

UN-REDD PROGRAMME



ATENEO SCHOOL OF GOVERNMENT
The Graduate School of Leadership and Public Service

UN-REDD Programme: Targeted Support to the Philippines
Corruption-Risk Assessment for REDD+ in the Philippines and Development of REDD+ Anti-
Corruption Measures
The Philippines National REDD+ Readiness Process

First Report: Stocktaking Results and Policy Analysis

I. Introduction

It has been observed that “corruption is an important enabler of deforestation in developing countries.”¹ Corruption has permeated forestry activities in developing countries for decades, from private companies and/or individuals offering bribes to public officials for favorable treatment, to public officials themselves demanding favors for personal gain. Historically, corruption in the forestry sector has been demonstrated to seriously compromise law enforcement and judiciary efforts, negatively affecting not only fragile forest ecosystems but also indigenous peoples and local communities.²

It is foreseen that REDD-Plus will likely face corruption-related roadblocks and challenges given its fundamental ties with existing forestry practices and institutions. There is no doubt the integrity of REDD-Plus as a national forest management strategy will depend on a country’s ability to identify and systematically address gaps and institutional weaknesses that breed corruption within and outside the forestry sector.

The literature has begun to identify and provide analysis towards understanding how corruption can affect and arise from REDD-Plus. In the *Readiness Phase*, national frameworks for REDD-Plus could inherit the corrupt systems already found in the sector, or worse, “legalize” such systems.³

¹ Bofin, P. et al, *Addressing Governance and Corruption Challenges in Schemes for REDD*, U4 Anti-Corruption Resource Center U4 Issue 2011:1 (February 2011), p. 10, available at <http://www.u4.no/publications/redd-integrity-addressing-governance-and-corruption-challenges-in-schemes-for-reducing-emissions-from-deforestation-and-forest-degradation-redd/>, accessed 11 September 2012.

² Blundell, A. and Harwell E., *Manual: An Analysis of Corruption in the Forestry Sector*, Transparency International (October 2009) available at <http://www.illegal-logging.info/uploads/Forestsectorcorruptiontoolsnov09FINAL.pdf>, accessed 11 September 2012.

³ Thorpe, A. and Ogle, L., *Staying On Track: Tackling Corruption Risks in Climate Change*, United Nations Development Programme (January 2011), p. 32, available at <http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/anti-corruption/staying-on-track--tackling-corruption-risks-in-climate-change.html>, accessed 11 September 2012.

During this phase, “high level actors, such as political elites, institutions, powerful national and international timber companies, industrial scale agribusiness, multinational corporations, project developers and the military... may seek to influence the design of national REDD-plus frameworks, legislation and regulations in order to maximize their chances of capturing REDD-plus revenues.”⁴

In the *Implementation Phase*, existing petty and/or grand corruption in contexts where REDD-Plus is implemented could work against the conservation and developmental goals of REDD-Plus schemes. Moreover, financial resources associated with REDD-Plus could create additional incentives and opportunities for corrupt activities. Such an environment could perversely attract public officials to extract rents from REDD-Plus resource flows.⁵

Nonetheless, there is an emerging view that, while not without risk, the entry of REDD-Plus and related activities in developing countries present a powerful opportunity to improve forest governance practices, and this includes opportunities towards systematically addressing corruption in the sector⁶.

Moving to the Philippine setting, corruption has been attributed to both “flawed structures in the political economy” and the lure of “economic incentives between principals and agents,” both “exacerbated by social and cultural norms.”⁷ In 2010, Transparency International gave the Philippines a score of 2.4, out of a cleanest possible score of 10, in its Corruption Perceptions Index. In 2009, the World Bank gave the country a score of -0.71 for its control of corruption, based on a -0.25 to 2.5 scale.⁸

It is widely posited in the context of the Philippines that the solution to curbing corruption does not lie in additional legislation. Moratalla writes, “the Philippines does not need any more laws against corruption. If anything, what it needs is a re-examination of anti-corruption laws not only to remove duplication, but also to ensure that those existing are accepted by the populace and enforceable by the anti-corruption agencies.”⁹

In the Philippine forestry sector, Mayo-Anda identified “existing and possible points of corruption problems,” listed as follows:¹⁰

- Bribery, favoritism and the manipulation of land classification documents carried out by public officials regarding the issuance of Community Based Forest Management Agreements (CBFMAs) and Certificate of Stewardship Contracts (CSCs);
- Extortion and bribery by officers of the Department of Environment and Natural Resources (DENR), by the military and by police personnel, as part of transaction costs for activities related to the harvesting, transportation and sale of forest products and for the process of compliance with forestry guidelines or requirements;

⁴ Ibid.

⁵ Bofin, P. et al, 13.

⁶ Bofin P. et al, 5.

⁷ Quimson, G. *National Integrity Systems Transparency International Country Study Report of the Philippines*, Transparency International (2006) available at http://info.worldbank.org/etools/ANTIC/docs/Resources/Country%20Profiles/Philippines/TransparencyInternational_NIS_philippines.pdf, accessed 11 September 2012.

⁸ Mayo-Anda, G. *Tackling Corruption for Governing REDD in the Philippines*, U4 Anti-Corruption Resource Center U4 Issue 2011:4 (May 2011), p. 8, available at <http://www.u4.no/publications/tackling-corruption-for-governing-redd-in-the-philippines/>, accessed 11 September 2012.

⁹ Moratalla, N. (1999) cited in Mayo-Anda, 8.

¹⁰ Mayo-Anda, 9, 11.

