 793, 796 (1998)).

<sup>46</sup> Wayne A. Wittig, *A Framework for Balancing Business and Accountability Within a Public Procurement System: Approaches and Practices of the UN*, *Pub. Proc. Law Rev.* 139, 139-164 (2001).

<sup>47</sup> *Inspector General Act of 1978*, 5 U.S.C. App. § 2, (Inspectors General have been established in different executive departments to investigate these agency's procurements. They are required to be free of agency influence, have access to all records relating to any agency's programs and operations and may issue subpoenas for all necessary information and documentation).

<sup>48</sup> CAMPOS & SYQUIA, *op. cit.*, note 5, at 153.

<sup>49</sup>In Peru, the CONSUCODE, through the "Government Procurement Transparency Project", and with the collaboration of the USAID, has been implementing civilian observers on public procurement in Peru. Civilian observers are defined as a mechanism of social participation through which representatives of society institutions get together with the purpose to supervise the fulfillment of the executive agencies' duties. In government acquisitions, civilian observers are a mechanism of active participation of surveillance of the procurement processes conducted by the agencies. The surveillance can take place at the 3 levels of government: Central, Regional and Local.

Civilian observers are integrated voluntarily by institutions that exist in the civil society (preferably that belongs to the region of where the purchasing agency is located), such as professional of the Chambers of Commerce, Lawyers Bar, Engineers Bar, and NGOs. Any citizen (e.g. students) can integrate them, unless there is a conflict of interests. There is, however, no statute that expressly defines the scope of the civilian observers in Peru. See generally, [www.consucode.gob.pe](http://www.consucode.gob.pe). (English translation by Melissa Cossio, a Peruvian lawyer)

<sup>50</sup> See Christian Pitchas, Hans Joachim-Priess, *WTO: The Proposed WTO Agreement on Transparency in Government Procurement-DOHA and Beyond*, *Pub. Proc. Law Rev.* 13 (2002).

<sup>51</sup> *Ibid.*

<sup>52</sup> BARTOLOME C. FERNANDEZ, JR., *A TREATISE ON GOVERNMENT CONTRACTS UNDER PHILIPPINE LAW* 141 (COA Research & Development Foundation, Inc.) (1985).

<sup>53</sup> Kara Haberbusch, *A Critical Look at Sealed Bidding System*, 99, 30 *Pub. Cont. L. J.* 97.

<sup>54</sup> Daniela Decker, Hans Joachim Priess, *The WTO: General Council Decision of August 1, 2004: A Note On the Decision Not to Launch Negotiations on Transparency in Government Procurement During the DOHA Round*, *Pub. Proc. Law Rev* 1 (2005).

<sup>55</sup> Compare with the Comment of US procurement experts Ralph Nash, Jr and John Cibinic, Jr when they opined that evaluations of procurement personnel should not necessarily focus on whether they followed the detailed procedures but on whether they did a good job. This, they state, will spur more efficiency into the system. See John Cibinic, Jr & Ralph Nash, *Can Procurement be Both Fair and Efficient*, 9 No. 1 *NASHCIBINIC Rep.* P2.

<sup>56</sup> Under pending legislation on whistleblowers in the Philippines, whistleblower is defined as "someone who does not share the strong and common interest of the two immediate participants of a corrupt transaction to hide the wrongdoing. Thus, a whistleblower offers hope of breaking through the "concealing cover" that protects the bribe giver and taker. A whistleblower is somebody who initiates the process of corruption control by disclosing information about a wrongdoing to authorities, who are expected to use the information for the anti-corruption efforts." See Keynote Address of Supreme Court Justice Feliciano C. Feliciano, chair of the Board of Advisors of the Hills Governance Center of AIM. Justice Feliciano served on the World Trade Organization (WTO) Appellate Body from 1995 to 2000, and is a member of the ICC International Court of Arbitration in Paris. See [http://www.aim-hills.ph/projectpage/prs/research3\\_13\\_1.htm](http://www.aim-hills.ph/projectpage/prs/research3_13_1.htm).

