



## AN INTRODUCTION TO THE CONCLUSION: 100 DAY REPORT AND PLAN OF ACTION

1 October 2010 - 8 January 2011

## THE COMMISSION IN CONTEMPLATION: A PREFACE

*An era can be said to end when its basic illusions are exhausted...*

– Arthur Miller

The first one hundred days is a political window of opportunity where a new direction can be created, a new momentum forged. This “100 Day Report” seeks to provide an informed outline of a course of action, identifying “quick wins,” while demonstrating how the first few days relate to an envisioned “last days”—to orderly wind down the Commission’s pending tasks, under §2(a) of E.O. 1, s. 1986. The goal that is good government cannot be achieved overnight. Institutional reforms and the challenge to eliminate corruption is an iterative process that requires constant “planning-doing-acting-checking.” In order to bring a sense of closure to the dark episode in Philippine history that was the Marcos years, it is important to bring sense and sensibility to the fore.

The Commission is setting the record straight (and committing to getting things done). It is, thus, the aim of this Commission to outline a concrete plan of action that is informed by rational and reasoned direction. This Commission is fully committed to its mandate, and prepared to fight the good fight. Much has been said about the Commission. Perhaps with this truth-full treatise, much, too, can be learned.

## Assistance to CARP

- As mandated by Republic Act No. 6657, otherwise known as The Comprehensive Agrarian Reform Law, the PCGG remitted to the Bureau of Treasury for the account of CARP the total amount of **₱86,010,636,190.81**.
- PCGG has contributed the total amount of **upwards of 80%** of the authorized funding of the CARP for the twenty year period that it has been in existence.
- These remittances were used to implement various CARP related projects, such as: **construction of farm to market roads, bridges, irrigation facilities, acquisition of post harvest facilities, rural electrification, potable water supply, school buildings, extension and training services, credit assistance, 2,056 scholarships, 1,784 Agrarian Reform Communities nationwide, 5,053 farmer organizations formed with 497,293 members**, and other related agricultural projects.
- PCGG has recovered and transferred to DAR **1,650 hectares of agricultural land which were distributed to farmer beneficiaries** of Cavite and Laguna. Another vast area in Biliran Province consisting of **1,407 hectares had been transferred** to the provincial government and distributed to legitimate farmer beneficiaries of the province.

### **The Commission’s Position Paper on CARP (Excerpts)**

*[With updated data, as of 14 January 2011]*

## I. ABOUT THIS TRUTHFUL COMMISSION

*"If you board the wrong train, it is no use running along the corridor in the other direction."*

– Dietrich Bonhoeffer

### A. CONTEXT

As with any other creature of politics, the Commission constantly contends with issues relating to its performance and, consequently, its relevance. On its 25<sup>th</sup> year, it stands as the oldest government agency, post-Marcos.

The Commission is often subjected to criticisms relating to its apparent failure to deliver on its mandate and its previous excesses. Its highly personalistic/persona-driven organizational character binds its success and reputation with its leadership. Plainly put, the Commission, whether rightly or wrongly, is often perceived to be “good” or “bad” depending on the public perception and reputation of its leaders.

At present, the average age for the Commission’s top management is 40 years old—nearly half that of the past Commission’s leadership. Beneath the surface difference, however, lies fundamental ones that make this Commission a marked departure from its immediate predecessor. The new administration has injected and infused new life into the Commission, hopefully, one that would carry its work through to the finish line. The Commission’s 25<sup>th</sup> Anniversary is a rare window of opportunity for a Commission that has come of age to showcase its

life. Year-long activities have been lined up to recall and re-introduce the Commission to the Filipino people. (see Annex A)

### B. LEGAL FRAMEWORK

Under Executive Order No. 1, s. 1986, the Commission has three mandates:<sup>1</sup>

- (a) Recovery of ill-gotten wealth of the Marcoses;
- (b) Investigation of other cases of graft and corruption; and
- (c) Institution of corruption prevention measures

At present, following the abolition of the Presidential Anti-Graft Commission, the recent Supreme Court decision on the Philippine Truth Commission of 2010, as well as the widely lamented failure of the Office of the Ombudsman to perform its functions, the Commission is, in effect, the country’s sole anti-corruption agency.<sup>2</sup>

That the Commission was created by the late President Corazon Aquino, in the exercise of her executive *and* legislative powers, puts it in a unique position. That it was central to the agenda of the democratic government is revealed by the fact that it was the first, as well as the subject of a succession of executive orders.<sup>3</sup> The confluence of factors that made its creation possible—authorizing political environment, political will, and popular support—is a rare combination and occurrence in Philippine politics.

These extraordinary circumstances places at the President’s disposal, a quasi-judicial agency, entrusted with impressive powers to:

- (a) Conduct investigations;
- (b) Provisionally take over business enterprises, until otherwise disposed of/privatized;
- (c) Enjoin or restrain acts that threaten or impair its efforts;
- (d) Administer oaths and issue both *subpoenas ad testificandum* (testimony of witnesses) and *duces tecum* (production of records and documents);
- (e) Cite persons in direct or indirect contempt, and impose corresponding penalties therefor;
- (f) Seek and secure assistance from any government agency, office, or instrumentality;
- (g) Promulgate such rules and regulations as may be necessary to fulfill its tasks

In addition to these awesome powers, Executive Order No. 2, series of 1986, further grants the Commission personality and prerogatives of a diplomatic nature, by specifically authorizing it “to request and appeal to foreign governments wherein any such assets or properties may be found to freeze them and otherwise prevent their transfer, conveyance, encumbrance, concealment or liquidation xxx.”<sup>4</sup>

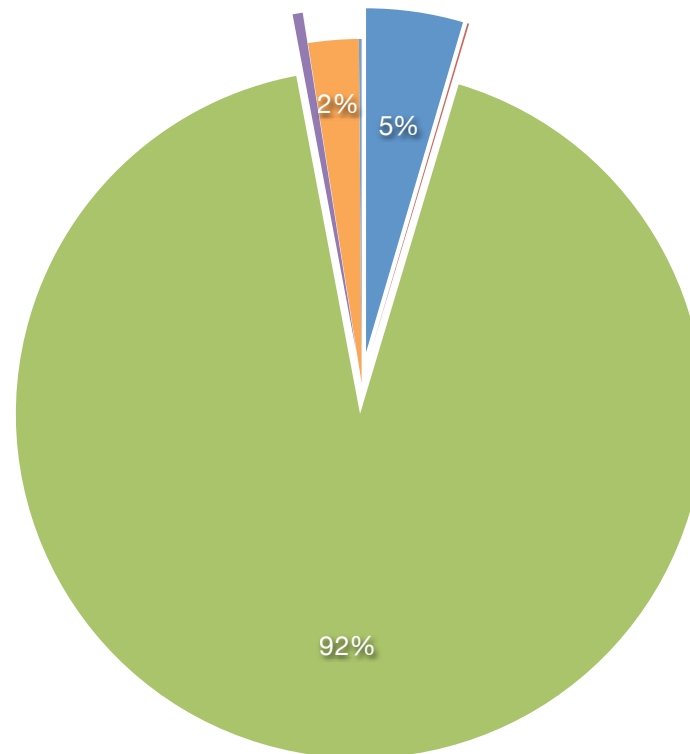
These circumstances taken together, the Commission can serve as a vehicle by which cases of graft and corruption can be investigated, filed, and prosecuted, upon the instructions of the President.

#### Total Collections and Recoveries

OP	4,231,548,616.37
OSG	76,518,759.56
CARP	86,010,636,190.81
PCGG	441,209,262.06
Gen. Fund	3,109,225.49
Escrow	2,200,567,658.97
Lands	118,466,731.27
	<b>93,082,056,444.53</b>

### C. THE STARTING POINT

The Commission is often derided for its apparent failure to deliver on



its mandate to recover the Marcos ill-gotten wealth. Yet, outside of the Philippines, the efforts of the Commission have been lauded as among the “most important and successful asset recovery cases in the last 20 years.”<sup>5</sup>

It is important to note that the Marcos case

“marks the starting point for the asset recovery agenda.”<sup>6</sup> It was important for the Commission to balance the drive and pressure to deliver prompt and immediate action, while working in a socio-legal terrain that was previously unexplored. Unknown to most Filipinos, the Commission’s work has had a positive and lasting impact on Swiss legislation.<sup>7</sup>

### Ferdinand Marcos's Swiss Bank Legacy: *(Excerpts)*

"The case of some \$500 million stashed in Swiss banks by the former dictator of the Philippines, Ferdinand Marcos, has prompted reforms that make it harder for corrupt rules and criminals to stow assets [in Switzerland].

xxx. It took 12 years for the Marcos money to be returned to the Philippines. Moving to close loopholes in the country's banking and legal structure as efforts to restore the money stalled, Swiss lawmakers made money laundering a crime for the first time, and overhauled its legislation for assistance to foreign governments seeking return of illicit wealth. It is now easier for Switzerland to give back disputed monies.

The case prompted Swiss bank regulators to make significant changes in banking's inner sanctums, which had routinely welcomed enormous sums with few, if any, questions asked. For the first time, banks were obliged to scrutinize funds from foreign political figures. Banks also had to take greater steps to ascertain the true owner of funds before accepting them for deposit. xxx"

*[On the opposite inset are some of the landmark events in relation to the efforts to recover the "Swiss accounts," as narrated by the World Bank-Stolen Assets Recovery (StAR) Initiative.<sup>8</sup>]*

**I. Cash Recoveries.** Assets and monies recovered and remitted by the Commission come from either surrendered or sequestered properties. PCGG's cash recoveries are proceeds realized from the sale of recovered assets which are then turned over to the Bureau of Treasury, in trust for the Comprehensive Agrarian Reform Program (CARP). The Commission, in coordination with the Privatization Council, plans and programs the privatization of assets. (see Annexes B and C.)

**II. Civil and Criminal Cases Pending in Various Courts.** As a necessary corollary to the Commission's power and authority to investigate (and

### Case Study: Philippines

- **February 28, 1986:** xxx Informal representations were made to the U.S. and Swiss courts to freeze Marcos assets abroad.
- **March 25, 1986:** Swiss authorities froze Marcos assets in Switzerland.
- **April 7, 1986:** PCGG filed a request for mutual assistance with the Swiss Federal Police Department under the provisions of the International Mutual Assistance on Criminal Matters Act (IMAC). This was not accepted, on the grounds of being "indeterminate and generic."
- **December 21, 1990:** The Swiss Federal Supreme Court authorized the transfer of Swiss banking documents on Marcos deposits in Geneva, Zurich, and Fribourg to the Philippine government. It gave the Philippine government one year in which to file a case for the forfeiture of the deposits in Philippine courts, failing which the freeze would be lifted.
- **December 17, 1991:** PCGG filed civil case 141 in Sandiganbayan, seeking to recover the Marcos assets.
- **August 10, 1995:** PCGG filed with the District Attorney in Zurich a Petition for Additional Request for Mutual Assistance asking for asset repatriation even before the rendering of a final judgment in the Philippines. It also showed that the Marcos assets in Switzerland were a product of embezzlement, fraud, and the plunder of the public treasury.
- **August 21, 1995:** Examining Magistrate Peter Cosandey granted the request and ordered all Marcos-related securities and accounts transferred to an escrow account with the Philippine National Bank (PNB). However, the Zurich Superior Court of Appeals denied the Order.
- **December 10, 1997:** The Swiss Federal Supreme Court upheld Cosandey's Order. In April 1998, the Swiss deposits were transferred to an escrow account in PNB.
- **July 15, 2003:** The Philippine Supreme Court issued a forfeiture decision in respect of the Marcos Swiss deposits.
- **February 4, 2004:** PCGG remitted to the Bureau of the Treasury the amount of \$624 million pertaining to the deposits.

### ***Stolen Asset Recovery (StAR) Initiative: Challenges, Opportunities, and Action Plan***

by express mandate to do so), the Commission took charge of preparing and filing the necessary cases against the Marcoses and their cronies. (see Annex D) Since then, however, the prosecution of these cases are, for the most part, being handled by the Office of the Solicitor General

(OSG) and the Office of the Special Prosecutor (OSP). (This is due to the fact that the OSG is the Commission's statutorily mandated counsel.)<sup>9</sup>

Table of PCGG Cases			
<b>Sandiganbayan</b>			
Civil Cases			
Filed by PCGG			
Forfeiture		8	
Reconveyance, Restitution, Accounting, and other civil cases		48	
Filed against PCGG		29	
			<b>85</b>
Criminal Cases			
Behest loans		4	
Other criminal cases		12	
			<b>16</b>
<b>Ombudsman</b>			
Forfeiture		1	
Other criminal cases		3	
Behest loans		28	
			<b>32</b>
<b>Regional Trial Court</b>			<b>27</b>
<b>Municipal Trial Court</b>			<b>6</b>
<b>DARAB</b>			<b>10</b>
<b>NLRC</b>			<b>25</b>
<b>Supreme Court</b>			
Behest loans		13	
Other cases		62	
			<b>75</b>
<b>Court of Appeals</b>			
			<b>15</b>
	<b>TOTAL</b>		<b>291</b>

### Behest Loans: The Investigation of (Non-Marcos) Cases of Graft and Corruption

Owing to its wide latitude and mandate to investigate cases of graft and corruption (as may be referred by the President), on 8 October 1992, *then* President Fidel V. Ramos issued Administrative Order No. 13, creating the Presidential Fact Finding Committee on Behest Loans. Initially directed to investigate and make appropriate recommendations, the Committee was later further directed to file and prosecute the appropriate legal actions relating to the recovery of deficiency claims.<sup>3</sup> Pursuant to this expanded authority, the Commission was specifically mandated “to render its full assistance and support.”<sup>4</sup> Recognizing the “full assistance and support that the Legal Department of the PCGG” rendered to the Committee and “being the agency most suited to perform the tasks of filing and prosecuting behest loans cases,” *then* Pres. Gloria Macapagal-Arroyo effectively transferred the prerogatives and tasks of the Committee to the Commission.

**III. Immunity and Compromise Agreements.** The Commission has the authority to grant immunity or enter into compromise agreements. Consistent with public policy—and supported by jurisprudence recognizing “compromise” as “a form of amicable settlement” <sup>10</sup>—the Commission has entered into such valid compromise agreements.

