



A Study of Anti-Corruption Initiatives in the Philippines' Construction Sector

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Abbreviations

ADB – Asian Development Bank
ANSA-EAP – Affiliated Network for Social Accountability-East Asia and Pacific
APP – Annual Procurement Plan
APPI – Agency Procurement Performance Indicator
AusAID – Australian Agency for International Aid

BAC – Bids and Awards Committee
BL – Bantay Lansangan
BLCC – Bantay Lansangan Coordinating Committee
BOT – Build-Operate-Transfer
BRO – Bureau of Resident Ombudsman
BRS – Bureau of Research and Standards

CBD – Coalition of Bicol Development
CCAGG – Concerned Citizens of Abra for Good Governance
CEDP – Community Employment and Development Program
CES – Cost Estimation System
CHARM – Cordillera Highland Agriculture Resource Management
CIAP – Construction Industry Authority of the Philippines
CIDA – Canadian International Development Agency
CNGG – Citizens Network for Good Governance
COA – Commission on Audit
Code-NGO – Caucus of Development NGO Networks
CoST – Construction Transparency Initiative
CPES – Constructors Performance Evaluation System
CPU – Corruption Prevention Unit
CSC – Civil Service Commission
CSO – Civil Society Organization

DAR – Department of Agrarian Reform
DBM – Department of Budget and Management
DENR – Department of Environment and Natural Resources
DepEd – Department of Education
DOH – Department of Health
DPWH – Department of Public Works and Highways

EDCOP – Engineering Development Consultants of the Philippines
EDSA – Epifanio Delos Santos Avenue
EIRR – Expected Internal Rate of Return
EO – Executive Order

FAP – Foreign Assisted Project

GAA – General Appropriations Act
GO – Grassroots Organization
GPRA – Government Procurement Reform Act
GPS – Government Procurement Service
G-WATCH – Government Watch

ICB – International Competitive Bidding
ICC – Investment Coordinating Committee
ICode - Iloilo Code NGOs Inc.
IDR – Integrity Development Review
IMTF – Infrastructure Monitoring Task Force
INT – Department of Institutional Integrity of the World Bank
IPP – Independent Power Produces
IRR – Implementing Rules and Regulations

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JICA – Japan International Cooperation Agency
JV – Joint Venture

KARSA – Kalinga Apayao Religious Sector Association

LGU – Local Government Unit

MDG – Millennium Development Goals
MOA – Memorandum of Agreement
MSACC - Multi-Sectoral Anti-Corruption Council
MSG – Multi Stakeholder Group
MTPDP –Medium-Term Philippine Development Plan
MWSS – Manila Water Works and Sewerage System

NAMFREL – National Movement for Free Elections
NBN – National Broadcasting Network
NCB – National Competitive Bidding
NCPC – Naga City Peoples Council
NDCC – National Disaster Coordinating Council
NEDA – National Economic Development Authority
NGO – Non-Government Organization
NIA – National Irrigation Administration
NLCGG –Northern Luzon Coalition on Good Governance
NRIMP – National Roads Improvement and Management Program

ODA – Official Development Assistance
OMB – Ombudsman

PAGC – Presidential Anti-Graft Commission
PARCOMM - Provincial Agrarian Reform Coordinating Committee
PBAC – Prequalification, Bids and Awards Committee
PCCI – Philippine Chamber of Commerce and Industry
PDBC – Philippine Domestic Construction Board
PhilGEPS – Philippine Government Electronic Procurement System
PMC – Project Monitoring Committee
PMS – Presidential Management Staff (under the Office of the President)
PMS – Project Monitoring System (in NEDA)
PNP – Philippine National Police
PO – People's Organization
POW – Program of Work
PPS – Pro-Performance System
PTG – Procurement Transparency Group
PWI – Procurement Watch Inc.

QAU – Quality Assurance Unit

R.A. – Republic Act
RDC – Regional Development Council
ROWA – Right of way acquisition
RPMES – Regional Project Monitoring and Evaluation System
RSSRC – Road Sector Status Report Card

SCTEX - Subic-Clark-Tarlac Expressway
SONA – State of the Nation Address
STAR - Southern Tagalog Arterial Road

TAN – Transparency and Accountability Network

UNCAC – United Nations Convention Against Corruption
UNDP – United Nations Development Programme

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WEF – World Economic Forum

WYSIWYG – What You See Is What You Get

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EXECUTIVE SUMMARY

This study, commissioned by the Construction Sector Transparency (CoST) Initiative Secretariat, traces anticorruption initiatives that have been in place in the Philippine construction sector for the past 20 years. It aims to document the Philippine experience in addressing corruption and draw out lessons that could be used for multistakeholder approaches in other countries.

Background

Infrastructure and construction projects, implemented correctly, contribute to a country's growth and social development. Basic social services such as health and education are better served when there are adequate roads and bridges that enable doctors and teachers to reach communities in remote areas. But the huge funds poured into this sector and the weak controls in the implementing agencies make it a magnet for corruption. The result: The delivery of these basic services becomes more costly and projects remain unfinished in areas where they are most needed.

There have been numerous anticorruption initiatives in the construction sector, despite its reputation for corruption. The CoST Secretariat sought to assess those initiatives and share the lessons among the seven countries running a two-year CoST initiative pilot program: Ethiopia, Malawi, the Philippines, Tanzania, United Kingdom, Vietnam, and Zambia.

CoST, an international multistakeholder program supported by the UK Department for International Development (DFID) and the World Bank, is anchored on existing governance initiatives, the use of mandatory disclosures, and holding government accountable for its implemented projects.

This study was undertaken by Procurement Watch Inc. (PWI), a Manila-based non-profit, nonpartisan civil society organization whose mission is to enhance transparency, accountability, and efficiency in public procurement through a multisectoral, constructive, and procedure-focused approach. For this project, PWI worked with a team of policy experts and journalists experienced in investigating corruption and studying political, legislative, bureaucratic, and grassroots processes.

Methodology

The study was conducted in two months and involved desk research, interviews, and a site visit.

The desk review focused on policy papers and reports produced by international donor and financial institutions such as the World Bank and the Asian Development Bank, and by international groups like Transparency International. Books, journals, and newspaper articles, specifically investigative and explanatory articles, were also used. The desk research included visiting government websites and accessing online articles and documents.

The research team also conducted interviews with key informants in government, civil society organizations, and the private sector. The team also interviewed members of the CoST MultiStakeholder Group (MSG). Due to the sensitivity and delicate nature of some information, certain informants requested anonymity or asked not be quoted.

A site visit was made to Abra province in Northern Luzon, where the civil society organization Concerned Citizens of Abra for Good Government (CCAGG) is based. Field interviews were conducted with engineers and other CCAGG volunteers during their site inspections.

Time constraints made it impossible to delve deeper into all anticorruption initiatives. A number of senior managers of the Department of Public Works and Highways (DPWH) and sources from other sectors were not available for interviews during the study's research time frame. Several documents such as bidding and project documents, which are mandatory disclosures, were also not released on time due to bureaucratic protocol within the DPWH. The protocol entails making a formal written request to the agency, seeking clearance from the DPWH Secretary who then farms out the request to the appropriate unit or office within DPWH for action. Despite following protocol, the team was unable to get the DPWH offices to release some documents in time.

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The team identified what it considered the key measures both within the government and outside. This study is intended to be a descriptive report, synthesizing information culled from the desk research, interviews, and site visit.

Findings and conclusions

The DPWH, the government's engineering and construction arm, is the country's "roads and bridges" office. It no longer enjoys a monopoly over public works, a task it shares with other departments, government corporations, and local government units, but it has consistently suffered from a poor public image because it is perceived to be one of the most corrupt agencies of government.

The DPWH's reputation and credibility over the years have suffered. Reports of misdeeds such as bribery, kickbacks, and collusion have tainted the DPWH's name, and never fail to make headlines, especially since the sums of money involved run into millions of dollars.

Philippine presidents as well as public works secretaries have invariably made it their priority to rid the DPWH of this bad image. They have instituted many anticorruption initiatives in the construction sector, in various forms and approaches, which are documented in Section 1 of this study.

One approach covers programs instituted within the bureaucracy, specifically the DPWH, aimed at streamlining processes, promoting efficiency and honesty in public works, and purging the organization of corrupt and incompetent personnel.

Yet another form is through decree and legislation, and the foremost statute that applies to procurement in the construction sector is the Government Procurement Reform Act (GPRA). The GPRA is intended to rectify and remove the practices that allowed corruption to seep into the bidding, award, and implementation of contracts.

Outside the government, anticorruption efforts include civil society engagement with procurement agencies and the monitoring of the construction sector.

But despite the numerous efforts over the past two decades, reform intervention and anticorruption measures have been inadequate, selective, and weak.

An anticorruption effort within the DPWH is the Quality Assurance Unit (QAU) which would have been a potent reform measure, being intrinsic to the organization, and succeeding in penalizing a few errant DPWH personnel. But as pointed out in Section 2, the QAU covers only a tiny fraction of public works projects, and its work hardly makes a dent in terms of ensuring that public funds are well spent.

Also within the DPWH is a resident Ombudsman whose job is to receive and process complaints and misdeeds on procurement-related activities, among others. But complaints from observers are rare, and the process of filing complaints long, tedious, and discouraging.

The Office of the Ombudsman itself has launched a number of anticorruption measures and programs in cooperation with civil society. But cases filed before the Ombudsman can get caught in the legal mill for years. The Ombudsman's resolve in running after grafters and corrupt civil servants is also dependent on the personality and biases of the person occupying the office.

A check-and-balance measure comes in the form of the Project Monitoring System (PMS) of the National Economic Development Authority (NEDA), which ensures that cost overruns are flagged and reported on foreign-assisted projects. The value of PMS's work is in the collection of information, documents, and databases that could guide the crafting of policy. But its value is also its weakness. PMS does not go beyond analyzing data and holding meetings and discussions, and even skirts the issue of corruption, even avoiding mentioning what its staff calls the "C" word.

The GPRA institutionalized the presence of observers from civil society in the procurement process, a step intended to deter corrupt practices. However, there are not enough knowledgeable CSO observers and contract implementation monitors for the huge number and frequency of government projects implemented in the archipelago.

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Section 3 discusses the three CSO initiatives representing the different anticorruption actions outside government.

The CCAGG is a grassroots organization that has been watching over public works spending in Abra province for the past 22 years. Staff engineers and volunteers lend their expertise and technical competencies in obtaining project documents in order to be able to benchmark contractor performance against the bid conditions. The CCAGG has been trying to pass on its expertise to communities in neighboring provinces; it has spearheaded the formation of contract implementation monitors in the Northern Luzon provinces. But there are procurement processes that take place beyond the watchful eyes of the CCAGG. The CCAGG's work is also hindered by problems of access to documents.

The Transparency and Accountability Network (TAN) implements the Bantay Lansangan (BL) initiative, a donor-funded undertaking to monitor the construction of national roads. Twenty-three organizations initially signed up but their interest waned even before the BL was two years old. The problem of BL's sustainability also threatens its existence.

The Pro-performance System is a multisectoral watchdog group that, unlike the CCAGG or BL, transacts easily with government simply because it is under the Office of the President. However, the group lacks tools and techniques in monitoring; hence, its work is limited to determining whether a project meets timelines.

Unscrupulous contractors are often part of the interplay between politicians and the DPWH. Politicians often assert their influence on DPWH-implemented projects, but a saving grace is the media, to whom CSOs can report the malicious exercise of undue influence. Oftentimes, CSOs turn to the media to expose these unlawful acts. Therefore, the media plays a vital role in informing the general public of the wheeling and dealing that often plague the DPWH system. This creates much needed pressure to bring to light backdoor transactions, bid rigging, collusion in the procurement process that affect the lives of millions of Filipinos.

One key anticorruption initiative is the GPRA, but as Section 4 notes, there are steps in the procurement process that the GPRA fails to cover, specifically those steps involving decisions made or influenced by politicians. These include the implementation of the project designs and investment prioritization by politicians, both at the national and local levels, where corruption breeds.

Indeed, one underlying finding present in previous sections and highlighted in Section 4 is that procurement tends to be a political process. For politicians, public works projects become tangible proof of so-called achievements and translate to votes for those running for re-election.

The weak capacities of procuring entities to make prudent estimates with matching designs leave them prone to the dictates of unscrupulous contractors. Another weakness lies in the late detection of cost overruns and bloated cost estimates. However, a strong lobby from knowledgeable civil society groups to be included in regional and local development councils ensures that infrastructure needs of constituents are given priority before the politics of procurement prevails.

Recommendations

Procuring and monitoring entities are still too weak to combat forces of corruption in the construction sector. This is aggravated by the culture of secrecy that still pervades the DPWH, where officials and employees continue to deny the public access to information and documents related to public works projects. However, the Freedom of Information bill that has passed third reading in the Senate may soon be enacted and will have a great impact on transparency in government. Stakeholders must grab the opportunity such a measure presents, if it is enacted into law.

One recommendation is to strengthen the QAU and expand its coverage, giving it more teeth to deal with erring contractors. Another recommendation is to enforce stronger performance bond mechanisms as a way of ensuring quality in infrastructure projects so that funds do not go to waste. And then there is the need to strengthen capacity-building and legal protection for civil society monitors, and the streamlining of CSO tasks so that they do not overlap with the QAU. A final recommendation is the use of independent engineering consultants who can complement the work of civil society monitors.

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SECTION 1

Reforms and anticorruption initiatives in the Philippines construction sector: An Overview

Just after taking over the helm of the Department of Public Works and Highways (DPWH) in November 2009, newly appointed secretary Victor Domingo expressed his desire to have the name of the DPWH removed from the roster of government's most graft-ridden agencies.

"I hope the DPWH can graduate from the corrupt category that it has been perceived to be. I know that with the recent salary increases, and if we will only listen to our conscience, we would be able to graduate from that category with flying colors," Domingo said.

As with everyone who became Secretary of Public Works and Highways, Domingo has placed at the top of his list of concerns the department's poor public image. His approach is to hit the ground running, staying away from persons "out to corrupt" his office and his person. For the remainder of his term, which lasts till July 1, 2010 when a new president will start appointing a new cabinet, Domingo will be overseeing the rehabilitation of roads and bridges damaged by Typhoons "Ondoy" and "Pepeng." There will be no new construction under his watch with the moratorium on public works during elections.

The negative public perception of the DPWH is old hat. Domingo and anyone who has dealt with the agency will admit that the department has been known as a flag-bearer of corruption, along with other cash-rich agencies such as the Bureau of Customs (BoC) and Bureau of Internal Revenue (BIR).

Since 1998, the Social Weather Stations and Transparency and Accountability in Government (SWS-TAG) have conducted an Annual Survey of Enterprises on Corruption, with the DPWH among those suffering the worst reputations through the years. The 2008 survey showed the department losing credibility, with 63 percent of respondents believing it was not sincere in fighting corruption.

The DPWH's reputation, along with what is left of its credibility, has reached a level where people consider it a risk dealing with the institution. But things were not like this before, and public works veterans talk of a time before politics and corruption dominated the agency.

The DPWH is the government's engineering and construction arm, in charge of undertaking major infrastructure projects. From being called Obras Publicas when it was created in 1868 while the country was under Spanish rule, the agency had many times been renamed and reorganized. Today, it remains the "roads and bridges" office, although it no longer enjoys the monopoly it once had over all public works as other departments, government-owned and -controlled corporations, and local government units now share the task.

The DPWH has grown over the years. There used to be a Ministry of Public Works and a Ministry of Public Highways until then President Ferdinand Marcos issued Executive Order No. 710 in 1981 merging the two and restructuring them as the Ministry of Public Works and Highways (MPWH). The ministry then had 14 regional offices, 154 districts offices, five bureaus, and six services, in addition to corporations and councils attached to it for administrative supervision.

The present DPWH is a huge organization composed of 16 regional offices, 156 district offices, 17 sub-district offices, a task force, 16 regional equipment services, 68 area shops, 21 sub-area shops, five bureaus, six services, and 44 project management offices (PMOs). It employs 14,501 people.

The amount of funds that goes into the DPWH has also risen. From 1991 to 1993, the department received an average P28.6 billion in yearly appropriations. For 2008 to 2010, the agency budget has grown to an average of P127 billion a year. This excludes the P6 billion in congressional funds and infrastructure outlays it receives to implement infrastructure projects of other agencies such as the Departments of Education, Agriculture, and Agrarian Reform.

Under its present mandate, defined by Executive Order No. 124 signed on January 30, 1987 by then President Corazon Aquino, the DPWH is responsible for the planning, design, construction, and maintenance of public infrastructure, especially national highways, flood control, and water resources development systems, and other public works in accordance with national development objectives.

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Corruption and inefficiency in the DPWH

The DPWH is not the only agency the public holds in low regard. But its services are visible to all, often coming in the form of spotty roads, unfinished bridges, dilapidated school buildings, and other evidence of poor performance. Given the huge amounts of money that go into the DPWH, this underperformance is often attributed to inefficiency and corruption.

Misdeeds that are often cited in the DPWH include kickbacks from infrastructure projects, price fixing or bid rigging, collusion or cartel bidding, quality substitution, phantom contractors, progress payment fraud, cost padding, and tailored specifications.

In early 2009, the DPWH grabbed headlines with the revelation that a cartel of contractors, bureaucrats, and politicians had dipped their hands into the \$150-million loan made available by the World Bank for the National Road Improvement and Management Project (NRIMP-1). An estimated \$30 million to \$45 million, or anywhere from one-fifth to a third of the entire budget for NRIMP-1, had gone to the pockets of these cartel members.

The bank's Department of Institutional Integrity (INT) went head-to-head with the government and the DPWH with findings that, among others, "numerous officials...participated in an institutionalized cartel replete with collusive tendering, bid rigging, price fixing, and routine payment of bribes and kickbacks."

The NRIMP-1 case showed that corruption has infested even big-ticket projects that are supposed to be watched closely by many government agencies and donor institutions. The controversy generated so much adverse publicity that in a survey by Pulse Asia following the incident, the DPWH was catapulted to the number one spot as the most corrupt agency in government.

The NRIMP-1 project prompted the World Bank to immediately blacklist from future bank-financed projects the contractors named part of the cartel. In contrast, the government treaded carefully in its investigation on the involvement of DPWH officials and other personalities.

NRIMP-1 is not the only project that exposed corruption in the DPWH. Neither is it the first time that government has taken action to counter the problem. The government has spent decades fighting corruption, and has enacted numerous laws to sanction erring personnel. Within the DPWH, various reform measures have been undertaken in the different areas of operation to ensure good management and governance.

DPWH leadership through the years

DPWH insiders say the management styles and personalities of their former ministers or secretaries played a huge part in the enforcement of anticorruption measures.

A case in point was Vicente Paterno, a technocrat who was appointed Minister of Public Works and Highways during the Marcos years. Paterno's first day on the job was a Friday, recalls former Undersecretary Edmundo Mir, himself a DPWH career official since the 1960s.

"He (Paterno) asked us to come very early on Monday and we would have a flag raising ceremony," Mir says. All ministry employees did show up that Monday, all of them curious to meet Paterno and hear him speak. After the flag ceremony, Paterno told employees to return to their offices. "I will follow you. I'll be there in 10 minutes," Mir quotes him as saying.

Still wondering how the minister could follow everyone to their offices in so short a time, they reached their units and were surprised to see Paterno's people already there, distributing ballots and asking everyone to list down the names of the 10 presumed worst people in the department and 10 best who had been contributing to its good image.

In the end, Paterno himself counted and tallied the ballots, yielding the names of the best and the worst as listed by ministry employees themselves. Everyone on the list was summoned to Paterno's office and shown the results. He reportedly told each one on the "worst" list, "What are you going to do? Will you resign or shall I kick you out?" Mir remembers that many resigned, while some promised to reform, and did.

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When Marcos was ousted and Corazon Aquino rose to the presidency, a succession of appointees took over the DPWH. In her study of the Aquino cabinet, public administration expert Ledivina Cariño noted that Aquino's early appointees were politician members of the Marcos opposition, unlike Marcos-era cabinet members who were technocrats later lured into politics. Thus, Aquino's first appointee to the Ministry of Public Works and Highways was Bulacan politician Rogaciano Mercado, who later became congressman.

Later Aquino appointees were thought to be more suited to the post, among them Fiorello Estuar, who had a PhD in civil engineering and headed the department from 1987 to 1991.

By 1991, Aquino handed over the helm of the DPWH to Jose "Ping" de Jesus, a trusted lieutenant who had been secretary of the Cabinet and one of three presidential coordinating secretaries. Before De Jesus took over the DPWH, he had headed the Presidential Task Force on the Rehabilitation of Earthquake-affected Areas which attended to areas in Luzon hit by the July 1990 earthquake. DPWH insiders considered him a good leader and manager.

When Fidel Ramos became president, he appointed Gregorio Vigilar, a fellow military man and West Point graduate, to be DPWH secretary. Vigilar had a civil engineering degree from the University of the Philippines and headed the Philippine Army Corps of Engineers for many years. Vigilar held the post of secretary of the DPWH the longest in the post-Marcos years, staying on to serve Ramos' successor, Joseph Estrada.

When Gloria Arroyo became president, she appointed politicians and politically inclined individuals to become secretary of public works. Her first appointee was Simeon Datumanong, a long-time lawmaker from Maguindanao who would later become Justice Secretary and Deputy Speaker of the House of Representatives. Metro Manila Development Authority Chairperson and former Marikina mayor Bayani Fernando also sat briefly as DPWH secretary.

Under Arroyo, controversy started to hound the DPWH over appointees to the post of secretary. At one point, she named a career official, then Undersecretary Florante Soriquez, to act as secretary. Soriquez was facing a variety of lawsuits for graft and corruption and had failed a lifestyle check.

After Soriquez came Hermogenes Ebdane, a former chief of the Philippine National Police (PNP). Ebdane's appointment drew criticism because his name had been mentioned in the "Hello, Garci" tapes, a wiretapped recording of alleged fraudulent election operations in 2004. Aside from this, critics said Ebdane was never an engineer by profession, unlike most of the past secretaries of the DPWH.

Arroyo, through her spokesperson Ignacio Bunye, defended her choice of Ebdane for the post, saying the former police general did have a civil engineering degree from the Philippine Military Academy. "What is important is that Ebdane enjoys the trust and confidence of the President and he is perceived by the President to be capable of helping implement her 10-point agenda," Bunye said at the time. Ebdane bowed out of the DPWH in November 2009 to run for president, although he withdrew from the race at the last minute. Ebdane's replacement was Victor Domingo, a certified public accountant and businessman.

Efforts to reform the department remain constant through the years, said DPWH insiders, but the intensity and resolve to implement these reforms waxed and waned, depending on who sat at the helm.

Areas of reform

The areas of reform correspond with those aspects of DPWH operations perceived to be corruption-prone. These include the procurement of civil works, consultancy services and goods and materials, quality of infrastructure projects, project implementation, and the organizational structure.

In the area of procurement, the DPWH has moved to uniformly apply the provisions of the Government Procurement Reform Act (GPRA) enacted in 2003 and its applicable Implementing Rules and Regulations (IRR), but the IRR has yet to take effect at the sub-national levels. Section 3 of this paper discusses factors that impede the full implementation of the GPRA.

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The DPWH also instituted a computer-based registry of civil works contractors developed under the Road Information Support System (RIMSS). The registry allows the various DPWH offices to screen and examine the qualifications of contractors and determine their eligibility for certain types of projects. The system is intended to “help minimize, if not totally eradicate collusion among contractors.”

Erring contractors are subject to the DPWH's three-strike policy, which applies to those participating in the bidding for DPWH projects. Section 69 of the GPRA lists acts that violate the procurement reform law: “not buying bid documents; withdrawing from bidding or submitting a letter of non-participation before the deadline for submission of bids; and, submitting late bid without valid cause and, insufficient/defective documents.”

Likewise, DPWH has adopted “uniform guidelines for blacklisting of manufacturers, suppliers, distributors, contractors and consultants” as approved by the Government Procurement Policy Board (GPPB), an interagency committee established by the GPRA to address state procurement concerns.

