

# The Industrial Anatomy of Corruption: Government Procurement, Bidding and Award of Contracts

AMADO M MENDOZA JR



The demise of the Estrada administration in January 2001 is the latest evidence that corruption remains one of the salient issues in the country's political life even amidst widening cynicism that the problem will ever be resolved. The public uproar against Estrada's corruption started with the revelations of a disaffected ally, Governor Luis "Chavit" Singson, alleging the President's regular receipt of pay-offs from operators of *jueteng* or the popular illegal numbers game.<sup>1</sup> Singson's disaffection was caused by the awarding of a lucrative government contract to operate a legalized version of *jueteng* (Bingo 2-Ball) to another presidential crony, Charlie "Atong" Ang, who in turn awarded the franchise to operate Bingo 2-Ball in Ilocos Sur, Singson's home province, to Singson's bitterest business rivals and political enemies.

Singson's revelations, the subsequent Senate Blue Ribbon committee hearings and the presidential impeachment trial indicated how the award of gov-

ernment contracts among many others, can be distorted in a manner that is disadvantageous to government and lopsidedly benefits favored private interests. In a reprise of previous questionable arrangements, Ang's grossly under-capitalized corporation was awarded a substantial contract by the Philippine Amusement and Gaming Corporation (PAGCOR) even before it was formally registered with the Securities and Exchange Corporation (SEC). Ang's outfit bagged the contract on the verbal say-so of Estrada to PAGCOR chairperson, Alice Reyes, and without the benefit of a public bidding. The preferential treatment of Ang was apparently premised on the former giving Estrada a substantial cut of his earnings.

During the impeachment trial proceedings, several witnesses including former Secretary of Finance Edgardo Espiritu, testified that a government bank, the Philippine National Bank (PNB), extended a P600 million loan to BW Resources, owned by another presidential crony, Dante Tan, though the firm was not credit-worthy. BW Resources was the same company involved in the massive stock price manipulation in 1999-2000 which almost wrecked the local stock market.

Grand corruption happens at the highest government levels and involves major government programs and projects. Governments frequently transfer large economic resources to private firms and individuals through procurement contracts, awards of concessions and sales of public assets. Given the attractiveness of these transfers, some private interests are not content to allow the award of the same through fairly competitive processes. Bribes are offered and accepted to ensure the capture of these resources. These bribes in turn transfer monopoly rents to private interests with a share going to the corrupted public officials.

Corruption involving top-level public officials can produce serious distortions in the way society and government operate. The government pays too much for large-scale procurements and receives too little from the sale of public assets and the award of concessions. Corrupt officials distort public choices and decisions to generate large rents for themselves and to produce inefficient and inequitable public policies and programs. Incentives to corruption exist

because state officials have the discretionary power to allocate scarce resources and to impose costs.

This paper discusses the industrial anatomy of corruption in the area of government contracting, which involves government procurement and the bidding and award of contracts funded both by the government and by international financial institutions such as the World Bank and ODA (official development assistance). By industrial anatomy, we seek to identify and to describe the technologies used in the corrupt practice, the politico-economic players involved and the enabling/disabling policy and socio-political environment.

This paper contains two parts: first, a review of the literature on corruption with respect to public procurement and contracts; and second, several case studies to unearth new and emerging corruption technologies.

We argue that globalization and economic liberalization have offered new opportunities for corruption and rent-seeking and have therefore led to the development of new corruption technologies as well as caused the entry of new players into the fray.

While globalization and economic liberalization should theoretically lessen the opportunities for corruption and rent-seeking in a here-to-fore protected economy, the transition period affords entrepreneurs of all types new opportunities to capture rents through corruption. For instance, the IPO (Initial Public Offering) fever during the later years of the Aquino administration and the early half of the Ramos government afforded insiders and other favored individuals and groups lucrative rent opportunities. A case that bears more careful study is the public offering of the PNB and PNOC shares. Another case is that of the sale of Fort Bonifacio: the Metro Pacific Group won over the Ayala Corporation by offering an unbelievable premium of about P10,000 a square meter. Yet as soon as it won the contract, Metro Pacific obtained a loan from the Government Service Insurance System (GSIS) to finance the 20% down payment required of the winning bidder.