### Compromise/Immunity Agreements

- |                             |                            |
|-----------------------------|----------------------------|
| 1. RP v. De Venecia         | 17. Anthony Lee            |
| 2. RP v. Martel             | 18. PDAF                   |
| 3. RP v. Ganut              | 19. Gabriel Singson        |
| 4. Roberto S. Benedicto     | 20. Jesus Tanchangco       |
| 5. Jose Y. Campos           | 21. Jose F.S. Bengzon, Jr. |
| 6. Meralco Foundation, Inc. | 22. Alejandro Simeon       |
| 7. Potenciano Ilusorio      | 23. Oscar Cariño           |
| 8. Roberto Ablang           | 24. Antonio Floirendo      |
| 9. Baltazar Aquino          | 25. Mantransco             |
| 10. Gerardo Flores          | 26. J. Lorenzo Vergara     |
| 11. Anos Fonacier           | 27. Jesus J. Vergara       |
| 12. Rolando Gapud           | 28. Enrique Razon          |
| 13. Baltazar Aquino         | 29. Ricardo V. Quintos     |
| 14. Rodolfo Cuenca          | 30. Placido Mapa           |
| 15. Jose Eduque             | 31. Evelyn Singson         |
| 16. Jaime Laya              |                            |

## D. STEMMING THE TIDE

From day 1, it was abundantly clear that the Commission was in dire need of reforms, both as an institution and as an organization. And while such reforms could not (realistically) be implemented wholesale, they could be rolled out according to a rational plan hewn along ethical principles and change management.

In order to proceed in this direction, the Commission had to deal squarely with its past.<sup>11</sup> In this connection, the Commission welcomed the resolution from the Truth Commission requesting it to submit issues of graft and corruption (from the past administration), as it coincided with the Commission's own reform efforts. In the course of its study, the Commission uncovered issues relating to substantial

### Outline of the Preliminary Report to the Truth Commission

- A. Unliquidated Cash Advances
- B. PNB-Retained Fund
- C. Apparent Misuse of Public Funds
  - a. Bloated personnel complement
  - b. Superfluous counsel
  - c. Newspaper abuses
  - d. Water bills
- D. Administrative and/or Criminal Cases
- E. Questionable Decisions/Agreements
  - a. IBC-13's JVA with R-II Builders/PRIMESTATE
  - b. Conversion of SMC common shares into SMC series 1 preferred shares
  - c. PIMECO MOA

allegations of unconscionable excesses—globetrotting, mismanagement, unliquidated cash advances, unprofessional and unethical conduct, among others. These abusive and corrupt practices were documented endorsed to the Truth Commission in a report that the Commission submitted through the Department of Justice.

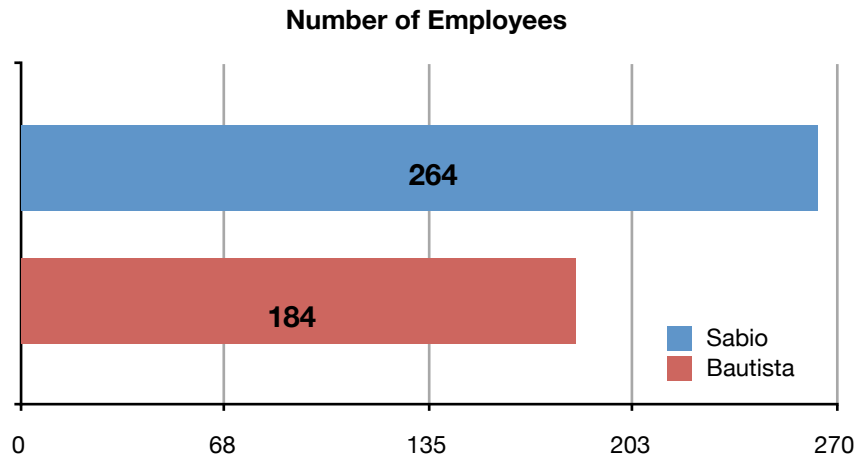
### “Preliminary Report for the Truth Commission” (Highlights)

- Based on information obtained from the accounting office of PCGG, former Chairman Camilo Sabio has, to date, unliquidated cash advances amounting to PhP2,158,692.99. Of this amount, PhP1,658,692.99 comes from the National government appropriations and PhP500,000.00 from a donation by the Philippine Development Alternatives Foundation (PDAF) to PCGG xxx.
- Re: OMB-C-A-09-0606-J; “[Sabio] failed to remit PCGG-collected deposits to the Bureau of the Treasury amounting to PhP10,350,000; [Sabio] acknowledged receipt of this sum in the form of cash advances and partial remittances of the Mid-Pasig Land Development Corporation to PCGG from the proceeds of sale of Anscor shares in 2006.
- It appears that PCGG's use of [the PNB-retained fund] wholly for travel costs amounting to US\$3,964,102.97 is marked by the following attributes: (1) unliquidated; (2) irregularly disbursed; (3) clearly excessive; and (4) in some instances, ultra vires, in that it was used for travels clearly beyond the stated parameters of the fund.

Its preliminary report having been submitted, the Commission continues to pursue its institutional and organizational reforms to keep the excesses and wrongdoings of the past from stymieing its own independent agenda.<sup>12</sup> (see Annex E)



In the first month alone, since the new Commission was constituted, it has had to perform its own “truth-seeking” functions within the Commission, looking into issues that had implications on the integrity of its operations. A fact-finding team was constituted resulting in the



termination of an individual who was intercepted while trying to spirit away some official documents. The team’s work resulted in recommendations relating to the fidelity in the custody and care of documents, as well as office policies relating to document security.

Unsettled by the excesses of the previous Commission, austerity and cost-cutting measures were immediately put in place in order to serve the fact that “every peso counts.” (*“Ang bawat pisong ginagastos sa gobyerno ay pinag-aambag-ambagan ng milyun-milyong Pilipino.”*) Each account or transaction requiring the disbursement of public funds was closely scrutinized. Working as a team, the Chairman and the Commissioners provided the necessary “checks and balances” to

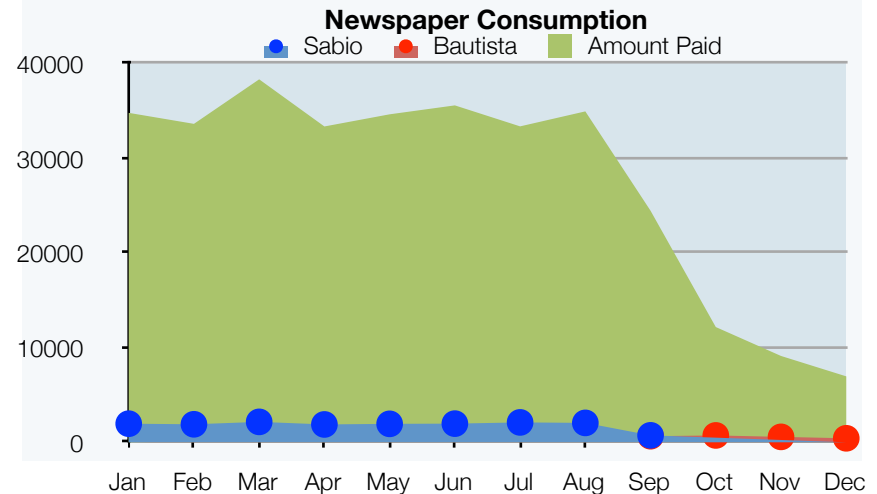
the Commission’s expenses. The following practices are representative of these efforts:

**Foreign Travel.** Confined only to extremely meritorious cases requiring urgent and personal attention (and on Economy class), supported by a lean complement of only the most essential Commission official(s);

**Contracts and Transactions.** Subjected contracts to close scrutiny and review, at times resorting to re-negotiation in order to ensure that the best deal is obtained in favor of the government. Procurement and purchasing policies were strictly monitored, with a view towards achieving cost-efficiency without sacrificing quality;

**Consultants and employees.** Greatly reduced the number of consultants and weeded out “15-30” personnel;

**Cash advances, allowances, and allocations.** Reduced cash advances for special disbursing officers (in order to ensure greater transparency and accountability), as well as the excessive allowances and allocations that have been subject of Commission on Audit reports,

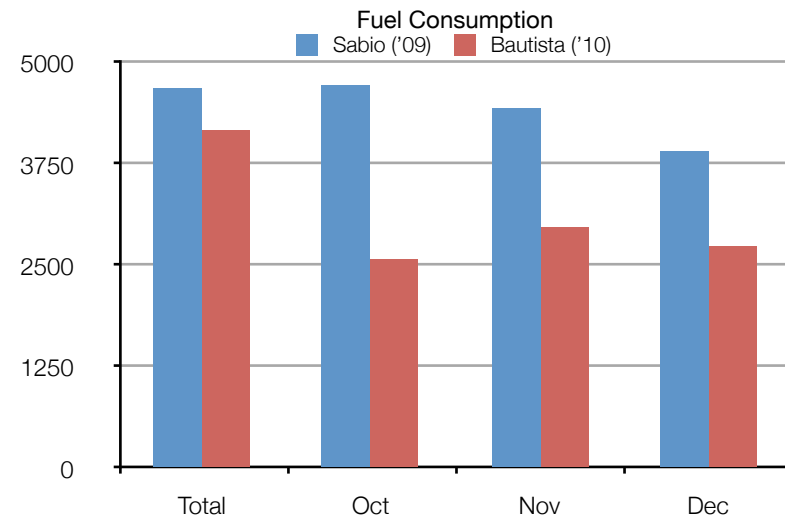
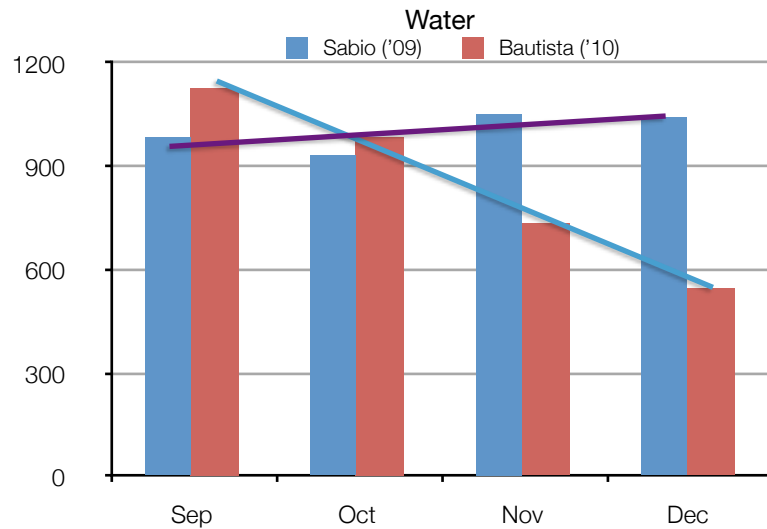
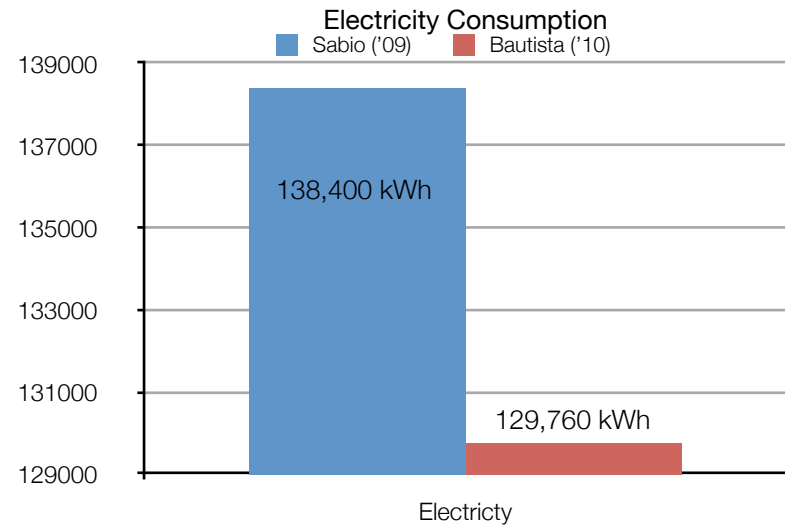




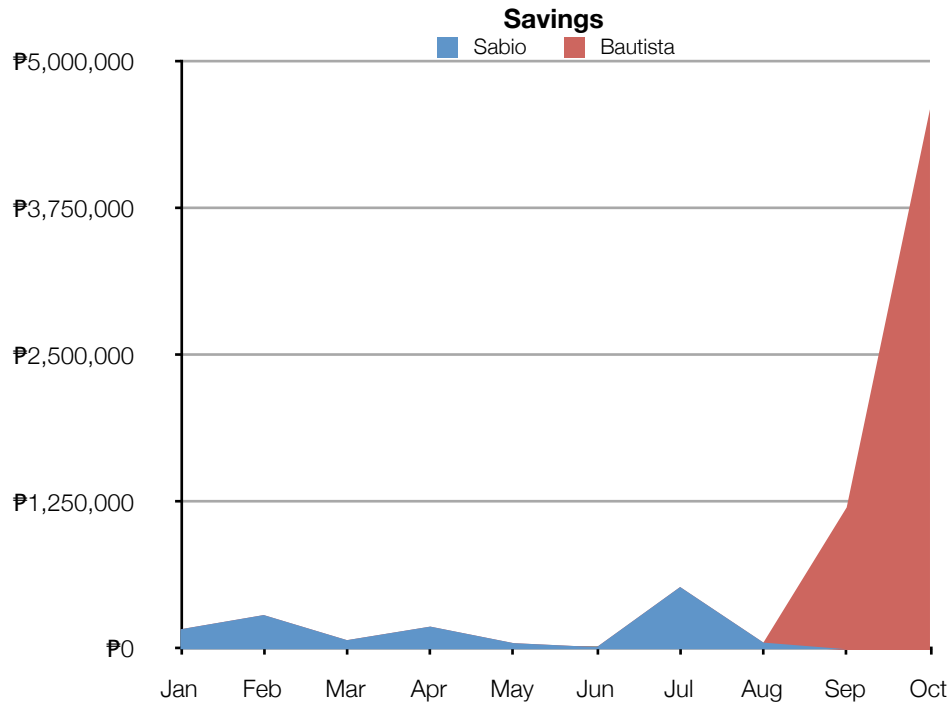
e.g. unconscionable cellphone roaming charges during frequent foreign travels;

**Unconscionable expenses.** The Commission has drastically reduced the newspaper allocations to each office, enforced simple and achievable energy-saving measures (e.g. air-con and lights off at noon, carpooling for members of the Commission, etc.), and reduced wastage and stopped wasteful practices. Stocking of supplies were re-assessed, in certain instances, reducing and discontinuing certain unnecessary provisions;

**Unprofessional behavior.** Adhering to high ethical standards allows the Commission’s leadership to demand the same of others, putting in hours above and beyond the call of duty. The present officials are well-aware that their conduct, both inside and outside the office, also reflect upon the Commission;



The most significant of these efforts relate to the deflation and streamlining of an overly bloated Commission which directly and positively affects the operations of the bureaucracy, and eases the pressure on limited government resources. From a complement of two hundred sixty four (264) personnel—at least forty one of which were under guise of “consultants” to the previous Chairman—the Commission managed to reduce the same to one hundred eighty four (184), generating considerable recurring savings. Altogether, the Commission’s efforts have yielded substantial savings.