Another anticorruption measure is the Document Tracking System (DoTS) that traces all contract-related documents, including billings of contractors. The DoTS aims to reduce red tape and opportunities for unscrupulous DPWH personnel to demand bribes in exchange for facilitating the processing of documents and payments. A payment method using the New Government Accounting System (NGAS) was likewise instituted.

To foster transparency in the awarding and implementation of contracts, the DPWH has partnered with civil society organizations, which are mandated to act as observers in Bids and Awards Committees from the central office to the regional and district levels. (See Section 2)

The DPWH's anticorruption program also includes measures to ensure quality of infrastructure projects, which has been the subject of complaints. The DPWH Quality Assurance Unit (See Section 2) checks that construction materials used in projects conform to quality standards and that DPWH field personnel, as well as contractors, have the expertise and capability to engage in project implementation and supervision.

Similarly, the DPWH uses the Constructors' Performance Evaluation System (CPES) guidelines of the Construction Industry Authority of the Philippines (CIAP), an agency attached to the Department of Trade and Industry (DTI), to evaluate a contractor's performance in the implementation of projects. (See Section 2)

The DPWH has an accreditation system for its own project engineers and inspectors to ensure that only the competent are assigned to projects. There is also an accreditation system for private testing laboratories to augment DPWH's own testing capability, as well as for concrete and asphalt batching plants to ensure the high quality of concrete and asphalt materials to be used in projects.

The DPWH has set up an Integrity Board to which contractors are encouraged to report any corrupt practices in project implementation. A sanction mechanism was put in place to penalize project implementors reported to have come up with unsatisfactory performance.

In the area of project implementation, DPWH has assigned two undersecretaries to handle overall supervision of projects—one for foreign-assisted projects and one for locally funded projects. Three assistant secretaries are assigned to handle locally funded projects in Luzon, Visayas, and Mindanao.

This additional layer of management was created in response to allegations that contractors and consultants deliberately delay completion of projects to lengthen their period of work. The DPWH also put in place a system to track slippages and alert top management to urgent implementation issues. There are guidelines to check the performance of implementing offices, with corresponding sanctions for unacceptable performance. And to prevent DPWH personnel from fraternizing with contractors, the DPWH also now implements job rotations.

On top of these measures, the DPWH relies on the Office of the Ombudsman and the Presidential Anti-Graft Commission (PAGC) to enforce laws against graft and corruption and act on complaints against those from within DPWH ranks who violate these laws.

SECTION 2

The Watchers Within

In November and December 2004, a series of typhoons hit Central Luzon, causing rivers in Nueva Ecija province to swell. When the storms subsided, only the Pias Bridge in General Tinio town was left standing while downstream on the Rio Chico, at least three others collapsed.

All those bridges were projects implemented by the Department of Public Works and Highways (DPWH). In one bridge, road monitors said, the structure's alignment did not follow specifications. Another one collapsed, they said, because the contractor apparently tried saving on materials. The bridge was shorter than it was supposed to be, built on a narrower portion of the river where the rampaging waters squeezed through the passage, as in a funnel, the pressure washing the structure away.

A 2009 World Bank report entitled *Philippines: Transport for Growth* notes a high number of deficiencies affecting the quality of roads and bridges in the country.

Several government agencies are tasked with oversight functions that are supposed to prevent, or at least monitor, occurrences such as those in Nueva Ecija in 2004. But these agencies are hounded by limitations that prevent them from making an impact.

DPWH Quality Assurance Unit

The DPWH has its Quality Assurance Unit (QAU), an office under the department's Bureau of Research and Standards (BRS), which sets the norms for all infrastructure projects in coordination with the construction industry and private manufacturers.

The QAU has been in existence since the 1980s but has undergone changes in coverage and constitution. In 2007, then DPWH officer-in-charge Manuel Bonoan signed Department Order No. 22, amended later by DO 33, reconstituting the QAUs and integrating its personnel from the central office and the regional offices.

The QAU functions like a project team whose staff comes from different units. It is composed of engineers from the BRS, Bureau of Design, Bureau of Construction, and those from the regional offices who have undergone QAU training. It is tasked with ensuring that all projects are implemented in compliance with existing engineering rules and regulations. The QAU's evaluation work is done on a quarterly basis.

While the QAU covers various types of infrastructure projects—national roads, bridges, schools and public buildings, flood control, water supply, and farm-to-market roads—it examines only a small fraction of all these. The QAU's mandate is to assess at least 10 percent of projects implemented by the DPWH in its regular budget, or those funded by other agencies.

Data show that the QAU barely makes a dent in terms of monitoring projects. In 2008, the DPWH Annual Report listed a total of 13,860 projects completed (See Table 1) but the QAU was able to assess only 2,838 completed and ongoing projects (see Table 2). This translates to about 20 percent coverage. The BRS-QAU reports do not list the corresponding amounts per project, but a very rough estimate would be a coverage equivalent to P6.2 billion out of more than P30.4 billion worth of projects.

Table 1 Projects completed by DPWH in 2008

| | No. of projects | Amount (in million pesos) |
|--|-----------------|------------------------------|
| Flood control | 1,329 | 5,068 |
| Other infrastructure—water supply, irrigation, canals, buildings | 7,713 | 6,124 |
| Classrooms | 3,423 | 1,309 |
| Farm-to-market roads (under DA) | 175 | 286 |
| Farm-to-market roads (under DAR) | 5 | 7 |
| Bridges under Tulay ng Pangulo sa Barangay | 410 | 6,041 |

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| | | |
|---|---------------|---------------|
| Bridges under Tulay ng Pangulo sa SZOPAD/Mindanao | 593 | 7,420 |
| Bridges under "Countrywide Bridge Projects" | 200 | 2,287 |
| Long bridges and flyovers for Tulay ng Pangulo sa Kaunlaran | 12 | 1,908 |
| TOTAL | 13,860 | 30,450 |

Source: DPWH Annual Report 2008

Selecting projects

The QAU selects the projects to be assessed randomly from the database of the Project Monitoring Group (PMG) lodged at the Bureau of Construction, said Medmier Malig, a QAU engineer who is also one of the internal assessors implementing the anticorruption Integrity Development Review project of the Office of the Ombudsman.

Although projects are chosen randomly, the QAU also includes those where the PMG has filled out the "Remarks" portion in its monitoring sheet, considered a red flag indicating a project requires QAU inspection and assessment.

On top of those randomly chosen, the QAU assesses projects mentioned in the president's State of the Nation Address (SONA) and those that are foreign-assisted. All foreign-assisted and locally funded projects are assessed by the QAU before final payment and turnover, but in the case of locally funded projects, implementing units may conduct the assessment themselves.

The QAU also responds to requests for investigation from various stakeholders, including public complaints received through text, email, and other means of communication, none of which are rejected. The Concerned Citizens of Abra for Good Government (CCAGG), for one, notes that the QAU has never turned down any of its requests. "CCAGG had the memorandum of agreement with DPWH before so if there are findings, they immediately act on it. Even without that same order, the DPWH still cooperates. Their performance improved despite that. They are more careful when it comes to us," said CCAGG volunteer Paz Bumogas.

In some instances, DPWH insiders themselves may bring problematic projects to the attention of the QAU. But rather than come forward, Malig said, some insiders would instead pass the information or tip off outside groups such as nongovernment organizations or community members willing to take the cudgels and bring the matter to the DPWH. Whistleblowers include losing bidders or politicians who may be at odds with local officials involved in the project. Regardless of who the complainants or informants are, however, the QAU is supposed to look into projects in question.

Once problems are detected, the QAU issues an internal memorandum to engineers involved in the projects and asks them to respond. If the QAU ascertains that there are defects, contractors are compelled to correct them or to remove and replace the structures at their own expense.

One project proven to have been defective is a portion of the Halsema Highway in the Cordillera region, a major road network included in President Arroyo's North Luzon Agri-Quadrangle. Concreting works done by a contractor on a portion in the second phase of the highway project failed the quality assurance test. As a result, the contractor was required to remove and replace the defective portion, with no expense from government. The problem was brought to the QAU's attention by the Northern Luzon Coalition for Good Governance (NLCCG), a civil society organization that had asked the QAU to facilitate the remove-and-replace order.

DPWH project engineers and district engineers who are likewise found to have been remiss in their duties as supervisors are issued warnings, suspended, or permanently barred from handling projects. QAU reports are used as bases for filing cases against DPWH personnel, with QAU members serving as witnesses.

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Even QAU members themselves may be charged before the Ombudsman if they fail to report their findings in full. A DPWH engineer is facing charges for failing to include in his report the fact that a contractor for a flood control project omitted one component of the project.

For 2007 and 2008, the QAU found that only some 20 percent of the more than 2,000 projects assessed complied with specifications. The BRS Annual Report for 2008 noted that an estimated two-thirds of projects assessed, 1,925 out of 2,838, required corrective action and written explanations from the DPWH personnel and contractors involved, while 353 required removal and replacement.

As a result, more than a hundred DPWH engineers were issued warnings, dozens were suspended for a period of six months to one year, and four were perpetually disqualified from handling projects. (See Table)

Table 2 Summary of QAU reports, 2005-2008

| | 2005 | 2006 | 2007 | 2008 |
|--|-------|-------|-------|-------|
| No. of projects assessed | 2,641 | 2,180 | 2,171 | 2,838 |
| No. of projects that complied with specifications | 1,083 | 971 | 464 | 560 |
| No. of projects that required corrective actions from the contractors and written explanations from RD, DE, PE, and ME | 1,402 | 1,172 | 1,491 | 1,925 |
| No. of projects that required removal and replacement | 156 | 37 | 216 | 353 |
| No. of DPWH engineers issued warnings | 108 | 102 | 30 | 37 |
| No. of DPWH engineers suspended for six months | 40 | 51 | 18 | 27 |
| No. of DPWH engineers suspended for one year | 12 | 20 | 4 | 4 |
| No. of DPWH engineers perpetually disqualified from handling projects | 4 | 0 | 2 | 2 |

Source: BRS Annual Reports

The previous two years, 2005 and 2006, showed a higher rate of compliance with project specifications, at more than 40 percent per year.

To the extent that the QAU reports lead to sanctions for erring personnel of the DPWH, the QAU may be more effective in cleaning up the DPWH than outside oversight and law enforcement agencies have been so far. The Commission on Audit (COA), for instance, has no powers to sanction erring personnel, although its reports can, and prove to be useful, in building cases against them.

The Office of the Ombudsman lacks competent lawyers and prosecutors, and is often perceived as being partisan. The Civil Service Commission (CSC) can hardly enforce civil service rules such that officials who would not have been qualified or should be dismissed from public office continue to hold on to their posts or are even promoted, according to various informants. A former DPWH official said some personnel even falsify their career service eligibility documents to stay on in the bureaucracy. In a sense, the QAU fulfills the function these oversight institutions may be unable to carry out also because they have other agencies to look into.

Why defects persist

The 2009 World Bank report also cited a Japan International Cooperation Agency (JICA) study conducted from November 2005 to January 2006 which found that in many cases, DPWH project managers, engineers, and supervisors were aware of the regulations on construction management and road

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maintenance but were lax or negligent in enforcing them. The reason given was that they did not seem to appreciate the importance of the regulations and the likely effects of their negligence. This was attributed mainly to inadequate manuals, insufficient training, inadequate incentives and sanctions, inadequate equipment and budget for inspection, and undue external or political influence in some cases. A former DPWH official admitted that agency personnel are sometimes pressured to fast track the implementation of a project, skipping certain procedures in the process, so that the project can be completed and inaugurated soon.

Some DPWH project engineers in the field question the competence of QAU members, being relatively young and inexperienced. But hiring younger engineers to staff the QAU was intentional, former Undersecretary Edmundo Mir said. Fresh from college, these engineers tend to follow the rules and stick to the norms and standards set by the QAU. Nonetheless, Mir acknowledged that idealism may wane as one is exposed to the realities of corruption. "After a few years, they either become complacent or corrupted," he said. Some would later learn the ropes and become part of the system, while others would simply leave out of frustration.

The local connection

The QAU notes that deficiencies found in projects implemented at the district level can sometimes be attributed to the intervention of local officials. These officials sometimes allow or even urge local contractors to use materials other than those stated in project plans and specifications to either cut costs or to benefit preferred suppliers, Malig said.

A former DPWH official recalled that during his time, there was competitive bidding. "There was no political intervention then because the joke was, politicians had *jueteng* (an illegal numbers game) then so they did not need projects. When *jueteng* was gone, they would now intervene in projects," he said.

In some cases, QAU informants said, local officials or their families are themselves the preferred suppliers. To get DPWH engineers to cooperate, some local officials would not hesitate to exert pressure on these engineers, who often owe their posts to local executives.

In other cases, however, materials stated in the project specifications are simply not available locally and have to be sourced elsewhere at a cost; thus, contractors resort to locally available materials. To address such concerns, the BRS also conducts research on and testing of various indigenous materials that meet the standards set by the DPWH to give contractors a menu of options.

Having local officials with vested personal interests in projects is a major problem, road monitors said. A volunteer from the Social Action and Development Center cited the case of a Philippine National Police building in a town in Northern Luzon whose contractor was the mayor's son. Explaining how this came about, the volunteer said the bidding did not take place in the town itself, but in Baguio City several kilometers away. In such cases, it would not be in the mayor's personal interest to go against the contractor, should the contractor renege on his obligations. This same mayor also happens to be the contractor for a farm-to-market road found to be defective.

Like any other government unit, the QAU is dependent on the national government for its limited funding and can only do so much. Moreover, in an ideal setting, projects are presumed to be implemented as planned and in accordance to specifications and standards.

Monitors like the QAU come in only once in a while and only in selected projects. Malig believes that field engineers should become more responsible and be held accountable for the quality of projects that they supervise, without the need for QAU to point out defects. Sanctions imposed on erring DPWH engineers are meant to serve as deterrents against negligence.

Aside from this, the DPWH enforces other procurement reform initiatives aimed at private contractors so that they become competitive and would not resort to bribery and connections. These include the Constructors Performance Evaluation System (CPES), contractual provisions on warranties and performance bonds, and Government Procurement Policy Board (GPPB) guidelines for blacklisting.

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Expanding QAU

The QAU seems to play an important role but its operations are limited, covering only 10 to 20 percent of ongoing and completed projects.

A short-term arrangement to further empower the QAU would be to beef up its manpower by reassigning some personnel to the unit, instead of hiring more, considering that the DPWH bureaucracy is bloated. According to a World Bank document, the DPWH has one employee per 1.3 kilometers of national road, compared to Indonesia where the ratio is one employee per 10 kilometers of road.

Another way of expanding QAU operations would be to consider it as a platform for engagement by stakeholders, enlisting community members and NGOs to help in monitoring. Citizens can call on the QAU to check on what they perceive to be problematic projects. Civil society organizations that undertake on-site monitoring of construction projects can choose to work with the QAU.

DPWH engineers are open to the possibility of eventually enlisting community assistance in monitoring work. Engineer Joselito Ma. Jacalme of the BRS said this is possible provided that CSOs go through the same QAU training and accreditation. CSOs and community members, he said, can be deputized or at least take on portions of QAU work that are less technical. This arrangement would free up QAU members and allow them to concentrate on the more engineering-intensive or technical aspects of work and cover more projects as a result.

Malig, however, noted that CSOs joining the QAU will not increase its coverage. She argues that there may be a problem with duplication if they end up looking at the same projects. She also feels that QAU may still have to validate CSO findings, which would mean a longer process.

Malig thinks that a more prudent setup is for CSOs to continue working independently and separately so that more projects can be assessed and deficiencies corrected as a result. However, because they lack the authority over contractors, CSOs still need to go through the official channels of the DPWH, or the procuring entity, to act on their findings. In this sense, CSO engagement with the DPWH is inevitable. Cooperation between CSOs and the DPWH also becomes crucial where project documents are unavailable, and in cases where the DPWH-QAU's facilities and equipment put it in a better position to assess.

Using an infrastructure industry score card

Dealing with errant contractors is a reality the DPWH and other agencies implementing government's infrastructure projects face. To guard against slippages, the private sector and the DPWH have been using a ratings system that compels contractors to perform well.

The July 2009 report of the Construction Industry Authority of the Philippines (CIAP) lists three construction firms which performed poorly in government projects, all engaged in building roads in some of the country's poorest provinces. One was concreting a section of the Loay-Loboc-Carmen Road in Bohol, another concreting a section of the Davao-Cotabato Road, and the last one building the Artech-Lapinig Road in Eastern Samar.

The three contractors got marks lower than 60 percent under a scorecard system called the Constructors Performance Evaluation System (CPES). Such low scores could be due to poor workmanship, failure to follow specifications, or simply because the project was significantly delayed.

The three firms were not the bottom dwellers. There were others who did even worse, all their names listed in the CIAP report.

This system of rating projects and contractors to push construction firms to perform better existed before the enactment of the Government Procurement Reform Act (GPRA) or Republic Act No. 9184. The law, however, harnessed the system and mandated all procuring agencies to set up units that would gather the information necessary to generate these scores.

If, for example, a project is found to have a slippage of 15 percent in quality and implementation schedule, a construction firm stands to lose a project it is bidding for, even if it has already emerged as

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the lowest bidder.

The CIAP was created in 1980 by then President Marcos to promote, accelerate, and regulate the construction industry. Its implementing boards are the Philippine Contractors Accreditation Board (PCAB), Philippine Overseas Construction Board (POCB), Philippine Domestic Construction Board (POCB), and the Construction Industry Arbitration Commission (CIAC).

The CIAP regularly consolidates information about projects and about contractor performance and capabilities. It does this by bringing together information gathered through the CPES. There are supposed to be CPES implementing units installed in all infrastructure procuring agencies, including the local governments.

CIAP reports also clarify if project delays are caused by the procuring government agency. The National Economic Development Authority (NEDA) and the Government Procurement Policy Board (GPPB) promulgate and periodically review the scoring methodology.

By January 2009, there were already 617 CPES implementing units, 174 or nearly two-thirds of them under the Department of Public Works and Highways (DPWH). The Philippine Ports Authority (PPA), National Irrigation Administration (NIA), and the National Housing Authority (NHA) each had more than 50 CPES units.

The CPES system, however, only covers a minority of all public construction activities that happen in the country. The build-up of a corps of Constructors' Performance Evaluators (CPEs) is also a continuing process. The system, however, is bound to expand. In 2002, the NEDA ordered all infrastructure-procuring entities to include a budget for CPES in their projects' engineering and administrative overhead cost. Also, since R.A. 9184 uses the CIAP's databases and score cards as its references for both pre-qualification and post-qualification, it will be difficult and disadvantageous for construction firms not to be enrolled in this system.

The limited coverage and the organizational capability of the established CPES implementing units in the different agencies is not the only challenge facing this score card system. Credibility continues to be a concern. Civil society groups and even the government's own development partners still see a need for infrastructure monitoring systems that are independent of the system used by procuring agencies. There is, to say the least, debate about this point.

Yet even as the government's own system of monitoring is installed incrementally, a World Bank report on the Philippine Transport Industry already looks forward to the enhancement of the monitoring system and of its uses. "The Constructors' Performance Evaluation System can be further improved to more precisely reflect the quality of the contractor's work. The Department could use the System rating in pre-qualification or eligibility screening, post-qualification and contract award, monitoring of works, remedial measures to correct defects, issuance of certificates of completion, blacklisting, and incentives/recognition. The System results may also be used in designing appropriate plans to enhance the capability of constructors."

The NEDA project monitors

Another government agency that engages in monitoring work is the National Economic Development Authority (NEDA), the country's development planning and policy coordination agency. The NEDA is tasked with reviewing project proposals, and monitoring and evaluating major investment and infrastructure projects in terms of social and economic benefits.

But NEDA's monitoring work is limited to meetings and discussions, paperwork, report generation, and aggregation of data to be used mainly for policy decisions, rather than the corrective or punitive action that the work of DPWH's Quality Assurance Unit leads to.

NEDA houses the Regional Project Monitoring and Evaluation System (RPMES), which aims to speed up project implementation. It also assists in devolving to regional and sub-regional offices, down to the provincial and municipal levels, the job of facilitating projects, solving problems, monitoring, and evaluation.

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Guiding the NEDA regional offices is its Project Monitoring Staff (PMS), which prepares manuals for project monitoring, including the manual for the RPMES. As project monitor, the PMS puts together all pertinent project documents, including those prepared during pre-investment stage, such as project evaluation reports and minutes of meetings of the Investment Coordinating Committee (ICC).

Although the PMS is mandated to cover all development projects, it deals mainly with those coming out of the ICC process and ODA-funded projects, NEDA PMS Director Roderick Planta said.

NEDA, however, relies on implementing agencies for monthly progress reports. It does not deal directly with the procurement process, but has the ability to compare the implementation of infrastructure projects with what had been initially projected or proposed.

Planta also said NEDA's work is not directly geared toward detecting and addressing graft and corruption but its activities and reports may lead to that. "We don't say the 'C' word," according to Planta, but he said the agency provides the paper trail and information that could reveal inconsistencies in the explanation or excuses made by agencies and NEDA units on, for instance, changes in scope or loan or project extensions.

NEDA takes on a variety of roles: a repository of data and documents, a note taker when it comes to unjustified cost overruns and technically a source of advice if huge cost overruns require a decision to discontinue. NEDA's evaluation of completed projects is supposed to feed into the decision-making for succeeding projects.

But the Cabinet and the president do not always abide by or follow NEDA recommendations, Planta said. Still, these recommendations become part of the paper trail in relation to specific projects.

Most of NEDA's reports are available to policy makers as well as citizens through its website. "But we are not sure that these are understood or that there are people who really pay attention to our reports. Our reports require that you are familiar with the technical language. We do not get a lot of feedback from our stakeholders," Planta said.

NEDA's project monitoring committees at the regional, provincial, city, and municipal levels offer nongovernment and private volunteer organizations a chance to take part in the monitoring and validation process. In these committees, citizens' groups can raise concerns or questions with implementing agencies such as the DPWH.

In Central Luzon or Region 3, for instance, the NEDA regional office has been actively involved in monitoring and evaluating infrastructure and development projects. NGOs have also been involved through the Regional Development Council (RDC) and often serve as a check and balance mechanism amid conflicting interests and views of various agencies and local government units.

In cases where NEDA regional offices and even regional line agencies lack the technical expertise to evaluate design and specifications, independent consultants are hired to provide such expertise, said former NEDA Region 3 division chief Jay Lacsamana.

Lacsamana said hiring external consultants entails cost, but is beneficial in the long run. He cited the case of Pias Bridge in General Tinio in Nueva Ecija, a P32-million project of the Department of Agrarian Reform (DAR) funded by the Asian Development Bank (ADB) and implemented by the LGU of General Tinio. External consultants helped design the bridge to withstand a major "once-in-50-year-flood." Indeed, Pias Bridge withstood the series of typhoons and floods in 2004 while the three other downstream bridges on the Rio Chico were all washed away. Pias Bridge would have suffered the same fate as the three bridges, Lacsamana said, had the DAR used and followed the original design prepared by the DPWH for the local government.

Office of the Ombudsman

When government infrastructure projects collapse and cause loss of livelihood, if not lives, as well as losses to government, individuals responsible have to pay. Receiving complaints about such cases, investigating who should be held liable, and filing cases against them are the job of the Office of the Ombudsman.

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One public works project now the subject of an Ombudsman case is the Pasig-Potrero River Diking System, also known as megadike, a project intended to stem the flow of lahar from Mount Pinatubo to the Central Luzon provinces. In 1996, the megadike collapsed, prompting the filing of a case against several DPWH officials.

Among them were former undersecretary and later secretary Florante Soriquez, at the time program director of the Mt. Pinatubo Rehabilitation-Project Management Office, and Bienvenido Leuterio, director of the DPWH's Bureau of Design.

The DPWH officials are being held liable for approving what is alleged to be the megadike's faulty design and for allowing the contractor to revise previously approved designs and specifications. The officials are being made to answer for the estimated P48 million in losses to the government resulting from the megadike's collapse.