<sup>57</sup> Qui tam means "he who sues for the king as well as for himself in the matter." JOHN CIBINIC, JR. & RALPH C. NASH, JR., *FORMATION OF GOVERNMENT CONTRACTS* 157 (CCH 3d. ed. 1998). Qui tam rules under the US system are found under the False Claims Act (31 U.S.C. § 3730). Violators who are proven guilty will be made to pay three times the dollar amount of total amount defrauded the government plus civil penalties of \$5000-10,000 for each false claim. The qui tam plaintiff will receive fifteen to thirty percent of what the government actually recovers from the defendant as a result of the suit.

<sup>58</sup> R.A. 6981, a complete text of which is available at <http://www.chanrobles.com/republicactno6981.htm>.

<sup>59</sup> For an overview of pending whistleblower bills in the Philippine Congress, please see [http://www.aim-hills.ph/projectpage/prs/research3\\_8.htm](http://www.aim-hills.ph/projectpage/prs/research3_8.htm).

<sup>60</sup> See False Claims Act, *op. cit.* note 54.

<sup>61</sup>*Ibid.* Under the False Claims Act of the U.S. system, a relator is the one who reports a procurement anomaly to the appropriate government agency.

<sup>63</sup>PHIL. CONST., *op. cit.*, note 24, Art. IX (D)(2)(1).

<sup>64</sup>*Ibid.*

<sup>65</sup>R.A. 9184, *op. cit.*, note 31, § 13.1.

<sup>66</sup> Nash and Cibinic, *Postscript III: Exemption 4 of the Freedom of Information Act*, NASH&CIBINIC REP 19. No. 1, page 4.

<sup>67</sup> *Ibid.*

<sup>68</sup> Janes Bertok, *Promoting Transparency and Integrity in Public Procurement: The Work of the OECD*, *Pub. Proc. Law Rev. NA* 188-194, 4 (2006).

<sup>69</sup> This portion will be part of the author's thesis entitled "The Concept of Civilian Observers in Public Procurement: Initiatives for a Sound Public Procurement System," submitted in partial fulfillment of an LLM in Government Procurement Law, the George Washington University Law School, Spring 2007.

<sup>70</sup> Robert T. Anderson, *Policy and Legal Frameworks for Open Procurement Markets-Part I, The Role of the WTO* (citing Annet Blank and Gabrielle Marceau, "The History of the Government Procurement Negotiations Since 1945," *Public Procurement Law Review*, No. 4, 77 (1996)).

<sup>71</sup>WTO GPA, Art. VII, § 2. For a complete text, please see [http://www.wto.org/english/tratop\\_e/gproc\\_e/gp\\_gpa\\_e.htm](http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm).

<sup>72</sup> *Ibid.* Art. XVII.

<sup>73</sup>*Ibid.*, § 2.

<sup>74</sup> For data on the member-countries of the WTO, including the Philippines, and their respective dates of accession, please see the World Trade Organization website at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm).

<sup>75</sup>For data on World Trade Organization member-countries' Country Profile where this data about the Philippines may be obtained, please see <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language>

=E&Country=PH.

<sup>76</sup> Ibid.

<sup>77</sup> WTO GPA, *supra* note 68, Art. XIV, § 3.

<sup>78</sup> United Nations Information Service United Nations Convention Against Corruption Enters Into Force on 14 December, December 13, 2005, available at <http://www.unis.unvienna.org/unis/pressrels/2005/uniscp528.html>.

<sup>79</sup> The preamble in part states, "Bearing in mind that the prevention and eradication of corruption is a responsibility of all states and that they must cooperate with one another, with the support and involvement of individuals and groups outside the private sector, such as civil society, non-governmental organizations and community-based organizations if their efforts in this area are to be effective."