#### D. EXTERNAL RELATIONS

These efforts have been paying off. A clear indication of faith and confidence in the Commission is the steady stream of support that it has been receiving from various institutional partners. The Commission has a d e s i g n a t e d

Commissioner-in-Charge for managing and coordinating donor relations. (A “partners’ night” is already in the planning stages, scheduled for implementation in the first quarter of 2011.) For the first time in the history of the Commission, it held a series of “focus group discussions” that will feed into its first strategic planning seminar scheduled for the end of January. Riding on this wave of optimism, the Commission will pursue these partnerships more actively in the coming months.

##### Actual Partners

- Friedrich Naumann Foundation for Liberty
- American Bar Association (USAID)
- Management Systems International (USAID)

##### Potential Partners

- World Bank
- Stolen Asset Recovery (StAR) Initiative
- Anti-Money Laundering Council (AMLC)

##### What about the victims of human rights violations (during the Marcos years)?

The amount of PhP10 billion pesos was set aside for victims of human rights violations, taken from the PhP35 billion Marcos Swiss accounts remitted in 2004 (as confirmed by the Bureau of the Treasury).

As an expression of its support for the compensation of the victims of human rights abuses (during the Marcos regime), the Commission hosted and facilitated the recent visit of Ambassador Valentin Zellweger, Head of International Law of the Swiss Foreign Ministry, in coordination with our Department of Foreign Affairs.

During the said visit, Commission officials, together with Amb. Zellweger, met with the Commission on Human Rights Chairperson and the respective heads of the Committees on Human Rights of the House of Representatives and the Senate,<sup>13</sup> in the hopes of urging the passage of the long-pending Human Rights Compensation Bill. The reception and feedback from both houses of Congress has been, generally, positive.

Since then, Commission representatives have attended meetings called by both Houses for the said bill.

## E. CHANGE MANAGEMENT

Change management in the public sector is no easy task. Deep-seated values—whether aptly termed as such or unfortunate misnomers—need to be rehabilitated, if not completely uprooted.

The Commission aims to professionalize the bureaucracy and invest in its people. The first crucial step in this direction is the two-pronged challenge of paring and whittling down a bloated bureaucracy in order to retain those who deserve to remain in its employ. Apart from restoring morale among the deserving, this ensures that the Commission is kept to a manageable size, doing away with

redundancies and inefficiencies that take its toll on limited government resources.

Rational incentives, not patronage, is the way to drive performance in the public sector. Whereas, in the past, Commission employees have been overly politicized, its present leadership aims to insulate them by ensuring that “work performance” maintains its essential link to “employment benefits” and, thus, are received as a matter of demandable standard.

Above and beyond this bar, however, the Commission is raising its demands of its employees.

The Commission has also committed to upgrading its facilities in order to improve their working conditions. It has already commenced construction works and aims to complete the following projects in the first quarter of 2011:

- Training Room/Business Center/Lawyers’ Lounge
- Renovation of Dilapidated Restrooms
- Employees’ Cafeteria

The Commission is always actively seeking ways to improve productivity and incentivize the bureaucracy. This concern is made manifest through the following:

**Flag Ceremony.** At the start of every workweek, its leaders have been making it a point to attend the ceremony. This effort has been rewarded by the employees’ near-perfect attendance, as well as improved morale (in stark contrast to past practice).

**Management Committee Meeting.** The institutionalization of regular management committee meetings has allowed the Commission's leadership to receive feedback from the other officers and employees, giving them a frank and candid voice to raise and address issues and concerns to the Commission.

**Change Cues.** In order to support and signal the ongoing changes, the Commission has firmed up its policies on uniform/dress code, tardiness, and the wearing of IDs.

Realizing that its legal team is central to its long-drawn battle to recover the Marcos ill-gotten wealth, the Legal Department went through a systematic and rational reorganization to improve its operational capacity. Complementing these changes is the introduction of "performance measurement and evaluation" (e.g. "forced ranking" type of evaluation and peer evaluation) in order to make the legal team more competitive and to incentivize excellence. These changes aim to make the department more responsive to the Commission's needs.

Feedback gathered from persons from both within and outside the Commission indicates that there is widespread consensus regarding the palpable change in the atmosphere in the Commission. The sense of camaraderie is at an all-time high, making the Commission truly collegial: participative, inclusive, and consultative. This unity of vision and purpose has allowed the Commission's leadership to discuss issues and thresh out diversity in opinion respectfully and rationally, resulting in principled responses and decisive action.

In fine, the following are but some of the representative policies and important policy shifts in the operations and workings of the Commission:

**Memorandum No. 1.** In order to highlight the importance of "[bringing] a new level of professionalism and dynamism to the work" of the Commission, the first Memorandum that was issued by the Chairman pertained to the "Standards and Criteria for the Selection of Applicants." This Memorandum required all applicants—most notably, the *co-terminus* employees from the previous Commission—to submit, among others, a *Curriculum Vitae* and a 1-Page Essay addressing their past *and* intended contributions to the Commission. All applicants were, thereafter, screened further in a panel interview conducted by the Commissioners.

**Clearly defined Vision, Mission, and Core Values.** Taking after the "New Public Management" school of thought—"reinventing government"—treating "citizens" as "customers," incorporating principles of economics, and balancing decision-making from three dimensions: legal, economic, and moral.

**"Lawyer-Clients: The Commission and the Filipino People."** Recognizing that the Office of the Solicitor General is its statutory counsel, the Commission will provide its full cooperation as a "client," mindful of the fact that its actions and decisions should be for the better interests of the Filipino people. This arrangement will result in a leaner and more focused task force that will handle the Commission's cases.

**Green initiatives.** The Commission is introducing "green initiatives" to the extent that they are possible: "lights/computers off" during lunch breaks, energy-efficient lighting, and repair of pipe leaks, etc. are all in line with trying to minimize and prevent waste.

**MISSION and VISION.** To restore the institution's integrity and credibility, aligning its organization and efforts by recalling the noble intentions for which it was created. To secure its place in history, by creating a legacy built on transparency, integrity, and accountability—and, in so doing, become the People's Commission, and a model agency and exemplar for good governance. To become the Commission on informed policy analysis and studies on techniques and methods to combat and prevent corruption.

**CORE VALUES.** Our actions, decisions, and our work are enlightened by values and deeply-held convictions. Ours is a Commission that is consultative, participative, and inclusive.

**Collegial.** We believe that collaboration, cooperation, and coordination are key to the successful operations of our organization.

**Moral.** We do not only do what is right, we strive to do what is good—for the country and the Filipino people.

**Responsible.** We welcome responsibility as an indicator of trust: the greater the responsibility, the greater the trust.

**Transparent.** We follow established procedures that are clearly spelled out and known to everyone.

**Honest.** We serve the people with candor and for no consideration other than to meet the ends of truth.

**Competent.** We work hard to respond and to be responsive to the needs of the country and our people.

**Professional.** We conduct ourselves in a manner that honors our office and positions as a public trust.

**Systematic.** We aim to be globally competitive strive to be efficient, in order to be effective.

**Efficient.** We make every effort to save on costs, without sacrificing the high quality of our work.

**Punctual.** We report for work on time, and respond to our stakeholders in a prompt and timely manner.

**Self-Transcendent.** We recognize that there is always room for learning and continuous self-improvement.

Despite these efforts and initiatives, there remain issues that constrain and impinge upon the ability of the Commission to perform its functions:

**Privatization.** Apart from obtaining relief in court, the Commission is able to realize proceeds from the privatization of assets under its management. The Commission needs the support of the Privatization Council and the Privatization Management Office to pursue its privatization plan. At the same time, market forces (*e.g.* availability of interested bidders, real estate prices, timing, *etc.*) affect the prices that these properties can command.

**Budgetary constraints.** The Commission receives one of the smallest budget allocations from among the attached agencies of the Department of Justice—despite the fact that, unlike most other agencies, it actually generates revenue for the national government. (For fiscal year 2010, for example, the Commission did not receive any budgetary allocations for its “capital expenditures.”)

**Asset management.** Supervision and close monitoring of the surrendered and/or sequestered assets, with particular regard to the past administration's practice of patronage politics (in the appointment of directors to boards of sequestered/surrendered corporations).

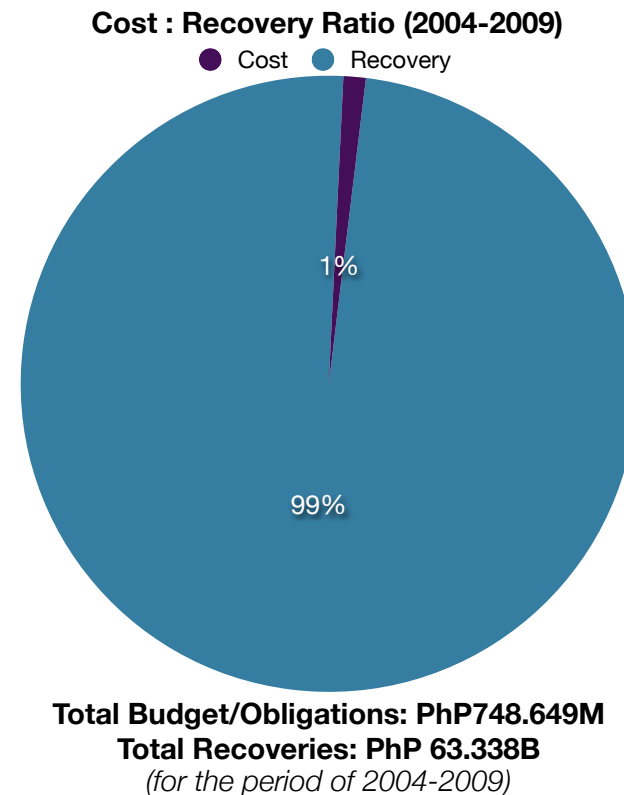
**Bureaucracy layers.** During the Arroyo administration, the Commission was placed under the administrative supervision of the Department of Justice, adding another layer to the bureaucratic process—with the unintended consequence of demoralizing the employees.

**Contentious issues.** Thorny issues, both legal and political abound, with regard to the following matters: “*Payanig sa Pasig*,” Region VIII properties, Independent Realty Corporation (IRC Group of Companies), and Philcomsat.

**Wavering political capital and support.** As a special agency created for a specific purpose, the Commission has had to fall back on its “personalized” leadership. Whereas institutions ought to be divested of the personalities and characters of their leadership, the Commission has, for the most part, been identified based on the character, reputation, and integrity of its Chairman. In some ways, this “reputational” form of organizational control worked to its advantage, in instances when the Chairperson is of unimpeachable character and integrity (e.g. Sen. Pres. Jovito Salonga and the late Chairperson Haydee Yorac). In instances, however, when such virtues appear to be lacking, political capital and support for the Commission wanes and wavers together with the tides of politics.

**Knowledge management.** The Commission has a wealth of institutional learning which, unfortunately, are deeply personalistic. Although the Commission is not short of competent personnel, there is a challenge to transmogrify “institutional memory” (reposed in these persons) into tangible and rigorous data.

**Communicating success.** Among the most neglected aspects of “change management” and reform in the public sector is the agency’s public relations vis-a-vis its open and transparent disclosure of its processes, as well as its outputs. More than just having data, it is important to translate them into a form, and using a medium (e.g. web site) that is accessible and made available to the general public.



## II. THE LAST COMMISSION: A LASTING LEGACY

*A goal is a dream with a deadline.*

– Napoleon Hill

### A. 25 YEARS—AND NOT MUCH LONGER

For the last twenty five years, the past Commissions had performed its tasks (seemingly) with no end in sight. This thirteenth (13th) Commission, however, recognizes that there are important ends to the recovery of the Marcos ill-gotten wealth: in particular, to compensate the human rights violations victims and to sustain support for the country's agrarian reform program.

There can be no greater prize for the Commission than for its work to be rendered *functus officio*. Unlike Commissions past for whom the bell of abolition often tolled, this Commission is charging into the future, prepared to end the work that began nobly, twenty five years ago.

For the most part, the Marcos ill-gotten wealth has been identified and made the subject of cases that are presently pending in court—albeit for too long. In order to bring this sordid matter (of the Marcos' ill-gotten wealth) to an orderly and meaningful close, the Commission has already:

1. Strengthened the internal capacity of its legal department;
2. Created clusters of cases to facilitate case management;
3. Coordinated with the Solicitor General and the 13 ASGs handling PCGG cases;

4. Developed a performance measurement system;

As of this writing, the Commission is in the preparatory stages of pushing for the creation of a special division in the Sandiganbayan to exclusively hear and try PCGG cases within a prescribed short-term timeline. Further to this effort, the Commission will likewise seek to establish open lines of communication with a focal person at the Office of the President in order to convey regular and timely feedback to the President on PCGG cases of special importance from a legal, financial, or political standpoint.

In this regard, while it is not within the Commission's competence to make a definitive pronouncement as to when these cases will be decided with finality, the Commission pronounces with definiteness that a shift in focus and priorities is in order which should facilitate a judicial resolution of the relevant issues at the soonest time.

As to where we go from here, the Commission has deliberated on three scenarios:

1. Outright and categorical abolition of the Commission by legislation where:
  - a) In reference to the mandate to recover all Marcos ill-gotten wealth, the Commission shall be directed to wind down its affairs and facilitate the orderly transfer of such functions and operations, and assets and properties under its care and management.
  - b) The sequestered and/or surrendered properties and assets that are presently under the Commission's care shall be transferred to the Department of Finance's Privatization Management Office for the latter's disposition.



c) The transfers and “winding down” efforts shall be completed and satisfactorily accomplished within a period of two (2) years, upon the approval of the said legislative measure.

2. Legislative abolition of the Commission (similar to 1), but with the recommendation that the bill includes the creation of the Institute for Good Governance. The Institute shall serve as a policy center that will focus on the conduct of analytical and ethical research to inform and enlighten both national policies as well as the Filipino people, through the mainstreaming of best practices and case studies on good governance.

3. A presidential directive for the Commission to wind down its affairs as far as §2(a) of E.O 1, s. 1986 is concerned, *i.e.* all matters relating to the ill-gotten wealth of the Marcoses and their cronies; but also directing the Commission to fully activate its functions under 2(b) and 2(c) as a corruption prevention agency.

The Commission is, here and now, recommending the third option. The President needs a legislatively created and judicially sanctioned agency for corruption prevention. The Commission is such an agency. It may not be Congress’ priority to create an agency with similar powers. And as we have had the occasion to observe, an executive creation such as the PTC has, and may always be, questioned before the courts.

**This being said, whatever the final decision of the President is, the Commission will be no less decisive and effective in pursuing its cases and in safeguarding the Republic’s interests.**

#### **B. A MODEL AGENCY FOR GOOD GOVERNANCE: THE WAY FORWARD**

In the coming weeks, the Commission will vigorously pursue its efforts to translate principles of transparency, integrity, and accountability

into concrete policy measures, in the hopes of transforming the Commission into a model agency for good governance.<sup>14</sup> In this regard, the Commission is presently pursuing efforts to codify the Commission’s rules and standards.