Market reforms associated with globalization may not always reduce rent-seeking opportunities. They may in fact reproduce incentives for rent-seeking behavior even in the presence of comprehensive liberalization. Recent Latin

American experience shows that distributional coalitions (of the Mancur Olson type) may proliferate when the state withdraws from the economy, not only when it intervenes (Schamis 1999). The improper sequencing of economic reforms could also cause problems. Russia's experience shows how premature price liberalization without prior or accompanying de-monopolization simply shifted the flow of monopoly rents from the state to private monopolists. Here, the low level of competition could explain the surge in rent-seeking and corruption associated with the early phase of economic liberalization. This is consistent with the empirical literature that finds that corruption is negatively correlated with different indicators of economic freedom (Henderson 1999 and Paldam 1999), with openness, defined as the ratio of imports to GDP (Ades and di Tella 1997 and Brunetti and Weder 1998), and with the number of years a country has been open to international trade (Sachs and Warner 1995, Treisman 2000, and Leite and Weidmann 1999).

While it may be argued that rents created during the transition to liberalization may be an acceptable one-time cost that must be borne by the economy, there is reason to believe that the transition will be a drawn out process in the Philippines, given the relative impermanence of social consensus, including elite consensus, behind economic openness in Philippine society<sup>0</sup>. As a protracted process, transition to liberalization will be witness to various episodes of rent-capture by entrepreneurs through corrupt deals.

A rough estimate of the Filipino public's response to economic openness may be seen in the results of a September 1999 public opinion survey on possible changes in the Philippine Constitution. To avoid the suspicion that plans to amend the charter were motivated principally by self-serving motives (such as the lifting or extension of term limits for the President and other elective officials), the Estrada administration initiated an amendment drive called Constitutional Correction for Development (CONCORD) in mid-1999. The said plan intended to limit changes to the economic provisions of the charter with the objective of making it more attuned to the challenges of globalization.

Concretely, the intent was to amend the charter by lifting the prohibitions on ownership of land by foreigners and to allow 100% foreign ownership of

public utilities, mass media and other strategic industries. The September 1999 survey of Pulse Asia indicated that most Filipinos were against amending the Constitution in general and that it was precisely the economic amendments proposed by President Estrada that Filipinos found most unacceptable. While 77% of the survey respondents were against extending the term limits of elected national and local officials, a heftier 92% did not want foreigners to own land in the country. In addition, 88% did not want foreigners to own public utilities or mass media companies while 81% registered opposition to a proposal allowing foreigners to own retail companies in the country.

### **Some empirical literature on Philippine corruption**

There is a rich body of literature on corruption in the Philippines coming from diverse sources including the academe, journalists, the courts and legislative bodies. After the fall of the Marcos dictatorship in 1986, primary materials on corruption during the Marcos dictatorship surfaced, including the Marcos-Honolulu Papers, seized by the U.S. Customs Service from the disembarking party of the fallen dictator at the Hickam Air Force Base in Hawaii. These documentary sources presented a clear picture of how corruption was organized and carried out with respect to infrastructure projects funded by Japanese official development assistance (ODA) during the Marcos years.<sup>2</sup>

Oscar Rodriguez, former Public Highways Deputy Minister, was appointed by President Marcos as implementing officer of the Philippine-Japan Project Loan Assistance Program (PJLAP), a special government agency organized by Marcos to oversee all Japanese government-funded yen credit projects in the country after the declaration of martial law in 1972, four years before the lapse of the Japanese Reparations Program. Previous to the PJLAP, the principal conduit of Japanese public monies into the country was the Reparations Commission headed by Marcos friend, Senator (formerly General) Eulogio Balao. The Reparations Program was the Japanese government's response to the need to compensate the Philippines and its citizens for damages suffered during the Second World War.