The Office of the Ombudsman is a constitutional body that has full powers to exercise extraordinary oversight and investigative authority over the actions of all public officials and employees. It investigates anomalies and inefficiencies, prosecutes cases before courts of law, conducts administrative adjudication, renders public assistance, and conducts programs to prevent graft and corruption.

The Ombudsman supposedly operates unhampered by political influences, but the Global Integrity Report for 2008 notes that because it is the president who appoints whoever heads the Ombudsman, "the nominee always runs the risk of being viewed as under the influence of the president." The report's rating of the effectiveness of the Ombudsman in terms of independence is thus qualified, giving the Ombudsman a rating of 77 out of 100. The report also contains conflicting views between the raters and the peer reviewers regarding specific cases and persons.

The Office of the Ombudsman has pursued cases of graft and corruption, including lifestyle checks, at various levels. One example is the case of a DPWH regional director who was found to have amassed businesses and properties, some of which were placed in the names of his wife, daughter, and sisters. The Ombudsman found that neither the DPWH official's salary nor the income and financial status of his sister could have enabled them to accumulate such wealth. The Ombudsman found *prima facie* evidence to file criminal charges and forfeiture proceedings against the official and his family. An administrative case also resulted in the official's dismissal from the service.

Ombudsman cases have been known to drag on, however. An example is the filing in June 2009 of graft charges against former Secretary Gregorio Vigilar and six other DPWH officials, allegedly for approving and signing an anomalous contract 11 years earlier in 1998.

Aside from such cases, the Office of the Ombudsman, in partnership with Procurement Watch Inc. (PWI), has come up with operational guidelines on handling feedback and complaints from observers who sit in Bids and Awards Committee (BAC) meetings.

Lawyer Roline Jabalde, resident ombudsman at the DPWH who was a member of the technical working group that drafted the guidelines, lamented that her office hardly receives any feedback from BAC observers. She attributed this to the lack of manpower and the rather arduous reporting requirements observers have to meet to file complaints or submit feedback.

Many BAC observers are volunteers who are retirees or senior citizens with ample time to participate in meetings and activities, she said, but they could hardly be expected to prepare reports or submit copies of voluminous documents as attachments.

Apart from the main diagnostic report, the guidelines prescribe a set of seven documentary requirements as attachment, among them the attendance sheet, advertisement announcing the bidding of a project or certificate of advertisement, procurement transmittal report, and the list of bidders. For the past year, Jabalde recalls having received only two reports, which she says are not even substantial.

The Office of the Ombudsman, together with the Presidential Anti-Graft Commission (PAGC), also conducts Integrity Development Reviews (IDR) for agencies perceived to be vulnerable to corruption, particularly those which are revenue generating, high-procuring, or have big infrastructure projects such as the DPWH. The IDR is a preventive measure involving a systematic assessment of the agency's vulnerabilities to and resistance mechanisms against corruption.

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The IDR is monitored by the Integrity Development Committee whose members include an official of the agency, its internal auditor, and resident Ombudsman. For the DPWH, the IDR listed several recommendations, some of which were actually implemented: streamlined processing of contractors and consultants' billings; posting of list of accounts payable at the DPWH website; creation of an online complaints desk; and the blacklisting of contractors.

IDR evaluators, however, note that a change in leadership of the DPWH, as well as the Ombudsman, has weakened the implementation of the IDR recommendations.

The IDR uses two tools summarized in the table below.

Table 3 Summary of tools used in IDR

| Tools/Methodologies | Objective |
|---|---|
| <p>Tool 1: Corruption Resistance Review (CRR)</p> <ul style="list-style-type: none"> • Integrity Development Assessment • Survey of Employees | <ul style="list-style-type: none"> • Self-assess systems integrity, review relevant policies and procedures • Assess deployment of integrity building museums and generate feedback from employees |
| <p>Tool 2: Corruption Vulnerability Assessment</p> <ul style="list-style-type: none"> • Process Mapping • Risk Assessment • Evaluation of controls and safeguard | <ul style="list-style-type: none"> • Understand agency procedures • Identify factors that can induce deceit, malfeasance, or abuse of power for private gain • Assess the adequacy of means in assessing risks |

Box 1: Government Procurement Policy Board

Procurement-related cases may sometimes be resolved without the intervention of the Ombudsman.

The Government Procurement Policy Board (GPPB) monitors the implementation of Republic Act No. 9184, the procurement reform law, and its recently revised implementing rules and regulations. While primarily a policymaking body, the GPPB also monitors compliance by government agencies with procurement laws, rules, and regulations and addresses complaints against agencies regarding violations of these laws and regulations. As such, observers and anyone involved in or has knowledge about procurement irregularities in an agency can turn to the GPPB. As an inter-agency body composed of high-level officials, the GPPB can call on the erring agency and compel it to undertake corrective measures.

The GPPB also acts as the secretariat of the Procurement Transparency Group (PTG) that was created by Executive Order No. 662 and its two succeeding amendments to enhance transparency measures under the procurement reform law. The PTG is composed of five government agencies—the Presidential Anti-Graft Commission (PAGC), NEDA, and the Departments of Budget and Management, Justice, and Interior and Local Governments—as well as five nongovernment organizations duly designated by the network of civil society groups involved in procurement reforms.

SECTION 3

From the outside looking in: CSO watchers

On a cloudy mid-morning in September 2009, a group of development workers from various parts of Northern Luzon stood looking at the foundations and piers of what was supposed to be a steel bridge being built over the mighty Abra River, one of the Philippines' largest rivers.

Known as the Calaba Bridge, it was a fraction short of a kilometer. Once built, it was supposed to bring an end to the days when the people of Abra crossed the river to neighboring Ilocos Norte on bamboo rafts or steel barges, which locals fondly call "taxis."

But, even as the visitors stood inspecting its foundations or what was the first phase of the bridge, their local "guides" told them it was already two years overdue. Phase 1 began in 2005 with assistance from the Austrian government, and it was supposed to be finished in February 2007. Construction work was originally scheduled to last 420 days, which stretched to 532, and then to 689, and finally to 1,000 days. The contractor hired by the Department of Public Works and Highways (DPWH) suspended work, sometimes for as long as four months, each time the river swelled, especially during the rainy season. One of the guides explained that the weather and river conditions were overlooked when the foreign funder forgot to have the site inspected during the feasibility study for the bridge.

Because of the delays, the project cost also ended up escalating from P177 million to P218 million, said the guide as he showed the visitors how to tell a good bridge from a bad one.

Construction of the Calaba Bridge is now in its second phase—the building of the deck, girders, steel components, and approaches—and the guides said they are watching the project relentlessly to guard against more costly slippages—as relentlessly as they have with nearly all the roads and other public works projects constructed in Abra for the last 22 years.

The guides are engineers and volunteers of the Concerned Citizens of Abra for Good Government (CCAGG), one of the first nongovernmental organizations that ventured into infrastructure monitoring in 1987. At that time, democracy was newly restored in the Philippines, with Corazon Aquino sitting as president following the ouster of strongman Ferdinand Marcos.

The opening up of democratic space encouraged NGOs like CCAGG to take a more active role in governance, in an effort to reverse the more than two decades of Marcos' corrupt autocratic rule. NGOs mushroomed and found themselves scrutinizing government performance and undertaking watchdog or oversight functions in areas like human rights, agriculture, and the economy.

In the field of infrastructure and public works, NGOs, also called civil society organizations (CSOs), became engaged in monitoring through a range of initiatives emanating from grassroots initiatives such as the CCAGG, foreign funding institutions such as the Bantay Lansangan (BL) or Road Watch, or government itself as in the case of President Gloria Arroyo's Pro-Performance System (PPS).

CSO participation as state policy

It was the 1987 Constitution, followed by a slew of laws that helped make people empowerment and their participation in governance a matter of state policy.

The Constitution orders the State to "respect the role of independent people's organizations to enable the people to pursue and protect, within the democratic framework, their legitimate and collective interests and aspirations through peaceful and lawful means." It also cautions government against abridging "the right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making" and to instead put in place "adequate consultation mechanisms."

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The Local Government Code of 1991 allowed the direct involvement of NGOs, people's organizations, and the private sector in local governance.

Presidential directives empowering citizens were also issued early on in the newly restored democracy. Aquino's Executive Order No. 175 of 1988 stipulated the inclusion of NGOs in the prequalification, bids, and awards committee (PBAC) and the project monitoring committee (PMC) created in every province and municipality for local government projects funded by the national government.

A year later, Aquino established through Executive Order No. 376 the Regional Project Monitoring and Evaluation System (RPMES) to watch over and evaluate development projects at the regional, provincial, and municipal levels through a network of development councils and PMCs. The order expressly stated the role of NGO monitors in this scheme: They were to identify implementation problems or outstanding performance, ensure effective and efficient implementation of projects, and act as government partners in ensuring transparency in project implementation.

Beginnings, motivations

The CCAGG got involved in infrastructure monitoring even before the passage of these pieces of landmark legislation, and has since become a model citizens' watchdog group.

Six months into her presidency, Aquino had launched the Community Employment and Development Program (CEDP) to build small-scale, labor-intensive infrastructure projects—farm-to-market roads, health centers, school buildings—to provide jobs to communities, and were scouting for NGOs to monitor implementation of the program. As serendipity would have it, a group of citizens in Abra who had served as poll watchdogs in the 1986 elections that pitted Aquino against Marcos, were searching for other meaningful avenues of watching and engaging the government.

Several reasons made the volunteers of Abra gravitate toward infrastructure monitoring. The 27 towns of this mainly agricultural province were mired in poverty, with all but one, the capital Bangued, classified as sixth-class municipalities, the poorest in the Philippines. Abrenians, as the Abra people are called, were not getting many basic services, including infrastructure.

Roads and bridges were especially an "emotional" issue, says CCAGG co-founder Pura Sumangil. Residents needed them badly to make their way around hills and mountains and through rivers and creeks. There were no roads in some places where they were direly needed. Most of the existing roads were unpaved, narrow, and got washed out during the rainy season.

Projects were mismanaged and funds misused despite the presence of the Commission on Audit (COA). As a result, projects were not only substandard but also costly, or never implemented at all. It became common knowledge that roads and bridges that were badly done or never got done were a clear indicator of corruption.

So it came as no surprise that the election volunteers of Abra, many of them members of the laity in the Roman Catholic Church, were also quick to heed the call of their religious leaders to take part in the campaign against graft and corruption.

"(It's) love for the province of Abra," Sumangil says of the chief motivation for farmers, housewives, students, engineers, teachers, nurses, doctors, lawyers, church workers, and priests to eventually band into the CCAGG and move into the uncharted waters of government project monitoring. "Every time others picked a fight with us because of our work, we'd tell ourselves, 'If it weren't for love of Abra, I'd long be gone from here.'"

Two decades after the CCAGG was formed, its work was replicated by Bantay Lansangan or BL, this time with encouragement from foreign funding institutions. Although BL is institutionally a newcomer to the field, several members of this coalition include veteran NGO monitors like the Abra group.

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The two-year-old BL is an assortment of governance advocates, road service providers, road users, centers of expertise, and media groups prodded by the World Bank to forge a partnership with the DPWH and Road Board. This partnership was a condition for the release of a \$232 million loan to cover the second phase of the National Roads Improvement and Management Project (NRIMP-2) being sought at the time by the Philippine government.

Also partners in this 23-member coalition are the bank itself as a development partner; government regulatory and enforcement agencies; elected representatives like those from the leagues of local governments; and anti-graft agencies like the Office of the Ombudsman and the Presidential Anti-Graft Commission (PAGC).

The institution of an independent oversight by civil society was only one in a battery of anticorruption measures the bank had set because of "lessons learned" in the first phase of the NRIMP it had assisted to the tune of \$150 million. In three rounds of bidding for road contracts, the bank detected rigging, rejected the awarding of the contracts, and referred the findings to its Department of Institutional Integrity (INT). Concluded the investigators: "A cartel of contractors had engaged in corrupt and collusive practices in all three rounds of bidding, undermining competition in roads construction in the Philippines and inflating prices by up to 30 percent."

The multistakeholder partnership now known as BL was envisioned by the bank "to strengthen the voice and influence of citizens in ensuring transparency and proper use of public funds for roads, and to counter corruption at high levels of government and society."

The Transparency and Accountability Network (TAN), a coalition of 25 multisectoral organizations advocating good governance, was chosen BL coordinator.

The TAN would have never thought of partnering with the DPWH to combat corruption had it not been asked to come on board the BL. Survey after survey had identified the department as among the top three government agencies perceived as the most corrupt, but says Vincent Lazatin, executive director of the TAN and now the BL: "TAN usually partners with government agencies that talk to us, that want our help."

The DPWH was not among those that had opened its doors to the TAN, until the World Bank gathered department executives and governance advocates in a June 2006 meeting to discuss the NRIMP-2.

"I was very surprised because I always thought that these kinds of agencies are in denial about the problem," Lazatin says. But the DPWH undersecretaries and assistant secretaries candidly told him and the other NGO representatives during the meeting, "Yes, there is corruption and we need your help."

Another infrastructure watchdog group is the Pro-Performance System (PPS), which came about because of Arroyo's emphasis on infrastructure development in her six-year medium-term development plan and the Philippines' poor showing in the Global Competitiveness Index. This resulted in the creation of the Infrastructure Monitoring Task Force (IMTF), which would initially involve the private sector and later civil society. The task force later became the PPS.

The PPS is a government-initiated citizen watchdog effort. Its beginnings could be traced to the year Arroyo unveiled in her State of the Nation Address (SONA) 149 priority infrastructure projects she committed to complete during her term of office in line with her thrust to create five "super regions": the North Luzon Agribusiness Quadrangle, Luzon Urban Beltway, Central Philippines, Mindanao Agribusiness Super Region, and the Cyber Corridor.

Displeased with the slow-paced implementation of her pump-priming infrastructure projects and the inadequate monitoring being done then by NEDA through the RPMES set up under Aquino's Executive Order 376, Arroyo signed Executive Order 553 in 2006.

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Through that order, she invited the Philippine Chamber of Commerce and Industry (PCCI) to represent the private sector and advise the task force that would monitor what has come to be known as her "SONA projects." It was a big stride in instituting public-private partnership in infrastructure tracking.

That year as well, the World Economic Forum (WEF) ranked the Philippines 71st out of 125 countries in terms of competitiveness. When it came to infrastructure, the country fared even worse: It ranked 88th. The private sector found a good opening to remind the Arroyo government of the need to improve competitiveness, especially in the area of infrastructure.

In 2007, through yet another executive order, Arroyo transformed the IMTF into the PPS. She added nongovernmental representatives—one each from the NGO, business, youth, media, and church sectors, and an international development organization—as members of the Steering Committee now chaired by a representative from the private sector. The PCCI representative was appointed committee chairman.

In 2009, representatives from academe, the local government, sector and a national government advocacy group joined the committee.

The Presidential Management Staff (PMS), which falls under the Office of the President, became the secretariat in charge of coordinating the work of the Steering Committee and its monitoring units. Although Aquino's Executive Order No. 376 of 1988, which created the RPMES, had long designated the PMS to keep tabs on the President's "various commitments," it was the NEDA that took charge of this during the Arroyo, Ramos, and Estrada presidencies. Arroyo's directive initially created tension between the two offices until it was settled that the PMS was in a better position to independently monitor presidential projects because it was involved in neither project approval nor implementation.

The PPS's chief task was "to ensure the diligent delivery and fast-tracking of the government's projects, in measurable terms with transparency and thorough documentation." It was also told to look into cost overruns.

In late 2007, apparently as an offshoot of the World Bank's findings of collusion among bidders in the NRIMP-1, the PPS and other agencies such as the NEDA and the Procurement Transparency Group (PTG) were tasked to take on an active anticorruption role. Arroyo ordered the offices to review road projects covered by the suspended loan and hold regular consultations with foreign funding agencies to "minimize, uncover and address anomalies in foreign-funded projects." The PTG was created at about the same time as the PPS to scrutinize state procurements and also has civil society representatives as members.

Capacity building

Civil society groups have come a long way since 1987. When the CCAGG was enlisted to monitor the progress of Aquino's CEDP in January 1987, its only oversight experience when it started was as an electoral watchdog. Infrastructure monitoring was alien to the Abra volunteers.

The CCAGG discovered that the task of infrastructure monitoring was not as easy as counting votes and ensuring clean and honest elections. It entailed studying government rules and regulations, understanding project cycles, auditing procedures, the basis and technicalities of monitoring, programs of work, and actually going to the field and inspecting roads and bridges under construction.

But the CCAGG found its work cut out for it in the memorandum of agreement the organization signed with the NEDA and Department of Budget and Management (DBM). The agreement committed the NEDA to furnish the CCAGG with the list of projects to be implemented and train its members on the mechanics of monitoring. It bound the DBM to provide the volunteers documents on the release of funds, and to support the NEDA in the release of funds necessary for the CCAGG's monitoring activities. Copies of the agreement were sent to the Abra governor and the DPWH's provincial office.

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The NEDA's Infrastructure Committee gladly equipped the CCAGG with the technical know-how. The volunteers accompanied the NEDA's own RPMES team when it visited Abra to inspect CEDP projects so they could acquire hands-on experience.

There were only a handful of engineers in the whole of Abra, but the CCAGG was fortunate enough to recruit a few of them as volunteers. Drawing inputs from various sources, including the NEDA and the DPWH, the engineers were instrumental in fashioning their own monitoring manual in the organization's early years using its own resources.

The manual turned out to be technical for non-engineers, though. In 2006, with assistance from the United Nations Development Programme (UNDP), the CCAGG developed the 123-page "Laymanized Manual on Monitoring Infrastructure Projects by a Practitioner" based on the American Society Testing and Materials C150, Handbook on Republic Act No. 9184 or the Government Procurement Reform Act, DPWH Standard Specifications for Public Works and Highways, NEDA Monitoring Tool, and the RPMES Project Inspection Handbook.

The manual describes the entire monitoring process, the actors and their roles, the legal and technical bases for monitoring infrastructure projects, and the work items involved in road construction and rehabilitation, flood control, bridge construction, irrigation system, domestic water supply and building construction, and the red flags.

It was belief in the "residency" concept that pushed the CCAGG even from the start to transfer the monitoring technology its volunteers had acquired to communities in Abra which are, after all, the project's end-users. The training for the community-based monitoring groups comes in two stages: basic and advanced monitoring. Community monitors also learned to generate data on projects. "We capacitate people," says Melchor Pacopia, a structural engineer who joined the NGO in 2000. "It's only the community who can monitor the interim process (of construction)."

Unlike the CCAGG, there is no engineer among the staff of the TAN, which is now BL coordinator. But it, too, has managed to come up with a manual it uses to train volunteers nationwide to monitor road and bridge construction, plus an assessment tool or "report card" to evaluate the overall performance of the DPWH.

This was made possible because of generous funding from the NRIMP-2. The project had set aside \$1.1 million as technical assistance for the multistakeholder partnership, to be sourced from the Australian Agency for International Aid (AusAID) that was co-financing the NRIMP-2. The assistance paved the way for the allocation of a P15.4 million budget for the BL on top of the amount that went to the hiring of an Australian consultancy group, GHD Pty Ltd, to aid the young organization in its three major fields of engagement in the road sector: monitoring and analysis, communication, and advocacy.

The consultancy group, which included former DPWH personnel, finished by August 2008 the second and much simplified version of the Procedures Manual for Construction and Maintenance, a 136-page kit guide that the BL and its consultants used when training road monitors it had recruited from various NGOs across the country.

The manual was based on field guides from Australia, the United Kingdom, and the United States in addition to the CCAGG's laymanized manual and the DPWH's Standard Specifications for Public Works and Highways. It provides an overview, guidelines, and instructions on road and bridge construction and maintenance, and a step-by-step process of conducting road monitoring. Divided into five major components, the manual contains information of the Philippine National Road Network, basic mathematical concepts and calculations, roads and bridges terminologies, roads construction and maintenance monitoring, and bridge failures, and slope protection.

Some sections of the BL manual are heavily lifted from the CCAGG's. This comes as no surprise as the CCAGG is not only a member but the chair of the BL's board.

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“That’s where the slight disadvantage (of the BL) comes in,” says Lazatin. “We’re sort of expected to work around CCAGG’s tool.”

The existence of two manuals on road monitoring has indeed caused a problem in areas where the CCAGG manual has long been in use. Although a member of the BL, CCAGG volunteers have stuck to the laymanized manual they have grown used to. So have several NGOs, especially in Northern Luzon, trained in infrastructure monitoring by the CCAGG long before the BL came along. Some of these NGOs are also BL volunteers.

The CCAGG, for example, requires monitors to produce detailed narrative reports of their findings. BL monitors, meanwhile, just need to fill up matrix-like monitoring forms for roads, bridges, drainages, slope, and ongoing construction projects, the templates of which form part of the Procedures Manual. This has in a way resulted in uneven reporting among BL monitors.

The BL Procedures Manual also includes what the organization calls “Advocacy and Transparency Survey Forms.” These are essentially perception survey questionnaires that gather inputs from road monitors and road users for its Road Sector Status Report Card (RSSRC).

Modeled after the successful citizen report card projects in India, the Ukraine, Bangladesh, and Australia, the RSSRC was crafted to assess the performance of the DPWH in three areas: effectiveness, efficiency, and impact.

The Road User Satisfaction Survey and the Monitors Perception Survey administered during road monitoring are geared toward gauging the impact of the DPWH and its services, in this case the provision of roads.

Data gathered by the BL’s Infrastructure Report Card, designed to assess the DPWH’s effectiveness as a service provider, also feed into the RSSRC. This phase entails a review of available records in all DPWH units and evaluation of the condition, capacity, operations, and maintenance of national roads and bridges, as well as road safety.

The BL measures efficiency through the Public Expenditure Tracking Survey, which hopes to keep an eye on the flow of public funds to see if these actually reach communities. The survey collects information on the availability, amounts and timing of released funds, project implementation, procurement processes, contracting, and performance of contractors and staff.

By the time the PPS was institutionalized, the NEDA had already developed monitoring tools for various projects, including for infrastructure that the CCAGG had used in crafting its manual. The NEDA also had an RPMES Manual of Operations, developed in compliance with Aquino’s executive order.

When she created the PPS in 2007, Arroyo ordered the integration of the RPMES and the Overseas Development Assistance Monitoring System into the PPS’s Tracking System that must be ISO-compliant within a year. The National Computer Center was directed to establish the Information Strategic Systems Plan, and the PPS and the PMS to come up with an operations manual within 30 days.

But none of these are yet in place, according to the PMS, not even after The Asia Foundation stepped in with a special project to improve the technical capability of the PMS, which has no engineer in its midst.

Most NGO representatives to the PPS lack the technical expertise to inspect infrastructure, save for the private sector. The PCCI has an infrastructure committee whose members—engineers and architects—are deployed to monitor the SONA projects. The business chamber also fields economists as part of its engagement with the PPS.

Fr. Anton Pascual, who represents the religious sector in the PPS Steering Committee, recalls being given a basic orientation by the PMS on the SONA projects. Committee members then buckled down to work, joining field visits three or four times a year and attending monthly meetings arranged by the PMS during which they would grill officials of the line agencies fast-tracking the projects, including the DPWH.

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For lack of an engineering background and equipment, civil society's inclusion in infrastructure monitoring is considered by some members of the private sector as "token participation."

"They must have the equipment and they must be there during the entire process of the implementation," says an engineer from the private sector, referring to civil society monitors. "Considering the corruption in this country, you have to have your eyes open 24 hours on every square inch. It (Monitoring) has to be a full-time effort."

Pascual, however, says infrastructure monitoring benefits as well from expertise in other fields such as management, which allows monitors to detect flaws in project administration. The priest, who holds a master's degree in management from the Asian Institute of Management and engages extensively in development work, emphasizes the importance of examining what he calls the "triple bottom line" when monitoring the SONA projects: their economic impact, environmental impact, and social impact, especially on beneficiaries.