The Commission is set to roll out initiatives that embrace new technologies and trends, in order to open active and responsive communication lines, both from within the Commission and with its stakeholders. These efforts shall include, but not be limited to: open-source software, cloud computing, and “paperless office.”

These efforts cohere around emphasizing the Commission’s accountability and sense of responsibility to its stakeholders.

Parallel to these initiatives is the Commission’s drive to become more responsive to the people. In this connection, the Commission has already submitted its key targets, indicators, and goals to the Department of Justice, even as it is iteratively refining these criteria. The development of criteria for evaluation, and identification of outcomes and intervention are consistent with the oft-neglected public policy imperative of “monitoring and evaluation.”

In sum, these policies are aimed at urging forward the Commission’s agenda to operationalize and actualize its second and third mandates: that is, to investigate cases of graft and corruption that are referred by the President and to install effective safeguards to prevent the occurrence of corruption in government. The Commission is intensifying and reinvigorating its legal team to ensure that it can fully accommodate any challenges that might come its way. At the same

time, together with its “professionalization” efforts, the Commission is taking a second glance at its third and equally important mandate. In this connection, the Commission’s 25th Anniversary will serve as a platform to introduce this forgotten mandate. These year-long activities aim to re-introduce the Commission—and the issues intertwined with its work, such as the abuses of the Marcos regime—to an entire generation of Filipinos who have never been adequately acquainted with it, due to the past Commissions’ failure to properly communicate its vision, work, and progress. At the same time, these activities tie in with cooperation and partnerships with institutional and development partners who have committed to support the Commission’s activities.

Mainstreaming these efforts requires “knowledge management” that goes hand-in-hand with “communicating success.” In this connection, the Commission is presently renovating its web site, and instituting a content management system, in order to better store, arrange, and disaggregate its data. It can be anticipated that the revamped web site will be able to increase “voice” and “participation” which are important indicators of good governance.

### **C. SO FAR, SO GOOD—SO LONG?**

The work of the Commission is the dream of the Filipino people: it is as it was nearly 25 years ago. Now, more than ever, it is important to make the critical choice: of whether the Filipino will wake up and rise to the challenge of good governance or wake it as though it was nothing more than a lifeless dream. For us to be good, the people have to believe that we can be and do good.

The Commission and the work that it does is embedded in a network of relations that affect and are affected by each other. It is, thus, very important to be mindful of these institutional linkages, in order to understand the critical success factors and constraints that impinge upon or affect its operations. With regard to its recovery efforts, it is important to understand that the investigation and identification of the ill-gotten wealth of the Marcoses and their cronies, as well as their subsequent prosecution, are by and large *fait accompli*. The metaphorical ball is quite literally *in the Court*. It is up to the courts and the Commission’s statutory counsels to fight the legal battle.

The ability to realize proceeds from privatization efforts relies, for its success, on the will and purposeful direction of the political agencies such as the Department of Finance. The Commission supports these activities by managing and preserving these assets, preventing their dissipation, and assessing and auditing them for their current value.

The restitution and recovery of ill-gotten wealth, however, is just one aspect of the solution. Greatly overlooked and often neglected is the transparent and accountable management and use of the proceeds of recovery. That the Marcoses robbed the Filipino people blind is unfortunate, but for the recovered money to be spirited away and wasted is unforgivable. It is just as important to make sure that the monies recovered and remitted are spent wisely for the purposes defined by law. Credible and audited reporting of expenditures and disbursements from these sums should be made in a transparent manner.

In these aspects of stolen assets recovery—court-driven and “proceeds management”—political will and public pressure play important roles in driving success. Good governance is not the exclusive task of the Commission: if the people want a good government, then it must be demanded of everyone.

What this Commission brings to the table is what it sought to do in this report: to make a commitment to the Filipino people to serve their interests with honesty and integrity, acting with full transparency and accountability.

“Winding down” is an effort that the Commission is willing and prepared to undertake—however, it is one that it cannot pursue without legislative fiat or express direction from the President, lest it risk being accused of neglecting its mandates. The Commission’s leadership has communicated and made public this principled stand that, until then, it will aim to provide the Filipino people a sense of closure, through the commitments and plan of action that it has outlined in this report.

As the Commission struggles with these push and pull factors on its 25th Anniversary, espousing principles of good governance and extending the call to the people, it does so, not to deal in platitudes, but to lay down a concrete short-term proposal, with a view towards the long-term. While it is a *mere* “presidential” creation—and, perhaps, precisely because it is the President’s—the Commission is as accountable and responsive to the Filipino people, as the President is.

<sup>1</sup> Executive Order No. 1, series of 1986, sec. 2 uses the following formulation: The Commission shall be charged with the task of assisting the President in regard to the following matters:

- (a) The recovery of ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connection or relationship.
- (b) The investigation of such cases of graft and corruption as the President may assign to the Commission from time to time.
- (c) The adoption of safeguards to ensure that the above practices shall not be repeated in any manner under the new government, and the institution of adequate measures to prevent the occurrence of corruption.

<sup>2</sup> In this regard, it is worthwhile to note that the Commission antedates the Office of the Ombudsman (1987) and the United Nations Convention Against Corruption (2005), even as the latter urges State Parties (such as the Philippines) to “ensure the existence of a [preventive anti-corruption body].”<sup>2</sup> In fact, insofar as the Commission partakes of the nature of a “Truth” Commission, it predates the Truth and Reconciliation Commission of South Africa (1995).

<sup>3</sup> EO No. 2, “REGARDING THE FUNDS, MONIES, ASSETS AND PROPERTIES ILLEGALLY ACQUIRED OR MISAPPROPRIATED BY FORMER PRESIDENT FERDINAND E. MARCOS, MRS. IMELDA ROMUALDEZ MARCOS, THEIR CLOSE RELATIVES, SUBORDINATES, BUSINESS ASSOCIATES, DUM- MIES, AGENTS, OR NOMINEES”; EO No. 13, “AMENDING EXECUTIVE ORDER NO. 1, DATED FEBRUARY 28, 1986, CREATING THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT”; EO No. 14, “DEFINING THE JURISDICTION OVER CASES INVOLVING THE ILL-GOTTEN WEALTH OF FORMER PRESIDENT FERDINAND E. MARCOS, MRS. IMELDA R. MARCOS, MEMBERS OF IMMEDIATE FAMILY, CLOSE RELATIVES, SUBORDINATES, CLOSE AND/OR BUSINESS AS- SOCIATES, DUMMIES, AGENTS AND NOMINEES”; EO No. 14-A, “AMENDING EXECUTIVE ORDER NO. 14.”

<sup>4</sup> To help preserve the integrity of its work, civil actions shall not lie against the Commission or any of its members for acts done or omitted, in the performance of official duty. Corollarily, Commission members may not be compelled to testify or produce evidence in any judicial, legislative, or administrative proceeding concerning matters within their official cognizance.<sup>4</sup> This is not to say, however, that the Commission is not accountable and answerable to anyone—as the President exercises the power of control over it. Unlike the Ombudsman who serves for a fixed term of seven (7) years (and who may be removed from office only by impeachment), the Commission’s leadership serve at the pleasure of the President.

<sup>5</sup> [http://www.baselgovernance.org/fileadmin/docs/publications/working\\_papers/Managing\\_Proceeds\\_of\\_AR\\_Final.pdf](http://www.baselgovernance.org/fileadmin/docs/publications/working_papers/Managing_Proceeds_of_AR_Final.pdf), p. 6.

<sup>6</sup> [http://www1.worldbank.org/publicsector/star\\_site/documents/Case\\_Studies\\_02.pdf](http://www1.worldbank.org/publicsector/star_site/documents/Case_Studies_02.pdf)

<sup>7</sup> [Ferdinand Marcos’s Swiss Bank Legacy: Tighter Rules for Despots and Criminals, http://query.nytimes.com/gst/fullpage.html?res=9A05EFD7113DF930A15753C1A96E958260](http://query.nytimes.com/gst/fullpage.html?res=9A05EFD7113DF930A15753C1A96E958260), 23 October 1998.

<sup>8</sup> <http://siteresources.worldbank.org/NEWS/Resources/Star-rep-full.pdf>, p. 21

<sup>9</sup> The first batch of cases filed by the Commission were mostly civil cases for forfeiture, reconveyance, reversion, accounting, and damages. Most of these civil cases are considered “banner cases” because of their importance. Thereafter, criminal cases were filed for violations of the provisions of R.A. 3019, the Anti-Graft and Corrupt Practices Act, and the Revised Penal Code. Pursuant to Executive Order No. 432, the bulk of criminal cases (otherwise known as “behest loans cases”) for violation of the anti-graft law are presently being prosecuted by the Commission.

<sup>10</sup> Heirs of Zabala, et al. v. Court of Appeals, G.R. 189602, 6 May 2010, [http://www.lawphil.net/judjuris/juri2010/may2010/gr\\_189602\\_2010.html](http://www.lawphil.net/judjuris/juri2010/may2010/gr_189602_2010.html)

<sup>11</sup> As a social institution, the Commission is envisioned to represent the best in the Filipino people. As such, it is important to make the idea of the Commission coincide with its actualized reality. In order to do so, its reputation and credibility would have to be restored.

<sup>12</sup> Actualizing principles of transparency, integrity, and accountability and translating them into concrete policy measures and directives, the Commission, whenever practicable, adopted the iteratively applied management principles of “planning-doing-checking-acting,” while maintaining a view towards the long term. Piecemeal reform efforts can be put together like pieces in a puzzle, provided that its leadership is well-aware of the bigger picture.

<sup>13</sup> Hon. Rene L. Relampagos (House of Representatives) and Sen. Francis Escudero

<sup>14</sup> A critical factor in managing change and instituting reforms in the public sector—and in keeping with transparency—is the development of clear and rational standards that are communicated to the public and adhered to by the Commission. Whenever possible and applicable, an open feedback and consultation system between 1) the Commission and its personnel, and 2) the organization’s stakeholders will be tapped, in order to secure buy-in and ensure a proper alignment between the Commission’s policies and the Filipino people’s direction.



DATE	ACTIVITY	VENUE	DESCRIPTION/COMMENTS
January 17 – February 14	Post-EDSA Generation Contests	Nationwide	<p>Contests that seek to engage and impress on the post-EDSA youth not only the concept of good governance but also the importance of contributing to the improvement of the community through individual and collective action.</p> <ol style="list-style-type: none"> <li>1) Drawing contest for grades 4 to 6;</li> <li>2) Essay writing contest for high schools students;</li> <li>3) Short video competition for college students; and</li> <li>4) Search for a model youth organization involved in a project/program related to good governance.</li> </ol> <p>The main theme of these contests is <i>“What is good government to me?”</i></p>
February 28	Launch of Public Exhibit	Shangri-la Mall	<p>Commemorative exhibit which aims to offer the general public a road map of the Commission’s raison d’être, its functions, and its legacy. This will be in a high traffic area to afford optimal exposure to the general public.</p> <p>The centerpiece of the exhibit shall be an extensive information wall where panels will detail the various phases significant to the Commission, from the Marcos excesses to the subsequent recoveries and eventually to present hopes for actual and progressive change.</p>
-	Anniversary Luncheon/Reception	EDSA Shangri-la Hotel	<p>Key officials and other guests, including selected members of the diplomatic community, will be invited to the launch of the exhibit and the luncheon/reception that will follow.</p> <p>The following will be shared at the luncheon:</p> <ul style="list-style-type: none"> <li>• PCGG Profile Publication</li> <li>• Interim report on a comprehensive assessment report of the PCGG</li> <li>• Audio-visual report</li> </ul> <p>Moreover, plans of the year-long celebration will be launched during the activity, including:</p> <ul style="list-style-type: none"> <li>• Lecture series</li> <li>• Youth conference</li> <li>• Scholarly publication</li> </ul>



DATE	ACTIVITY	VENUE	DESCRIPTION/COMMENTS
-	Employees' Dinner & Awards Night	PCGG Main Office	Celebration for the employees of PCGG which will feature a short program, dinner, and loyalty awards for those who have served the Commission for 25/20/15 years.
February 28 – March 4	Run of Main Public Exhibit	Shangri-la Mall	See above
February 28 – March 14	Run of Parallel Display of the Marcos Jewelry	Metropolitan Museum	While the main exhibit will be in a high-traffic mall to allow maximum access to our people, such parallel display at the Met is planned for the jewelry and some artworks, for security reasons, as the museum is inside the BSP Complex where the jewelry collections are currently kept. However, there will be references to the parallel display in the main exhibit.
March 10	Commemorative Lecture 1	Metro Manila university	Maximum of six (6) lectures on specialized topics related to PCGG will be conducted in key colleges and universities in the country. These lectures will be given by distinguished individuals in the field of academe and/or politics. One of the goals of these lectures is to expose the post-EDSA generations to the relevant work of PCGG and the responsibility of each and everyone not only to combat corruption but more importantly to contribute to the achievement of good governance in the country. <i>The topics being considered for the lecture series and the scholarly publications are the following: 1) Asset Recovery: Then and Now; 2) The Politics of Collection: Imelda's Jewelry &amp; Art; 3) Marcosian Architecture and the "Edifice" Complex; 4) PCGG and the 1987 Constitution; 5) Good Government Beyond the Capital: The Role of LGUs; 6) Citizen Journalism's Role in Combating Corruption; and 7) The Lessons of PCGG: Insights for Successor Institutions.</i>
May 12	Commemorative Lecture 2	Cebu university	
July 14	Commemorative Lecture 3	Northern Mindanao university	
August 11	Commemorative Lecture 4	Southern Mindanao university	
September 8	Commemorative Lecture 5	Eastern/Western Visayas university	
October 3	Commemorative Lecture 6	Central/Southern Luzon university	
August - September	2 <sup>nd</sup> Run of Public Exhibit	Metropolitan Museum	This will be an extended exhibit incorporating the major facets of the shorter February public exhibit.
November 24	Youth Leaders Conference on Good Governance	Metro Manila	A workshop gathering young leaders from selected colleges/universities in the country will be conducted. The aim of this activity is to familiarize/reintroduce the leaders of the post-EDSA



DATE	ACTIVITY	VENUE	DESCRIPTION/COMMENTS
			generation to the work of the Commission, to discuss pressing issues related to corruption and good governance and to present action plans at the end of the workshop to address the concerns they have identified.