The documents indicated that President Marcos exacted kickbacks from each of the private Japanese corporations awarded supplier contracts in connection with Japanese-funded infrastructure projects in the Philippines. The Marcos-Japanese relationship began with the Reparations Program and continued until the last years of the Marcos dictatorship when the Overseas Economic Cooperation Fund (OECF) became the main conduit of Japanese public funds into the country following the end of the Reparations Program.

In general, the Japanese government-provided funds were to finance specific general infrastructure and development projects in the Philippines. The equipment requirements of the projects were to be purchased from Japanese manufacturers/suppliers in so-called "tied aid". Ostensibly, the Japanese suppliers competed with each other in a bidding process where the qualified bidder submitting the lowest bid price was awarded the supplier's contract. However, Marcos and his associates perfected a system wherein no Japanese supplier could win a contract unless a 15 percent "commission" (of the total contract price) was paid which would be included

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Except for a single instance where they attempted to win contracts without paying any commission to Marcos, Japanese suppliers generally acceded to the "commission" system. All qualified bidders knew they were expected to pay the "commission" if they wanted to win

a contract. Since all were willing players, one can say that suppliers' contracts were judiciously apportioned to a select group of Japanese suppliers in a sort of queue-ing system. This meant that if a particular Japanese supplier did not win the contract for a particular project, he could still hope to get one in another project.

The key Marcos aides involved in the operations were Balao (formerly a senator), Aquino (formerly secretary of Public Highways), Rodriguez (formerly

deputy minister for Public Highways) and Andres Genito, Jr. (a Marcos crony who became a member of the rubber-stamp parliament during the Marcos dictatorship). Balao collected commissions on projects financed under the Reparations Program; most of these projects were administered by Philippine government agencies other than the Department/Ministry of Public Highways. Genito took Balao's place when the latter died. In a division of labor, Aquino collected commissions on projects administered by the Department/Ministry of Public Highways and financed by the Overseas Economic Cooperation Fund (OECF). Rodriguez, who was accountable only to Marcos though technically Aquino's subordinate, took care of the technical function of accepting and evaluating bids and recommending (to Marcos) the award of contracts to specific Japanese firms. He could have been in charge of the queue-ing system alluded to earlier.

A key aspect of the entire operation was the collection side. Examination of the documents indicated that a private corporation, Angenit Investment Corporation (ostensibly owned by Genito but actually controlled by Marcos) played a central role in the collection of commissions from the OECF loans. Bids for contracts were coursed by Japanese traders through Angenit that, in turn, made recommendations for approval to Marcos. Genito and Aquino occasionally traveled to Tokyo or Hongkong to accept the pay-offs in cash from representatives of the Japanese suppliers. In Aquino's case, he would immediately deposit the pay-offs to a numbered account with the Hongkong office of the Swiss Banking Corporation. Upon his return to Manila, he would hand over the deposit receipts to Marcos.

The discussion of this specific case of corruption during the Marcos dictatorship shows the difference in the "industrial organization" of corruption in autocratic polities compared to democracies. As Rose-Ackerman (1999) points out, the industrial organization of corruption depends not just on the nature and organization of government but also on the organization and power of pri-

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vate actors. Corruption under the Marcos dictatorship was organized as a “kleptocracy” (Rose-Ackerman 1999). In this situation, the kleptocratic ruler faces a large number of unorganized (therefore less powerful) potential bribe payers. Marcos was powerful enough to whip the Japanese suppliers in line and managed to organize an effective and credible system of collection and enforcement.

As expected, the industrial organization of corruption in the Philippines was altered with the reintroduction of formal democratic and electoral processes after the demise of the Marcos dictatorship in 1986. As de Dios and Esfahani (2000) have pointed out, the provision of three co-equal branches of government and the system of checks and balances results in an “independent monopolists” model of corruption described by Shleifer and Vishny (1993). Even if the executive has the power to enter into contracts with favored parties, the power of the legislature to conduct investigations may be regarded as potent and may force the executive to share part of the bribe with key legislators, especially those who have skillfully mastered the “AC-DC” (Attack and Collect, Defend and Collect) tactic like former Senator Ernesto Maceda. Even the judiciary, especially the Supreme Court, could join the fray and gain its share of the loot, through its power to issue temporary restraining orders (TROs) binding on the executive or any of its agencies.