- Weak oversight of the forestry sector by the DENR due to corruption within the department which discourages effective forest management even in instances where there is demonstrable capacity in local government units (LGUs) and communities;
- Current legal and institutional mechanisms provide only a weak accountability check on REDD schemes;
- Court cases filed against DENR personnel alleged to have engaged in corruption are few and mostly involve mid-level rather than high ranking staff;
- Rent seeking activities in natural resource management are widespread;
- A complex network of individual participants that follow unwritten rules of secrecy and (mis)conduct; and
- Human resources are not maximized due to the negative working environment in which individuals find themselves.

The Philippine National REDD-Plus Strategy (PNRPS) likewise identifies corruption as an “underlying driver of deforestation and forest degradation,” with the immediate drivers being “allocation of resource use concessions and permits contrary to existing regulations and inconsistent enforcement of environmental laws.”¹¹

Corruption risk assessments, economic and social impact assessments and multi-stakeholder consultations have been acknowledged by the UN-REDD Programme as useful towards identifying and addressing corruption risks vis-a-vis national REDD-plus frameworks.¹²

II. The UN-REDD Corruption Risk Assessment Project

The Ateneo School of Government (ASoG) is responsible for the conduct of the *Corruption Risk Assessment for REDD-plus in the Philippines and Development of REDD-plus Anti-Corruption Measures* Project. As part of the Philippines’ National REDD-Plus Readiness Process, this project aims to produce a report that includes:

- a. A prioritized list of corruption risks for REDD-plus in the Philippines, with a special focus on the Philippine National REDD-Plus Strategy;
- b. Proposed measures to mitigate the risks identified as most likely and most detrimental in the short, medium and long term;
- c. A preliminary budget and identified responsibilities for the implementation of those measures; and
- d. Lessons that may be applicable in other countries.

The recently released *UN-REDD Guidance on REDD Conducting REDD+ Corruption Risk Assessments*, and the *Analysis of Corruption in the Forestry Sector* manual put together by Transparency International and National Capital Advisers, LLC in 2009, were used as guidance for overall methodology of the project and for conducting stocktaking activities and consultation workshops.

In order to produce a complete, accurate and reliable final report, the Corruption Risk Assessment (CRA) team began gathering data through a review of related literature on corruption in the forestry sector in general, and REDD-Plus in particular.

¹¹ Philippine National REDD-Plus Strategy Team, *Philippine National REDD-Plus Strategy* (2010), p. 20

¹² Thorpe and Ogle, 37-38.

Focus Group Discussions (FGD's) and Key Informant Interviews (KII) with experts and practitioners in the field of governance, corruption, forestry, natural resource management and indigenous peoples from the government, civil society, indigenous communities and the academe were conducted in order to produce a well-rounded basis for further study and consultation.

On the 16th and 17th of October, 2012, a national consultation workshop was conducted to present and discuss the Corruption Risk Assessment team's initial findings and gather data on corruption risks in REDD-Plus. These corruption risks were to be identified through the lens of the PNRPS by a larger group of stakeholders from the government, donor partners, civil society, indigenous peoples and the academe. Feedback on the recently released UN-REDD Corruption Risk Assessment Methodology, as well as the CRA team's Philippine Corruption Risk Assessment Methodology, was also gathered and assessed.

On the 20th of October, 2012, a subnational workshop was conducted by the CRA team in Davao City, which was attended by employees of the DENR from the Visayas and Mindanao. More definitive data on corruption risks were gathered and assessed through the lens of the PNRPS, based on a fine-tuned workshop methodology.

The Davao stocktaking workshop concluded Phase One of the Corruption Risk Assessment Project, which had as its main objective facilitating consultative discussions towards identifying the following:

1. existing conditions that make corruption more likely to occur for REDD-Plus activities;
2. motivations or drivers behind such corruption; and
3. means towards corruption or "modus operandi" thrive in the field.

The information generated from these activities then served as a basis for further analysis and consultations by the team.

The conclusion of the planned stocktaking activities led to the conduct of a *policy and institutional analysis*, wherein underlying trends and gaps in policy and institutions relevant to corruptions risks for REDD-Plus were identified. The result of this analysis is contained in Annex I of the report, and will be used as reference and basis for the remaining consultation processes and final report.

III. Summary of Results from the Stocktaking and Consultation Workshops

The results of the stocktaking activities and consultation workshops conducted so far afford the CRA Project and the PNRPS an opportunity to capture, for the first time, stakeholder perceptions on the following:

- corruption risks potentially affecting and arising from REDD-Plus in the context of the PNRPS;
- emerging priority risks; and
- initial list of proposed interventions.

A full iteration of the results is contained in Annex II. We present a summary of the results here.

A. Corruption Risks

KIIs and workshop groups were divided according to the Components of the PNRPS. These components include Enabling Policy, Governance, MRV, Resource Use Allocation and Management (RUAM), Research and Development, Capacity Building and Sustainable Financing. The participants

were then tasked with identifying the enabling conditions, corruption risks, as well as the likelihood and impact of the corruption risks arising and affecting REDD-Plus implementation in the Philippines.

The CRA team then collated and logically organized the results of these activities into seven corruption risk clusters, coinciding with guidance from Transparency International's REDD Manual (2004):

1. Collusion or Complicity
2. Fraud
3. Embezzlement
4. Bribery
5. Abuse of Authority
6. Influence Peddling
7. Extortion

A summary of the outputs is elaborated as follows. It immediately emerged that corruption risks are largely cross-cutting across these seven clusters, where a complex network of means and motivations create enabling conditions towards corrupt activities ranging from the petty to the grand.