Access to information

The CCAGG and PPS have no difficulty pinpointing what projects to monitor. At the PPS, Arroyo's 149 priority projects are even divided into six clusters and assigned to members of the Steering Committee for more focused monitoring. The members, however, are not limited to these projects alone. The clusters: roads and bridges, flood control and sanitation; airports, seaports/roll on-roll off (RORO) and railways; major and small irrigation; farm-to-market roads and cold chain system; power and bulk water projects; and housing and upgrading of hospitals.

Although the BL started out as an NRIMP anticorruption initiative, not all the projects it monitors are World Bank-funded. The trained volunteer monitors from Luzon, Visayas, and Mindanao were the ones who chose three projects—two locally funded and one foreign-assisted—in each of the country's 16 regions, or a total of 48 projects.

The BL relied on its members like the CCAGG, Procurement Watch Inc. (PWI), and Caucus of Development NGO Networks (Code-NGO), which represents more than 2,000 development NGOs, to first identify the regional BL coordinators who, in turn, identified at least five volunteer monitors. That means a number of the volunteers came with some experience in monitoring and some level of technical expertise and commitment to participate in the initiative. However, convenience and security, not the potential impact or cost of the project, were the main criteria in project selection, says Lazatin. Most roads and bridges were chosen because they were easily accessible.

BL and CCAGG monitors bring certain tools with them when they inspect roads and bridges. Standard among the Abra volunteers are a steel tape to measure actual work done, a record book to note down findings, observations and engineering analysis, a camera to capture the actual physical status and perceived defects or commendable points, a voice recorder to document interviews with project stakeholders, and packed lunch or snacks. The BL monitoring kit is simpler: a digital camera, tape measure, vest, and helmet.

The CCAGG volunteers never go into the field blind. By the time they are at the project sites, they already know the "blue book" or the DPWH's Standard Specifications for Highways, Bridges, and Airports, a reference book of all activities being undertaken by the agency. More important, they are equipped with what are considered an independent monitor's "best guides": the project plan, specifications, and program of work.

The plan contains a flat representation of a proposed building structure, all of the structure's parts and arrangements with its apt dimension, and proposed materials to be used. The volunteers use this to check change orders or additional work done.

The specifications contain a written description of requirements in executing the project, from the size, shape, quality, and color, down to the manner and procedures of implementation.

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The program of work (POW) indicates the complete information of a project—location, source of fund, contract amount, and mode of implementation. Also included are the schedule of manpower and equipment use, item description, estimated quantities, unit and total cost, estimated breakdown of expenditures, and the agency officer who prepared and approved the program. Prominent in the program are figures of thickness, widths, lengths, areas, and volumes.

Disclosure of “material” project information has been identified as one of the two major components in the Construction Sector Transparency Initiative (CoST), an international multistakeholder initiative designed to increase transparency and accountability in publicly financed construction projects. CoST defines “material” as “sufficient information...to enable stakeholders to make informed judgments about the cost and quality of the infrastructure concerned.” Core disclosures, according to CoST, must include the following:

- Project identification: project specification, purpose, location, intended beneficiaries and feasibility study
- Project funding: financing agreement
- Tender process: list of tenderers, tender evaluation report
- Contract award or the main contract for works: contractor name, contract price, contract scope of work and contract program
- Contract execution: individual significant changes to contract which affect price and/or programme and duration and reasons
- Post contract completion: contractor name, actual contract price, final contract payment, actual contract scope of work and actual contract program
- Project evaluation report: upon completion and while ongoing

In theory, accessing state-held information should not be a problem in the Philippines. The people’s right to information is enshrined in the Constitution, specifically in the Bill of Rights and the Declaration of Principles and State Policies. In fact, the Philippines is among the first in Asia to provide a constitutional guarantee for such a right. Oddly, it was first written into the 1973 Constitution, at a time the country was under martial rule.

In the last decade, however, there has been a growing clamor, especially from civil society, to pass a right to information legislation (also known freedom of information or official information law in other countries), the result of the constant struggle of citizens to obtain important official information for lack of a policy that ensures uniform and consistent application of the right. The closest to a right to information law the Philippines has right now is Republic Act No. 6713, or the Code Conduct and Ethical Standards for Public Officials and Employees, which contains information disclosure provisions. But citizens complain that the law is, in general, unevenly applied and observed in the breach.

Infrastructure monitors tell the same story. Thanks to the longstanding arrangement with the DPWH, volunteers from the CCAGG experience little difficulty in obtaining the information they need for their monitoring work. “We give them a call and they give it to us,” says Pacopia.

Not so with the local officials who have in their possession information on locally funded projects. Some field engineers also withhold information and can be downright rude.

“Road monitoring is also based on the political climate. It depends on who the mayor or governor is,” Pacopia says. In his first term of office, former Abra governor Vicente Valera was open in providing documents to the CCAGG but later refused to cooperate when his relative was among the erring

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contractors the volunteers had identified. In the absence of the programs of work, the monitors' fallback is the DPWH blue book.

In September 2008, then Public Works Secretary Hermogenes Ebdane Jr. issued a "special order" to his field offices to provide technical assistance, including information, needed by the BL volunteers "to ensure effective partnership" between the two organizations. But this "special order" proved to be no guarantee that information would always be made available to the road monitors.

One year after the memorandum was issued; half of the BL's regional monitors have not turned in monitoring reports, partly because they could not access the information they needed for their work.

In a letter dated Dec. 11, 2008 to Ebdane, Rev. Luis Ao-as, who chairs the Kalinga Apayao Religious Sector Association (KARSA) that is a member of the BL, recounts his group's experience in accessing the documents the DPWH committed to share with the monitors:

In response to the memorandum, we formally requested from regional director Mariano Alquiza in a letter dated Oct 7, 2008 documents needed for our monitoring such as programs of work, detailed specifications and other documents for our proper guidance.

Until now we have received no copy of any of the documents we have requested. Even the project engineers had no plans during our inspection.

We reiterate the importance of having the plan to ensure that the construction and materials used conform to the standards and specifications.

In the end, the KARSA scrutinized the four SONA projects for the BL without the DPWH documents.

As a result of the KARSA's experience, the TAN urged the DPWH's top leadership to sanction the personnel "responsible" for the non-release of the POW and to adopt a policy that would allow contractors to "share" relevant project documents directly to the public.

Getting information was not all that easy either for the TAN when it was putting together the BL's report card or the RSSRC.

The exercise relies heavily on government data, chiefly from the DPWH: the Roads and Bridges Information Application database, Traffic Accident Recording and Analysis System database, Project Monitoring Group Reports, Environment Assessment Reports, National Expenditure Programs, General Appropriation Acts, fund releases, Procurement for Civil Works Office records, Bureau of Maintenance statistics, Bureau of Research and Standards reports and statistics, Project Monitoring Group reports, and personnel databases and reports.

When the BL released the findings of its report card project in September 2009, it was forced to give the DPWH an overall rating of "Incomplete" for lack of complete information. Data on procurement, preventive maintenance, and agency enforcement—the Procurement for Civil Works Office and the Bureau of Maintenance in particular—were not given or were unavailable. "A lot of data do not reside at the central office. A lot of the records are also not in order," says Lazatin. "Some (DPWH offices) were simply not responsive to BL."

In the case of the PPS, a government-initiated body, members of its Steering Committee are provided by the PMS thick folders that contain background materials, ranging from project specifications to the budgets and status reports (but not the contracts) before they do field visits. Pascual says the committee extracts even more information from the monthly meetings when they hold implementing agencies like the DPWH and the support agencies like the DBM to account for delays and other problems.

"Each agency has a representative. We ask them, 'Is the project on time? What's causing the delay? Is it the budget? Was the project stopped? Why was it stopped?' We confront them," he says. "It's a good

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move to make the government more effective and efficient because there are NGOs and CSOs who act as watchdogs.”

Pascual worries, though, that the same level of openness has not cascaded down to the regional, provincial, and municipal levels. It is a concern shared by other nongovernmental monitors who say that information on project costs is at times not made available to them and that there is no similar integrated mechanism to keep track of the numerous projects funded by local governments.

Field work, funding

The duration of field work put in by CCAGG, BL, and PPS monitors varies.

On average, BL watchers put in three days for locally funded projects and five days for those supported by foreign funds.

Engineers tapped by the PCCI to monitor Arroyo's SONA projects for the PPS also usually spend about three days in the field. For some projects, however, the engineers have found themselves visiting the site once a month for two to three hours. They admit, however, there is not much to see in such a short time.

Ocular inspection done by the PPS Steering Committee is infrequent—three or four times a year, says Pascual—and normally requires an overnight stay. During the site visits, committee members hold dialogues with the community and local officials.

Because the projects are right in their midst, CCAGG volunteers devote more time watching the progress of constructions.

For a project that takes six months, monthly monitoring is ideal. For a farm-to-market road that takes up to 30 days to complete, monitoring should be done weekly. The four monitors in the CCAGG's 14-member staff log at least two site visits in a week. Work on the Calaba Bridge, for example, is inspected twice or thrice a month. This is on top of monitoring of projects done by communities the CCAGG has trained.

Of the three institutions, the CCAGG puts in the longest hours in monitoring work even if it has the least funding.

A creation of government, the PPS is assured of funding for its activities. The 2007 executive order that institutionalized the PPS put at its disposal a P1 million budget for initial operations. The DBM was also ordered to put up a trust fund out of the 1 percent of total project cost of the monitored projects to be sourced from the contingency fund component.

In 2009, Arroyo directed the DBM to release P10 million to the PMS, which is the secretariat of the PPS, to cover its expenses. Members of the PPS Steering Committee are entitled to a P10,000 honorarium for every meeting.

The BL also began operating without funding worries. Of the P15.4 million budget it got from AusAID, P9.3 million is earmarked for regular monitoring and analysis. For the 48 projects around the country, the BL secretariat allots P1,500 a day for field work. That means P4,500 for a locally funded project and P7,500 for a foreign funded project.

The sum is obviously not enough. One Northern Luzon volunteer paid 12 visits to the project site and spent about P600 per visit, or a total of P7,200, and was disappointed when he got reimbursed only P4,500. The problem partly stemmed from the failure of some BL regional coordinators to tell monitors at the outset the budget ceiling and other parameters of the project. On hindsight, Lazatin says, “We realize that we should have given our monitors more financial support.”

While both the PPS and BL have enjoyed funding since their formation, the CCAGG hardly had any in its early years. In fact, the CCAGG got its first financial support outside of Abra only in 2000, 13 years after

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its founding. The NGO was chosen to take part in the participatory audit that the COA was pilot-testing under a UNDP-funded project.

The volunteers assisted the audit agency in conducting value-for-money audits on 23 projects, including road projects of the DPWH and community-based projects of the Department of Environment and Natural Resources (DENR). Participatory audits were later replicated in Leyte, Camarines Norte, and Baguio City.

But the CCAGG members say they continue monitoring with or without money. If they needed to, monitors would climb mountains, cross rivers, walk under the heat of the sun or the rain—and even go hungry.

For more than a decade, the organization survived on subsidy from the diocese of Bangued, contributions from the volunteers' own pockets and donations from the community. In its initial years, the CCAGG held office at the pastoral center, courtesy of the diocese, and borrowed its vehicle to get around the province. The diocese also donated an old typewriter for the NGO's use. CCAGG volunteers would hold variety shows and other fund-raising activities and were happy when they collected bags full of coins to support their work, including trips to Manila to follow up their cases with the DPWH central office.

Staying independent

The CCAGG was at first undecided about applying for grants from funding institutions. Sumangil says members feared manipulation or undue influence on organizational directions. But the NGO opted to solicit help when activities kept getting postponed because there was no money to buy food and pay for the transportation of monitors.

The CCAGG, however, has unwritten rules or protocols to ensure its neutrality and independence.

Certain rules are cast in stone. One rule: The NGO never asks for and takes money from politicians. It has happened many times that the contractor of a road project is a politician or his or her relative. The CCAGG, for example, discovered a four-kilometer road in Villa Mercedes to be substandard. Its findings caused some components of the P10 million project to be removed and replaced. The contractor turned out to be a relative of the provincial governor. "It does not matter who is seated," says Paz Bumogas, CCAGG's program coordinator for peace.

Another rule: "If you get into politics, you get out (of CCAGG)."

CCAGG members also refuse anything proffered by contractors, including a meal or a ride, to avoid being indebted to them. The stern instruction given to members: Write what you see. "It is a grave sin if you do not write up an honest report," Bumogas says. "A sin against the people is a sin against God."

A few BL volunteers do accept assistance from the DPWH, the agency it monitors. This usually comes in the form of transportation. Says one monitor in Northern Luzon: "The challenge really is logistical support. We don't have regular transportation. Sometimes I ride with the DPWH personnel, but that's not even supposed to be allowed. We have to be independent."

In the case of the PPS, it is almost always the government that organizes the field visits.

Taking bribes is definitely a big no-no for civil society road watchers, and there are certainly many occasions for bribery.

CCAGG's Pacopia recalls being pursued by an aide of a mayor who offered his team money when the CCAGG monitoring found defects in the project. A contractor, on the other hand, once tried to bribe Renato Brasuela, a CCAGG volunteer for 19 years now, with P200,000. The quality of the road was substandard and Brasuela's group had recommended withholding payment. "He kept on coming back and he wanted me to change my report and I could name my price," says Brasuela. "I told him we will stand by the group's report."

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Says an engineer from the PCCI who has served the PPS: "To do proper monitoring you have to have engineers who cannot be bribed. Give one of the supervisors an iPod or a Nokia phone and that's it."

When bribes don't work, volunteers sometimes become objects of ridicule or, worse, threats and harassment.

Having engaged in infrastructure monitoring for decades now, the CCAGG has had its share of threats. Sumangil and her staff received bomb threats in the organization's first few years. Some volunteers were told that the bounty on their heads was P20,000 apiece. Smear campaigns have been launched against the NGO, insinuating it was a front of the communist National Democratic Front-New People's Army because it was able to operate in conflict zones. Once, a five-member CCAGG team was caught in the crossfire between government troops and communist rebels.

"We always go in teams because of the threats," says Bumogas. The volunteers also pointedly tell contractors and those who threaten them that "we may not be engineers but what we're doing is legal."

Bumogas says, "Even if we were afraid, we continued. If we will not do this, who will?"

In more ways than one, having female monitors has worked to the CCAGG's advantage. Its laymanized manual notes: "Monitoring was and will never be a job for men. Women and children who are often left at home are the innocent but mindful witnesses whenever there are new government projects in an area."

Sumangil also says contractors and public officials upset with the CCAGG's monitoring work tend to have second thoughts intimidating or harassing women.

The safety of road watchers is also a real concern of the BL. That is the chief reason the multistakeholder partnership does not encourage its regional monitors to take risks by investigating corruption and similar acts of wrongdoing in road projects. "We don't want them snooping around," Lazatin says. "I'm not ready as executive director to put them in that kind of situation."

He says the TAN has always preferred to approach corruption from the prevention side. "The way we do that is really through information; we have to get a lot of information to the public. For example, one of the things we want to do is to be able to compare costs of construction across regions and see if there are regional differences."

Pascual says the PPS Steering Committee, of which he is a member, has neither detected nor felt corruption at its level. "No one approaches us," he says, referring to bribes other road monitors have been offered.

But Steering Committee members like Pascual have heard of incidents of graft and corruption, especially among politicians and local officials involving right-of-way acquisitions (ROWA). Some local officials and their associates start gobbling up private lands once they get inside information that the national government is poised to purchase property for SONA projects, jacking up real estate prices by as much as a thousand times. The PPS once even asked Pascual to help look for negotiators to deal with private landowners in a bid to reduce losses the national government would incur from ROWA.

Terms of engagement

When members of the PPS Steering Committee go out to the field on visits arranged by the PMS, they would be given a briefing about the project on top of the documents that had been sent to them beforehand for their perusal. It is during the visits when they meet field personnel from the implementing agencies and contractors that they find out about the status of the project.

Dialogues with the beneficiaries and local government officials follow the field visit, providing the committee a venue to gather feedback on problems in the project. Often, the complaint involves the lack of consultation and coordination with the community.

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But Pascual says, "We cannot monitor everything. (Monitoring) is really more based on the reports they give us."

The PPS has worked with three PMS chiefs since it was created. Agriculture Secretary Arthur Yap, who was the PMS boss at the time the PPS was formed, is said to have been "distracted" and not very active since he was preparing to get back his old Cabinet portfolio, the Department of Agriculture. Cerge Remonde, a radio broadcaster before he joined the Arroyo government, was not as visible as the current PMS chief, Hermogenes Esperon, a former Armed Forces chief of staff. But, Pascual says, the PMS under their three chiefs produced more or less the same output.

It is the PMS that writes up the reports of the Steering Committee and its monitoring units and submits them to the Office of the President. But Pascual is unsure about what happens to the feedback they give to President about the observations of the community. "That's one of the weaknesses: We do not get feedback if the issues raised during the dialogue have been implemented. (There is) no reporting back mechanism," he says.

To be fair, the PMS has assiduously followed up implementing agencies on actions, especially catch-up plans, they have taken on negative slippage and other problems the PPS and its predecessor, the IMTF, have detected in SONA projects. Consequently, projects like the Southern Tagalog Arterial Road 2 (STAR) connecting Lipa and Batangas cities in Southern Luzon and the Subic-Clark-Tarlac Expressway (SCTEX) in Central Luzon opened only slightly behind schedule. When she delivered her ninth and final SONA in July 2009, Arroyo proudly reported that 39 of her 149 priority projects had been completed, 67 were ongoing, and the rest were in the pre-civil work stage.

Because it has been around for some time, the CCAGG's rules of engagement with the community, contractors, the DPWH, and other agencies are fairly clear-cut.

When monitors visit a project, they go in groups and make sure they look into both the technical and social aspects. An engineer and his team will do the inspection while another team will interview members of the community.

When it comes up with its initial findings, the Abra NGO would seek an exit conference with the contractor and project engineer before it writes up its final report and transmits a copy to the implementing agency and the contractor. There are instances, however, when its monitors would request a meeting with the head of the agency before finalizing their report, especially when their findings are substantial and require urgent action.

Corrective measures are agreed upon and followed up in the next site visits. The COA is always furnished a copy of report on the corrective steps and recommendations.

For projects of the DPWH, the CCAGG does not hesitate to bring up a case directly with the agency's provincial, regional, or central office. It all depends on what the CCAGG feels is the office that would be in the best position to act on its findings. To date, 90 percent of the CCAGG's recommendations are implemented by the different government agencies, whether national or local, according to Pacopia.

The CCAGG's first foray into infrastructure monitoring in the late 1980s is well-documented. When the DPWH regional office put out a paid ad in a newspaper announcing that it had completed 20 public works projects, the neophyte road watchers decided to verify the information.

Site visits confirmed their suspicion that regional officials were making false claims. Armed with proof, the CCAGG officers went straight to the DPWH central office in Manila, sought an audience with then DPWH Secretary Vicente Jayme, and asked that men of probity be sent to the province to look into the veracity of their complaints.

Manila investigators who conducted surprise visits corroborated the CCAGG's findings, resulting in the suspension of 11 project engineers and the relief of the district engineer and the assistant engineer. The COA auditor testified in the case the DPWH central office brought against the engineers.

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Sumangil would rather leave the filing of cases against wrongdoers in government to the concerned government agencies like the DPWH. "We wanted (the DPWH) to be stronger. We told them, 'You should do the cleaning of your department,'" she says.

The road monitors, however, stood as witnesses in the complaint filed against the government engineers. Sumangil says monitors should learn to hold government non- and unperforming government personnel to account. "It's not simply to unravel and then period," she says. "In a democracy the citizen should be able to hold those who are accountable. In the end you are not only strengthening (the institution) but also the democratic process."

The TAN, BL's secretariat, would also rather leave such matters to the DPWH. And because the BL is a partnership with the DPWH, the TAN prefers that the BL transmit the findings of road monitors first to the DPWH central office, specifically the BL Coordinating Committee (BLCC) set up at this government agency for the initiative.

"In theory, the central office should be the one in control," says Lazatin who believes that the top leadership of the DPWH should first process the findings and then cascade their decisions and recommendations to the regional offices.

That apparently was also the expectation of the DPWH. Public works officials assigned to the BLCC had been under the impression that results of BL's road monitoring would be withheld from the public, including the media, until after the agency, as its partner, had been given a chance to address problems.

Both the BL coordinator and DPWH central office were thus taken aback when monitors of the religious group KARSA went directly to the media in November 2008 with its negative findings on four SONA projects involving the Bontoc-Tabuk-Tuguegarao Road in the Cordillera Administrative Region. Lazatin recalls the DPWH officials telling him, "We thought we were partners here. Why did this reach the media? Why didn't you even give us a chance to respond first?"

The KARSAs, which had been trained by the CCAGG to do infrastructure monitoring even before the BL was set up, has been used to inviting journalists to accompany their teams during field visits or sharing their findings with the media immediately after these are finalized. "There was a mismatch of expectations that we had to address and reconcile," says TAN program officer Ma. Flora Cerna.

Led by four priests and an engineer, KARSAs members found the SONA projects had no detailed plans and programs of work to guide engineers and contractors. They came across defects and deficiencies in the construction, especially in the riprapping work which fell below standard specifications.

While the TAN acknowledges the effort and energy BL road monitors put into their work, Lazatin also says, "We have to manage that relationship with DPWH. It's a balance we have to strike between that kind of activism that has been effective versus the sort of new partnership that we are trying at the national level."

The BLCC, he says, is the road watchers' primary interface with the DPWH for all projects. This despite the fact that the DPWH has another unit inspecting SONA projects such as those monitored by the KARSAs.

Strangely, in its two-year existence, the BL has had no direct access to DPWH Secretary Ebdane (who resigned in October 2009 after he announced his plan to run for president in May 2010). BL dealt largely with undersecretaries, assistant secretaries, and middle managers. A letter from the BL to Ebdane expressing concern over a range of issues never received a response. "That's my biggest frustration," admits Lazatin.

Adds Cerna: "We realize that the continuity of the partnership depends to a great extent on middle management. But if you want real change, radical forms, you need the commitment from the top, from the head of the agency."

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In response to the KARSA's findings, the DPWH central office sent a team from its Quality Assurance Unit (QAU) to validate the results. But the QAU's findings dissatisfied the KARSA, prompting the BL and the DPWH's Bureau of Construction to send a special team to Kalinga Apayao. A DPWH official admits that engineers in the QAU are fairly junior and inexperienced. "You don't put your best men in the QAU; you put your best men in the field," he says. "That's why those in the field are questioning why they're being monitored by less senior engineers."

The DPWH central office subsequently transferred the DPWH's director and assistant director in the Cordillera region to other posts, and the Presidential Anti-Graft Commission or PAGC launched an investigation into the DPWH's reported shortcomings.

In several regions, direct engagement with the DPWH's field offices has hastened action on the recommendations of BL road monitors. The Iloilo Code NGOs Inc. (ICode), for instance, monitored three road projects in Western Visayas and found untimely cracks and scaling on several concrete slabs along the Onton-Mambog Road. The monitoring reports were submitted to the DPWH regional office. The findings, along with those of the DPWH QAU, eventually led to the removal and replacement of the defective concrete slabs, with the contractor paying for expenses. The happy experience has led the ICode to recommend that engagement between DPWH and BL at the regional level be regularized.

The healthy relationship between the ICode and field offices of national government agencies—and local governments for that matter—is the offshoot of the network's decade-long involvement in monitoring infrastructure and other government projects. By the time it signed up with the BL, the NGO had chalked up a wealth of experience in scrutinizing procurements of both the local and national governments that pre-dated the enactment of the Government Procurement Reform Act, watching locally funded small rural infrastructure and livelihood projects as a partner of the Iloilo provincial government's Monitoring and Evaluation Committee, and tracking the progress of public works, IT, and other projects paid out of "pork barrel" or district funds the national government allots each year to their representatives to Congress. Using tool kits and monitoring templates developed by different groups for similar projects poses no problem for the ICode, the apparent result of having worked with multiple sponsors.