### **Corruption with respect to government procurement and the sale of public assets**

As a rule, procurement contracts are awarded through a public bidding which qualified firms participate in. In certain cases, no public bidding is held and contracts are awarded on a negotiated basis. When the government is a buyer or a contractor, there are several reasons to bribe public officials:

- A private firm might pay to be included in the list of qualified bidders and to restrict the length of the same list.
- The firm may pay for inside information, e.g., minimum and maximum price thresholds, average-offer prices and project evaluation criteria.



- Bribes may induce officials to formulate the bidding specifications so that the corrupt firm is the only qualified supplier.
- A firm may pay a bribe to be selected as the winning contractor.
- Finally, once a firm wins the contract, it may pay to get inflated prices or to skimp on quality.

These procurement contracts involve both large-scale infrastructure or capital goods projects and consumption goods such as drugs, books and other school supplies.

Consumption goods are favorite candidates for corrupt deals because it is difficult *ex post* to discover whether or not they were actually delivered. A good example of the former is the \$2.2 billion Bataan nuclear power plant provided by Westinghouse, which edged out General Electric (GE) by reportedly paying a \$60 million bribe to President Ferdinand Marcos through his crony, Herminio Disini (Verzola, Buenaventura and Santoalla 1991). Examples of the latter type documented by Chua (2000/1998; 1999) found that up to 65% of textbook funds go to bribes while Corotan (2000a/1995a; 2000b/1995b) found the same for drugs and rice, respectively.

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Corrupt deals with respect to procurement contracts and concessions therefore introduce several dysfunctions. They may limit the number of bidders, favor those with inside information and/or connections over the most efficient bidders, limit the information available to participants and introduce added transactions costs. The distortions also affect the behavior of public officials and private firms.

Public officials may select projects and make purchases with little or no economic rationale. As a rule, kickbacks are better obtained on capital goods projects and input purchases than on labor-intensive projects. For this reason, state officials may favor capital-intensive projects regardless of their economic

justification. Going back to the Bataan nuclear power plant example, one can accept the need to provide alternative energy sources for the country. However, the wisdom of building a nuclear plant in an area bisected by several earthquake fault lines and located near an active volcano is definitely questionable.

In addition, corrupt state officials have or ultimately develop shorter time horizons and therefore, higher discount rates than the country's citizens. The ruler's venality may make him insecure and subject to overthrow. In turn, this insecurity induces him to steal more, making him even more insecure, and so forth. As a result, the ruler will support projects with quick short-term pay-offs.

On the other hand, the corruption and corruptibility of the country's rulers and public officials introduce an additional element of uncertainty in the minds of private investors. Paradoxically, one of the strands of this uncertainty involves the efficacy of the bribe: will the firm get the "good" it wants in exchange for the bribe paid?; were the "right" officials bribed? In the face of this uncertainty, investors may commit funds only to short-term, get-rich-quick projects. This short-term orientation on the part of investors is understandable. First, they fear that those in power are vulnerable to overthrow because of their corruption. The new regime may not honor the contracts entered into by the overthrown regime. Second, even if the current regime remains in power, investors may still fear the imposition of arbitrary regulations and financial imposts once investments are made. They may be concerned that the ruler will permit competitors to enter the market or worry that their contracts will be voided for political reasons and economic considerations. Having paid a bribe in the past, investors are vulnerable to future extortionary demands.

For these reasons, concessionaires may run through their concessions at a faster rate, e.g., logging concessionaires may cut down trees more quickly than they would in less corrupt jurisdictions. Investors may also be reluctant to invest in immobile capital assets that will be difficult to move should political conditions change.