Collusion or Complicity refers to “an arrangement between two or more parties designed to achieve an improper purpose, including improperly influencing the actions of another party.”¹³

Policy component: Collusion was identified in cases where government agencies and project proponents circumvent requirements and required processes such as Free, Prior and Informed Consent. Government agencies were said to collude with private interests for favorable interpretations of already weak or vague policies and provisions of law, usually in return for increased influence or commissions.

Governance component: Government agencies' unwillingness or failure to monitor forestry projects and investigate possible violations was attributed to collusion between the agencies and project proponents. Similarly, these parties were also said to agree to exclude local communities and Indigenous Peoples representatives from local natural resource management bodies (such as the Protected Areas Management Board) when they raised opposition to certain projects and activities. Negotiations for co-production agreements and other joint ventures were also said to be tainted with bias, when the Negotiators purporting to represent Indigenous Peoples (IPs) communities and LGU actually served other interests.

RUAM component: Collusion among government officials was manifested in deception committed during the course of their required fieldwork, particularly as regards the conduct of land surveys, field based investigations and the number of days spent in the field. This deception allowed them to collect more travel expenses, field allowances and per diems for less work.

In addition, collusion encouraged by bribery facilitated the circumvention of requirements and processes for the issuance of licenses and permits for forestry and land use as well as illegal titles

¹³ Transparency International REDD Manual, adapted from UNODC [2004].

over public land. Other forestry crimes are condoned by officials up to the highest levels, usually out of pity for the perpetrators.

MRV component: Collusion and political pressure were identified as culprits in the manipulation of economic studies to favor specific commodities for private gain. It likewise reportedly enabled the issuance of illegal permits, contracts and plans by LGU, as well as the diversion of available funds.

Collusion was also said to result in the establishment of dummy Non-Government Organizations (NGOs) and People's Organizations, or misrepresentations of organizations already existing, for the purpose of meeting MRV needs and requirements.

Research and Development component: Collusion allegedly affected the selection of sites for REDD-Plus demonstration activities. It likewise emboldened government officials to manipulate information that allowed project proponents to circumvent required processes in the issuance of permits and to interpret the law to favor certain vested interests.

Sustainable Finance component: Collusion was noted in the bidding and approval of contracts and the legitimization of certain REDD-plus demonstration sites.

Fraud refers to "any behavior designed to trick or fool another person or entity for one's own or a third party's benefit."¹⁴

Policy component: Fraud was found to be manifest in the misrepresentation of local government income and expenditures by national government auditors who were usually bribed to do so.

RUAM component: Fraud was reportedly reflected in the fieldwork conducted by government agencies, particularly for the conduct of land surveys and field-based investigations. Field reports were allegedly manipulated to reflect different results, and to allow personnel to lodge increased claims for transportation expenses, allowances and per diems. Survey results were also similarly misinformed.

Single-use permits were also allegedly manipulated, allowing them to be used on multiple occasions.

MRV component: Fraud was especially noted in reforestation efforts. Resource inventories, performance reporting, quality of seedlings and survival rates of planted seedlings were allegedly engineered to reflect different results. Often, the practice of double reporting was also employed for this purpose.

It was also claimed that data could be manipulated to favor local government officials or private investors. Economic studies in particular were slanted to favor specific commodities for private gain.

Misrepresentation was also observed in the establishment of dummy NGOs and People's Organizations and the practice of recycling single-use permits to allow for repeated usage.

¹⁴ Ibid.

Research and Development component: It was reported that government officials manipulated information from investors and project proponents to allow them to circumvent certain processes in the issuance of permits, such as the requirement for an Environmental Compliance Certificate.

Capacity Building component: Fraud was identified in the misleading claims for carbon rights.

Embezzlement refers to “the conversion of money, property or valuable items by an individual who is not entitled to them but by virtue of his or her position or employment has access to them.”¹⁵

Policy component: Embezzlement was observed to be evident in the commissions received by politicians and government agencies in return for the “assistance” that they provide in the issuance of permits (e.g. for business, land use, resource extraction etc.) or for favorable interpretations of already vague policies.

RUAM component: Embezzlement was noted in the practice of “payroll-padding,” or the apparent hiring of fictitious or “ghost” employees, to convert their allocated salaries to the enrichment of certain officials. Private interests likewise benefited from the practice of overpricing equipment and materials such as survey tools, supplies and seedlings.

This practice of overpricing seedlings was also noted as a corruption risk under the MRV component.

Sustainable Finance component: The possibility that the potential benefits to be derived from REDD-Plus projects would be appropriated by local politicians was expressed.

Bribery refers to “the act of offering and giving someone a benefit, in the form of money, services or other inducements to persuade them to do something in return.”¹⁶

Policy component: Bribery was identified between local government officials and national government auditors. These auditors were allegedly paid to misrepresent government income and expenditures.

Governance component: Investors and project proponents were said to be the source of bribery, paying off local officials and Indigenous Peoples communities to secure favorable consent for project activities and operations.

RUAM component: Bribery was said to facilitate the circumvention of licensing requirements for forestland use permits and the issuance of private titles over public lands. More specifically, local officials and government agencies could be bribed to recycle documents such as transport permits, allowing single-use documents to repeatedly authorize multiple activities.

MRV component: Bribery allegedly enabled false measurement and inspection of reforestation efforts, particularly as to the quality of the seedlings used. Economic studies were likewise manipulated to favor specific commodities for private gain.

¹⁵ Ibid.

¹⁶ Ibid.

Peoples' Organizations (POs) and LGU reportedly shelled out for favorable treatment and positions in natural resource planning instruments. Local government units and government agencies in turn accepted bribes to allow illegal permits, contracts and plans, or to recycle permits that were previously issued.

Research and Development component: Bribery was resorted to secure interpretations of the law that favored vested interests and to guarantee approval of necessary documents by the government offices in charge.