Politicians, the media

Politicians are known to have gotten in the way of road monitors desiring to put government projects in order.

The governor and congressman, for example, supported a signature campaign endorsing the return to Abra of the 11 engineers who were suspended over the 20 unfinished road projects in the province discovered by the CCAGG. Early this year, the KARSA expressed concern over the lobbying by Cordillera congressmen with the DPWH to stay the transfer of the two top DPWH regional officers over the flaws it detected in the SONA road projects. The lawmakers claimed they were not consulted on the relief of the two officials, an action that, they said, had demoralized the DPWH workforce in the region.

In 2000 Abra governor Maria Zita Claustro-Valera openly opposed the COA's tie-up with the CCAGG to conduct participatory audits. This came after a television public affairs program, "i-witness," featured the CCAGG's work, including the monitoring it did on the repair and rehabilitation of the old Sinalang Bridge costing P26 million and the simultaneous construction of the P8.2 million Sinalang detour bridge by DPWH contractors.

A special COA audit and the CCAGG's investigation in July 1997 had found overpricing in the construction of the detour bridge, which remained impassable even after the contractors and its suppliers had been fully paid. Repairs on the old bridge were also overpriced and substandard. As with the 20 unfinished projects it first monitored, the CCAGG wrote directly to then DPWH Secretary Gregorio Vigilar. The regional office of COA later recommended the prosecution of several DPWH personnel.

The governor complained that "the local leadership was made to appear (on TV) as stealing money meant for bridges and roads in Abra" and that endorsing the COA-CCAGG partnership "would be tantamount to accepting your premise that the people of Abra may not trust this governor anymore, the DPWH and the COA."

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To appease Valera, the COA excluded provincial projects from the value-for-money audits in which the CCAGG would be involved. Participatory audits were scrapped a few years later when a new COA chairman was appointed.

Early on, NGO monitors like the CCAGG have learned to take advantage of the media to entice the public to watch government projects.

Besides bringing the media along on ocular inspections, the CCAGG undertakes massive information dissemination through a community newspaper and the radio, sharing with Abrenians the documents they obtain from government and news of its monitoring activities. It has a Sunday radio program over the local Church-run radio station called "Allangungan" or "Echoes" with replays on a weekday. The weekly program discusses topics like Christian vision of man, what is good government, and transparency and accountability in government.

One of the BL's fields of engagement is communication: to make use of the media, among others, to provide information on the monitoring of national road services. The TAN has organized several briefings for the national media, the latest of which was for the dissemination of its report card or RSSRC findings.

Even the PPS acknowledges the importance of the media. A presidential issuance seeking to enhance the work of the PPS instructed all government TV and radio networks to allot air time to communicate the status of all projects, including televised bidding of all departments. A member of the PPS Steering Committee is the Kapisanan ng mga Brodkaster ng Pilipinas, an association of more than 150 radio and TV stations nationwide. The representative of the religious sector, Pascual, is president of Radio Veritas. He reports the status of the SONA projects over a morning program on the Church-owned radio station on a monthly basis.

Says the private engineer who has put in work for the PPS, rather harshly: "The role of the CSOs is only on information dissemination."

Where to?

The good work of the CCAGG has not gone unnoticed. Because of its groundbreaking monitoring that led to the suspension of the 11 government engineers, the Abra NGO was awarded in 1988 the "Most Outstanding NGO in Region I" by the NEDA. That same year it received the Presidential Plaque of Appreciation for "Outstanding Community Service" for the implementation of the CEDP from Aquino no less.

A little more than a decade later, in between more awards and accolades, the CCAGG received the first Integrity Award given by the Berlin-based Transparency International. Its monitoring work has also been adjudged a best practice by the World Bank.

The success of the CCAGG can also be gauged from the activities it has been undertaking since it morphed from an electoral watchdog to infrastructure monitor. It has broadened its advocacies and expanded its territorial coverage.

After its partnership with the COA for participatory audit, the CCAGG, still with funding assistance from the UNDP, formed in 2003 the Northern Luzon Coalition on Good Governance (NLCCG), a community-based monitoring that uses the rights-based approach in the three regions: the Cordilleras, Ilocos Region, and Cagayan Valley. The coalition today has 21 civil society organizations, academe, and church-based social action networks as members.

The CCAGG has also ventured into peace, environment, agriculture and education concerns. For instance, it is a member of a consortium of NGOs hired to prepare 16 towns in Abra, Benguet, and the Mountain Province to participate in development projects administered under the agriculture department's seven-year Cordillera Highland Agriculture Resource Management (CHARM) project. The project's components include natural resource management, rural infrastructure development, and agricultural support services.

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The Abra NGO has also partnered with the Provincial Agrarian Reform Coordinating Committee (PARCOMM) in implementing land reform, especially among indigenous peoples.

The CCAGG has become known for its anticorruption advocacy. It is a member organization of the TAN, and Sumangil sits in the network's seven-member Executive Council. For years now the CCAGG has been a member of the Corruption Prevention Unit (CPU) of the Office of the Ombudsman. In June 2009, the CCAGG also accepted the invitation of the Ombudsman to become a member of the Multi-Sectoral Anti-Corruption Council (MSACC), which was formed based on three basic frameworks: the 2004-2011 Medium-Term Philippine Development Plan (MTPDP), Millennium Development Goals (MDG); and the United Nations Convention Against Corruption (UNCAC).

Even as its work continues to expand, CCAGG officers admit that funding for their monitoring activities remains limited. The NGO is also undermanned, having a staff of only 14 people.

"What keeps us going is our love for the province. The inequality persists," says Bumogas who is just one of the CCAGG officers and members who embody the spirit of volunteerism thriving in the organization.

A volunteer since 1986 when she was just 16, Bumogas quit the CCAGG in 1997 when her mother became ill and she needed to earn more. She worked at the Agriculture Department for seven years, only to rejoin the CCAGG in 2004 and become one of its program coordinators.

Pacopia was in the private sector when he saw the "i-witness" television documentary on Abra's roads and bridges. He returned to his province and offered the CCAGG his expertise as structural engineer. He initially lived off his savings. When he took on consultancy jobs later, he donated part of his income to the CCAGG.

Sumangil, an auxiliary nun, does not draw a salary from the NGO. Instead, she has been contributing a portion of her income as a teacher to the organization.

Unlike the CCAGG, the PPS is assured of continuous funding—for now. What will happen to the government-initiated infrastructure monitoring group when Arroyo bows out of office in July 2010 and all her SONA projects have been completed is anybody's guess. Pascual acknowledges that the fate of the PPS lies with the next president who could very quickly change the course of infrastructure monitoring through an executive issuance.

Very soon the BL will have to address the issue of funding. The technical assistance from the AusAID to the multistakeholder partnership lasts only 29 months and is scheduled to end in March 2010.

Lazatin has been toying with the idea of organizing a donors' forum to which he hopes to invite multilateral and bilateral agencies to support the BL's work. One of the challenges is to demonstrate to potential donors the impact the partnership has had. But the BL executive director admits: "We haven't had the kind of impact that people might expect. The cost of roads is still the same; it's not reduced. We can't claim to have reduced corruption in the DPWH. So we are in a difficult situation where we are trying to pitch BL as a viable partnership with the DPWH and yet not have much to show for it."

Donors would have to understand it will probably take the BL seven to 10 years to have the impact expected of it, he says.

Along with the CCAGG and the PPS, the BL feels the need to expand monitoring work beyond contract implementation to cover the entire project cycle, especially the budget process, project identification, and procurement. All three institutions agree on the need to build the capability of their monitors in these areas. This entails resources.

But one big problem the BL needs to urgently address is the apparent loss of enthusiasm of majority of its members. Only four of the 23 original members who signed up in 2006 to join the World Bank-sponsored initiative remain active and actually showed up in an action planning meeting specially convened in

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August 2009 to revive members' interest. "Maybe it's our fault, maybe we didn't find ways for them to be involved," says Lazatin.

The BL's problem with its members brings to the fore the question of how to get NGOs engaged in oversight and anticorruption work to not only keep but also expand their membership so they could cover more ground. A few years ago, then Ombudsman Simeon Marcelo astutely noted: "(D)espite the expertise and resources that our institutional partners from the academe, research organizations, professional groups and civil society organizations provide, said anticorruption allies have 'limited' reach and effectiveness considering that they lack the 'warm bodies' needed to reach every corner of the country and implement their tested programs."

They key, he said, is for anticorruption NGOs to link up with the general populace to establish an anticorruption network or machinery nationwide in scope and reach. But, in the same breadth, he noted: "In the Philippines, the Catholic Church is the only private institution that is capable of providing a nationwide ready network of people who can implement the projects and programs designed and tested by our anticorruption NGOs. Except for a very few places, there is no community in the Philippines which is not part of a Catholic Church parish. In every local community, no matter how far-flung, there will always be church volunteers and workers serving."

The civil society movement in the Philippines: Emerging models for engaging government

Other civil society organizations have the potential of replicating the monitoring work of CCAGG, BL and PPS. After all, civil society in the Philippines is a vibrant movement. An estimated 60,000 civil society organizations (CSOs) are registered with the Philippine Securities and Exchange Commission. About 5,000 of them are engaged in development work, while 10,000 are considered people's organizations (POs).

CSOs, also called nongovernment organizations (NGOs), are those engaged in development work with advocacies pertaining to meeting social, economic, and environmental needs such as governance, poverty alleviation, and climate change, among others. POs and grassroots organizations are sub-intermediaries of NGOs and are based in communities where beneficiaries reside. The terms NGOs and CSOs are used interchangeably in this section.

The nature and role that these CSOs play in society have evolved over several decades, as historical events and government policies shaped their tools, techniques, and level of effectiveness.

In the 1960s, for instance, what could be considered an early form of civil society was the mass movement led mainly by students that took to the streets to protest various government policies. When Ferdinand Marcos declared martial law in 1972 and curtailed the freedoms of speech, the press, and peaceful assembly, many of those who took part in these mass movements were forced underground or to the hills and mountains to pursue other forms of resistance. Early in the martial law years, civil society maintained a low profile but was nevertheless kept alive by reform-minded citizens. Toward the end of Marcos' rule in the early to mid 1980s, an anti-dictatorship movement grew, with some stalwarts of today's civil society tracing their roots to that period.

By 1986, when the peaceful uprising known as the EDSA revolution overthrew Marcos and installed Corazon Aquino as president, the seeds of what Filipinos know as civil society had long been planted. In December 1986, Aquino signed Presidential Proclamation No. 51 that institutionalized community-led and civil society participation in social and economic development.

The London School of Economics Centre for Civil Society defines civil society as the "arena of uncoerced collective action around shared interests, purposes, and values." It further explains that in theory the institutional forms of civil society are independent of the state, family, and private sector but in practice, the interplay and boundaries are complex and intertwined. A civil society organization is a group of people with a cause that is often independent from government and the private sector, autonomous and often present in every sector.

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Various types of CSOs and grassroots organizations (GOs) came into existence from 1987 to 1992. The Presidential Management Staff identified the three streams in which CSOs and GOs became active: socio-development to address poverty alleviation, disaster management in calamity stricken areas, and political development in order to preserve democratic institutions.

Some CSOs, such as those in northern Luzon, built on existing grassroots and community initiatives. The Philippine Procurement Country Experience report done by the Affiliated Network for Social Accountability in East Asia and the Pacific (ANSA-EAP) noted the usefulness of clan and tribal practices such as discussions by common folk of issues ranging from the trivial to the most sensational, and conflict resolution among tribal leaders.

CSOs aligned with the church also engaged in social and development work on a volunteer basis. The ANSA-EAP study noted that CSOs concentrated in urban areas like Metro Manila are often viewed to be "detached from the reality in the ground mainly because of the seemingly academic and western development approaches," but they are closer to funding sources and are able to tap resources in their advocacy work.

Civil society in procurement reform

In 2001, the Procurement Watch Inc. (PWI) started advocating for the passage of an omnibus procurement bill, but Congress was preoccupied at the time with the impeachment trial of then President Joseph Estrada for corruption and plunder. The youth group Walang Kukurap, the church, business sector, as well as some reform-minded government officials from the Departments of Budget and Management, Public Works, and Education, eventually joined PWI in lobbying for the passage of the procurement bill. Their efforts paid off when, in January 2003, Congress passed Republic Act No. 9184, known as the Government Procurement Reform Act. The omnibus law institutionalized civil society participation in the procurement process but failed to indicate where the funds to sustain such efforts would come from.

The Implementing Rules and Regulations of R.A. 9184 mandated the presence of CSO observers in monitoring procurement and contract implementation as a means of improving transparency and governance. Observers from the private sector and from the NGOs are now routinely invited to keep an eye on the tendering process, validate that the technical specifications set forth in the tender documents are technically sound, and confirm the integrity of the procurement process.

Among the things that NGO observers are supposed to watch out for are variation orders and changes in the contract specifications, but this aspect of the procurement process is not always monitored, resulting in increases in project costs or, worse, cost overruns. For instance, the National Economic Development Authority (NEDA) reported cost overruns amounting to P698 million in 21 out of 123 foreign-assisted projects in 2007. No CSO monitored these projects and the reason for the cost increases.

CSOs that are technically adequate become effective monitors before, during, and after the tendering stage. CSOs such as the Naga City Peoples Council (NCPC) and the Coalition of Bicol Development (CBD) sit at local development councils that evaluate identification of projects. The PWI, Government Watch (G-Watch), Citizens Network for Good Governance (CNGG), and the Iloilo Graft Watch maintain a seat as independent observers in the tendering committees of various agencies. The Concerned Citizens of Abra for Good Government (CCAGG) and CBD are present during contract implementation.

Volunteers from the CCAGG, Iloilo CODE NGO (I-Code), CBD, and the CNGG acknowledge that post-tendering monitoring is difficult because infrastructure projects are highly technical in nature. The frequency of monitoring activities on a particular construction project is critical in validating the quality of works, use of materials, and contractor's performance. Unlike goods monitoring, which entails a physical and ocular verification of quality and quantity, works monitoring involves a series of procedures that, if not vigilantly monitored, could be concealed under layers of cement.

A typical program of works would include the scope of work, plans, design, and methodology along with the proposed timetable. For a program involving concrete laying, several activities precede the actual laying of concrete on the road. It requires excavating the right depth, laying of sub-base materials,

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compacting of the sub-base, concrete pouring, curing, and brooming. A technically inept monitor may be physically present on site not knowing what to watch out for. A substandard steel bar and placing of the rebar could easily be concealed when concrete is poured over the span of road, hiding any evidence of poor workmanship or use of substandard construction materials.

Third party monitoring deters corruption and inefficiency in government spending. Scrutiny by CSOs has contributed to behavioral changes from government and even contractors in the quality of service delivery. Emmanuel Arano of I-Code pointed out that because of his group's vigilant monitoring of a road project in Iloilo, they were able to bring to the DPWH project engineer's attention the deficiencies in the contractor's work. The report was forwarded to the head of the procuring entity, which prompted DPWH to order the removal and replacement of the segment of the deficient road works. This is an example of social accountability at its best. External scrutiny leaves citizens group empowered to question the quality of work and demand better quality output from government and its contractors.

Modes of engagement with government

There are various approaches to CSO engagement with government. The PWI uses a systems-based approach anchored on the procurement legal framework and assessment of procurement systems and processes. It looks into the cycle from bidding to contract implementation to post-procurement audit, coming up with recommendations toward a more rational procurement effort. In its School-based Procurement Watch report, the PWI tapped a volunteer base of about 600 people nationwide.

G-Watch uses a more academic approach in enhancing social accountability in the procurement process. Its initial work is based on researches and studies conducted. It mobilizes such stakeholders as the Boys Scouts and Girl Scouts in its monitoring efforts. Lauded by the World Bank as one of the best CSO procurement practices not only in the Philippines but internationally, G-Watch laid the foundation for institutionalizing CSO participation in the education sector when the Department of Education (DepEd) issued DepED Order No. 59 recognizing CSO monitors as part of the procurement process. G-Watch's tools have been replicated in various provinces. For the past five years, G-Watch's annual Textbook Count project has been mobilizing numerous volunteers to ensure the delivery of textbooks to various school districts throughout the country.

Like the CCAGG, the Iloilo Graft Watch and CNGG are community-based approaches. These groups operate within or near project sites and are better able to mobilize volunteers and teams to monitor bidding and contract implementation. Some of these groups are either affiliated with or are part of the diocese-based Social Action Centers of the Catholic Church.

Challenges for CSOs

The Office of the Ombudsman used to receive numerous procurement-related complaints against government officials and employees, which were docketed as complaints of graft and corruption. The 2008 Annual Report of the Office of the Ombudsman cites 13,228 complaints during the year. Although recorded complaints are not all procurement related, the more controversial complaints filed such as the overpriced Cebu lamp posts, NBN-ZTE deal, and the fertilizer scam at the Department of Agriculture are all tied to procurement irregularities. These cases were treated as violations of the civil service code and Republic Act 3019 or the Anti-Graft and Corrupt Practices Act. Under this statute, erring officials would be meted out administrative suspension, with their cases not reaching the courts.

In 2006, the PWI helped the Office of the Ombudsman draft Department Order No. 66, which institutionalizes a feedback and complaints mechanism designed to specifically address procurement-related cases. The order also mandates the Ombudsman to keep tabs on agencies' compliance with the procurement law. Frontline staff of the Ombudsman underwent training, but trainees were limited only to the central and regional offices. Some 250 more Ombudsman personnel need training on the feedback mechanism. CSOs, on the other hand, have not utilized this feedback system, and are satisfied to provide only verbal feedback to the agencies. The Bureau of Resident Ombudsman (BRO) has since been the keeper of the procurement reports filed by the CSOs. However, exact figures on the number of reports filed are not available.

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The PWI, G-Watch, Iloilo-Graft-Watch, Ecolink, and CNGG have established the practice of providing procurement monitoring reports to heads of procuring entities and their Bids and Awards Committee chairs, and furnishing the Office of the Ombudsman copies of these reports. "We give them (government agencies) an opportunity to improve their processes by citing the gaps and deficiencies observed by our monitors," said Jay-Jay Cordova, a procurement observer of the Iloilo Graft Watch. "If they do not rectify the procedure the next time we monitor, then we use the same report as evidence when we file a case against them."

Generating information and filing procurement reports is one area CSOs have yet to fully develop and harness. "Writing procurement monitoring reports is a cumbersome process. The procurement report template is quite lengthy," said lawyer Pat Menson, chair of the Procurement Transparency Group (PTG). Menson said he would rather verbally articulate his findings during the bidding conference.

The National Movement for Free Elections (NAMFREL), an election watchdog, compiles procurement monitoring reports through its secretariat. After the reports are collated and processed, the secretariat sends its report to the concerned agency, sometimes a tad too late. NAMFREL has been involved in medicines count since September 2004. The volunteers of NAMFREL were tasked to monitor the Department of Health (DOH) procurement of essential medicines in 72 retained hospitals nationwide.

Another area that remains a challenge for CSOs is the setting of benchmarks that government agencies can use or refer to in drawing up budgets or cost estimates for projects. For instance, CSOs have made several attempts to set the cost of building a one-kilometer stretch of concrete road at the national level, both before and after the passage of the procurement law. While Congress was deliberating R.A. 9184, then Senator Edgardo Angara delivered a speech in which he proposed pegging the cost of one kilometer of road at about P5 million. The Naga City government set the cost at P7 million, but Naga is considered a special case because all procurements transactions and outcomes are done online.

According to the DPWH website, the cost of finished concrete laying works in various locations differs but it is usually more than twice the amount Naga City pays for the same type of work. The table below illustrates the price of DPWH-implemented concrete roads projects.

Table 4 Price of DPWH-Implemented Projects for Concrete Roads

| Location | Description of Works | Amount Upon Completion (in million pesos) |
|-------------------------|---|---|
| National Capital Region | 1 km. concrete paving of Sumulong Highway | 9.226 |
| National Capital Region | 1 km. Marikina-San Mateo Road | 19.091 |
| National Capital Region | 1 km. concrete paving of President Garcia Avenue (C-5 Road) | 19.091 |
| National Capital Region | 1.6 km. concrete paving of the north and southbound lanes of EDSA | 19.295 |
| National Capital Region | 1.8 km. concrete paving of the north and southbound lanes of President Quirino Avenue | 19.290 |
| Romblon Province | 1 km. Romblon-Cogon-Sabluyan Road | 18.799 |
| Romblon Province | Junction Guinhayaan-MAIbog-Sta. Fe Road | 18.799 |

Source: DPWH website www.dpwh.gov.ph

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Arriving at the most cost-effective collaboration between CSOs and the DPWH and other procuring agencies is a matter all parties have been trying to iron out. Duplication and overlapping functions are a source of irritants, but all agree that complementation is the goal to be attained.

One point of agreement is that CSOs and community organizations should primarily serve as the ubiquitous eyes at the ground level. Retired DPWH undersecretary Edmundo Mir said he has been encouraging NGOs and socio-civic groups to take on public works and infrastructure monitoring. Volunteers need not be engineers, he said, but they need minimum information to know when something is wrong. "But more important," Mir said, "is their presence and their resolve to show project implementers that people are looking and will be a strong disincentive to commit anything improper."

The DPWH cannot be at the project site all the time, said Mir, but community members are there to do frequent checks. Needless to say, community members would know if a supposed project in their community is actually non-existent. If they are aware of the program of works or are informed of the sequence of activities, they can tell whether a step was omitted, such as when no heavy equipment is seen to do compacting to strengthen the base of a road. As taxpayers and beneficiaries of projects, it will be in their interest to make sure that projects meet set standards. Even without any engineering background, community members would know that a flood control project has not served its purpose simply because their area still gets flooded, or that a bridge is substandard because it gave way after only a single typhoon.

In other words, the role of the CSOs and community members is to make contractors and DPWH engineers realize the risk of not doing their jobs properly and continue to feed information on problems, no matter if suspicions prove to be unfounded. Monitors within the DPWH say it will be the department's Quality Assurance Unit (See Section 2) that will do the checking once it receives complaints or even unverified information. It should not be necessary for the CSOs to have highly technical skills and to be well-trained on works and construction although this will greatly help in facilitating monitoring.

What is important is for citizens to provide leads or red flags based on what they actually see on the ground or at the project site. Besides, the DPWH has already set up mechanisms for the public to air complaints, report problems or abuses, or provide feedback to the DPWH. What is needed next are follow-ups to ensure that the DPWH actually acts on them.

SECTION 4

The political economy of reform

When small-town mayors or governors decide to build a road or bridge in their locality, the technical specifications of the project hardly take into account their constituents' needs. Civil society volunteers interviewed for this research affirm they are excluded from the planning of such projects, even if they have the technical expertise to participate. Instead, informants for this study said it is the favored vendors and suppliers who typically play a very large role in determining project specifications, so that the design and terms suit their competencies and cost advantage.

Such realities illustrate the many loopholes that undermine the Government Procurement Reform Act (GPRA) or Republic Act No. 9184. Acclaimed by many as among the most advanced procurement laws in the world and considered the foremost anticorruption initiative in the Philippines, the law contains provisions meant to ensure transparency in government procurement and to promote competition that would help ensure the judicious use of public funds.

The law, among its many provisions, has prescribed the use of information technology, primarily through the Philippine Government Electronic Procurement System or PhilGEPS, to promote transparency and competition, simplified prequalification procedures to reduce the powers of the Bids and Awards Committees, and standardized procurement process and forms. It also institutionalizes civil society participation in all stages of the procurement process, requires procuring entities to adopt open and competitive bidding in all levels of public procurement, sets standards for professional conduct by government procurement personnel, and includes a penal clause and civil liability.

Despite the provisions of the law and its implementing rules and regulations (IRR), however, many of the intended outcomes have yet to be realized, partly because of weak or incomplete implementation, because there are projects or procurement items not covered by it, or because there may be other conflicting laws that negate its intended effects. In other words, the law does not easily translate into practice.

In the DPWH, the primary agency implementing public works projects, the implementation of the procurement law has been assessed to be mixed. This, in spite of the fact that DPWH has other complementary systems and reform programs that should enhance the effectiveness of procurement reforms introduced.