The sale of public assets to private interests may reduce corruption to the extent that it removes assets from state control and converts discretionary offi-

cial actions into private, market-driven choices. However, privatization of public assets is laden with opportunities for corruption. Analogous to the award of procurement contracts, bidders for a public asset may bribe officials in the privatization agency or at the top of government for the following reasons:

- The private firm wants to be included in the list of qualified bidders.
- Firms may pay to restrict the number of other bidders.
- Firms may pay bribes to obtain reliable information including a good assessment of the monetary value of offered assets. For instance, corrupt privatization officials may present information to the public that makes the company look weak while revealing that it is actually doing well to favored parties. The latter in turn are the high bidders in seemingly open and above-board bidding.
- Firms may pay bribes to obtain the public asset offered for sale at below-market cost.

In privatization exercises, corruption may mean that the most efficient bidder loses out to favored parties. Even if the most efficient firm does win, corruption in the tendering process ensures that the government receives too little revenue from the sale of the public asset. This implies higher taxes or lower public spending.

The question of corruption in relation to procurement contracts and the sale of public assets should not be viewed merely as an economic matter. Rather, corruption must be seen as a political problem. In principle, autocratic polities are more corrupt than democratic regimes because of the absence of checks and balances. In democracies, the desire for re-election constrains the avarice of politicians. Opposition candidates have the incentive to expose corrupt incumbents. Furthermore, political and civil liberties and a free mass media make open and transparent government possible and corruption more difficult. However, the requirements of electoral processes may also induce corrupt behavior. Corruption scandals in a number of democracies are frequently associated with the financing of political campaigns. (Some of the cases reviewed in this paper—the PEA-Amari, Centennial Expo and Benpres-North Luzon Expressway

scandals—relate electoral finances with questionable government deals.) Elections must be financed and wealthy actors concerned with policy and legislative outcomes may be willing to foot the bill. Financial pressures induce politicians to accept payoffs, thus working against other corruption-reducing effects of competitive elections. Even legal contributions to politicians can be a source of concern. Interests contributing to electoral campaign chests may expect help in the legislative process or special treatment in seeking government contracts and concessions or in dealing with the bureaucracy. It is not uncommon that

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heavy financial contributors are awarded juicy government contracts and accorded preferential treatment by successful candidates. The benefits enjoyed by Lucio Tan under the Estrada administration are the latest examples of this phenomenon.

These things are best understood in the context of a Philippine political economy characterized by a relatively weak state dominated by vested private interests. De Dios and Esfahani (forthcoming) observe that political contests over control of the state are quite intense since “the government disposes over a significant amount of resources and exercises discretion over a wide sphere” and that the elites struggle to skew the deployment of resources to favor specific interests.

### Case studies on Corruption

The financial demands of electoral democracy induce politicians and private interests to resort to corruption. Practices include the illegal receipt of campaign funds from private individuals and firms by politicians in exchange for lucrative government contracts or for favorable treatment by the bureaucracy or the raid by incumbents of the public treasury for the same purposes. In the post-Marcos period, three scandals—the Centennial Expo, PEA-Amari and Benpres-North Luzon Expressway—all of which occurred during the Ramos

presidency highlight the fatal connection between grand corruption and electoral finance. These scandals were of two types: the first involved the disadvantageous sale of public assets to favored private actors in exchange for electoral contributions; the second involved the grant of lucrative public contracts to private firms at terms grossly disadvantageous to government.

### **The Expo Scam**

Let us consider the Centennial Expo scandal.<sup>3</sup> Expo Pilipino in Clark Airbase, Pampanga was the centerpiece of the country's centennial celebration in 1998. The project turned out to be expensive, (costing a total of P9 billion or 1.7 percent of the 1998 national budget). Moreover, it was discovered to have been marred by contracts disadvantageous to the state. Following the speech of Senator Nikki Coseteng on August 5, 1998, the Senate Blue Ribbon Committee conducted an investigation on the matter; its final report included the recommendation for the prosecution of former President Ramos and eight others (including former Vice President Salvador Laurel and five former cabinet members) for "technical malversation or misapplication of public funds." Thirteen of 23 senators signed the report.