**Other undertakings in line with the 25<sup>th</sup> Anniversary**

<i>PCGG Profile publication</i>	Limited copies of a publication containing reports on the achievements, past hardships, and continuing challenges faced by the commission will be produced. The book will also feature some of the assets, properties and other valuable items that have been sequestered and/or surrendered to the republic through the PCGG. It will also include relevant pictures and blurbs with regard to the key impact of the asset recovery efforts of the government, such as but not limited to, the funding of the Comprehensive Agrarian Reform Program (CARP). This publication will contain the meat of the 100-day report of the current Commission and will include a discussion of the highlights of the draft bill being espoused which, while allowing for the possibility of the winding up of the PCGG, includes a very important feature – that of a successor institution crafted with the advantage of the lessons learned by the Commission while being free of the baggage that weighs the latter down.
<i>Audio-Visual report</i>	To complement the profile publication abovementioned, a 15 to 20 minute audio-visual material reporting on the three-fold organizational mandate of the Commission including the achievements in the past 25 years in relation to each mandate will be produced. A message portion will also be included that will provide an overview of the strategic directions that the present Commission wishes to undertake and its vision for PCGG's long-term legacy.
<i>Scholarly publication</i>	Compilation of articles authored by reputable academics will be published with the aim to report on the history and performance of the Commission and/or contribute to the body of knowledge in the areas related to the functions of the PCGG. The publication will be targeted for academics and professionals and will have in-depth analysis focusing on the fields of engagement of the Commission.



**LIST OF SURRENDERED/RECOVERED ASSETS**  
as of 17 January 2011

**I. REAL ESTATE PROPERTIES**

	DESCRIPTION	COMPROMISE AGREEMENT	ESTIMATED VALUE (in PhP)
1. Baguio Property: Banaue Inn Compound, Baguio City	2,677 sq.m. land	Jose Y. Campos	7,496,000.00
2. Baguio Property: Hans Menzi Compound, Baguio City	3,875 sq.m. land with improvements	Jose Y. Campos	36,155,000.00
3. Baguio Property: J.Y. Campos Compound, Baguio City	17,516 sq.m. land with improvements	Jose Y. Campos	133,123,000.00
4. Baguio Property: Wigwam Compound, Baguio City	1,146 sq.m. land with improvements	Jose Y. Campos	14,096,000.00
5. BBC – Iligan City	6,000 sq.m. land including improvements	Roberto S. Benedicto	17,830,450.00
6. BBC – Legazpi City Site I Site II	3,327 sq.m. land 1,834 sq.m. land 5,161 sq.m. land	Roberto S. Benedicto	22,190,000.00
7. BBC – Naga City	5,952 sq.m. land	Roberto S. Benedicto	19,046,000.00
8. BREDCO Property, Bacolod City	46,688 sq.m. land	Antonio Martel/ Simplicio Palanca	298,803,000.00
9. Caloocan Property: Kingswood St., Emerald Court, Caloocan City	480 sq.m. land	Alejo R. Ganut, Jr.	2,400,000.00
10. Caloocan Property: Maligaya St., Pangarap Village, Caloocan City	300 sq.m. land	Alejo R. Ganut, Jr.	250,000.00
11. Caloocan Property: Matahimik St., Pangarap Village, Caloocan City	300 sq.m. land	Alejo R. Ganut, Jr.	250,000.00
12. IRC-EDSA Property (PCGG offices) Mandaluyong City	2,885 sq.m. land with improvements	Jose Y. Campos	129,870,000.00
13. IRC Mapalad Property, Parañaque City	4,038 sq.m. land	Jose Y. Campos	278,622,000.00
14. IRC Reconveyed Land, Bgy. Gregoria de Jesus, GMA, Cavite	64,669 sq.m. land	Jose Y. Campos	32,327,720.00
15. IRC-Wack-Wack Property Mandaluyong City	2,012 sq.m. land	Jose Y. Campos	90,540,000.00
16. Ortigas “Payanig” Property, Ortigas Avenue Pasig City	184,891 sq.m. land	Jose Y. Campos	13,866,800,000.00
17. Piedras Petroleum Corp. Property, Mariveles, Bataan Site I Site II Site III	1,279,258 sq.m. land 140,274 sq.m. land 101,861 sq.m. land 1,521,393 sq.m. land	Roberto S. Benedicto and nominees	63,963,000.00 3,507,000.00 2,546,000.00 70,016,000.00
SUB – TOTAL : P 15,019,815,170.00			

**II. SHARES OF STOCKS**

	NO. OF SHARES	COMPROMISE AGREEMENT	ESTIMATED VALUE (in PhP)
1. Atlas Consolidated Mining and Development Corp.	253,044	Jose Y. Campos	4,291,626.24
2. Benguet Consolidated, Inc.	“A” shares - 89,198 “B” shares - <u>473,517</u> 562,715	Jose Y. Campos	1,204,173.00 <u>7,102,755.00</u> 8,306,928.00
3. Chemfields, Inc.	8,400,000	Jose Y. Campos	42,336,000.00
4. Imperial Insurance	129,375	Jose Y. Campos	1,293,750.00
5. Lepanto Consolidated Mining & Development Corporation	“A” shares - 121,378,452 “B” shares - <u>4,893,130</u> 126,271,582	Jose Y. Campos	57,654,764.70 <u>2,373,168.05</u> 60,027,932.75

6. Marcventures Holdings, Inc. (formerly AJO.net Holdings, Inc.)	20,400	Jose Y. Campos	38,556.00
7. Oriental Petroleum and Minerals Corporation	"A" shares - 770,431 "B" shares - <u>225,080,988</u> 225,851,419	Jose Y. Campos	10,786.03 3,151,133.83 3,161,919.86
8. Oceanic Wireless Network, Inc. (OWNI)	12,445	Roberto S. Benedicto	13,629,266.20
9. PAL Holdings, Inc. (formerly Baguio Gold Holdings Corporation)	1,811	Jose Y. Campos	13,184.08
10. Philippine Long Distance Telephone Company (PLDT) - preferred shares	3,700	Jose Y. Campos	37,000.00
11. Philippine National Construction Corp. (PNCC)	24,820,351	Jose Y. Campos	90,594,281.15
12. Philippine Oil Geothermal Energy, Inc.	"A" shares - 800,000 "B" shares - <u>25,200,000</u> 26,000,000	Jose Y. Campos	8,000.00 252,000.00 260,000.00
13. Philippine Overseas Telecommunication Corporation (POTC)	4,727	Jose Y. Campos	190,540,512.00
14. Philodrill Corporation	24,030,000	Jose Y. Campos	360,450.00
15. Puerto Azul Golf and Country Club	2	Jose Y. Campos	150,000.00
16. Radio Philippines Network, Inc. (RPN-9)	4,161,207	Roberto S. Benedicto	33,289,656.00
17. Showa United Food, Inc.	157,500 shares	Jose Y. Campos	36,861,250.00
18. Trans-Asia Oil and Mineral Corporation	36,667	Jose Y. Campos	42,533.72
SUB – TOTAL : P 485,234,846.00			

### III. TV NETWORK AND RADIO STATIONS

	DESCRIPTION	COMPROMISE AGREEMENT	ESTIMATED VALUE (in PhP)
1. Intercontinental Broadcasting Corporation (IBC-13) – Physical Assets, including rights to franchise	TV Central and Relay Stations; Provincial TV and Radio Stations; Real Estate Properties	Roberto S. Benedicto	3,074,068,800.00
2. BBC - DWAN Radio	Broadcasting equipment, furniture and office equipment, transmitter station	Roberto S. Benedicto	1,362,000.00
SUB – TOTAL : P 3,075,430,800.00			

### IV. JEWELRY COLLECTION

	COMPROMISE AGREEMENT	ESTIMATED VALUE (in PhP)
1. Hawaii Collection	Imelda R. Marcos	112,500,000.00
SUB – TOTAL : P 112,500,000.00		
<b>GRAND TOTAL : P 18,692,980,816.00</b>		

**LIST OF SEQUESTERED/SURRENDERED CORPORATIONS WITH GOVERNMENT NOMINEE-DIRECTORS  
(as of 17 January 2011)**

Corporation/Government Ownership/No. of Nominee-Directors	
1	BATAAN SHIPYARD & ENGINEERING CO., INC. (BASECO)  Sequestered Shares: 100% No. of Directors: 11
2	CHEMFIELDS, INC.  Govt Ownership: 60% No. of Directors: 6
3	EASTERN TELECOMUNICATIONS, PHILS. INC. (ETPI)  Sequestered Shares: 22% No. of Directors: 1
4	INDEPENDENT REALTY CORPORATION (IRC GROUP OF COMPANIES)  Govt Ownership: 100% No. of Directors: 5
5	INTERCONTINENTAL BROADCASTING CORPORATION (IBC-13)  Govt Ownership: 100% No. of Directors: 9
6	PHILIPPINE COMMUNICATIONS SATELLITE CORPORATION (PHILCOMSAT)  Govt Ownership: 34.94% Sequestered Shares: 7.9% No. of Directors: 3
7	PHILIPPINE OVERSEAS TELECOMMUNICATIONS COMPANY (POTC)  Govt Ownership: 34.94% Sequestered Shares: 7.9% No. of Directors: 3
8	PIEDRAS PETROLEUM COMPANY, INC.  Govt Ownership: 85.75% No. of Directors: 4
9	RADIO PHILIPPINES NETWORK, INC. (RPN-9)  Govt Ownership: 21.4% No. of Directors: 9
10	SAN MIGUEL CORPORATION (SMC)  Sequestered Shares: 23.8% No. of Directors: 3  NOTE: Starting April 2011, the government could no longer vote the sequestered CIIF block of shares in SMC in view of the conversion of shares from common to preferred.
11	SMC Subsidiary: ANCHOR INSURANCE BROKERAGE CORPORATION  Sequestered Shares: 41.6% No. of Directors: 1
12	UNITED COCONUT PLANTERS BANK (UCPB)  Sequestered Shares: 95.69% No. of Directors: 14

UCPB SUBSIDIARY BANKS :	
13	a. UCPB LEASING AND FINANCE CORP.  100% owned by UCPB. No. of Directors: 4
14	b. UCPB SAVINGS BANK, INC. (USB)  100% owned by UCPB. No. of Directors: 4
15	c. UCPB SECURITIES, INC.  100% owned by UCPB. No. of Directors: 2
16	d. ULTRA SECURITY SERVICES, INC.  Sequestered Shares: 49.93% No. of Directors: 3
UCPB INSURANCE GROUP :	
17	a. COCOPLANS, INC.  Sequestered Shares: 99.99% No. of Directors: 9
18	b. UCPB GENERAL INSURANCE CO., INC. (UCPB GEN)  Sequestered Shares: 99.99% No. of Directors: 14
19	c. UNITED COCONUT PLANTERS LIFE ASSURANCE CORPORATION (COCOLIFE)  Sequestered Shares: 46.51% No. of Directors: 11
UCPB-CIIF SUBSIDIARIES :	
20	a. UCPB-CIIF FINANCE AND DEVELOPMENT CORPORATION  Sequestered Shares: 89.74% No. of Directors: 13
21	b. UCPB-CIIF FOUNDATION, INC.  Sequestered Shares: 100% No. of Directors: 14
22	c. UNITED COCONUT PLANTERS INTERNATIONAL, S.A. (UCPI)  Sequestered Shares: 99.99% No. of Directors: 8
23	d. UNITED COCONUT CHEMICALS, INC. (COCOCHAM)  Sequestered Shares: 62.96% No. of Directors: 7
24	e. SILAHIS MARKETING CORPORATION  Sequestered Shares: 97.28% No. of Directors: 6
25	f. ILIGAN BAY EXPRESS CORPORATION  Sequestered Shares: 96.94% No. of Directors: 5

26	g. MINOLA CORPORATION  Sequestered Shares: 99.99% No. of Directors: 5
27	h. MINOLA REFINING CORPORATION  Sequestered Shares: 34.99% No. of Directors: 3
28	i. GRANNEX CORPORATION, U.S.A.  100% owned by Grannexpo No. of Directors: 5
29	j. STEPAN PHILIPPINES, INC.  Sequestered Shares: 39.99% No. of Directors: 3
SIX (6) CIIF OIL MILLS GROUP :	
30	a. CAGAYAN DE ORO OIL COMPANY, INC.  Sequestered Shares: 94.33% No. of Directors: 8
31	b. GRANNEXPORT MANUFACTURING CORPORATION  Sequestered Shares: 91.25% No. of Directors: 10
36 to 49	14 CIIF HOLDING COMPANIES  1 – Anglo Ventures Corp. 2 – ASC Investors, Inc. 3 – AP Holdings, Inc. 4 – ARC Investors, Inc. 5 – Fernandez Holdings, Inc. 6 – First Meridian Development, Inc. 7 – Randy Allied Ventures, Inc. 8 – Rock Steel Resources, Inc. 9 – Roxas Shares, Inc. 10 – San Miguel Officers Corps., Inc. 11 – Soriano Shares, Inc. 12 – Te Deum Resources, Inc. 13 – Toda Holdings, Inc. 14 – Valhalla Properties Limited, Inc.  100% owned by CIIF Oil Mills Company. No. of Directors: 5 *Same set of nominee-directors in the 14 HOLDING COMPANIES:  1 – Camilo L. Sabio - Chairman 2 – Jesus L. Arranza – President 3 – Mao K. Andong - Director 4 – George S. Chua - Director 5 – Ramon Y. Sy - Director
50	CIIF MANAGEMENT COMPANY, INC.  100% owned by CIIF Oil Mills Company. No. of Directors: 13

## **PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT LEGAL DEPARTMENT CASE DOCKET REPORT**

The 300 cases in the PCGG docket are classified under the following case clusters:

- I      MARCOS Cluster
- II     COJUANGCO Cluster
- III    AFRICA Cluster
- IV    LUCIO TAN Cluster
- V     IRC Cluster
- VI    BENEDICTO Cluster
- VII   ROMUALDEZ Cluster
- VIII   DISINI Cluster
- IX    SABIDO Cluster
- X     BEHEST LOANS II
- XI    TAGAYTAY Cluster
- XII   BEHEST LOANS I
- XIII   DUMPIT Cluster
- XIV   JACOBI Cluster

### **I      MARCOS Cluster**

The Marcos cluster is composed of civil cases for forfeiture (Civil Case No. 0141), reconveyance, reversion restitution, accounting, and damages (Civil Case No. 0002) against the Marcos family and known cronies including but not limited to Gregorio Araneta and the Estate of Ramon Cojuangco; criminal cases; and derivative and/or other related cases either filed by or against the PCGG.

One of the properties involved in the said cluster, specifically in Civil Case No. 0002, is the controversial Olot property wherein the Supreme Court granted Imelda Marcos' Motion to Quash the sequestration. On the other hand, the Marcos' jewelry and ARELMA funds are the subjects of Civil Case No. 0141. The forfeiture of the ARELMA funds in favor of the government is the subject of two (2) petitions for review filed by the Marcoses before the Supreme Court.

### **II     COJUANGCO Cluster**

The Cojuangco cluster refers to the subdivided cases of Civil Case Nos. 33- A to F otherwise known as the coco levy cases, and other related civil and criminal cases. The coco levy funds are not only affected with public interest but are in fact prima facie public funds as pronounced by the Supreme Court in its Decision promulgated on 14 December 2001 in G.R. No. 147062-64.