Abuse of Authority refers to “when officials utilize their authority to give undue preferential treatment to any group or individual, or discriminate against any group or individual for personal gain.”¹⁷

Policy component: Politicians were said to abuse their authority to influence the issuance of permits (e.g. for business, land use, resource extraction etc.) for their friends, allies or for the businesses and industries in which they had a personal stake. Political pressure and interference was likewise identified in the crafting and implementation of policies, particularly local ordinances.

Governance component: Abuse of authority was attributed to government agencies and local officials who put a damper on local peoples' participation by excluding local communities and Indigenous Peoples representatives from local natural resource management bodies (such as the Protected Areas Management Board) when they raised opposition to certain projects and activities.

RUAM component: Personal use of office vehicles and equipment was noted.

MRV component: Local government units in particular were said to commit this by approving and allowing illegal permits, contracts and plans. Diversion of funds was likewise ascribed to various actors.

Research and Development component: Abuse of authority countenanced favorable interpretations of laws and accommodated private interests in the selection of sites for REDD-Plus demonstration activities. It also allowed for the practice of manipulating information to allow project proponents to circumvent processes in the issuance of permits, such as the requirement for securing an Environmental Compliance Certificate.

Capacity Building and Communication component: Abuse of authority in government offices facilitated the improper selection of the personnel that were sent for international and national trainings and conferences.

Sustainable Finance component: Officers in charge were said to abuse their authority in deciding to whom projects will be awarded. This also tainted the selection and legitimation of certain REDD-Plus demonstration sites. Lastly, the prevalence of incidents of abuse of authority led to the fear that the potential benefits to be derived from REDD-plus projects would be appropriated by local politicians.

¹⁷ Ibid.

Influence peddling is an amalgamation of favoritism, cronyism and nepotism under the Transparency International REDD Manual. This refers to “the favorable treatment of friends, business associates and family in the distribution of resources and positions, regardless of their objective merits.”¹⁸

In the Philippines, this is often manifested in the *padrino* system, or networks of patron client relationships, created and strengthened by familial relations, organizational affiliations, political support, bonds of friendship or favors owed.

Policy component: This was observed in the accommodations granted by politicians to influence the issuance of permits (e.g. for business, land use, resource extraction etc.) to their friends and allies. Similar accommodations were also allowed by government officials who would favorably interpret vague or weak provisions to benefit friends or contacts.

Governance component: Engaging the support and active lobbying of close friends or *padrinos* was a noted method to secure the approval of policies that benefitted certain vested interests.

RUAM component: Preferential hiring of relatives for field activities was reported.

Research and Development component: The *padrino* system likewise facilitated favorable interpretations of laws and accommodated private interests in the selection of sites for REDD-Plus demonstration activities. Also attributed to influence peddling was the practice of manipulating information to allow project proponents to circumvent processes in the issuance of permits, such as the requirement for securing an Environmental Compliance Certificate.

Sustainable Finance component: Influence peddling was said to legitimize the selection of certain REDD-Plus demonstration sites.

Extortion refers to “the process of coercion where a person or institution forces another party to pay money or other valuables in exchange for acting or failing to act.”¹⁹

Corruption risks constituting extortion were identified under two components. Under the RUAM component, it was noted in the practice of asking for large sums of money to facilitate the approval of land titles.

Similarly, under the Research and Development component, extortion was also identified as a means used to guarantee approval of necessary documents for the processing of permits, licenses and applications.

B. Emerging Priority Risks

Based on participants’ perceptions of the likelihood and impact of the identified corruption risks, we are able to establish an initial list of emerging priority risks. Participants graded likelihood and impact of corruption risks on a scale of 1-5, using the following criteria as basis:²⁰

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Blundell, A. and Harwell E., *Manual: An Analysis of Corruption in the Forestry Sector*, Transparency International (October 2009) available at <http://www.illegal-logging.info/uploads/Forestsectorcorruptiontoolsnov09FINAL.pdf> accessed 11 September 2012.

| | Likelihood | Impact |
|----------|-------------------------------------------------------------|--------------------------------------------------------------|
| 1 | Impossible- Never happens | Nil- No impact |
| 2 | Rare- Has been known to occur in other similar environments | Minor- Not undermined |
| 3 | Unlikely- Uncommon, but does occur | Moderate- If stopped, would recover rapidly |
| 4 | Likely- Commonly occurs | Major- Even if corrected, would be compromised for some time |
| 5 | Highly Likely- Frequently occurs | Catastrophic- Undermined irreparably |

Based on the sum of the weight assigned by participants for both likelihood and impact, we utilize the following basic criteria to arrive at an initial prioritization of risks:

| | Priority |
|-------------|-----------------|
| 8-10 | High Priority |
| 5-7 | Medium Priority |
| 2-4 | Low Priority |

And while the initial results will still be subject to further validation and prioritization, high priority risks include the following:

1. Politicians influence the issuance of permits to accommodate friends and receive commissions and/or personal favors
2. Manipulation, pressure and interference of politicians (particularly at the LGU) in policy making and implementation (particularly for ordinances)
3. Fraudulent operations
 - a. Travel allotted for 15 days is actually completed in 5 days' survey activity
 - b. Personal use of vehicle not in relation to the work
 - c. Overpricing of survey equipment, supplies and materials
 - d. Overpricing of farm inputs/tools purchased for CBFM POs use
 - e. Cost of seedlings in the contract is P12 but the actual cost given to PO is less than the contract cost
 - f. TEV claims of personnel doing NGP activity is not actually claimed based on the payroll signed by the claimant
4. Collusion in the interpretation of the law, favoring vested interests
5. Fraudulent reporting
 - a. Deliberate misinterpretation of data to favor LGUs or investors
 - b. Fraudulent resource inventories and performance reporting, including survival rates of reforestation efforts
 - c. Double reporting of reforestation efforts
 - d. Bribery (eg. PO and LGUs provides bribes to favor them in plans)
 - e. To meet deadlines, substandard seedlings for reforestation reported as standard
6. Bribery/"Tongpats": Commission culture
 - a. Overpricing/underpricing of seedlings
 - b. False measurement and inspection of reforestation efforts, types of seedlings used
 - c. LGUs allow illegal permits, contracts and plans
 - d. Diversion of funds
7. Fraudulent and misleading claims on carbon rights