Previous sections have mentioned instances of collusion, bid rigging, and other procurement problems, which have been documented and cited in various studies. These cases demonstrate the many other things happening within and outside of DPWH which speak of the remaining challenges in procurement. After all, there are several procuring entities involved at different levels of government and there are other procurement-related methods that are covered by laws other than RA 9184. Problematic provisions of the procurement law

When then Congressman Rolando Andaya, who would later become budget secretary and subsequently chairman of the Government Procurement Policy Board, introduced the bill that was to become R.A. 9184 in April 2002, he told his colleagues that the bill would feature a two-envelope system for bidding. The first envelope, he said, would contain the technical proposal, which would be given a pass or fail mark by the Bids and Awards Committee. The second envelope containing the price offer would be opened but only in the case of bidders whose technical bids were accepted. The lowest bidder would win because the bid price would be the only parameter that matters at the opening of the second envelope.

This process would ensure that procuring entities will have limited or no discretion at all in the selection of contractor. Bidders will have to compete based on technical and financial merits of their proposals. Yet, informants interviewed for this study said in the case of local governments, favored bidders win contracts because they had a hand in determining the specifications, giving them a built-in advantage. This is only one instance of how the final determination of the winner—a process that supposedly makes no reference to the identity of the contractor behind the bid—is undermined.

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Andaya also said the law would require contractors to post warranties and performance bonds so that quality was expected to become less of a problem. Bonds and warranties remove any dispute on whether some proposals are technically better than others, and ensure that the price bids being entertained comply with the minimum technical requirements.

Yet an informant from the private sector who has won contracts with government says the garnishing of performance bonds and warranties is unheard of. Retired public works undersecretary Edmundo Mir likewise said the DPWH would often “conveniently forget” that there are such provisions and would opt not to go after contractors when defects are found even within the warranty period. Instead, the DPWH would see nothing wrong with having its own construction workers do the repairs, using either DPWH maintenance funds or some money offered by the contractor.

This is apparently happening in local government units as well. In Cagayan de Oro, city councilors have criticized the vice mayor for asking the DPWH to fix the defects found in the construction of the P322-million Kagay-an bridge instead of holding the local contractor liable. The councilor, quoted in a local newspaper, said, “Why should DPWH to come into the picture when the one responsible for the defects is the project contractor?” Then DPWH Secretary Hermogenes Ebdane nonetheless gave in to the vice mayor’s request and was quoted as saying, “I have instructed the local DPWH to check the extent of the damage and then we’ll repair it.”

Mir says there is a generous way of interpreting what the above story means. Indeed, there is a warranty period for completed projects, but typically “the reality is that contractors have already demobilized and had left the project site when defects are discovered within the period of warranty.” It would be difficult and costly for the contractor to do the repairs itself. The same newspaper account about the cracks at the Kagay-an bridge, however, quotes a local councilor’s rhetorical question about the vice mayor’s action of calling in the DPWH to address a problem that could have been addressed by the contractor—“Doesn’t he [the vice mayor] want his favorite contractor to spend more?”

Mir says performance bonds have been garnished by the DPWH in the past, but very often without the intended effect of making the contractor answer financially for the inadequacies of the infrastructure that was delivered. According to Mir, “the problem is that while project managers and engineers are responsible for seeing to it that performance bonds and other warranties are actually paid, updated and effective, there is no one checking on whether or not this is being done, such that garnishment becomes a problem when the need for it arises. Either they simply neglect this task or they are in cahoots with contractors, conveniently forgetting to take contractors to task for unpaid performance bonds and sureties.” Mir does not know of any pending case where punitive action has been taken against these project managers and engineers.

Addressing this specific gap in the effective use of warranties and performance bonds is well within the mandate of the Government Procurement Policy Board (GPPB). The GPPB, for instance, may issue policy that takes non-payment of performance bonds as an indication of a construction firm’s financial incapacity, rendering it ineligible to bid for public projects. But there are other problems that also need to be addressed by the GPPB in due course.

In many cases too, the DPWH would run into arguments on what defects could be covered by warranties and on whether defects can be attributable to the contractor or considered an “act of God” or an unforeseen event like typhoons, floods, and natural disasters. A contractor for a road project, for example, can say it was not his fault that a typhoon that submerged the entire city destroyed the newly asphalted road. Some contractors argue *force majeure* or they can avoid being penalized by simply repairing the substandard components that have been detected. However, it is not easy for contractors to claim *force majeure* since they must also provide proof and verification from the National Disaster Coordinating Council (NDCC) that indeed the damaged road or bridge is situated in a locality that has been declared a “calamity area.”

In other cases in the past, Mir said, performance bonds turn out to be falsified or non-binding perhaps because the contractor did not actually pay the issuer of the bond. Mir likened this to an insurance policy that is rendered useless because the policy owner had not been paying his premiums. Only cash, manager’s checks from reputable universal or commercial banks and security bonds issued by insurance companies duly certified by the Insurance Commission as authorized to issue the bond are accepted.

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Andaya's points are just some of the more important innovations introduced by the GPRA that were first highlighted at the House of Representatives but which prove to be difficult to implement.

Just this year, the GPPB enhanced the Implementing Rules and Regulations (IRR) of the law to harmonize the rules for nationally funded projects and those that are foreign assisted. Notwithstanding these revisions and enhancements, there remain important and controversial issues.

One is the use of the approved budget for the contract (ABC) as bid ceiling, to which foreign funding agencies may not agree but which government seems to feel strongly about. This is a problem because although the intent of the IRR is to have a common set of guidelines for national and foreign-assisted projects, a provision remains that should there be a conflict between a treaty or international executive agreement and the IRR, the former will prevail. Nonetheless, unless the treaty or international or executive agreement expressly provides the use of procedures and guidelines followed by a foreign government or foreign or international financing institution, this IRR shall apply to foreign-funded procurement by the government.

A former DPWH official believes that the problem of collusion among bidders is rampant and very hard to prevent. After all, even the World Bank, in its recent Transport for Growth report, has identified and provided examples of possible collusion arrangements. The table below is taken from the bank's report.

Table 5 Possible corruption arrangements at the project level

| Risk | Risk Description and Examples |
|--|--|
| Procurement Collusion | Bidders are manipulated by an 'arranger' under the direction of a patron, who for large national or international competitive bidding (ICB) bids is typically a senior politician or elite, and who for regional or District level bids is typically a local politician. |
| Bid-rigging | Bid prices are established by the arranger, with a sufficient margin above the cost estimate (Approved Budget for the Contract) to pay kickbacks to the patrons, cartel participants and some officials. The margin is often high, e.g., 15-36 percent, but appears subject to controls: as the Bank began rejecting high bids in 2003 the margin evident in the bids decreased first to <30 percent and recently to <15 percent. The Patron often requires payment at the time of award recommendation; other payments are usually made from the advance payment. |
| Bloated designs and estimates | For locally-funded projects which have the Approved Budget for the Contract (ABC) as the cap, the ABC is inflated as it is based on bloated quantity estimates using manipulated survey and design data (such as earthworks and base courses), understated equipment production rates, etc.; actual payments during project implementation would be based on the bloated quantities. The increment (bloated less actual) is used by the preselected winner of the bidding to pay off the patrons, the losing bidders, and government officials. This appears to be done also, though to a lesser extent, to foreign-assisted projects. |
| Misrepresentation of bidder qualifications | Falsification of work history, productivity or financial records. Most elements were eliminated through the introduction of the computerized Civil Works Registry of contractors in 2002, but its effectiveness has been limited since by waivers and misuse. Use of discretion by the BAC to pre-disqualify non-cartel members for irrelevant infractions, while glossing over similar or worse infractions to prequalify cartel members. |
| Fraud | Falsification of documents |
| Bid evaluation | Manipulation of bid evaluation is relatively rare or minor under recent internal controls, but could re-emerge; for consulting services, |

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| | |
|------------------------|---|
| | manipulation seems common and high. |
| Bid process | Interference with bid submission, substitution of documents or misreading of bid prices relatively rare in foreign-assisted projects (FAP) due to observer controls, but may occur in locally-assisted projects (LAP) & could re-emerge. |
| Contract processing | Bribes to facilitate processing of contract award and subsequent payments are highly probable. The approval process has multiple layers and extended delays occur in key offices, e.g., legal services, construction, executive, PMO |
| Preferred suppliers | Nomination of preferred agents for key contract services such as bank guarantee, security, indemnity insurance, who provide kickback to project-level officials is common. |
| Contract variation | The size of some variations is inflated through estimates of quantities for pay items which are difficult to confirm or audit, such as repairs, excavation, landslide removal, etc. Also, some items omitted in the designs are reintroduced as variation orders, and the contractor and the implementing office negotiate the prices. Usually results from collusion of contractor with officials, but may also involve collusion of supervising consultant. |
| Implementation quality | Falsification of quality control test results, defect or repair inspections, padding of quantities of work accomplished, etc. through collusion between contractor and supervising officials or consultant. Incidence very dependent on particular individuals and firms, ranging from negligible to modest in most FAP, but minor to serious in LAP. |

Contractors are very clever, the former official said, and with the help of their patrons or *padrinos*, can easily get away with overpriced projects. So much so that this official would try to play their game while he was still with the DPWH. He narrates that he went to the extent of trying to manipulate the agency estimate by asking the procuring entity to lower it by as much as the expected overprice of the bidders. "If the cost estimate is 100," he says, "I would ask that it be lowered to 70 so that if the bidders bid 30 percent higher, as they do, then I would be happy with the outcome. If the bidding is a farce, let it be a farce."

The World Bank recently agreed to use the ABC as bid ceiling on a case-to-case basis provided that four conditions are met:

- Bidding documents are obtainable free of charge on a freely accessible website. If the law requires payment of bidding documents, payment could be made upon the submission of bids. Failure to pay for the documents prior to or upon submission of the bids should not lead to the automatic rejection.
- The implementing agency has procedures in place to ensure that the ABC is based on the Engineer's Estimate and that the estimate reflects the quality, supervision and risk factors associated with the type of job proposed.
- The implementing agency has trained cost estimators on estimating prices and analyzing Bid variances, and
- The implementing agency has established a system to monitor and report bid prices relative to the ABC and Engineer's Estimate.

Another problematic provision is on the annual procurement plan (APP). The IRR states that no procurement shall be undertaken unless it is in accordance with the approved APP of the procuring entity. This is to ensure that procurement items are in accordance with the entity's plans, priorities, and budget. However, agencies may revise APPs frequently and submit supplemental APPs midstream.

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As for projects funded out of the congressional district funds, popularly known as “pork barrel” funds, the DPWH often only prepares the APPs after the fact just to comply with the IRR. In many cases, informants said, no detailed engineering investigations are done, contrary to procurement planning guidelines, and local executives often dictate technical specifications to suit preferred contractors.

Beyond R.A. 9184: The bigger grid of reform efforts

Besides R.A. 9184, there are various reform laws such as those on Official Development Assistance (ODA) and Build-Operate-Transfer (BOT) that are meant to strengthen the integrity of the procurement process. But translating these into good practices depends in a major way on whether or not the procuring agency or the oversight bodies actually represent the public's best interests. As this is not always the case, informants said, it is important to look into the procurement process, including how the heads of agencies and the staff of oversight and regulatory agencies are themselves embedded in society. Taking note of this helps establish what can and cannot be achieved from tinkering with the rules that govern bureaucracies or by increasing the capacities of stakeholders that interact with these bureaucracies.

National level

Proposals for major infrastructure projects, particularly ODA-funded, have to undergo a thorough evaluation by the National Economic Development Authority's Investment Coordinating Council (NEDA-ICC).

The NEDA-ICC is tasked to ensure quality at entry so that only projects that have economic internal rates of return (EIRR) potentially higher than 15 percent are included in the shortlist of projects to be supported with public funds. Yet, former NEDA Director General Felipe Medalla said some large projects evaluated by the NEDA technical staff as having low EIRRs still got to be approved. These include those that Cabinet members or even the president lobby for and support.

Medalla argues that “civil servants were still conditioned to accept elected officials' and the Cabinet's orders without argument.” Moreover, a culture of acquiescence to superiors prevails since top civil servants down to division chiefs, who are ranked seven salary grades lower than Cabinet secretary, are presidential appointees. This system practically discourages employee criticisms of, and disagreements with, the executive. Thus, in spite of their knowledge of the long-term goals of government and despite their political neutrality, bureaucrats were on the whole unable to stop bad policies and contracts.

Medalla also said suppliers or prospective investors could control some projects if the government agency is weak or lacks integrity. This was also pointed out by the Senate Economic Planning Office in its August 2008 Policy Brief. The report said, “It has been observed that, oftentimes, the interested contractors/suppliers rather than the proponent agencies themselves spearhead the conceptualization and preparation of project specifications and even the feasibility studies, which are submitted to the ICC for evaluation. The said practice gained the label 'supply driven' for the procurement system.”

Medalla added that many agencies end up being too dependent on preferences of suppliers and private investors because they do not have the capability and the resources to develop the project and to do required studies, project selection and design. The DPWH is seen to be just such an agency, considering also that some projects it implements are identified and initiated by outside entities and individuals such as congressmen and local officials. In effect, a major entry point for lobbies exists where agencies have a weak internal planning cadre.

Once projects are approved, the NEDA's Project Monitoring Staff (PMS) continues to monitor the projects. The PMS notes request and significant cost overruns, variation orders, and changes in project scope that would enlarge the budget without correspondingly enlarging the returns. NEDA PMS Director Roderick Planta said whenever there are excessive cost overruns, these must, on a mandatory basis, be placed on the agenda for scrutiny.

The NEDA staff could argue for the discontinuation of projects or for the disapproval of contract changes that lead to a deterioration of returns, but in fact, they seldom do. In part this is because the implementing agencies usually decide to move ahead with the changes in the substance of the projects even while the process of monitoring and evaluation is ongoing.

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Needless to say, the project lobby that managed to gain first pass approval for the project can again be mobilized for subsequent rounds of engagement with the ICC and the NEDA staff. The deterioration in EIRRs upon completion (Table 1) is a manifestation of the deleterious effects of changes to the contract.

Table 6 Project Expected internal rates of return (EIRR) of projects during appraisal and after completion

| | During Appraisal | After Completion |
|---|------------------|------------------|
| Number of EIRR Estimates | 62 | 87 |
| % of Projects where with EIRR Below 15% | 11% | 33% |
| % of Projects with EIRR Equal to or Above 15% | 89% | 67% |

Source: NEDA ODA Portfolio Review 2006

What these indicate is that institutional and political realities can stand in the way of even the most innovative reforms which prevent the expected benefits from being realized. These are risks that remain and will have to be taken into consideration.

Analysts and policymakers are looking into ways to manage such risks and correct deficiencies in the procurement laws. For one, it is possible that at some point, stronger mandates can empower civil servants, so that they can do more than just keep tabs of how lobbies and vested interests are succeeding.

Some are looking into improvements in the ODA law so that it becomes mandatory and part of the job description of NEDA staff to submit reports to the Ombudsman or to the Senate when public officials unaccountably exercise discretion contrary to protocol and the norms of prudence. Still looking ahead, there may also be further room for improvement in institutional redesign by future administrations so that oversight agencies like NEDA can stop lobbyists' efforts on their tracks before they are able to gain momentum and recruit support.

In the absence of reforms to strengthen its mandate, a bureaucracy like NEDA is perhaps bound to be just a technical arm of incumbent politicians, validating official actions instead of being an authority instructing transient office holders on correct behavior.

Local

When Andaya told congressmen at the committee hearing in April 2002 that there would be a five-year period within which local contractors would be preferred for public works projects, not a single congressman rose to ask why that was necessary. The consensus was clear that inducing competition for congressional district procurement and generating savings was not the most important objective. The goodwill and economic well-being of local contractors seemed to be something that obviously needed to be protected.

Funding for pork barrel projects of district representatives was resumed in 1990. At the time, congressmen received allocations of P12.5 million per year. The amount rose steadily as presidents used this allocation to muster congressional support for the executive's legislative agenda. From 1998 to 2001, the funds that would require line agency consultation with district representatives amounted to P65 million pesos per representative. District engineers of the DPWH and the National Irrigation Administration (NIA) say lawmakers used to go to their offices seeking projects for constituencies. The ballooning of congressional pork barrel funds has led to a reversal. Now, it is the district engineers who must appeal to congressmen for projects.

Infrastructure projects are needed by local politicians to top up their store of reputation and goodwill. In the Philippine context, visible projects like infrastructure, rather than political party affiliation and platforms, draw more votes that allow them to stay in power. In contrast, social services are less visible to constituencies, their beneficiaries are more diffuse over space, and benefits derived become manifest only in the long-term.

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In the extreme, politicians resort to the distribution of goods, such as seeds and fertilizers, and prefer this over uncertain long-term commitments such as the increased delivery of water for irrigation. From this perspective, the exchange of cash for votes, or vote-buying, would appear to be just another kind of transaction that is not too different from the other exchanges that politicians resort to because they are incapable of making commitments to policies.

Infrastructure projects can have various functions for politicians in the Philippines, as Oorthuzien noted in a 2003 study. They symbolize tangible services: a passable road, water to the farm, or a roof for a school. Public works projects may also generate wage work for constituencies and side payments for government staff up and down the bureaucracy. And where a war chest needs to be amassed for the coming elections, infrastructure projects can generate funds through rigged bids that enable the delivery of substandard infrastructure at exorbitant costs, though for this to happen, competition has to be managed so that the transactions can generate the cash. Public infrastructure investments also directly increase the value of politicians' properties by being appropriately located, an example being the so-called "farm-to-mansion" roads in contrast to farm-to-market roads.

For these reasons, even well-intentioned or reformist politicians may find themselves in a bind. A former local development planner who initially considered running for vice mayor in Pampanga, for instance, opposed an overpriced gym that the local chief executive wanted to build. He eventually abandoned his political plans. He said in a forum: "Elections are not for those who cannot stomach (the wheeling and dealing). There are transactions that need to happen as one assembles a coalition. The currency for such transactions is jobs, infrastructure projects, gasoline for the ambulance that has to bring somebody to the hospital at night, and cash. Where will you get that currency? I had to opt out of politics because I understood this too well."

Politicians also gain the ability to influence bureaucrats at the national center through a combination of harassment and exchange of favors in the course of the annual process of national budget approval. This influence over agency bureaucrats is further exercised during investigations aimed supposedly to aid legislation and through the processes of the constitutionally mandated Commission on Appointments.

This clout over agency bosses is translated into extraordinary influence in promotions, the filling of vacant posts in the local bureaucracy of agencies like the Department of Education, DPWH or the NIA. While some posts are considered dead-end jobs lacking in prestige, others are highly coveted and offer money-making opportunities for local bureaucrats who do the politicians bidding. A local bureaucrat may get up to 30 times his salary from such coveted positions.

Limits to the scope of what should be a comprehensive law

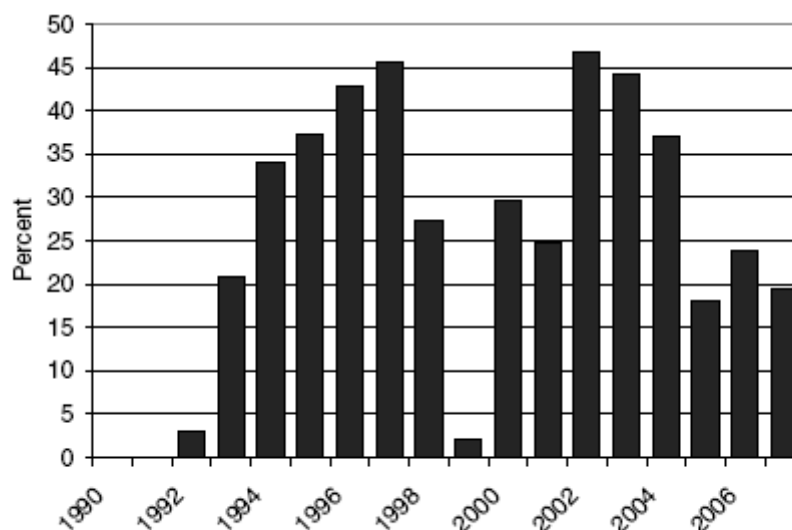
There are procurement processes and projects that remain or have been pushed beyond the pale of the GPRA. Former Budget Secretary Emilia Boncodin, the first chairperson of the GPPB, cited the need to bring projects funded out of ODA into the ambit of R.A. 9184. She has also joined advocates calling for a reform in the procedures that govern the implementation Build-Operate-Transfer law.

In other words, although the GPRA consolidated and gave consistency to 137 procurement laws that used to govern public procurement, large chunks of the public expenditure process remain outside the scope of the GPRA. The law likewise stipulates that projects procured using funds placed at the discretion of members of Congress are also supposed to be governed by the GPRA.

There have been years, like the crisis year of 2005, when the government's capital expenditures budget was reduced to just P50 billion and money was out of the reach of the DPWH. The year 2002 was not a crisis year in terms of the country's budget but public works officials complained then that they "no longer have control over infrastructure projects. The department only implements projects, while members of Congress have the final say on everything."

In 2002 more than half of the DPWH's infrastructure budget of P34.8 billion was placed at the discretion of the members of the legislature. This happens because congressional allocations— lump-sum funds that permit legislators to implement "pet" projects either through a line agency such as the DPWH or the local government unit within their district—include appropriations for "Various Infrastructure including Local Projects and Urgent Infrastructure," which are included in the budget of the DPWH.

Figure 1 Congressional allocation as a share of the budget for the DPWH, 1996-2006



Source: Budget statements for the Department of Public Works and Highways.

Source: World Bank, *Philippines Transport for Growth*, 2009.

The utilization of infrastructure funds based on the directions given by senators and district representatives is doubly troubling because it is widely believed, five years after the passage of the GPRA, that contractors are still pre-selected by legislators. Agency BACs receive reports about the continuation of the practice, but agency heads are unable to provide a coherent organizational response. A second major consequence cited by Medalla is that projects falling under multi-agency jurisdictions do not get funded. It is only through ODA projects that the country manages, once in a while, to insulate capital budgets from being taken over by lawmakers with vested interests. Things may not yet be at their worst, because during deliberations for the reprogramming of the national budget in both the House of Representatives and the Senate, voices periodically argue for slashing ODA-funded projects in favor of increasing funds under the discretion of legislators.

From the point of view of securing capital investments for strategic infrastructure, the ODA process serves as an important administrative instrument of the executive department. The ODA process has the advantage of utilizing project monitoring and evaluation protocols that are completely absent in the course of project procurement by members of Congress.

The so-called harmonization of the ODA process with the provisions of the GPRA, however, still has a long way to go. The World Bank has already moved toward this, having supported the efforts to harmonize procurement and financial management processes. It has, for instance, agreed on certain conditions, such as the use of the “approved budget for the contract” as bid ceiling for the recent road improvement and management project. But other major sources of ODA may and still do choose to specify their own procurement rules to favor own-country vendors and play a strong role in developing the project specifications.

Projects developed through the BOT modality and through the recently formulated policies for joint venture (JV) modes are also procurement approaches that are beyond the purview of the GPRA. What the BOT and the JV mode have created in recent years is policy arbitrage. Unsolicited bids that typically lead to negotiated contracts have been the key outcomes of these modes of procurement.

Unlike procurement modes mandated by the GPRA, BOT, and JV modes of procurement are highly nontransparent and the record shows that these have exposed the public sector to liabilities that were uncalled for. If former heads of the National Economic Development Authority are to be believed, things have taken a turn for the worse as the *ex ante* evaluation for BoT projects—the decision to expose the national government to contingent liabilities, as well as the decision to accept proposed cost overruns and

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changes in projects scope—is no longer the responsibility of the NEDA-ICC cabinet cluster. Government corporations, line agencies, and local government units have been given the authority to try their hand at modes of building business relationships with the private sector, an endeavor where a series of presidencies have arguably failed.