### **III AFRICA Cluster**

Civil Case No. 0009 and its derivative cases comprise the Africa cluster. The main case was filed to recover ill-gotten wealth assets and damages against known Marcos close associates such as Jose Africa, Manuel Nieto, Roberto Benedicto<sup>1</sup> and Potenciano Ilusorio<sup>2</sup>. Also involved in this case are Sen. Juan Ponce Enrile, several corporations including the PHILCOMSAT, POTC, Oceanic Wireless Network, Inc., Silangan Investors and Managers, Inc., Polygon Investors and Managers, Inc., Eastern Telecommunications Philippines, Inc., and Aerocom Investors and Managers, Inc.

### **IV LUCIO TAN Cluster**

Included in the Lucio Tan cluster are the cases where the principal defendants among others are Lucio Tan and his associates and several corporations (Civil Case No. 0005) including Fortune Tobacco, Allied Banking Corporation, Foremost Farms, Asia Brewery, Inc.; Geronimo Velasco (Civil Case No. 0003), Andres Genito (Civil Case No. 0004), the late Roman Cruz (Civil Case No. 0006), Fe Roa Gimenez (Civil Case No. 0007), Ricardo Silverio, Sr. (Civil Case No. 0011).

### **V IRC Cluster**

The IRC cluster is composed of cases involving the “Payanig” properties including the cases filed before the Sandiganbayan by Ortigas & Company, and Ricardo Silverio, Sr. docketed as the consolidated cases of Civil Case Nos. 0093 and 0147, respectively.

### **VI BENEDICTO Cluster**

The Benedicto cluster includes Civil Case No. 0034 or the case against the late Roberto Benedicto, his companies and cronies, and related cases. Although the case against Mr. Benedicto and his cronies have already been terminated pursuant to a compromise agreement, the case against the remaining defendants are still on-going.

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<sup>1</sup> The Republic of the Philippines and Roberto S. Benedicto, now deceased, already entered into a Compromise Agreement, dated November 3, 1990, which was upheld by the Honorable Supreme Court on September 10, 1993 in Republic vs. Sandiganbayan, et al., G.R. Nos. 108292, etc.

<sup>2</sup> The Republic of the Philippines and Potenciano T. Ilusorio, now deceased, also entered into a Compromise Agreement, dated June 28, 1996, which was approved by the 4th Division of the Sandiganbayan and upheld by the Honorable Supreme Court on June 15, 2005 in Republic vs. Sandiganbayan, et al., G.R. Nos. 141796 & 141804.

## **VII ROMUALDEZ Cluster**

The Romualdez cluster consists of cases for reconveyance and forfeiture and their derivatives against numerous defendants among which are Alfredo and Agnes Romualdez (Civil Case No. 0010 and Civil Case No. 0167), Benjamin and Juliet Romualdez (Civil Case No. 0035), and Armando Romualdez (Civil Case No. 0019).

## **VIII DISINI Cluster**

The Disini cluster involves cases against known personalities and their cronies, associates and companies like Bienvenido Tantoco (Civil Case No. 0008), Herminio Disini (0013), Erlinda Enriquez Panlilio (0014), Rodolfo Cuenca (0016), Fabian Ver (0017), Luz Bakunawa (0023), Jesus Tanchangco (0029), Alfonso Lim, Sr. (0030), Roberto Ablang (0031).

In Civil Case No. 0029, the Republic obtained a favorable decision on 09 September 2010 whereby the Estate of the late President F. Marcos, and Imelda Marcos were ordered to (i) reconvey to the government the amount of P10 Million plus interest at the legal rate from 29 July 1983 until fully paid, and (ii) pay the amount of P1.950 Million as moral, exemplary, nominal and attorney fees and cost of suit and expenses of litigation.

## **IX SABIDO Cluster**

Under the Sabido cluster are the cases of Civil Case No. 0024 involving among others the Yulos, Peter Sabido, Roberto Benedicto, Civil Case No. 0026 for forfeiture involving Maximino Argana and his family, Civil Case No. 0027 against the late Vicente Chuidian, et al, Civil Case No. 0172 against Ramon J. Quisumbing, and other related cases.

## **X and XII BEHEST LOANS Clusters**

The Behest Loans clusters are the criminal cases against the Officers and Members of the Board of corporations and government financial institutions like the DBP, PNB, NIDC and Philguarantee assigned to the PCGG by virtue of Executive Order No. 432 series of 2005. The corporations were granted loan accommodations and concessions under behest loans criteria set by Administrative Order No. 61 issued by then President Fidel V. Ramos among which are the lack of and/or insufficient collateral and capital, and close ties of the stockholders/officers of the borrower corporations with then President Ferdinand Marcos.

## XI TAGAYTAY Cluster

The Tagaytay cluster involves the property in Tagaytay ceded and/or surrendered to the Republic by Anthony Lee by virtue of a compromise agreement.

## XIII DUMPIT Cluster

The Dumpit cluster refers to cases for forfeiture and reconveyance filed against former generals and government officials under the Marcos regime.

## XIV JACOBI Cluster

Finally, under the Jacobi cluster is a variety of cases filed by and against the PCGG which involve, among others, properties owned by surrendered corporation, labor cases of surrendered/sequestered corporations, falsification and use of public documents, cases for specific performance, and claim for attorneys lien of a former PCGG counsel.

Estimated Valuation of Assets Under Litigation					
Twenty (20) Civil Cases Pending with the Sandiganbayan (as of 31 December 2009)					
No.	Defendants	Civil Case	In Thousand Pesos		TOTAL
			Shares of Stocks	Real Properties	
1	Marcos, et al	002	-	396,993	396,993
2	Velasco, et al	003	3,298,536	149,473	3,448,009
3	Genito, et al	004	1,244,084	194,724	1,438,808
4	Lucio Tan, et al	005	14,843,736	-	14,843,736
5	Cruz, Jr. et al	006	-	276,591	276,591
6	Gimenez, et al	007	29,599	237,772	267,371
7	Tantoco, et al	008	609,268	443,049	1,052,317
8	Africa, Nieto et al	009	2,755,287	2,274	2,757,561
9	A Romualdez et al	010	2,650,099	95,035	2,745,134
10	Silverio, et al	011	-	308,874	308,874
11	Enriquez, et al	014	-	581,304	581,304
12	Ver, et al	017	-	350,186	350,186
13	A. Romualdez, et al	019	-	45,653	45,653
14	E. Yap, et al	021	19,390	-	19,390
15	Bakunawa, et al	022		79,794	79,794
16	Sabido. et al	023		2,721	2,721
17	Argana, et al	024	-	388,288	388,288
18	A. Lim, et al	026	-	352,399	352,399
19	Cojuangco, et al	030	138,273,455	2,103,144	140,376,599
20	B. Romualdez, et al	033	681,956	4,332,904	5,014,860
	Total		P 164,405,410	P 10,341,178	P 174,746,588





**PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT**

## Preliminary Report for the Truth Commission

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[Providing information to the TRUTH COMMISSION concerning or relating to cases or instances of graft and corruption within the PCGG's respective jurisdictions during the previous administration and for other purposes]

## **PCGG PRELIMINARY REPORT FOR THE TRUTH COMMISSION**

In compliance with Resolution Number 007 of the Truth Commission requesting information relating to cases or instances of graft and corruption, the Presidential Commission on Good Government (PCGG or the Commission) respectfully submits this preliminary report concerning possible instances of graft and corruption, and excesses committed during the previous administration.

### **A. UNLIQUIDATED CASH ADVANCES**

Based on information obtained from the accounting office of PCGG, former Chairman Camilo Sabio has, to date, unliquidated cash advances amounting to PhP2,158,692.99. Of this amount, PhP1,658,692.99 comes from the fund comprising National Government appropriations and PhP500,000.00 from the fund comprising the donation by the Philippine Development Alternatives Foundation (PDAF) to PCGG representing the accrued interest on the principal amount donated to the Republic. These advances are recorded as these are funds from PCGG-maintained books of account audited by the Commission on Audit (COA). There is no similar record regarding the advances made from the PNB contingency fund.<sup>1</sup>

Moreover, there is also a pending case before the Ombudsman regarding Chairman Sabio's failure to remit PCGG-collected deposits to the Bureau of Treasury amounting to PhP10,350,000.

### **B. THE PNB-RETAINED FUND**

*The Supreme Court's decision of 15 July 2003, affirmed by the orders of 18 November 2003 and 13 January 2004, ordered the forfeiture of the Swiss deposits in the estimated aggregate amount of US\$658,175,373.60 as of 31 January 2002 in favor of the Republic. The Sandiganbayan issued a Resolution ordering the issuance of a writ of execution and the Writ itself on 22 January 2004. Conformable with the orders, the Philippine National Bank (PNB) agreed to transfer the funds to the Republic except for the amount of approximately US\$22,000,000.00 which was held by West Landesbank in Singapore. The PNB also retained, inter alia, 5% of the escrow funds or approximately US\$30,000,000.00 as contingent fund for any lawsuit or potential lawsuit against PNB in connection with the Escrow Funds or such other funds held in trust by the PNB for the Republic. It is supposed to cover the legal, administrative and other related costs that may be incurred in the recovery and transfer to the Republic of the amount in Singapore and the Arelma account in the United States.<sup>2</sup> The Republic is looking to recover approximately US\$60,000,000.00 in these two cases.*

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<sup>1</sup> Other PCGG employees who have, on record, large cash advances are now claiming that they simply allowed these advances to be made in their names as an accommodation to Chairman Sabio who in fact acquired the funds.

<sup>2</sup> This retention was the subject of PCGG Resolution No. 2004-Y-002 passed during the term of Chair Haydee Yorac, to wit:

NOW THEREFORE, be it RESOLVED as it is hereby RESOLVED, that ... PNB is authorized to retain five per cent (5%) of the amount recovered to cover the necessary administrative and litigation expenses in the recovery of the ARELMA account and the approximately Twenty-two

As of 31 October 2010, the aggregate amount which PNB “retains” for the Republic is \$50,481,999.37, broken down as follows:

Principal	\$20,035,636.05
Cash Balance w/ Custodian Bank (refers to amount under litigation in Singapore)	30,486,977.60
Accrued Interest	6,435.06
Sum of the above	50,529,048.71
Less accrued expenses	47,049.34
Total	\$50,481,999.37

As to attorneys’ fees, PNB financial records show that approximately \$9.5 million has already been disbursed as of 30 September 2010:

	2004	2005	2006	2007	2008	2009	2010 (Jan-Sept)	Total
PCGG	87,371.	200,000.0	334,716.7	1,004,407.4	114,420.8	1,304,820.7	530,829.0	3,576,566.27
PNB	668,892	223,178.1	420,323.3	707,497.37	1,120,316.	1,064,352.3	1,697,297.	5,901,857.16
Total	756,264	423,178.1	755,040.0	1,711,904.8	1,234,737.	2,369,173.0	2,228,126.	\$9,478,423.4

These do not reflect outstanding billing statements from various counsels pending payment. The enormous costs also take on an even more colorful complexion if one considers that the cases pending in New York and Singapore have yet to go to trial proper.

Moreover, from the extant records currently accessible, US\$3,964,102.97 was disbursed for travel alone between 31 January 2004 and 30 September 2010. Of this amount, US\$2,276,478.46 was used by PCGG.

	2004	2005	2006	2007	2008	2009	2010 (Jan-Sept)	Total
PCGG	-	29,203.02	95,970.73	358,684.38	957,439.04	549,227.33	285,953.96	2,276,478.46
OSG	-	-	29,702.67	183,175.89	792,222.39	223,575.92	292,101.16	1,520,778.03
PNB	2,518.14	11,462.16	25,059.86	28,057.35	47,955.47	30,277.99	21,515.51	166,846.48
Total	2,518.14	40,665.18	150,733.26	569,917.62	1,797,616.90	803,081.24	599,570.63	\$3,964,102.97

It appears that PCGG’s use of this fund for travel is marked by the following attributes: (1) apparently unliquidated; (2) irregularly disbursed; (3) clearly excessive; and (4) in some instances, *ultra vires*, in that it was used for travels clearly beyond the stated parameters of the fund.

1. **There are no liquidation reports on file. The use of the \$2,276,478.46 for PCGG travels has not been accounted for or audited at all.** While these trips were funded by money from the account retained by PNB and was never remitted to the National Treasury, it is maintained that these are, and have always been, public funds and should be accounted for. The law, specifically

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Million U.S. Dollars (US\$22M) still in West Landesbank in Singapore, as well as necessary expenses that may arise in relation to the Escrow Agreement.

RESOLVED further that this authority shall expire upon termination of the ARELMA and West Landesbank cases but in no case shall this authority exceed ten (10) years.

Section 16 of E.O. No. 248 as amended by E.O. 298, states that: *“Within [60] days after his return to the Philippines, in the case of official travel abroad... every official or employee shall render an account of the cash advance received by him in accordance with existing applicable rules and regulations and/or such rules and regulations as may be promulgated by the [COA] for the purpose.”* And Section 18 of the said E.O. provides that: *“Every official or employee assigned or authorized to travel should, within [30] days after his return..., submit a report with his recommendations....”*

2. **Actual disbursements were made in an irregular manner.** Checks were not cut in favor of PCGG or a responsible officer of the Commission. Of approximately 135 letter-requests from PCGG to PNB for disbursements from this fund, around 118 directed PNB to make the check payable to Ms. Cristina A. Beronilla, a clerk at the Legal Department, allegedly “in order to facilitate encashment”. Again, there are no acknowledgment receipts or liquidation reports or official receipts to support alleged expenditures.

- a. Ms. Beronilla took a one-year leave in June 2010 which was approved by the previous commission. She has never reported for work under the new commission and submitted her resignation as of October 2010 (after the incident described below).
- b. Her sister, Ms. Ellaine Santos, also a clerk at the Legal Department, is currently the subject of an internal fact-finding investigation after she was stopped by PCGG security on 28 October 2010 while attempting to bring out boxes of official files which she allegedly thought were “personal files of her sister, Cristina Beronilla”.

3. **The amounts spent on each trip are gravely excessive especially if considered along with the fact that these have not been subject to any liquidation whatsoever.**

- a. In requesting funds, the Chairman or Officer-in-Charge first writes a letter addressed to PNB making the necessary representations and giving the following information: (a) persons making up the delegation<sup>3</sup>; (b) inclusive dates of the trip; (c) a short description of the trip’s objective; and (d) the amount requested. This letter would have an attached summary of projected travel expenses. A number of items in said summary are flagged as follows:
  - i. “Representation allowance” of US\$1000.00 is provided to every single member of any delegation, even individuals who are tasked to do simple clerical and secretariat work.<sup>4</sup> *This notwithstanding the clear language of Section 13 of E.O. 248, as amended by E.O. 298, that: “[I]ndividuals traveling on official business may, upon approval of the President, be allowed non-commutable representation expenses not exceeding US\$1000.00, duly supported by bills or receipts, as shall be absolutely necessary to enable them*

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<sup>3</sup> In some cases, no names would be given and would only indicate “PCGG Secretariat”.