8. Abuse of discretion in the selection / improper selection of personnel to be sent for trainings
9. Collusion and abuse of discretion in the bidding or approval of contracts and projects
10. Favoritism in the selection of sites

C. Initial List of Proposed Interventions

Based on the identified corruption risks, participants also proposed possible interventions that so far are oriented along the lines of policy, audit systems, capacity building, and MRV. Again, these will be subjected to further validation and enhancements.

Policy Interventions

- Improve consultations process especially before the issuance of policies
- Impose and enforce appropriate sanctions according to applicable laws (RA 3019, RA 6713)
- Passage of interim guidelines on REDD-Plus
- Creation of REDD-Plus Office and TWG at the Regional/Provincial level

Audit Systems Interventions

- Strengthen and standardize the Internal Audit Service at all levels to ensure speedy and actionable audit processes
- Mobilize account management teams
- Ensure there are avenues and sufficient time for providing feedback, and that feedback is responded to
- Establish a “One-strike policy”
- Implementation of Employee Rationalization Plan to ensure that the proper employees are the ones sent to be capacitated
- Encourage vigilance among external sectors in reporting malpractices (media, intelligence offices, NGO, academe)
- Strengthen the system on reward and punishment

Capacity Building Interventions

- Massive information, education and communication campaigns on REDD-Plus at all levels, with particular focus on good governance and operations
- Values re-orientation

MRV Interventions

- Ensure independent monitoring / 3rd party reporting and investigations
- Harmonize reporting systems procedures and methodologies
- Finalization of baseline data and standards for REDD-Plus
- Strict monitoring of activities (e.g. use of plantation registries, registries in general)

Next Steps

This report shall be distributed among REDD-Plus, forestry and governance stakeholders in order to elicit comments, insights and suggestions on the stocktaking results, policy and institutional analysis, and methodology that will be applied thereafter. Any feedback from stakeholders, however, must be sent to REDDCRA@yahoo.com (CC: therese.guiao@gmail.com) by the 30th of November 2012.

All feedback received shall be evaluated, and the methodology adjusted, to address any gaps in the data or process that may have been identified.

An online survey shall then be conducted in order to solicit from a greater number of stakeholders their assessment of the likelihood and impact of the corruption risks that have been identified through the stocktaking activities. Survey participants consisting of representatives from government, civil society, indigenous communities and the academe shall be asked to rate corruption risks on the basis of a scale ranging from one (impossible or no impact) to five (highly likely or catastrophic).

The survey results will be evaluated alongside the policy and institutional analysis, with the view of developing a set of criteria to determine the prioritization of REDD-Plus corruption risks on the basis of a more objective set of standards. These criteria will then be applied to the corruption risks that have been identified.

A second subnational workshop shall be held in mid-January 2013, with civil society and donor partners, academic and indigenous community representatives as participants. The results of the stocktaking, as well as the survey and preliminary prioritization will be presented, and the feedback generated will be used to validate and concretize a list of ten priority corruption risks. Participants will also be asked to identify interventions needed in order to address REDD-Plus corruption risks.

A national validation workshop will take place at the end of January. During this final workshop, the list of priority corruption risks and interventions shall be presented to and validated by REDD-Plus, governance, and natural resource experts and stakeholders, which shall be concretized in the final report, to be submitted at the end of February. The final report will contain the workshop results, criteria for prioritization, the prioritized list of corruption risks, a proposed budget, proposed intervention measures and identified responsibilities for implementation.

ANNEX I

Policy and Institutional Analysis of Corruption Risks Identified

Policies and institutions (see Table 1) can either support or hinder efforts to address corruption. Formal institutions can provide the structure for cooperation and community involvement in combatting corruption, and policies can establish the needed framework for such institutions. On the other hand, the absence or weakness of institutions and policies can contribute to the existence of corruption.

In this context, a policy and institutional analysis in relation to the corruption risks identified is useful in highlighting complementarities, conflicts, overlaps and gaps in the institutional arrangements and organizations which support or hinder effective anti-corruption at various levels of government and within the community. The process can assist in identifying what is needed to support anti-corruption efforts, such as new regulations, new organizations and enforcement mechanisms.

Table 1. Policies and institutions²¹

| | FORMAL | INFORMAL |
|---------------------|--------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|
| Creation/ Origin | Written legislation, administrative regulations, court decisions | Oral tradition, customs & indigenous belief systems which may not be recognized by the State |
| Enforcement | Require exogenous enforcement by a third party organization, e.g. courts | Endogenously through mutual agreement, or by relations of power and authority between or among social actors involved |

Policies and Institutions vis-à-vis Corruption Risks Identified

The corrupt activities identified in the previous section are all covered under the Revised Penal Code (RPC) which is a compilation of laws defining and penalizing crimes committed by public officers (Title VII, RPC). These crimes or offenses include direct bribery (Article 210); indirect bribery (Article 211); qualified bribery (Article 211-A); corruption of public officials (Article 212); frauds against the public treasury (Article 213); and malversation of public funds or property (Article 217).