President Estrada soon after formed the Ad Hoc and Independent Citizens' Committee (AHICC) headed by former Senator Rene Saguisag to look into the matter. The result was basically the same except that more "blame" was shifted to Laurel who was the Chairman of the National Centennial Commission. Ramos and his former cabinet members claimed that the findings were politically motivated and designed to draw attention away from a textbook scam involving a relative of President Estrada and his budget minister, Benjamin Diokno.

In any case, the matter was referred to the Office of the Ombudsman for appropriate action. Saguisag called for the inhibition of Ombudsman Aniano Desierto, a Ramos appointee. It was to no avail; on 3 February, 2000, Desierto cleared former President Ramos from charges in connection with the 328% increase in the cost of the Freedom Ring, one of the most expensive compo-

nents of the project, despite the fact that Ramos was the final approving authority for all projects.

Florentino-Hofileña and Sayson wrote their report on the Centennial Expo scandal after the Senate Blue Ribbon committee released the results of its own investigations. They claimed that the Senate report failed to discover “the use of the Centennial as a cover for raising funds for the Lakas campaign” (Florentino-Hofileña and Sayson 2000/1999: 163). One of the star witnesses at the Senate Blue Ribbon committee investigations, Joseph Ocol, executed an affidavit in June 1999 detailing how contractors working on the Centennial project were asked to make substantial contributions to Lakas, the ruling party. These contributions were in turn delivered to Lakas fund raisers by officials of the Bases Conversion and Development Authority (BCDA) and the Clark Development Corporation (CDC), two government agencies involved in the Centennial project. However, since Lakas was itself split into two camps, the campaign contributions supported both the candidacies of de Venecia and Ramos’ former defense secretary, Renato de Villa.

The Saguisag committee failed to uncover another possible scandal: the ownership of 200 hectares of baselands within the former Clark Air Base leased to Global Clark Assets (Global). Global, a company headed by Nora Bitong, formerly a business associate of Senator Juan Ponce-Enrile, was initially the government’s strategic partner from the private sector for the Centennial project. It was supposed to shoulder 55% of the equity equivalent to P550 million of the Philippine Centennial ’98 Corporation (EXPOCORP). Global made a down payment of P150 million, the rest to be paid in installments. In return, Global received a lease on 200 hectares of the baselands. However, beyond giving a first installment of P90 million, Global thereafter failed to pay the balance. Because of that failure, then President Ramos decided to rescind the contract with Global and poured more government money into the project. Despite a forfeiture clause (which provided for the forfeit of a P100 million performance bond) in the said contract, Ramos decided to return Global’s money, ostensibly to avoid legal troubles. In addition, Global was allowed to retain the lease even after withdrawing from the project.

## The Amari and Benpres scandals<sup>4</sup>

The Amari scandal involved the disadvantageous sale of public assets to private interests in exchange for substantial bribes that apparently found their way into the campaign chest of the ruling political party for the 1995 by-elections. Tordesillas and Coronel (2000/1998) described in detail how the Amari Coastal Bay Development Corporation (or Amari) paid up to PhP 2.8 billion (\$107 million at the time) in kickbacks for a highly under-priced 158-hectare plot of reclaimed land along Manila Bay. The said property was bought by Premchai Karnasuta, the owner of one of Thailand's biggest construction companies, at the ridiculously low price of PhP 1.9 billion (or \$72.4 million) at P1,200 per square meter from the Public Estates Authority (PEA) through Ital-Thai Philippines.

By the admission of PEA's own officials, the cost of reclaiming land stood at P2,000 to P5,000 per square meter. Three other firms had offered P1,400 to P1,600 per square meter but PEA did not negotiate with them. Moreover, reclaimed land near the said property was selling at up to P90,000 per square meter. The deal was apparently helped by tailor-made appraisals (from P750 to P1,000 per square meter) of the land to favor Amari's initial bid of P1,000 per square meter. One firm had valued the property at P1,680 per square meter in 1991, yet it dropped its estimate to P1,000 in 1995. A year later, when asked by Amari to appraise the same property, the same company estimated a per square meter price tag of P4,500. PEA records show that these appraisers were contracted by a PEA official, Justiniano "Bobby" Montano IV, who apparently received a substantial share of the kickbacks.