<sup>4</sup> This practice appears to have been abandoned only in 2010. However, officials of a particular rank were still provided with a blanket representation allowance of US\$1000 without any liquidation being made.

*to uphold the prestige of the Republic of the Philippines, to represent the country with dignity and distinction, and to carry out their functions and objectives more effectively.*

- ii. Aside from “representation allowance”, “contingency funds” is another constant in these projected budgets and appears to be arbitrarily determined. There is no detectable standard for the amounts requested (e.g.,  $x$  amount per day or % of total) and these ranges from a low of US\$1000 to a high of US\$36,000. To reiterate, these have not been subject to any accounting or liquidation.
- iii. Whether or not the traveling civil servant is a commissioner tasked “to confer with foreign counsel” or an office assistant tasked “to provide clerical support to OSG lawyers”, travel is invariably on business class (based on quoted airfare). *This notwithstanding the clear language of Section 10 of E.O. 248, as amended by E.O. 298, that: “In case officials and employees authorized to travel are not provided with transportation by the host country or sponsoring organization or agency, they shall be allowed official transportation, which shall be of restricted economy class unless otherwise authorized by the President of the Philippines”.*
- iv. For a good number of the trips, “hotel accommodations” shows up as an expense item separate and distinct from the requested Daily Subsistence Allowance (DSA) at UNDP rates. The operational definition of the DSA covers “lodging, meals, gratuities and other expenses”. *Section 12 of E.O. 248, as amended by E.O. 298, provides that: “Government personnel who travel abroad shall be entitled to the [DSA] as provided under the [UNDP] Index.... The DSA shall be apportioned as follows... (a) 50% for hotel/lodging....”<sup>5</sup>*
- b. The former members of the Commission and certain officials traveled so frequently that it is indeed suspect whether such trips were really necessary and advantageous to the government interests which the Commission are mandated to protect. To cite a few examples: Chairman Sabio undertook between 41-50 foreign trips between September 2005 and June 2010<sup>6</sup> and Comm. Jaime Bautista undertook approximately 60 foreign trips between June 2006 and May 2010.<sup>7</sup>
- c. The sizes of the delegations varied but a delegation size of more than 10 individuals is commonplace. This would be a composite of PCGG and OSG officials. The PCGG delegation would frequently include individuals to serve in a secretariat or administrative manner even as the objectives

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<sup>5</sup> This practice appears to have also been abandoned only in 2010. But instead of following the E.O. and living within the DSA, the more recent practice was to peg the DSA at US\$150 (about half the UNDP rate) and still provide a separate budget line for hotel accommodations which are consistently much higher than the total UNDP-pegged DSA.

<sup>6</sup> This only refers to trips charged to PNB, whether partially or fully, and does not include other trips made which were charged to the CIIF Oil Mills Group or any other entity.

<sup>7</sup> While it is not suggested that all these trips were useless junkets, it is very difficult to make a determination of their benefits as no reports are available and mission orders drawn up prior to the trip are usually couched in general terms. Furthermore, these numbers only represent trips financed by the PNB fund and do not include other trips such as those financed by CIIF or the regularly appropriated budget of PCGG.

of these trips arguably would not require extensive secretariat services (as, say, organizing a conference would). There are also about 10 instances where the communication to PNB would simply make reference to the travel of “PCGG secretariat” with no mention of who exactly makes up said group, although the number of people can be gleaned from the projected summary of expenses (ranging from 3-5). Again, for the most part, each would be given representation allowance of US\$1000.00 per trip and accommodated on business class no matter the destination. No reports were also required to be submitted.

- d. To bring the point home, consider the following example: *An amount of US\$46,000 was requested (15 September 2008 letter to PNB) and released for the travel of two persons, a commissioner and his chief of staff, to Singapore. The trip was for 17-30 September, or a period of two weeks, for the ostensible reason of “confer[ring] with the Republic’s counsel and determin[ing] which courses of action the Republic should take considering the developments after the pre-trial conference.”* This particular trip was excessive on so many levels: (a) the objective did not require a two-week sojourn; (b) the objective would have been better served if the commissioner was accompanied by a lawyer well-versed in the proceedings instead of his Chief of Staff; (c) the total amount expended is unconscionable and hotel accommodations were charged over and beyond the DSA; (d) business class rates are reflected even though this is a short flight to Singapore; (e) representation allowance of US\$1000.00 were given to each; (f) a contingency fund of US\$10,000.00 was provided; and (g) none of these were ever liquidated.<sup>8</sup>

4. **A number of trips financed by the PNB-retained fund were arguably outside the scope or coverage of said fund.** The 2004 resolution which allowed the retention of this fund by PNB is clear that it is for any lawsuit or potential lawsuit against PNB in connection with the Escrow Funds or such other funds held in trust by the PNB for the Republic, and the legal, administrative and other related costs that may be incurred in the recovery and transfer to the Republic of the amount in Singapore and the Arelma account in the United States. However, it also been used to fund trips which arguably are not within the parameters given above. There would only be “saving clauses” tangentially relating to the objectives of the fund. To illustrate:

- a. Reason for Rio de Janeiro travel of 13-27 August 2008 based on the 7 August 2008 letter to PNB: “to attend the International Law Association’s 73<sup>rd</sup> Biennial Conference where the contingent shall endeavor to pass a resolution supporting the Republic’s position in the West LB case pending before the Singapore High Court, and to advocate resolutions strengthening the Republic’s claim of sovereign immunity in future recovery efforts abroad.” *It is noteworthy that the contingent included nineteen (19) members and at least one non-lawyer and that the amount*

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<sup>8</sup> The worst part of this narrative is that this example is not a singular incident but is in fact quite ordinary.

*requested and released for this particular trip was US\$160,000.00. It also bears noting that the Rio Conference was only from 18-21 August 2010.*

- b. Reason for Vienna travel of 17-29 September 2008 based on the 11 September 2008 letter to PNB: “to attend the Open-Ended Intergovernmental Working Group on the Review of the Implementation of the UN Convention Against Corruption and the 2<sup>nd</sup> Inter-sessional Meeting of the Open-Ended Intergovernmental Working Group on Asset Recovery to pursue the Commission’s advocacy of Philippine sovereign immunity in relation to our asset recovery effort as judicially expounded in the Arelma case.” *For this particular trip by 2 individuals, the amount of US\$80,916.00 was requested and released. It also bears noting that the UNCAC meetings were only held on 25 and 26 September 2010.*
- c. Reason for Vienna travel on 9-17 May 2009 based on the 5 May 2009 letter to PNB: “to participate in the Open-Ended Intergovernmental Working Group on the Review of the Implementation of the UN Convention Against Corruption and the Open-Ended Intergovernmental Working Group on Asset Recovery of the UN Convention Against Corruption where the contingent shall endeavor to pass a resolution supporting the Republic’s position in the West LB case pending before the Singapore High Court, and to advocate resolutions strengthening the Republic’s claim of sovereign immunity in future recovery efforts abroad.” *Again, it bears noting that the UNCAC meetings were only held on 13 and 14 May 2010.*<sup>9</sup>

Finally, based on records from the CIIF Oil Mills Group (OMG), Chairman Sabio had 10 foreign trips which were charged to CIIF between 2006 and 2009. Of these, 6 trips were to attend board/stockholders’ meetings of the United Coconut Planters International based in Paris and 4 trips were made for the purpose of attending agricultural industry affairs. For his travel alone, CIIF OMG spent a total of PhP2,265,121,83. Of this total, PhP714,069.30 or approximately 1/3 thereof represented *per diems* collected by Chairman Sabio. This occurred at a time when CIIF OMG was incurring heavy operating losses (roughly PhP1.4 billion from 2005-2007).

What makes matters worse is that, upon checking the CIIF OMG-funded trips against the records of disbursements from the PNB-retained funds, there are at least two instances of overlap:

<b>Dates</b>	<b>CIIF</b>	<b>PNB</b>	
March 2008	<ul style="list-style-type: none"> <li>• 9-13 March 2009</li> <li>• Florida, USA</li> <li>• NIOP annual convention</li> <li>• Charged airfare (US\$2,036), per diem (US\$1,500), hotel</li> </ul>	<ul style="list-style-type: none"> <li>• 3-16 March 2008</li> <li>• Singapore</li> <li>• -</li> <li>• Charged DSA (US\$389/day for 14 days)</li> </ul>	<ul style="list-style-type: none"> <li>• 12-20 March 2008</li> <li>• Washington, DC</li> <li>• -</li> <li>• Charged airfare (RP-US-RP); DSA (US\$344/day)</li> </ul>

<sup>9</sup> It is not the position of the current Commission that participation in these kinds of conferences are to be discouraged, only that the proper sourcing of funds ought to have been undertaken.

	(US\$1,688)		
September 2008	<ul style="list-style-type: none"> <li>• 17-20 September 2008</li> <li>• Paris, France</li> <li>• UCPI Stockholders' mtg.</li> <li>• Charged per diem (US\$1,050), hotel (US\$2,310)</li> </ul>	<ul style="list-style-type: none"> <li>• 17-29 September 2008</li> <li>• Vienna, Austria</li> <li>• UNCAC meetings</li> <li>• Charged DSA (US\$341/day); hotel (US\$8,255)</li> </ul>	

*Action taken: The Commission will be issuing memoranda to each PCGG official or employee who undertook foreign travel (from the period of September 2005 to June 2010) to submit accomplishment and liquidation reports.*

### **C. APPARENT MISUSE OF PUBLIC FUNDS**

1. **Bloated personnel complement.** Per COA, the PCGG hired 6 private lawyers, 41 consultants and 85 office-based personnel paid under PCGG's expense entitlement during the last commission's term. The office-based personnel ranged from additional drivers and utility workers to "special assistants". When the current Chair assumed office, there were still approximately 72 of said office-based personnel.<sup>10</sup>
2. **Superfluous counsel.** On 30 March 2010, the previous Commission (through Chairman Sabio) entered into a Retainer Agreement with Donal A. O'Buckley (the brother in-law of Chairman Sabio) to "provide consultancy services in the case of *Osugama F. Swezey, et. al. v. Merill Lynch, et. al.* pending before the Supreme Court of the State of New York County of New York". *This notwithstanding the fact that PCGG had already retained, at much cost, a well-known law firm (Paul Hastings) to represent the Republic.* A review of O'Buckley's billing statement showed that not only were the rates relatively high (US\$600/hour for O'Buckley, \$225/hour for a paralegal and \$125/hour for an administrative assistant), the actual work done was relatively minimal, such as: "review online research and draft memo of paralegal" (6 hours); "review of pleadings" (6 hours); "legal research and sharing of information with Chairman Sabio" (4.5 hours); "appearance at court to listen and observe legal arguments" (3 hours); and "meeting at Philippine Consulate to discuss oral arguments and official lunch with PCGG" (7.5 hours). Also, on one single day, he charged 2.5 hours (\$1500) for a "strategy consideration meeting with Chairman Sabio" and 2 hours (\$1200) for "dinner with PCGG at the Radisson". His bill also included \$600 for the photocopying of 1500 pages of documents or a charge of \$2.50 per page. It is noteworthy that the current going rate for photocopying in the state of New York is 20-50 cents per page. *Through Resolution No. 2010-020-797 dated 3 June 2010, PCGG requested PNB to release the amount of US\$26,755.00 in favor of Mr. O'Buckley as payment for professional services rendered on 5-28*

<sup>10</sup> This is grossly disproportionate if one considers the fact that the regular personnel complement of the PCGG is only 135 employees (comprising of the permanent, co-terminus, casual and contractual kinds). The new Commission is in the process of rightsizing and has already trimmed the numbers by not renewing approximately half of the assignments/contracts, as these were considered redundant personnel. More rightsizing measures are planned for the beginning of 2011.



*April 2010. He was thereafter paid. This was unprecedented in terms of prompt payment for counsel fees and made while similar billings from other retained counsels were then (and still are) pending. In fact, at the time said resolution approving the O'Buckley bill was made, the lead counsel in the subject case of Swezey v. Merrill Lynch (where Mr. O'Buckley was "consulting" on), the firm of Paul, Hastings, Janofsky & Walker, had outstanding billings amounting to US\$708,602.40 dating back to 18 November 2009.<sup>11</sup>*

3. **Newspaper abuses.** During the term of the last Commission, approximately 1,900 newspapers per month (or 61 newspapers per day) were being purchased and distributed to various offices in the PCGG. Based on official records, for the period of January 1, 2010 to August 31, 2010 alone, PCGG spent a total of Php278,634.35 as payment for newspaper subscriptions. Considering the size of the Commission and the number of departments and offices in the entire Commission, this consumption of newspapers is excessive. Verbal testimonies include accounts of one particular commissioner requiring that 4 copies of each major daily be delivered to his office (as he needed two of each kind for his home and two for his office staff).
4. **Water bills.** PCGG paid the total of Php336,292.49 (in 2008) and Php505,750.01 (in 2009) for water to Manila Water Company Inc. Considering the number of employees (253 in 2008 and 273 in 2009), this consumption of water is deemed excessive and disproportionate. It can be noted too that for just a period of one year (from 2008 to 2009) there is an increase in expense amounting to Php169,457.52. Verbal testimonies cite the use of the inhabitants<sup>12</sup> of the IRC Wack-Wack property of water from the office for all purposes, including cooking, laundry, bathing toilet, and cleaning.

*While the inclusion of some of these matters may seem relatively trivial as accounts of graft and corruption, these are symptomatic of the excesses prevailing during the last administration.*

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<sup>11</sup> Paul Hastings was paid US\$252,271.36 in 2009 and has a pending bill, as of 31 October 2010, of US\$750,671.08.

<sup>12</sup> Informal settlers who are comprised of PCGG employees and their families, roughly around 30 in number, who were all allowed to stay in the empty lot by the Commission.