The role of the international organizations

A recent effort to help curb corruption in the public works sector is the Construction Sector Transparency Initiative (CoST), an international project aimed at increasing the transparency of information on public sector construction projects, particularly in the period from contract award to completion of implementation. Premised on the core concept “Get What You Pay For,” CoST ultimately aims to make procuring entities and construction companies accountable for the cost and quality of public sector construction projects. The Philippines is one of the CoST pilot countries.

CoST is envisioned to work as follows:

- Procuring entities will be required by CoST to disclose already available information throughout the project cycle, focusing particularly on the implementation stage where there tend to be few or no other initiatives. Such disclosure is envisioned to be done without any extra burden on either the procuring entities or the construction industry.
- The raw disclosures will be made publicly available and will be analyzed by an independent technically qualified body, which has been labelled the “Assurance Team.”
- The Assurance Team should also make use of all other relevant information, such as reports on quality assurance, information from the Constructors Performance Evaluation System (CPES), and Commission on Audit (COA) reports. Efforts here are not intended to cut across the work of other bodies such as regulatory agencies or inspectorates.
- The Assurance Team will report to a multistakeholder group, setting out its findings and raising any concerns based on the disclosures and other relevant information;
- The multi-stakeholder group, with representatives from government, private sector, and civil society, is at the heart of CoST. It will have oversight functions and will make all major decisions such as which projects should be included in CoST and what actions, if any, should be taken based on the reports from the Assurance Team.
- The multistakeholder group will also be responsible for making reports of the main findings of the Assurance Team publicly available.
- During the pilot phase, donor funding will be provided where necessary, recognizing the pioneering nature of the initiative and the early stage of development when the precise costs and benefits cannot be determined.
- Each pilot country will be required to appoint a “CoST champion” who will be responsible on behalf of government for steering the implementation of CoST.

CoST consultant David Stafford, who presented the diagram above to a Philippine audience in 2007, said CoST is designed to offer countries substantial flexibility in implementing the initiative, especially during the pilot stage, so that countries can ensure that it complements, rather than duplicates, similar programs.

In the Philippines, there have been issues on who should be the CoST champion, who will head and how many will comprise the MSG and the Quality Assurance group, as well as who will best represent each sector. Concerns on possible conflicts of interest and the need for mechanisms for checks and balances have likewise been raised.

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Two years after an initial workshop was held in the country, the structure and composition of CoST in the Philippines remains fluid. Interviews with Dr. Primo Cal, representative from the academe, and Lito Madrasto of the Philippine Constructors Association, representative from the private sector, indicate that the CoST in the Philippines is not yet fully operational.

Madrasto explained that being a pilot, the organization understandably runs into uncharted territory as far as setting up the structure is concerned. "I guess that is why it is called pilot...there really is no set rules yet the pilot experience will show everybody which is the better mode," he said. "The whole concept of CoST is, Why don't we come up with more transparency and better governance initiatives in various governments where the people who are bringing these about and coming up with the ideas are different sectors of society of the industry?"

Madrasto believes that a transparency initiative like CoST should focus on systems, policies, and procedures. "I don't believe in witch hunts," he said, apparently referring to investigations and pursuit of cases against erring individuals. "It doesn't work."

He explains: "If you don't change the system, no matter how much, how good, how effective your witch hunt will be, no matter how good your investigations are, it will not stop... You come up with whistleblowers just to pin down a person or some persons, what happens? The whistleblower gets killed, he loses a job, government has to put him in a witness protection program, and they will spend more money at the end of the day. And they may have been suspended and when you reach the price somebody has taken over the foolishness because the system is still there. So my approach has always been to do something about the system, do something on the policies, do something about the procedures."

Cal said he would like to see a more proactive role for the academic community in instilling the right values and professionalism in students and professors who would end up in construction projects. He would like to incorporate ethics into the academic curricula, citing the University of the Philippines which is known not only for technical or academic excellence but also for the values it instills in students. This is important in building strong characters for those in the engineering and similar professions so that they are upright and true to professional standards.

The role of the media

When the World Bank blacklisted several contractors involved in the rigging of bids for the first phase of the \$150-million National Roads and Improvement Management Project (NRIMP) in January 2009, the scandal drove the media into a frenzy.

Implemented from February 2000 to March 2007, NRIMP-1 was a series of 10 projects equivalent to 1,400 kilometers of roads funded by a World Bank loan. The bank's Department of Institutional Integrity (INT) investigation uncovered evidence of a major cartel of local and international companies that participated in the project.

It was a crisis for the Department of Public Works and Highways (DPWH). Elizabeth Pilorin, chief of the DPWH's Public Information Division, likened the issue to the ouster of DPWH Secretary Florante Soriquez, who is facing a slew of charges for graft and corruption. Next to that, Pilorin said, "the NRIMP proved to be one of the hardest to manage."

Managing media reports about the DPWH, shielding the agency from the backlash of negative publicity, and highlighting reforms is the PID's job. At the height of the NRIMP-1 controversy, the PID ran a full-page ad in several dailies detailing the circumstances around the foreign-funded project. It held a major press conference and conducted daily press briefings to address the issue.

Also, since the first round of bidding for the \$232-million NRIMP-2 was about to take place, the DPWH—in an attempt to be more transparent—invited representatives from the Commission on Audit (COA), nongovernmental organizations, and media to sit as observers.

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But the mess got out of hand when the Senate revealed that EC De Luna Construction Corp., a blacklisted firm that allegedly arranges collusive bid schemes on behalf of contractors and politicians in the Philippines, enjoys close ties with First Gentleman Mike Arroyo.

"There was nothing we could do. FG was already involved and no amount of convincing, not even the reforms DPWH instituted because of NRIMP-1, could get through the mainstream media," she recalled. FG refers to First Gentleman.

The PID soon stopped trying to manage the deluge of criticism on NRIMP-1. Press releases were reduced from one a day to two to three times a week, with no fresh angles to pursue. At the height of the scandal in February, for example, of the 15 press releases for that entire month, only two were on NRIMP. Also, the PID's monitoring of news reports showed that almost 90 percent of the stories that came out during those months—from January to March of 2009—were negative to the DPWH.

Pilorin said the strategy at the time was just to "stick to the facts." But a DPWH source who refuses to be named said some top officials wanted to resort to giving out *payolas* (cash gifts) to journalists to "manage the crisis." The source told the officials that resorting to such a strategy would show that the department is indeed corrupt.

It did not help that the reports lacked context, a scan of the print stories published at the time showed. Most of the stories focused on what was going on in the Senate hearings, including statements of contractors implicated by witnesses in the mess, as well as reactions from Arroyo's lawyer.

Several reports were about Senator Miriam Santiago, head of the investigating panel at the time, who shared the observation of a major media organization in its investigative report that the World Bank report was mere hearsay, riddled with rumors and innuendoes, and uncorroborated facts, with no probative value. This prompted Senator Richard Gordon to state that "it is not for us to investigate the World Bank but the allegation of collusion" and a member of the opposition to give the comment: "They were quick to clear Mr. Arroyo, even quicker to indict the World Bank."

The publication of the series of excerpts from the INT's Record of Interviews in a major daily also presented a problem, Pilorin shared. For one, the names of whistleblowers and witnesses revealed—something which the World Bank was careful not to disclose even to the Office of the Ombudsman. Also, it revealed the names of alleged road contract brokers, among them politicians and former high-ranking DPWH officials.

One particular name, Boy Belleza, was tagged as part of the syndicate in the bid rigging of the World Bank projects. There were media organizations that identified him to be the DPWH Region IV-A assistant regional director Huillio B. Belleza, also nicknamed "Boy." Belleza, a career official who has been in the service for 36 years, was forced to write to then DPWH Secretary Hermogenes Ebdane Jr. that "the issue imputed on me by the news reports is nothing but a simple case of mistaken identity."

The PID also came out with a statement that Belleza never participated in any World Bank activity. Still, published reports online bear no such correction, nor an apology.

One DPWH officer, who requested anonymity, said media could have pursued leads from the report of Senator Panfilo Lacson and from the transcripts. Former Surigao del Sur Rep. Prospero Pichay, who later became head of the Local Water Utilities Administration, and the late Senator Robert Barbers and his sons, for example, were identified as among those who allegedly influenced bids. Yet no reports on their possible involvement ever came out. "They (the media) failed to get to the bottom of it," he said. Both the Barbers sons and Pichay denied involvement in the road projects.

The NRIMP controversy also caused a setback in the operations of Bantay Lansangan (BL), a civil society organization that is DPWH's "institutional partner" in enhancing transparency through the multisectoral external monitoring of road projects. Bantay Lansangan is a key anticorruption measure in NRIMP 2 set by the World Bank.

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The World Bank in a project appraisal report said the independent oversight by civil society members—which include road user groups, the private sector, and the media—was established to ensure the transparent and proper use of funds and “to counter corruption at high levels of government.” In 2007, a memorandum of agreement between the DPWH and the BL was executed.

Under the partnership, the DPWH should allow BL members open access to data and information in monitoring road projects. At the beginning, regional monitors reported they had no trouble getting documents from the DPWH.

But soon the BL secretariat received anecdotal reports from the regions that accessing documents proved to be a little too difficult. This was after the BL secretariat, the Transparency and Accountability Network (TAN), came out with strong press statements in January, lauding the World Bank for its decision to sanction erring contractors.

“The bank’s findings warrant swift and decisive action from the government because really, in corruption, the biggest losers are the Filipino people who end up paying for overpriced and poorly built roads. We will closely monitor national government actions related to the World Bank findings,” TAN Executive Director Vincent Lazatin said.

Lazatin said that BL’s request for updates on what the DPWH was doing about the issue also fell on deaf ears.

DPWH Undersecretary Raul Asis, however, denied that the relationship, particularly in terms of providing access to information, was affected.

The BL acknowledges the important role of media and its reach in generating awareness. With a grant of \$1.1 million for its operations, the road partnership activities include the hiring of communications and media specialists to disseminate information through appropriate media outlets, and through workshops, conferences, and consultative events.

Among the strategies in BL’s Communication Plan is to address the need for greater media support “to dispel negative publicity on DPWH.” This, according to BL, will be addressed through DPWH’s “active involvement and participation with the road sector reform initiatives of the Road Watch project.”

The PID, on the other hand, employs another kind of strategy in improving the embattled image of the DPWH. Created during the DPWH reorganization under Executive Order No. 124 in 1987, the PID is tasked to do the following:

- Develop a communications program to ensure that policies, plans, and activities of the department be known to the public
- Organize press briefings/conferences for the DPWH Secretary and other key officials and coordinate with the tri-media for information dissemination
- Supervise the preparation of information materials, reports, briefing materials, photo exhibits in line with the communication program of the department
- Act or provide answers to issues/problems brought about by the media
- Coordinate with the office of the Press Secretary and Presidential Management Staff, as well as other national agencies tasked with public information affairs, on the Department’s operation/activities pursuant to the administrator’s thrust and objectives
- Conduct overall supervision on the activities of the whole staff of the division

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- Assist and coordinate with the regional information office of the department as well as with the information officer of the attached agencies
- Receive public complaints, problem, and queries and provides direct, immediate quick-response to the general public infrastructure needs
- Establish a data bank for all the relevant data and information to the media, researchers, NGOs, and the general public about the plans and accomplishments
- Provide top management with daily news clippings activities/operations undertaken by the Department
- Take charge in the collection of voluntary contributions for DPWH employees needing assistance; assists fund drive for victims of calamities and provides assistance to other organizations in the solicitation of donations/contributions.

The PID comes up with a monthly analysis report of published news and photos. It uses a matrix bearing the names of the news organization, the title of the news report, and a classification whether the news is considered positive or negative.

According to Pilorin, rarely do the national media come up with “development stories”: “If a bridge collapsed, that’s a story. But if a bridge had been completed, that’s no longer a story.”

But, she added, a development story does not mean it has to be positive. It simply means that a story elicits interest among readers because the information is useful to them. An example of this, she offered, is a story of a girl who is able to go to school because of a newly built road in her village.

To make sure the DPWH has enough of these types of development stories, Pilorin recently imposed a daily quota on the regional information offices. In a given day, two regional offices must come up with a DPWH published story or photo release. Pilorin’s staff monitors these from the national dailies. Those who fail to meet the quota are given a memo, while those who comply are complimented for their efforts.

A DPWH staff said this, of course, means they would have to think of “creative means” to have a DPWH story release published. Examples of DPWH published releases are: “Ebdane enthroned as Sultan” (People’s Tonight); “New roads to boost economy, tourism in Northern Luzon” (Business Mirror); “DPWH prepares for Penafrancia Festival” (People’s Journal); “DPWH to adopt 2 inches minimum thickness in asphalt road projects” (Manila Bulletin); “Pro-Performance team inspects NLEX-SLEX link project” (Manila Bulletin).

Meanwhile, articles considered to be positive could range from stories like “Despite snags, P5.2 billion Cordillera projects to be completed” to “Ebdane urged to run for president.” Negative stories could be like the story in the Daily Tribune last September: “News on House inquiry into anomalous Samar road project sought.”

The efforts of the PID appear to be paying off. In September 2009, for example, 104 stories or 89 percent of the articles published were favorable to the DPWH while only 13 stories or 11 percent were considered unfavorable.

The PID Quick Response Desk also uses separate monitoring sheets for email and text messages that could come in the form of complaints, requests, and suggestions. Phone-in referrals, walk-ins, and letter referrals are also monitored every month. The DPWH also has a Konsyumer at Iba Pa Radio Program Referral with DZMM wherein listeners can send their concerns through text.

Pilorin said the monitoring starts from the day the query or complaint is received up until the concern is resolved. The queries range from information on how long and wide should a road be, steel bar data,

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population statistics to complaints about slow bridge and road repair, potholes, drainage problems, and graft and corruption. A feedback is given once action has been taken.

One particular citizen from Guguinto, Bulacan, for example, sent an email asking for the road in front of their house to be laid with asphalt because their hospital uniform gets soiled every time they pass through the muddy road. Five days after the email, the DPWH Bulacan district engineer referred the matter to the municipal engineer's office. Three days after, a program of work was drafted and submitted to the office of Senator Francis Escudero for fund allocation.

A texter once requested for pothole to be fixed as too many road accidents had happened because of it. Four days later, the DPWH district office in Bulacan did a pothole patching operation. – **by Avigail Olarte**

SECTION 5

An analysis of the GPRA and BOT-funding schemes

Numerous factors hinder the full implementation and inhibit the effectiveness of otherwise well-developed laws and policies. Some constraints and risks are more manageable than others. Reformers and anticorruption advocates will therefore have to take into consideration the factors that serve as binding constraints.

Key questions need to be asked to determine whether there are binding constraints in local government, national agency, foreign-assisted projects, and public-private procurement processes that will reveal industry characteristics, reform gaps, and entry points.

1. Is there a system that ensures high quality at entry (design and investment prioritization)?
2. Does the procuring agency have the capacity to make prudent cost estimates?
3. Is there competition?
4. Can defects be easily detected? Will there be capable and motivated observers?
5. Is there a dedicated system for receiving and processing reports from observers? Are there good incentives for carrying out the correct responses to adverse reports?

GPRA implementation as a political process

Answers in the affirmative will indicate a strong possibility that reforms will deliver good procurement outcomes—projects with high social and economic returns, competitively priced infrastructure contracts, and implementation that hews closely to the standards and time frame contemplated by the procuring agency.

The discussion points below show why the answers might not be in the affirmative. This reveals the gaps and possible action plans for strengthening the systems and actors and improving institutional processes within the procurement system.

1. Quality at entry: Design and investment prioritization

The procurement reform law and its IRR were certainly a breakthrough in anticorruption efforts. But a review of literature, as well as anecdotes from informants for this study, reveals that corruption happens even before the procurement process starts. There will always be such a risk because of weak programming and planning systems at various levels, weaknesses that are attributable partly to the country's political setting and partly to technical capacities of procuring entities.

Congressional allocations

Congressional allocations make up a substantial share of the budget for transport infrastructure. These allocations, however, are undertaken without regard for the planning systems in place at the DPWH, even though the DPWH among all agencies has the best planning system. Congressional representatives do not refer to existing plans of the department. The investment calculus is highly contextual. The need to attract votes would be the lawmakers' main consideration in initiating projects, especially those who have not acquired the credibility and track record that would inspire a loyal constituency.

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Local governments

According to the 2007 World Bank transport study, "Annual Investment Plans are essentially politically determined," independent of the Local Development Plan and the Local Development Investment Plan which, in many instances, is a long wish list of proposed projects. Seldom, if ever, is there an explicit assessment of costs and benefits, except in cases where the BOT Center supports grants for feasibility studies for partnerships with private sector providers of public goods. At best, some qualitative assessment of the projects is made based on urgency, need, relevance to sector concerns, and alignment with the governor's priorities.

Designs and project type are said to frequently come from proponents who also intend to bid for projects. On the surface, there appear to be two viewpoints on this matter of what seems like supplier-led procurement of LGU public works. Architects recommend that local government units finalize project design parameters independently of prospective bidders. This will ensure that specifications correspond to the needs of the LGU rather than those of the bidders.

However, one difficulty that this might present is the need for a specifications writer. Similarly, those reviewing technical proposals must have the knowhow to discern nuances in technical details that untrained reviewers might miss. The procurement law provides specific guidelines that would ensure that the winner is the lowest bidder, whose design complies with the procuring design parameters. The law accomplishes this by having a pass or fail rule with regard to designs in the technical envelope, giving no extra points for designs that exceed the parameters set by the procuring agency and thereafter relying only on the financial bid.

Modalities for public-private partnerships

There is apparently a shift toward design-build contracts and BOT schemes because of the lack of agency and LGU capability in independently assessing the appropriateness and economic returns of proposals coming from the private sector.

DPWH: Locally funded

Preemption of budgets by congressional allocations leaves the agency with limited resources for high-priority projects. Still, when projects are selected, a problem arises because of "very low commitment to original designs." This means that project selection is of high quality at entry, but there are problems when it comes to design.

This is costly. "New approvals of design alterations usually result in a new round of paperwork that is one-and-a-half times longer than the prior process," said former DPWH Undersecretary Teodoro Encarnacion. Increasing recourse to design-build contracts, following GPPB guidelines, is expected to "fast track implementation, reduce costs, avert collusion, (and) encourage cost-efficient designs." The GPPB implementing rules on design-build contracts assume a high degree of competence and integrity on the part of the procuring agency staff in terms of mixing and matching designs from different proponents, a process that is expected to lead to the best design possible.

ODA-funded

The design of ODA-funded projects is problematic when the design and project identification task is led by the bilateral funding source and consultants with strong links to prospective service providers. Best practices in ODA-funded projects appear where the government retains the services of an independent engineering company that represents the government. This is discussed in the previous section on quality assurance.

Independent engineering consultants would assess designs at the inception as well as compliance with the chosen designs at the implementation stage. The strengthening of this engineering review function through independent engineering consultants is a recommendation by former NEDA staff based on an assessment of critical capability gaps within the procuring agencies and within oversight agencies.

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There is a critical lack of capacities in hydrogeology for instance, which is crucial in the design and construction of bridges, spillways, river diversions, and piers. There is also a lack of capability in environmental engineering that would help assess environmental risks against which structures will be pitted, or possible structural engineers. The Engineering Development Consultants of the Philippines (EDCOP) is one of the few firms that have provided government agencies with support throughout the project cycle.

Box 2: EDCOP: Augmenting public sector engineering capability

The Engineering Development Consultants of the Philippines (EDCOP) provides a wide range of engineering and management services to the agri-infrastructure sector. It conducts feasibility studies, detailed engineering and design, assistance in tendering, construction, management, and training.

The company's involvement in these projects is highlighted by its active participation in poverty alleviation and rural infrastructure projects with the Department of Interior and Local Government, National Irrigation Administration, Department of Agriculture, Department of Agrarian Reform, and various local government units. Its list of major services includes quality assurance (QA) services for various sub-projects such as access roads and bridges, potable water supply, and irrigation.

As an independent engineering firm representing government, EDCOP ensures that high quality design, reliable and durable construction, and low operating and maintenance (O&M) costs are attained. The QA covers the entire project cycle—project identification, project preparation and design, construction supervision and initial start up, and O&M.

EDCOP also provides capacity building activities for government and other personnel of stakeholders in sub-projects. These include infrastructure quality monitoring, operation and maintenance, procurement, and project management.

2. Cost analysis

Detecting collusion and overpricing will depend on the procuring entities' capacity for estimating and analyzing project costs. Preparing procurement plans requires procuring entities to have a good estimate of the project costs. This is especially important where the cost estimates, as stated in the approved budget for the contract (ABC), become the cap for bid prices, at least for nationally and locally funded projects. As for foreign-assisted projects where ceilings are not allowed, projects coming from unsolicited proposals, and those that use financing schemes like BOT, cost analysis will help determine the financial viability and economic returns of projects,

DPWH

The 2008 Agency Procurement Performance Indicator (APPI) report of the DPWH notes that “for locally funded contracts in the seven pilot entities, 100 percent or all 596 contracts were awarded at prices lower than the ABC. This is because R.A. 9184 explicitly provides that the ABC is the ceiling for acceptable bids.”

Former DPWH Undersecretary Encarnacion perceives a gap in the agency's capacity to produce good cost estimates. The lack of capacity for consistently good estimates makes it difficult to interpret the APPI. Without this capacity ABC proposals from the DPWH can turn out to be systematically high, and bid prices below them may or may not represent prudent costs. Encarnacion says a quality review and assurance system for engineering designs and estimates is required in the DPWH to help prevent

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padding of design quantities and cost estimates, and minimize future variation orders, thereby reducing corruption and collusion.

The system could provide, along with the computerized Cost Estimation System (CES), the parameters for preparing approved budgets for contracts. The quality assurance system is expected to result in benchmarking bids of comparable size and complexity over time—and to stabilize bids close to or under the approved budget. The DPWH also needs to be supported in its efforts to develop capacity in and institute, as part of normal operating procedure, value engineering as a tool to evaluate alternative design schemes, prevent over-designing and deviations from approved designs.

LGUs

It is unclear if the BAC observers are notified when negotiations about a change of project scope are done. There is a void here in terms of the GPPB's implementing rules. Former San Jose, Antique mayor and Sangguniang Panlalawigan Board Member Fernando Corvera reveals that where the contracting authority has good intentions, negotiations for the cost of additional works can be the subject of something like a Swiss challenge. The second lowest bidder can be asked to implement the additional works if the currently engaged contractor does not agree to the agency's proposal for additional works. It may be good to embody such procedures and the documentation for decisions made in additional GPPB resolutions.

The Subic-Clark-Tarlac Expressway (SCTEx) case illustrates one important "vulnerability" of infrastructure projects, even those which, like the SCTEx, are largely outside the area of responsibility of the DPWH. This is the "natural" tendency for foreign-funded projects to be over-designed and to exceed, usually by huge amounts, their initial cost estimates. This happens, according to one informant, because many foreign-funded projects, and locally funded ones as well, are conceived and proposed, designed, and pushed by the same consultants who would later be involved in the implementation of the project, a clear case of conflict of interest. (Edna Co: 47)

A limited number of standard costs are available for reference during the preparation of the budget, specifically in infrastructure works. Standard costs being used by the DPWH, for instance, are merely indicative and known only among DPWH personnel and immediate stakeholders. Thus, no objective review could be conducted. Moreover, this scenario manifests the propensity of an agency to command on the levels of appropriation for capital investments. While the DPWH has a database on roads, it does not have one for bridges. Thus, a lump-sum budget for bridges is provided in the agency budget which makes releases and uses of fund a little bit less transparent.

ODA projects

Projects funded out of ODA funds usually rely on government consultants for detailed designs. But Rodolfo "Jun" Lozada, the whistleblower in the aborted \$329 million national broadband project with a Chinese firm, and former NEDA director general Medalla both confirm that for loans featuring some degree of concessionality, it is common for contractors from the source country to have a hand in the hiring of consultants to produce the detailed design. There is a possibility that there are many agencies with no in-house capability to assess prudence of designs and costs.

A desk review yields no quantitative information on the frequency of failures of bids that lead to negotiated contracts. There, however, is information with regard to cost overruns prompted by the expansion of project scope for ODA projects.