The Revised Penal Code forms part of the country's legal and policy framework on anti-corruption, which also acts as a framework for transparency and accountability. The key provisions of the Revised Penal Code include the following:

(i) 1987 Philippine Constitution

The Constitution establishes the accountability of public officers by stating that "a public office is a public trust" and that "Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives" (Section 1, Article XI). It is also noteworthy that the Constitution provides that "the right of the State to recover properties unlawfully acquired by public officials or employees from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppel" (Section 15, Article XI). It further provides that the highest ranking public

²¹ Adopted as reference from the CBCRM Handbook on Institutional Analysis PowerPoint presentation.

officials, namely, the President, Vice-President, members of the Constitutional Commissions and the Ombudsman may be removed from office on impeachment for bribery and graft and corruption.

(ii) Key Statutes/Laws and Executive Policies²²

Republic Act (RA) No. 3019 (Anti-Graft and Corrupt Practices Act of 1960) is one, if not the most, significant anti-corruption law in the Philippines. This law specifies 11 types of corrupt practices of any public officer, and provides the corresponding penalties of imprisonment (between 6-15 years), perpetual disqualification from public office and confiscation or forfeiture of unexplained wealth in favor of the government. The law requires every public officer to file every two years detailed and sworn statement of assets and liabilities, and includes submission of Statement of Assets, Liabilities and Net Worth (SALN) every other year.

Besides these enumerated acts, the law penalizes other acts or practices which may lead to the commission of graft and corruption, as well as those which do not necessarily result in damage or injury to the government (for example, merely persuading, inducing or influencing a public officer to violate the law). Private individuals can be penalized under this law, not only in cases where there is a proven conspiracy, but also when they induce a public official or employee to commit any of the prohibited acts.

RA 1379 (Law on Forfeiture of Ill-Gotten Wealth) authorizes the forfeiture in favor of the State of property of a public officer or employee which is manifestly out of proportion to his or her salary as such public official or employee and his or her other lawful income and the income from his or her legitimately acquired property.

Executive Order No. 292 (Administrative Code of 1987) reiterates the provisions embodied in Section 1, Article XI of the 1987 Constitution, and gives the President the power to institute proceedings to recover properties unlawfully acquired by public officials and employees. This Administrative Code provides for 30 disciplinary grounds against any officer or employee of the civil service. The cases may be administrative in character, but it can serve as a monitoring scheme on bureaucratic malfeasance, misfeasance and nonfeasance.²³

RA No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees of 1989) promotes a high standard of ethics among public officials and employees by requiring all government personnel to make an accurate statement of assets and liabilities and disclose net worth and financial connections. This law also requires new public officials to divest ownership in any private enterprise within 30 days from assumption of office to avoid conflict of interest. Other prohibited acts and transactions provided under this law are analogous to those enumerated under RA 3019.

RA No. 6770 (Ombudsman Act of 1989) provides the functional and structural organization of the Office of the Ombudsman.

RA No. 7055 (An Act Strengthening Civilian Supremacy over the Military) creates two avenues for trying erring members of the Armed Forces of the Philippines and other members subject to military laws. Ordinary courts take cognizance of crimes penalized by the Revised Penal Code and

²² Please refer to the compendium of the Presidential Anti-Graft Commission.

²³ Cabarios, F. *Corruption Control in the Criminal Justice System in the Philippines* available at http://www.unafei.or.jp/english/pdf/RS_No76/No76_19PA_Cabarios.pdf.

other special penal laws and local government ordinances while military courts take cognizance of service-oriented crimes only.

RA No. 7080 (Act Defining and Penalizing the Crime of Plunder) penalizes any public officer who by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, accumulates or acquires ill-gotten wealth of at least seventy-five million pesos (P75,000,000), through a combination of series of event criminal acts. Such public officer shall be punished by life imprisonment with perpetual absolute disqualification from holding any public office.

RA No. 8249 (Act Further Defining the Jurisdiction of the Sandiganbayan) classifies the Sandiganbayan as a special court and places it on the same level as the Court of Appeals.

Other Related Laws

RA 7160 (Local Government Code of 1991) identifies the nature, powers, authority and responsibilities of local government officials. It also provides for processes that ensure people's participation. Section 60 of the law provides for acts that can be committed by local officials, and this includes breaches of their mandates and other laws.

RA 9160 (Anti-Money Laundering Act of 2001) defines and penalizes money laundering.

RA 9184 (Government Procurement Reform Act) redefines procedures in government purchasing, and has enhanced transparency, competitiveness and public accountability in government procurement.

RA 9485 (Anti-Red Tape Act of 2007) provides for a Citizen's Charter which refers to the service standards of all government agencies in the form of information billboards, which are required to be posted at the main entrance of offices or at the most conspicuous place, and in the form of published materials written either in English, Filipino, or in the local dialect, that detail:

- (a) The procedure to obtain a particular service;
- (b) The person/s responsible for each step;
- (c) The maximum time to conclude the process;
- (d) The document/s to be presented by the customer, if necessary;
- (e) The amount of fees, if necessary; and
- (f) The procedure for filing complaints. (Section 6, RA 9485)

During Martial Law, the following decrees were passed:

1. *Presidential Decree No. 46* declares it unlawful for government personnel to receive gifts and for private persons to give gifts on any occasion including Christmas, regardless of whether the gift is for past or future favors. It also prohibits entertaining public officials and their relatives.

2. *Presidential Decree No. 677* requires public officials to submit annually the Statement of Assets and Liabilities.

3. *Presidential Decree No. 749* grants immunity from prosecution to givers of bribes and other gifts and to their accomplices in bribery charges if they testify against the public officials or private persons guilty of those offenses.