#### **D. ADMINISTRATIVE AND/OR CRIMINAL CASES**

Based on the records retrieved from the Office of the former PCGG Chairman Camilo L. Sabio, the following administrative and/or criminal cases have been filed against PCGG officials:

<b>Case</b>	<b>Respondent/s</b>	<b>Alleged Violation</b>
OMB-C-A-09-0606-J January 25, 2010	<i>Chairman Camilo L. Sabio</i>	Respondent failed to remit PCGG-collected deposits to the Bureau of Treasury amounting to Php10,350,000; respondent acknowledged receipt of this sum in the form of cash advances and partial remittances of the Mid-Pasig Land Development Corporation to PCGG from the proceeds of sale of Anscor shares in 2006.
OMB-C-A-09-0611-J and OMB-C-C-09-0601-J January 25, 2010	<i>Chairman Camilo L. Sabio Dir. J. Ermin Ernest Miguel</i>	Respondents violated regulations relative to the use of government-issued cellular phones. Respondent Sabio has a total excess bill of Php25,594.76 and respondent Miguel has a total excess bill of Php53,012.67.
OMB-C-A-10-0122-B and OMB-C-C-10-0121-B April 5, 2010	<i>Chairman Camilo L. Sabio Comm. Ricardo M. Abcede Comm. Tereso L. Javier Dir. J. Ermin Ernest Miguel</i>	Respondents violated the prohibition against using more than one government vehicle. Based on records, respondent Sabio received 3 vehicles; respondent Javier received 2 vehicles; respondent Abcede received 2 vehicles; and respondent Miguel received 2 vehicles in his name.
OMB-C-A-10-012-B and OMB-C-C-10-0122-B April 5, 2010	<i>Chairman Camilo L. Sabio Comm. Ricardo M. Abcede Comm. Tereso L. Javier Comm. Narciso S. Nario Comm. Nicasio A. Conti</i>	Respondents entered into lease-purchase agreements without proper bidding. Lease Agreement No. 5320 dated 18 April 2007 was entered into between PCGG and the UCPB Leasing & Finance Corporation for the lease of five vehicles in the total amount of Php5,393,000.00. Moreover, another (undated) agreement was entered into between the same parties for the lease of another six vehicles in the total amount of Php6,734,610.00.

Based on requests for records, the Legal Department provided a list of cases filed against PCGG officials and pending with the Office of the Ombudsman. Aside from the foregoing, these cases were also listed:

1. OMB-C-C-09-0019-C
2. OMB-C-A-09-0017-C
3. OMB-C-C-09-0598-J
4. OMB-C-A-09-0609-J
5. OMB-C-A-09-0608-J
6. OMB-C-C-09-0597-J
7. OMB-C-C-09-0597-J

No files on these could be produced. Verbal reports were made to the present Commission that towards the end of the term of former PCGG Chairman Sabio, the

files of all administrative and/or criminal cases were pulled out from the Legal Department and transferred to the Office of the Chairman. However, these files appear to be missing at present.

*Action taken: The present Commission has written the Office of the Ombudsman requesting documents pertaining to these cases and, should there be any, to include copies of other cases filed against PCGG officials that are not covered by those mentioned above.*

## **E. QUESTIONABLE DECISIONS/AGREEMENTS:**

*What follows is an enumeration of contractual agreements and/or decisions that were made with the color of authority and apparent due diligence but which may be disadvantageous to the government. Closer scrutiny and more in-depth investigation may be in order.*

### **1. IBC-13's JVA with R-II Builders/PRIMESTATE**

This joint venture agreement over the property known as Broadcast City has been assailed in the press and in the Senate (specifically by Sen. F. Drilon) as being disadvantageous to the Republic and as constituting a midnight deal (e.g., PCGG Resolution No. 2010-010-797 interposing no objections is dated 19 March 2010). While arguably easing the financial woes of IBC-13 and ostensibly enhancing its value, there are indeed a number of red flags to be raised in the JVA:

- The JVA has not been submitted nor reviewed by the Privatization Council pursuant to Section 3 of EO No. 323.
- Article III, Section 3.5.a of the JVA states that: "Considering that equity other than cash is to be contributed by IBC-13, IBC-13's contribution of the 3.6401-hectare Residential Development Portion shall be valued at (P364,000,000.00)." This would mean a valuation of only P9,999.99 per square meter. This may not reflect the true fair market value and said valuation was not submitted to COA's Technical Services Office for review.
- Section 3.5.b of the same article stipulates that: "Upon execution of this Agreement, IBC-13 shall turn-over and assign its rights to the Project Site<sup>13</sup> in favor of R-II BUILDERS/PRIMESTATE or its nominee or assignee, immediately transferring possession and perform such other acts necessary to fully contribute the Residential Development Portion under a separate title, free and clear from any and all liens, encumbrances and legal impediments..." It appears therefore that the JVA will mean that R-II/PRIMESTATE will build a residential condominium building on 3.64 hectares which will then be transferred in its name. In effect, IBC-13 will be left with only 5,000 square meters.
- Article I, Section 1.5.c. provides that "IBC-13 shall be entitled, as its share in the net revenues of the Residential Development, to IBC-13's Guaranteed Share in Revenues which is a guaranteed amount of [P728,000,000.00]...." This amount is a little misleading however as the breakdown states that "[P450,000,000.00]

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<sup>13</sup> The Project Site is defined under the JVA as the parcel of land located at Capitol Hills, Diliman, Quezon City with an area of 4.141 hectares, more or less owned and registered in the name of IBC-13.

shall be offset or used to compensate R-II BUILDERS/ PRIMESTATE for the construction and development of the New Broadcast City.”

These concerns were echoed in the Audit Observation Memorandum sent by the Commission on Audit to PCGG on 28 August 2010.<sup>14</sup>

## **2. Conversion of SMC common shares into SMC series 1 preferred shares**

On 17 September 2009, as an incident in the COCOFED, et. al. v. Republic case (G.R. Nos. 177857-58), the Supreme Court resolved to approve the conversion of the 753,848,312 SMC common shares registered in the names of CIIF companies to SMC Series 1 preferred shares (SMCP1).<sup>15</sup> The OSG had earlier opined to PCGG that the conversion and eventual redemption is legally allowable as long as the approval of PCGG is obtained for the amendment of the Articles of Incorporation of SMC. The OSG added that should PCGG give its prior acceptance and approval in accordance with its procedures and mandate, there should be no legal impediment to the eventual redemption of the SMCP1 should the right to redeem be exercised by SMC. In its Resolution No. 2009-037-756 dated 02 September 2009, PCGG approved the conversion pursuant to the confirmation of the DOF and the legal opinion of the OSG, and requested the OSG to seek approval of the Supreme Court for the proposed conversion. In a letter to PCGG dated 8 September 2009, the DOF confirmed that the proposed conversion is advantageous to the National Government on a purely financial standpoint. As mentioned above, the Court approved said conversion.

Based on the description of the exchange offer found in SMC’s disclosure statement relating to the offer, it is SMC which has the option to redeem the SMCP1 shares:

As and if declared by the Board, [SMC] may redeem the Series “1” Preferred Shares on the third anniversary from the Issue Date or on any Dividend Payment Date thereafter, in whole or in part, at a redemption price equal to the Issue Price of the Series “1” Preferred Shares plus accrued and unpaid dividends, whether declared or undeclared, for all dividend periods up to date of actual redemption by [SMC]. The redeemed Series “1”

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<sup>14</sup> The Memo raised the following points:

- The valuation of the 3.64-hectare contribution to the residential development portion of the project is pegged at PhP364 million or at PhP9,999.00/square meter [only]; this was not subjected to a technical review by the COA Technical Service Office.
- The arrangement in the JVA is skewed in favor of RII Builders, Inc./PRIMESTATE where IBC will be left with only 5,000 square meters for its Broadcast City with a relatively small 2-storey commercial building which may earn a small income.
- IBC-13 is effectively disposing of its 3.64-hectare land contribution to the JVA, in favor of RII Builders, Inc./PRIMESTATE, but without an absolute guarantee that it will receive in full the cash components of its share, i.e., PhP150 M and PhP128 M.
- The JVA does not appear on record that it was submitted, much less reviewed, by the Privatization Council.

<sup>15</sup> The proposed conversion was embodied in the Information Statement issued by SMC dated 23 July 2009 which discussed and compared the two types of shares.

Preferred Shares shall not be considered retired and may be reissued by [SMC] at a price to be determined by the Board.

Moreover, the enumerated “risk factors and other considerations” in said disclosure provides that there is no stated maturity date and SMC has the sole right to redemption:

The Series “1” Preferred Shares have no fixed maturity date, and the Series “1” Preferred Shares are not repayable in cash unless [SMC], at its sole discretion, redeems or purchases them for cash. Furthermore, holders of the Series “1” Preferred Shares have no right to require [SMC] to redeem the Series “1” Preferred Shares. The Series “1” Preferred Shares are only redeemable at the option of [SMC] on the third anniversary of the Issue Date of the Series “1” Preferred Shares or on any Dividend Payment Date thereafter. Accordingly, if a Series “1” Preferred Share holder wishes to obtain the cash value of the investment, the holder will have to sell the Series “1” Preferred Shares in the secondary market.

The determination that the conversion was advantageous to the National Government on a purely financial standpoint has, in the light of subsequent events, proven to be mistaken. The SMC offer for conversion which was taken up in this case provided that “the SMC Common Shares shall be converted at an exchange ratio of one SMC Series 1 Preferred Share for every one SMC Common Share tendered; [e]ach SMC Series 1 Preferred Share shall have a par value of P5 per share and an Issue Price of P75 per share. The average market value prevailing at that time was approximately P66 per share. As of 30 November 2010, the value of said common share is pegged at P120. The Supreme Court however has stood by its approval and stated in its 11 February 2010 Resolution that:

[T]he conversion of the shares along with the safeguards attached thereto will ensure that the value of the shares will be preserved. In effect, due to the nature of stocks in general and the prevailing business conditions, the government, through PCGG, chose not to speculate with the CIIF SMC shares, as *prima facie* public property, in the hope that there would be a brighter economy in the future, and that the value of the shares would increase.

### **3. PIMECO MOA**

PIMECO is a corporation sequestered by PCGG in 1986. Previously, in 1975, PIMECO had entered into a lease-purchase agreement (LPA) with MPCP (a wholly-owned subsidiary of GSIS) over MPCP’s meat packing complex, a valuable 12.3-hectare property in Pasig City. A case for reconveyance was filed covering the individuals ostensibly owning shares in PIMECO.

Moreover, for a number of reasons, MPCP-GSIS attempted to rescind this LPA which rescission was objected to by PIMECO and PCGG. In 2008, the Sandiganbayan ruled in favor of the latter and declared the rescission invalid. MPCP-GSIS raised the issue to the Supreme Court on certiorari.

On 11 December 2009, a Memorandum of Agreement (MOA) was entered into by and between PCGG, Peter Sabido, PIMECO, and Consolidated Prime Development Corporation (CPDC). CPDC is primarily interested in PIMECO because of the Pasig property. Acquiring a controlling interest in PIMECO would allow it to negotiate with MPCP-GSIS as it would, through PIMECO, now have legal interest in the LPA. The said agreement allowed PIMECO's shareholders, ostensibly Independent Realty Corporation and Peter Sabido, to sell their shares to CPDC for Php10,909,090.91 and Php20,000,000.00, respectively. The MOA also gave PCGG the amount of Php89,090,909.09 as settlement in consideration of its consent to the said compromise agreement.<sup>16</sup>

The thinking was that this was beneficial as it would end a litigation whose results were still uncertain over property which PCGG may be unable to afford or acquire anyway even in the face of resolution in its favor.<sup>17</sup> While this agreement may be seen as favorable to the government at first glance, certain facts cast doubt as to the wisdom of entering into it as it can be argued that, for all legal intents and purposes, PIMECO is a surrendered corporation by both Jose Campos (as to the IRC part) and Roberto S. Benedicto. The provenance of Peter Sabido's shares can arguably be traced to funds from the Traders Royal Bank (a bank beneficially owned and controlled by Benedicto for the benefit of Mr. Marcos).

The point then being that PCGG can arguably assert 100% ownership over the assets of PIMECO, as a surrendered company (not just a sequestered company), pursuant to the compromise agreements entered into by the

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<sup>16</sup> A joint motion dated 28 January 2010 for the approval of the MOA was filed by PCGG, PIMECO and Sabido with the Sandiganbayan; this was granted on 24 March 2010. A joint manifestation was also filed by PIMECO and MPCP-GSIS in the Supreme Court stating that they have amicably resolved their dispute; this was noted by the Court in a resolution dated 16 June 2010 and the case was thereby considered closed and terminated.

<sup>17</sup> OSG's September 2009 opinion:

[C]onsidering the pendency of the petition for certiorari, prohibition and mandamus filed by MPCP-GSIS before the Supreme Court praying that the rescission of its [LPA] with PIMECO be upheld and that it be allowed to exercise its rights as owner of the 12.9 hectare property, it is still premature for the PCGG to entertain any proposal for the acquisition of the subject property. This is because in the event that the Supreme Court nullifies the rescission of the Lease-Purchase Agreement, then MPCP-GSIS retains ownership of the subject lot; hence, any proposal involving the same should be directed to MPCP-GSIS alone. On the other hand, if the validity of the [LPA] is upheld by the Court, the issue of whether PIMECO has now become a surrendered corporation by virtue of the Compromise Agreement executed by Benedicto in favor of the PCGG must still be resolved by the Sandiganbayan."

In ¶7 of the joint motion for approval of the compromise agreement dated 28 January 2010 before the Sandiganbayan:

[T]he PCGG has no means of realizing the value on PIMECO's Lease-Purchase Agreement with MPCP-GSIS. This is because, while PCGG may have a hold on a quantity of PIMECO shares in the instant case and, through IRC, own a quantity of PIMECO shares, the value thereof, and those belonging to Peter A. Sabido, may ultimately depend on whether or not the Supreme Court upholds the continued validity of the [LPA] and then the financial capacity of PIMECO to continue with the [LPA].

government with Campos and Benedicto.<sup>18</sup> This may involve a radical change in the theory of the case but it should have been more thoroughly examined as a feasible legal position especially in the light of the fact that the Republic cannot be estopped by the mistakes of its agents. It is noteworthy that this MOA was concluded in a short span of 4 months from initial contact. Why did PCGG enter into the MOA and allowed Sabido to gain Php20,000,000.00 if his shares in PIMECO are fruits of ill-gotten wealth (from TRB funds) to begin with? Why enter into the MOA when we had the advantage in the rescission case filed by MPCP-GSIS?<sup>19</sup> Was the MOA really the best course of action in the face of the foregoing assertions?

## **Conclusion**

The Commission would like to note that this report embraces, for the most part, internal issues and does not cover possibly graver incidents of graft and corruption in sequestered and surrendered corporations supposedly subject of PCGG's oversight functions. The current Commission has no representation on the boards of these corporations and is currently in a bind as to how it can fully and effectively exercise its mandate. Moreover, even with regard to internal issues, this prepared report is constrained and hamstrung by the paucity of records on certain matters and the state of record-keeping when the present Commission assumed office. Finally, it is underscored that this is a preliminary survey into the issues raised, with a view to identifying matters which ought to be the subject of deeper investigation. No accusations therefore are being leveled and no findings as to administrative, criminal and/or civil liability are being made.

The new Commission stands firm alongside President Aquino and his administration's commitment against corruption. It is hoped that this report can provide the baseline for examining questionable practices in the past and holding accountable those individuals who may have fallen short of the public trust. It is the new Commission's hope that the PCGG will be a model agency whose hallmarks will be transparency and accountability to the people, and which can again lay full claim to being *the* Presidential Commission on *Good Government*.

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<sup>18</sup> This would, admittedly, require PCGG and the Republic to change its theory of the case.

<sup>19</sup> Even if, *assuming arguendo*, we had lost the rescission case, the Republic would still have benefited as MPCP is wholly owned by GSIS.