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Table 7 Cost overruns on ODA-funded projects

| Project title | Funding source | Implementing agency | Total cost increase (in P Mn) | Total cost increase (%) |
|--|-----------------------|----------------------------|--------------------------------------|--------------------------------|
| Subic-Clark-Tarlac Expressway Project | J BIC | BCDA | 6,478.00 | 24.61 |
| Line I Capacity Expansion Project Phase II | J BIC | LRTA | 4,105.29 | 51.32 |
| Arterial Road Links | J BIC | DPWH | 2,885.58 | 46.99 |
| New Iloilo Airport Development Project | J BIC | DOTC | 2,572.00 | 41.57 |
| Laguindingan Airport Development Project | Korea | DOTC | 2,467.88 | 45.82 |
| Batangas Port Development Project Phase II | J BIC | PPA | 1,837.84 | 33.08 |
| Selected Airports (Trunkline) Development Project (New Bacolod-Silay) | J BIC | DOTC | 1,749.38 | 39.78 |
| Laoag River Basin Flood Control and Sabo Project | J BIC | DPWH | 1,699.71 | 56.58 |
| Casecnan Multipurpose Irrigation and Power Project (Irrigation component) | J BIC | NIA | 1,623.02 | 27.83 |
| Philippine-Japan Friendship Highway Mindanao Section Rehabilitation Project Phase II | J BIC | DPWH | 1,291.79 | 43.32 |

Source: World Bank

Negotiated contracts and variation orders

Negotiated contracts and ODA projects that require significant variation orders or changes in scope both represent the challenge of cost-discovery without resort to the test of the market. The IRR of R.A. 9184 provides guidelines for setting costs for additional works, where similar works have been implemented by the same contractor for the ongoing project. Situations where those guidelines will not be very useful included instances when there are no benchmarks that can be used.

BOT projects

Decisions for projects procured under the BOT rules, except those costing more than P500 million, have recently been decentralized to agencies purportedly to reduce delays. Where the agency has been preparing a project for local or ODA funding, there is a high likelihood that the agency would have the knowledge necessary for assessing prudence of costs as well as possible risks liabilities being passed on to government.

Where there is an unsolicited proposal for a new project not previously contemplated by the agency, however, there is unlikely to be in-house expertise that can scrutinize the private sector offer. Needless to say, however, the presence of expertise or prior feasibility studies does not guarantee that the agency will be using the expertise.

3. Competition

The decision to contract out and determine the mode of procurement or funding modalities will depend on whether there indeed is competition in the market or in the industry or sector.

Negotiated contracts and variation orders

Contract amendments that change the project scope, whether to reduce or increase, are key examples of agency-contractor engagements for which there is no market competition. Unsolicited proposals,

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especially in the case of BOT and joint venture engagements are another broad category of contracts for which there is hardly any competition.

BOT and joint venture

A Swiss challenge is a conceptually sound approach to subjecting unsolicited proposals to the test of competition. However, it will not be an effective due diligence effort if challengers are given only a short period to prepare a bid for a multibillion-peso project. Thus, a Swiss challenge may not even be able to attract serious bidders, especially when challengers are not given full access to the detailed engineering proposal of the original proponent, or have to make a bid for a proposal whose design and materials are specifically suited to the capabilities of the proponent and of its business partners and sub-contractors.

Remote local governments

Geography plays an important part in the emergence of competition. Corvera notes that remote low-density localities are unable to attract competitors. There are signs that the PhilGEPS system is starting to generate interest among contractors in urban areas like Iloilo who may now bid for projects in San Jose, Antique.

The entry of contractors from another province, however, is a game changer. While there is as yet no documentation of the extent to which competition from non-local firms may have been disrupting collusive practices, Corvera says some degree of discretion can still be exercised against the entrant. Discretion to reduce the chances of successful bids or successful project implementation by outside bidders is being used because "the outsiders cannot be relied on" to participate in the local tasks of maintaining politicians' local networks of supporters.

ODA

The large size of ODA contracts has been a frequent reason cited in such reports as those produced by the Philippine Center for Investigative Journalism for the inability of more contractors to participate in bids. On the other hand, in the case of procurement in remote areas, contracts often need to be aggregated to become attractive for bidders. In the construction sector, a contract less than P50 million is considered too small to attract city-based contractors.

Congressional allocation

Despite the provision in the GPRA that requires that announcements be made for provincial projects and those to be funded out of congressmen's Priority Development Assistance Fund (PDAF) or "pork barrel" fund, informants say the practice of contractors being pre-selected by district representatives persists. The regional and provincial directors of the DPWH and other construction agencies, on the other hand, bend to the wishes of politicians. This is because many of them owe their appointments to these politicians and can easily be transferred to other posts.

Elected local and district-level politicians for their part are unable to rely on political parties to lend them the credibility that is needed for winning in elections. Thus they rely on the distribution of jobs, goods, and contracts to ensure that they can maintain the margins needed for re-election. In the extreme, the lack of credibility of political promises about policies and expenditures results in vote-buying, which is not too far removed from the exchanges that are enabled by the exercise of political influence in the procurement of public goods, including infrastructure.

BAC observers mainly participate in the course of ensuring that the competition happens. They are, however, hindered by lack of resources and capabilities, restricted access to information, worries of harassment from losing bidders, and lack of motivation to submit written reports of irregularities they may have observed.

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Absence of procurement policy champion

The DPWH's national BAC receives formal and informal reports about bidding irregularities and contractor pre-selection by politicians. The BAC appears not to know what to do with these reports. The reports are not compiled, and there is no clear manual of operations for this area of its work. But such irregularities and informal reports may actually be integrated in the business process and quality system of the DPWH, since they do not conform to processes and standards.

Delays in government disbursements for completed work reached P100 billion in the transition from the presidency of Fidel Ramos to his successor Joseph Estrada. Such delays are a barrier to the entry of bidders who decide to seek out government contracts. On the other extreme, there have been undocumented cases where payments of delivery services take more than nine weeks on even relatively small amounts, considering that funds are already available with the government and all the transactions are within Metro Manila.

4. Ease of monitoring and presence of capable and motivated observers

The Philippines is known for its vibrant civil society whose engagement in monitoring construction projects has been institutionalized in a number of projects. The country also has oversight institutions mandated to perform monitoring functions.

However, there is unevenness in the capabilities, resources, motivations, and scope of action of groups monitoring construction projects. Informants indicate that ubiquity is an important attribute of an effective monitor. Groups that are ubiquitous would be beneficiary communities, political opposition, religious groups, and staffs of agencies.

The ease or difficulty of monitoring contract implementation, informants say, depends on whether defects or deviations from proper procedures are easy to detect. Informants say vertical structures such as buildings, usually those implemented at the LGU level, are easier to monitor. But flat structures—roads and bridges and structures with hidden components, poles and pylons for ports and dikes, pipes for water systems—are more difficult to observe.

This may mean that more resources and greater capabilities are needed in detecting quality problems in some kinds of infrastructure compared to others. The quality of national projects, especially roads, is also more difficult to monitor because they span many communities and have long stretches where no corresponding communities reside. This is where LGUs may need to be motivated to participate in the monitoring. This need not be a matter of advocacy. If an LGU, for instance, co-finances an inter-municipal or an inter-provincial road, then it is automatically mandated to ensure that the resources it contributes are spent prudently. This is one way of roping in local governments into the monitoring process. ODA-funded projects can be designed so that this kind of stakeholderhood can be achieved.

Procurement monitoring, on the other hand, has been a challenge as few civil society members have the adequate resources, time, strong motivations, and skills and knowledge required for monitoring this tedious and complex process. The same is true for monitoring processes during the planning and budgeting or pre-procurement phase.

5. Dedicated system for receiving, processing, and responding to reports from observers

Monitoring is rendered pointless when findings to do not reach those who should act on them.

Post-qualification

The system of post-qualification mandated in the GPRA may be seen as the germ of a system that will create a demand for updated records on quality and work schedule slippages. The GPRA states that major slippages in quality and delays of more than 15 percent would be grounds for disqualification. The disincentive to bidders is clear—higher net incomes that are earned because of deviations from the quality required by the contract may generate savings in the short term. But they can create risks to a

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contractor as failure to get passing marks in quality will lead to disqualification. The DPWH's Quality Assurance Unit (QAU) may be lax in calling on performance bonds of a contractor and the department may exercise forbearance by just compelling a contractor to remove, repair, or replace portions that feature bad workmanship and substandard quality. But such slippages will still have to be captured in the Constructors Performance Evaluation System (CPES), with the concomitant risk of disqualification at the post-qualification stage for new projects.

ODA

NEDA staff lament that its stakeholders—the NEDA Board and the legislature—do not seem to pay much attention to the paper trail it produces. Consequently, projects with EIRRs that are below 15 percent *ex ante* or those whose EIRRs deteriorate in the course of implementation and deviation from original designs continue to be funded. The role of NEDA with respect to ODA-funded projects is worth mentioning with respect to changes in project scope.

NEDA assesses project cost overruns and changes in contract cost where variation exceeds 20 percent of cost/bid parameter. The NEDA staff assesses projects' EIRR given the adjustment in the bid parameter or work scope against the thresholds social and economic return of 15 percent. NEDA can recommend rejection of proposals or propose discontinuation of the project. There are, however, no examples of projects that have been discontinued due to the deterioration of economic returns following changes in projects scope or cost escalation. While NEDA is not a veto player, the documentation of justifications that it requires provides a good record for the use of decision-making authorities, possibly also of other oversight bodies. NEDA itself uses its findings for improving its own work in terms of monitoring and evaluation and establishing parameters that serve as inputs in estimating the economic and social benefits of infrastructure projects.

DPWH response to findings of quality

Following well-specified standards, the QAU receives reports from its own staff and acts on these by disciplining DPWH personnel. It withholds payments and is empowered to demand corrective works from contractors on pain of warranties and bonds being garnished. There are areas for improvement however, including in the following:

- The district representatives try to influence processes.
- The office of the secretary may be too burdened by other tasks or is not motivated to address issues brought before it.
- The regional staff and QAU staff are lax in enforcing construction standards.
- While it is understandable that the QAU may be perceived as prejudging cases if it publicizes reports that come into its office, the QAU also does not have a plan for engaging with media and civil society. It is only in the case of Bantay Lansangan where there is disclosure of some of the findings, in large part because it is a requirement of the policies of the lending institution, the World Bank. Still, it would appear that such disclosures are not project-specific and are not necessarily intended to trigger action by oversight bodies.

SECTION 6

Recommendations

Transparency has been a major theme in anticorruption initiatives. Civil society monitors, the media, international donor and financial institutions, and even other government agencies have stressed the need for a free and open access to information surrounding public works projects. This is the reason a major reform initiative has been to put pertinent documents online where the public can easily gain access and scrutinize these projects.

But a culture of secrecy still prevails in the construction sector. When former police general Hermogenes Ebdane was DPWH secretary, offices within the department, the Quality Assurance Unit (QAU) included, were barred from releasing information to the media without clearance from higher-ranking officials. The QAU applied the same policy to ordinary citizens, and the unit had no plan to systematically give project-level information to the public.

At the time of this research, a Freedom of Information bill was being deliberated in the Senate and was soon to be approved on third reading by the chamber. It grants citizens access to public documents and records pertaining to most government transactions and operations. If enacted into law, this measure could have a huge impact on construction sector projects.

Certain groups or “publics” involved in the construction sector would be the first to benefit from and use a Freedom of Information Law.

- **Independent BAC observers.** If independent BAC observers will also become mandatory observers in the determination and meting of penalties for both major and minor infractions then, monitors, just like in the case of bidding, will need to have access to pertinent information, including the records of the QAU.
- **Main stakeholders or “publics” of infrastructure projects.** Public works projects are supposed to benefit, either directly or indirectly, a constituency, whether a province, town or even barangay or village. These are the “publics” of an infrastructure project. Hence, they constitute another group that has unassailable reasons for wanting to secure information from the QAU. There continue to be instances when a congressman asks the DPWH secretary to go easy on a contractor caught red-handed so to speak by the QAU. But a paper trail documenting the misdeeds of the contractor will constitute proof, and make it easier for the DPWH to apply the rules on erring contractors. The routine inclusion of BAC observers and of receiving communities and LGUs in the flow of information and documents may significantly reduce the scope for *padrinos* who would intercede with DPWH officials on behalf of their friends in the construction industry.

Other recommendations mentioned elsewhere in this study deserve reiteration:

1. Increasing the scope and coverage of QAUs monitoring work. Civil society groups that monitor public infrastructure could argue that the work of QAU is still limited. An option to consider is an increase in the coverage of its monitoring activity, perhaps through the deputization of civil society groups.

QAU tracks ongoing projects that are being implemented by the DPWH. It works with supervising engineers in the field and documents failures of contractors to abide by the engineering plans. In some instances QAU staff may also call attention to site preparation that may no longer be necessary due to the better-than-expected condition of the terrain. Aside from keeping contractors on their toes, the main value-added of QAU is as a provider of information for work that is still in progress.

In tandem with the project monitoring system of the DPWH, the QAU provides the information that will enter into the CPES data base. The CPES database in turn is the main reference for the post-qualification of contractors. While the chances are high that a contractor will be visited by the QAU within a year or two, the QAUs coverage, however, may not be enough for the purpose of supplying current information for all. A contractor may already be experiencing major delays in the implementation of a project, yet it may still end up as the winning bidder, simply because the QAU did not have more current reports. Nonetheless, contractors' behaviors will change just because the QAU might show up and catch

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misbehaving contractors, and even recommend. Improvements may be desirable if these increase the probability that misbehaving contractors will be caught or if the consequence to being caught is the possible loss of a contract at post-qualification.

2. Stronger Performance Bonds Systems. DPWH monitors for project implementation propose the perspective that the strengthening of the system of sureties and performance bonds will be more important than encouraging civil society groups to do their own monitoring, because few civil society groups are technically capable of doing quality assurance work. The reports that civil society groups make, even when these are technically competent, cannot be used by the DPWH as triggers for actions against contractors. The DPWH still has to dispatch its own field personnel to do the monitoring.

Sureties, performance bonds and the withholding of a portion of progress payments are already operationalized in the implementing rules and regulations (Annex 7) of the Government Procurement Reform Act. One positive effect of these provisions in the law appears to be the willingness on the part of contractors to do the repairs required by DPWH monitors before the projects are accepted. Thus, although a significant percentage of projects monitored by the QAU show contractor failures—slippages in implementation, the frequent need to repair portions that do not comply with detailed engineering specifications and even the need to “remove and replace” work already done—the threat of financial loss on the part of the contractors and of entities that provided the surety and performance bonds appear to provide enough compulsion for addressing monitored deviation from the detail engineering plans.

There are also doubts about the ability of the QAU or even of the DPWH's project monitoring system to actually monitor all aspects of work done. A forty-kilometer road for example cannot possibly be inspected thoroughly by the QAU field staff or by the supervising engineer who will recommend acceptance of the finished project. They are also not in a position to monitor work as this is done sequentially. The compacting of the base in road building for example may not be done thoroughly, but it will be difficult to observe such a deviation from the engineering plan after concrete has already been poured.

However, these considerations do not appear to be fatal to the DPWH staff's counter-suggestion to the idea of expanding contract monitoring capabilities both at the DPWH and by civil society.

According to the staff at the QAU, the system of enforcing compliance with contractual agreements through performance bonds systems stands a better chance of improving the quality of finished work. It can happen that contract monitors will fail to detect slippages in quality. But if performance bonds can be garnished several years later, when defects become visible, this mechanism can provide powerful disincentives for chiselling on quality by contractors.

None of the resource persons interviewed for this research claims that performance bonds have been able to change the behaviour of DPWH contractors. In the course of research for this paper the following have been asserted by former DPWH officials and contractors:

Performance bonds are not reliable because premiums are not being paid. There is apparently collusion between the financial entities that issue the performance bonds on behalf of contractors and the contractors themselves, with the issuer mainly helping contractors comply with documentation to secure payments from the government, but also tolerating non-payment of premiums, which renders it difficult for the government to call on the bonds. Apparently there is no system for monitoring contractor compliance with performance bonds covenants after project completion and receipt.

Force majeure explanations are always utilized by contractors in order to prevent the government from calling on its performance bonds. It is not clear that the DPWH legal department is able to rely on precedents and rules agreed with contractors that would allow for the easy determination of whether or not the *force majeure* explanation is valid. It is not clear that the DPWH staff have the incentives to contest claims of *force majeure* and to get hold of the performance bonds, given the prolonged legal engagements that this would require.

Bail out and regulatory forbearance by the agency. The garnishing of substantial performance bonds can cripple a construction firm financially. Just as the possibilities for malfeasance are magnified when there is an opportunity for acquiring large rents through rigged bids and through overpriced variation orders, the possibility of extraordinary losses through government action to

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call on performance bonds will predictably create incentives for rigging the regulatory process. The discovery of irregularities before the contract is consummated requires meticulous recording and mandatory reporting for private sector and civil society observers. Similar mechanisms that would ensure transparency and compliance with standards of procedure do not yet exist for transactions that would lead to the call on performance bonds. It may be important to spell out the rights and obligations of independent parties during this stage to strengthen the integrity of the process.

Design problems can also be cited by contractors as reasons for the failure of the structure to hold up. This may be a valid issue. The design-build approach is being contemplated because of this, and RA 9184 IRRs have already been drafted for the design-build approach to procurement of public works.

The staff of the QAU cites the example of the system set up with the concessionaires of the Metropolitan Waterworks and Sewerage System (MWSS), which is an agency attached to the DPWH. The MWSS example is seen by QAU staff as an indicator of how performance bonds can be improved and of how they can sufficiently affect contractors' compliance with contracts.

The proposal for using performance bonds as a mechanism for compelling contractors to be faithful in following detailed engineering plans is being taken seriously by QAU staff, partly because it is already in the procurement law. There may indeed be major weaknesses in its implementation that need to be addressed. The approach to using the performance bond at the MWSS may prove instructive, as it is embedded in a system that addresses some of the concerns of stakeholders concerning performance bonds:

- i) In case of disagreement between MWSS and the private sector, a dispute resolution provision of the Concession Agreement allows the private sector to invoke an "Appeals Panel," an internationally constituted group of three members, one appointed by the concessionaire, one by MWSS and one international arbitrator. To avoid interminable litigation Article 12.5 of the Agreement with the private sector partners mandated that the parties waive their right of appeal beyond the Appeals Panel.
- ii) Each concessionaire -- who is both a designer, a builder and an operator -- is accountable mainly for outputs. The output is a flow of services for an ever-expanding clientele. Each private partner is required to meet the same standards for outputs such as water pressure, continuity of service, and customer service; but technical standards for inputs such as construction methods and pipe diameter are not specified. The government does not specify the design as long as there is broad compliance with engineering standards previously being utilized by the MWSS. As the concessionaires go about the task of adding millions of residents to the network, they have faced few restrictions on the methods and materials they use.
- iii) A performance bond is placed in an escrow account in a bank. This could be forfeited in case the concessionaire unjustifiably abandons the contract, or is terminated for contract violation;
- iv) Force Majeure in Article 16, Section 16.10 of the Concession Agreement defines what could constitute valid grounds for extraordinary tariff adjustments;
- v) The budget of MWSS and of a regulatory office is financed by payments from the private sector contractors. This is important because it renders the regulatory body financially independent of the government;
- vi) The MWSS regulatory office used benchmark or yardstick regulation. Aside from relying on its own technical expertise, the regulator compares the explanations being made by its private sector partners. Thus, claims about the extent to which the El Nino phenomenon or the Asian financial crisis (*force majeure*) prevented them from delivering on their promised outputs were checked using yardstick regulation.

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The Philippine government decided to draw the performance bond due to the failure of the private partner in the West Zone to comply with its amended contractual obligations. This came after adjudication by the Appeals panel and after a gambit on the part of the private company to stall the process by going into corporate rehabilitation. The private sector contractor, however, fought and bargained very hard to prevent its performance bond from being called and secured by the Philippine government. Filomeno Sta. Ana of the group Action for Economic Reform (AER) documented the resulting hesitation on the part of government.

Notwithstanding that, the MWSS experience could be instructive in improving the use of performance bonds. The Government Procurement Policy Board (GPPB) already mandates that disputes be resolved through alternative dispute resolution (ADR) mechanisms if they cannot be resolved by the agency head. However, the quality of the ADR rulings will only be as good as the provisions in the contract specifying with sufficient detail what kinds of disputes are within the ADR mechanism's mandate and what facts should be established by the petitioner. The conceivable contingencies that would constitute *force majeure* should be defined beforehand. This can be based on past experiences for particular types of infrastructure. For instance, rainfall and floods above certain norms that lead to the collapse of roads and bridges can be listed as constituting *force majeure*. Financial independence, may also be important, in order to allow the government to compensate agents, that would get hold of performance bonds. The database should be strengthened to permit the DPWH access to benchmarking approaches that would validate claims of contractors regarding the extent of the damage or delay that was due to factors beyond their control. The breaking up of major contracts into smaller lots may help the DPWH compare projects using objective criteria and reduce staff discretion in processes that are supposed to lead to official decisions to draw on performance bonds. While output-based contracting may work in the water sector, this approach may work better in the case of road and bridge maintenance, rather than in construction.

3. Strengthen capacity building and legal protection for independent civil society and observers.

This system is currently not operating, five years since the law was passed. The Ombudsman has previously admitted to the difficulty of fulfilling its mandates. When the GPRA was passed as a law, the Office of the Ombudsman had no choice but to accept this as a new mandate, on top of those that it is still not able to fulfill. The accounting of the gaps in organizational capacity is clearly noted in the report filed during the time of former Ombudsman Simeon Marcelo. It will be important for civil society, the private sector and government to support the institutional strengthening of the Office of the Ombudsman.

GPPB consultations in the provinces have also revealed the high cost in time and possible litigation for independent observers. The GPPB may need to establish a system of support for independent observers. Without addressing the other burdens and weaknesses, there have been initial attempts to increase the effectiveness of the Office of the Ombudsman. Procurement Watch Inc., for instance, developed a template that independent BAC observers could use in the performance of their duties. The form and content specified in the template corresponds to the kinds of reports that the overstretched lawyers at the Office of the Ombudsman need to process. It will be important to assess what other efforts need to complement these initial ones in order to make the presence of independent observers in BACs meaningful.

4. Non-duplication by civil society of work done by QAU and project monitoring system (PMS). It may be important, however, for civil society to establish engagements with procuring agencies that would do the following:

- ensure access to information for community-based monitors;
- conceptualize civil society engagement with procuring entities as a system of learning how to wave red flags in order to trigger action by institutional actors;
- engage with the NEDA secretariat to help them translate findings about low quality at entry and official actions contrary to the secretariat's prudent advice. Such a "translation" should help the NEDA secretariat reclaim tasks that have been taken away from the NEDA secretariat and devolved to agencies that do not have the capability to effectively engage the private sector. Such a translation should also increase the traffic of ideas between NEDA and media and between NEDA and oversight bodies like the Senate.

5. The use of independent engineering consultants. The absence of reliable engineering expertise in various procuring entities, including local government units can mean at least two things for the work of both civil society and government infrastructure monitors. Without reliable engineering capacity on the side of the government:

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i) contractors fulfillment "to the letter" may, for instance, simply mean that sturdy structure but one where no one noticed that the bill of quantities was far in excess of what was needed for the structure;

ii) variation orders and price escalation would continue to be the rule, as original designs are changed after bidding. When this happens, the competitive pressures that pushed bidders to offer good value for government's money would not be present as negotiations are held to amend contracts. When this is known to happen, the contractors who will win in the bidding will not be those who are efficient, but those who are confident that they can persuade the procuring entity to alter the contract after the losing bidders have gone home.

Perhaps the work of strengthening the professionalism of procuring agencies, including their engineering capacity can be made part of the capacity-building and professionalization in procurement that the GPRA promised. Monitoring such capacity-building work plans can be an important complement to the tasks that independent monitors are doing.

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