(iii) Creation of Anti-Corruption Bodies

Constitutional bodies were established to effectively implement the provisions on public accountability and deal with graft and corruption. To ensure the independence of these bodies, the

Constitution grants them fiscal authority and their actions are appealable only to the Supreme Court.

Office of the Ombudsman (OMB)

The Office of the Ombudsman plays a key role as “people’s watchdog” by investigating and acting on complaints filed against public officials and employees. The Office consists of the Ombudsman and his deputies (an overall Deputy Ombudsman, a Deputy Ombudsman for the Military, one Deputy Ombudsman each for Luzon, Visayas and Mindanao), and have the following key functions:

1. oversee the general and specific performance of official functions so that laws are properly administered;
2. ensure the steady and efficient delivery of public services;
3. initiate the refinement of public procedures and practices; and
4. impose administrative sanctions on erring government officials and employees, and prosecute them for penal violations.

Civil Service Commission (CSC)

As the central personnel agency of the government, the CSC is mandated to establish a career service and promote moral, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It is also mandated to strengthen the merit and rewards system, human resource development, and public accountability, and has jurisdiction over administrative cases including graft and corruption brought before it on appeal.

Commission on Audit (COA)

As the watchdog of the government’s financial operations, the COA is empowered to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property under the custody of government agencies and instrumentalities. Its mandate includes the promulgation of accounting and auditing rules and regulations for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or use of government funds and properties.

Sandiganbayan

As the country’s anti-graft court, the Sandiganbayan has jurisdiction over civil and criminal cases involving graft and corrupt practices and such other offenses committed by public officers and employees. Its mandate includes taking charge of maintaining morality, integrity and efficiency in the public service.

Other anti-corruption bodies established by the government include the following:

Department of Justice (DOJ)

The DOJ conducts preliminary investigations on complaints of a criminal nature against public officials that are filed with the Department, subject to the approval of the OMB if the offense investigated was committed by the public official in relation to his office. It also prosecutes these cases if the public officials involved belong to ranks lower than salary grade 27.

National Bureau of Investigation (NBI) and the Philippine National Police (PNP)

The NBI and PNP conduct fact-finding investigations on graft cases. These law enforcement agencies conduct entrapment operations, issue subpoena and serve warrants of arrest issued by the courts. Successful entrapment operations result in the arrest and filing of criminal complaint in courts against the perpetrators. NBI and PNP personnel involved in the conduct of investigations

also serve as witnesses for the prosecution during the preliminary investigation and prosecution of the case by the Ombudsman.

Presidential Commission on Good Government (PCGG)

The PCGG was created primarily to recover, and prosecute those who have, ill-gotten wealth. Its responsibilities include the adoption of safeguards to ensure that corruption shall not be repeated and the institution of measures to prevent the occurrence of corruption.

Presidential Commission against Graft and Corruption, and Presidential Anti-Graft Commission (PAGC)

Created by virtue of Executive Order 151 under then President Fidel Ramos, this Commission was tasked to investigate graft and corruption cases in the executive department. Its jurisdiction over corruption cases covers crimes involving:

1. appointees with rank of or higher than Assistant Regional Director;
2. at least one million pesos;
3. an offense that may threaten grievous harm to national interest; and
4. cases specifically assigned by the President.

Under the Arroyo Administration, another (though similar) commission was created by EO 12 in 2001- the Presidential Anti-Graft Commission (PAGC). Several executive orders were issued supposedly to strengthen and refine the mandate of the PAGC. Its adjudicatory powers were further delineated in 2007 by EO 670-A, and its composition was amended by EO 699.

Inter-Agency Anti-Graft Coordinating Council

This council is tasked to coordinate the government's anti-corruption efforts. It is composed of the Commission on Audit, the Civil Service Commission, the Ombudsman, the Department of Justice, the National Bureau of Investigation and the Presidential Commission against Graft and Corruption.

Complementary Policies, Government Programs and Initiatives

Anti-corruption has always been part of the rhetoric of every administration. Thus, other laws and policies were promulgated and programs were developed to combat corruption and establish accountability.

During the first Arroyo administration, the Government Procurement Act (RA 9184) was passed to redefine procedures in government purchasing, and has enhanced transparency, competitiveness and public accountability in government procurement. One important change in the system is the establishment of the Government Electronic Procurement System or E-Procurement System. This serves as the primary source of information in all government procurement. As of June 2004, some 7,173 suppliers and 2,522 agencies, including government-owned-and-controlled corporations (GOCCs) and LGUs have registered with the System. It has resulted in increased competition among suppliers and contractors. It has also generated competitive prices and reduced procurement processing time. All these have resulted in at least 30 percent savings in the cost of government procurement.

To strengthen public financial accountability, the new government accounting system (NGAS) was implemented. The NGAS aims to (a) simplify government accounting; (b) conform to international accounting standards; and (c) generate periodic and relevant financial statements for better performance monitoring. The NGAS intends to address the undue complexity of the old system, which inhibits full compliance with reporting requirements, inaccurate reflection of the full cost of

agency operations, which affects management decision-making and the inability of the system to allow benchmarking of costs with the private sector.²⁴

The New Aquino Administration approved in early 2012 its Good Governance and Anti-Corruption Plan (GGACP) and is continuing to map out its country action plan to address key open governance and transparency issues. The plan designates government officials to focus on several major result areas, one of which is the Cabinet Cluster on Good Governance and Anti-Corruption (GGAC). The GGAC will focus on institutionalizing “open, transparent, accountable and participatory governance.” According to President Aquino, “Our administration defines accountability in two ways: as a commitment to uphold the highest ethical standards in government, and as an obligation to achieve measurable performance targets and outcomes.”²⁵