<sup>80</sup> UN Convention Against Corruption, Art. 12, § 2 (b). For a complete text, please see [http://www.unodc.org/unodc/crime\\_convention\\_corruption.html](http://www.unodc.org/unodc/crime_convention_corruption.html).

<sup>82</sup> Ibid. § 1 (a), (b), (c).

<sup>83</sup> Ibid., § 2.

<sup>84</sup> Nicolas Conti, Implications of the UN Convention Against Corruption On Anti-Corruption Initiatives in the Philippines, presentation before the Global Organization of Parliamentarians Against Corruption in Manila, Philippines (March 31, 2005).

<sup>85</sup> Ibid.

<sup>86</sup> For the complete provisions of the Guidelines, please see [www.worldbank.org](http://www.worldbank.org).

<sup>87</sup> Ibid. at 6, General Considerations.

<sup>88</sup> Ibid. § 3.17.

<sup>89</sup> IBRD (World Bank), Analysis Suprational 3 (November 2006), available at [http://treasury.worldbank.org/web/Moodys\\_IBRD\\_Report\\_2006.pdf](http://treasury.worldbank.org/web/Moodys_IBRD_Report_2006.pdf).

<sup>90</sup> Doris Dumlao, World Bank Prods Government on Curbing Corruption, Philippine Daily Inquirer July 5, 2006, available at [http://www.dbm.gov.ph/current\\_issues/pressrelease/2006/7-July/press\\_070506-wb.htm](http://www.dbm.gov.ph/current_issues/pressrelease/2006/7-July/press_070506-wb.htm).

<sup>91</sup> OECD Methodology for Assessment of National Procurement Systems (Based on Indicators from OECD-DAC/World Bank Round Table) 2 (July 17, 2006). For a complete text, please see <http://www.oecd.org/dataoecd/1/36/37130136.pdf>.

The understanding among the participants in this process is that the assessment will provide a basis upon which a country can formulate a capacity development plan to improve its procurement system. Similarly, donors can use the common assessment to develop strategies for assisting the capacity develop plan and to mitigate risks in the individual operations that they decide to fund. The long term goal is that countries will improve their national procurement systems to meet internationally recognized standards enabling greater effectiveness in the use of funds to meet country obligations.

<sup>92</sup> *Id.*, Indicator 5, "Existence of an Institutional Development Capacity," which includes subindicator 5 (c).

A sustainable strategy and training capacity exists to provide training, advice and assistance to develop the capacity of government and private sector participants to understand the rules and regulations and how they should be implemented.

<sup>93</sup> "The private sector is the best monitor of the procurement process." See Presentation of Patricia Josefchak, Exceptions to Full & Open Competition, How to Ensure Integrity, OECD Symposium (Paris, France, December 1, 2006), available at [www.oecd.org/dataoecd/45/45/37864365.pdf](http://www.oecd.org/dataoecd/45/45/37864365.pdf).

<sup>94</sup> See [www.oecd.org/dataoecd/45/12/37864305.pdf](http://www.oecd.org/dataoecd/45/12/37864305.pdf), at 16.

<sup>95</sup> Refocusing Finland's Cooperation with Namibia, available at [www.oecd.org/dataoecd/7/33/35180530.pdf](http://www.oecd.org/dataoecd/7/33/35180530.pdf).

<sup>96</sup> See OECD news at [www.oecd.org/department/0,2688,en\\_2649\\_34495\\_1\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/department/0,2688,en_2649_34495_1_1_1_1_1,00.html).

<sup>97</sup> *Op. cit* note 88, Pillar 1.

<sup>98</sup> *Ibid.* Pillar 3.

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Commission on Audit (COA) Cir. No. 2003-0204  
 Government Procurement Policy Board (GPPB) Cir. 03-2003 (Dec. 1, 2003)  
 Republic Act 9184  
 1987 Philippine Constitution  
 Implementing Rules to Republic Act 9184  
 False Claims Act (31 U.S.C. § 3730)  
 WTO Government Procurement Agreement  
 United Nations Convention Against Corruption  
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