The Aquino Administration’s GGAC Plan was developed in tandem with the domestic Open Government Partnership (OGP) process with input from civil society networks, business associations, and donor partners over the past six months, and includes the following strategic objectives - to curb corruption; to improve the delivery of public services and to enhance the business and economic environment. Three pillars of open governance—transparency, accountability, and participation—form the basis for the Plan, with each pillar encompassing action-oriented programs and representing a commitment to the Open Government Partnership (OGP) at all levels of government. An initial success has been a directive by President Aquino to the government’s cabinet ministers to pass the Freedom of Information Act, which has languished in the Congress for over a decade.²⁶

On the level of the DENR, anti-corruption efforts were more explicit since 2003 under the leadership of former DENR secretary Elisa Gozun. The DENR has an Integrity Development Action Plan (IDAP) which had three strategies – Prevention, Education and Deterrence. This program was developed following a 2004 anti-corruption workshop organized by the Office of the President and the then Presidential Anti-Graft Commission.

The DENR’s anti-corruption strategy had the following components (Figure 1):

1. Integrity Development Action Plan
2. Citizen’s Charter
3. Code of Conduct
4. Moral Recovery Action Plan

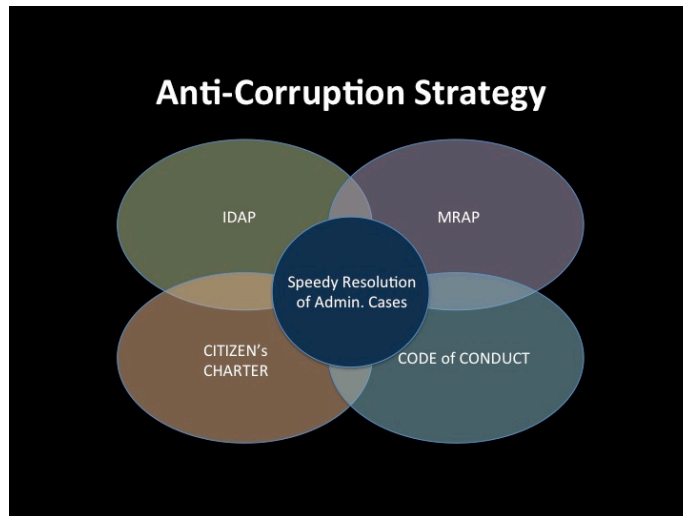
Figure 1. DENR’s Anti-Corruption Strategy²⁷

²⁴ NEDA. *Medium-Term Philippine Development Plan 2004-2010* (2004), p. 250.

²⁵ Open Government Partnership. *The Philippine Good Governance and Anti-Corruption Plan: A Roadmap for Implementing Good Governance Measures*. Available at <http://www.opengovpartnership.org/stories/philippine-good-governance-and-anti-corruption-plan-roadmap-implementing-good-governance-measures>

²⁶ Ibid.

²⁷ Based on DENR Asst. Secretary Daniel Nicer’s PowerPoint Presentation on DENR’s Integrity and Anti-Corruption Program (2011).



It is worth noting that Partnerships between civil society, media groups and government have resulted in several initiatives against corruption. Foremost among these efforts is the Philippine Public Transparency Reporting Project²⁸ (Pera Natin 'to!), which consisted of over 100 unique reports, investigations, commentaries and backgrounders produced on transparency and accountability issues, plus 29 blogs and 46 project news reports. In addition, this project resulted in, among others:

- more than 390 journalists, activists and citizens trained on budget and financial issues;
- 22 training workshops held across the country and 9 public roundtables;
- four local pilot citizens' watchdog and accountability groups set up and formally linking with the Department of Interior and Local Government at the latter's request; and
- dedicated educational and interactive website set up to build understanding and engagement in transparency and accountability issues.

Continuing Challenges

The Arroyo Administration's Medium Term Philippine Development Plan (MTPDP), particularly Chapter 21, admits that progress in anticorruption efforts was still slow, considering falling ranking of the Philippines in terms of perception of corruption. The MTPDP identified "several issues which need to be addressed in managing the fight against corruption, such as:

1. weak enforcement of anticorruption laws;
2. need to reinvigorate the anticorruption agencies and improve their coordination;
3. low social awareness and high tolerance for corruption;
4. need to institutionalize government-civil society-business collaboration; and
5. need to strengthen integrity and accountability in government-business transactions.

There is a need to strengthen earlier efforts against corruption and build a track record of success. The Aquino Government recognizes that the passage of a Freedom of Information (FOI) Act alone will not improve access to information. The administration's GGAC Plan includes the pursuit of other initiatives to enable meaningful freedom of information, and this includes technologies that will automate the processing and public disclosure of data.

²⁸ Philippine Public Transparency Reporting Project, <http://www.transparencyreporting.net>.

The DENR, the Ombudsman²⁹ and other key institutions that deal with corruption suffer from institutional deficiencies, such as the lack of personnel and funding to actively sustain the implementation of their integrity programs.

These anti-corruption laws and integrity initiatives need to be disseminated effectively to vulnerable communities and sectors. There are no clear programs focused on anti-corruption and involving vulnerable communities. The “Pera Natin ‘To” needs to be replicated in the local level, with priority given to the most vulnerable communities. Specific, localized strategies in REDD-Plus demonstration sites can be developed taking into account the lessons from such initiatives.

²⁹ USAID/Philippines. *Enhanced Governance through Anticorruption Efforts in the Philippines*. Available at: <http://philippines.usaid.gov/programs/democracy-governance/enhanced-governance-anticorruption-efforts-philippines>.