Amari allegedly paid a high-ranking politician PhP 400 million (\$15 million) for facilitating the land deal. According to a Senate investigation of the Amari transaction, checks amounting to P300 million issued by Amari to one of the wheeler-dealers involved in the deal were encashed by the sister-in-law of a high ranking leader of Congress (Tordesillas and Coronel 2000/1998: 146). When the Senate Blue Ribbon Committee released its report in 1997, the legislative chamber buzzed with the rumor that the official was Jose de Venecia,

Speaker of the House of Representatives and secretary general of the ruling Lakas party. De Venecia denied the allegation. While corruption charges were filed against a string of officials (including Montano) as a result of the Senate investigations, many questions about Amari remain unanswered. De Venecia's role in the deal is one. Former President Ramos' possible involvement is another. Reports of payoffs made to several officials (allegedly including acknowledged AC-DC master Senator Ernesto Maceda who first denounced the scam in a privilege speech in the Senate) to hush up the investigation of the transaction also remained a mystery.

While de Dios and Esfahani (forthcoming) raised fears that the large projects of the Ramos administration faced the "threat of reversal" with the ascension to power of the Estrada government, these apprehensions did not materialize in the Amari project. Another set of private interests close to the President managed to wrest control of the project. In late 1999, a group led by businessman Ramon Ang, the right hand man of San Miguel Corporation chairman Eduardo "Danding" Cojuangco, wrested control of Amari from Ital-Thai Philippines. The Estrada administration reportedly felt that the government did not benefit from the PEA-Amari project and ordered a renegotiation of the contract. President Estrada reportedly agreed to uphold the project after the terms of the contract were modified to give the government a 30-percent share of the land developed in the property, up from 20 percent in the previous contract (Cabacungan and Torrijos 1999 and Dumlao 2000).

Ital-Thai and de Venecia figured prominently in another scandal—the Benpres/North Luzon Expressway case. The scandal erupted when a young first-term congressman, Mike Defensor, who was questioning the award to Benpres Holdings of a contract to rehabilitate the North Luzon Expressway, disclosed to media that he received P200,000 from a Benpres representative a few days before Christmas 1995. Defensor said that he soon returned the money to a member of the Lopez family that owned Benpres and the ABS-CBN broadcast network. The Lopez kin reportedly accepted the money but denied any knowledge about its source. Benpres also denied the bribery charge and De-



fensor, fearful of the Lopez family's media clout, fudged the details of the pay-off in a congressional hearing.

As was subsequently revealed, the entire controversy was actually a contest between two private corporate groups over a lucrative government contract. In July 1995, a company jointly owned by Benpres and another Lopez firm, the First Philippine Holdings Corp., signed an agreement with the government-owned Philippine National Construction Corporation (PNCC) to rehabilitate and extend the tollway to Subic and Clark. Ital-Thai was also interested in the project and presented an alternative proposal to rebuild and extend the highway to Pangasinan. Ital-Thai had a champion in de Venecia "who not only suggested that the firm bid to build the highway to his home province, but also interceded for the company when it looked like Benpres was going to get the deal" (Coronel 2000/1996: 138). There were also persistent rumors, which de Venecia denied, that Ital-Thai contributed to the Lakas campaign chest in the May 1995 by-elections.

Defensor and some of his congressional colleagues were reportedly used by de Venecia's camp to compromise the contract with Benpres. Defensor reportedly received a comparison of the Ital-Thai and Benpres proposals from a senior congressman allied with de Venecia. He then used the information in a privilege speech in November 1995, charging that the tollway agreement with Benpres smacked of "highway robbery."

Even if one was to admit that the attacks against the Benpres contract were primarily motivated by a sour-graping firm and its political patron, much can still be said about the said contract. For one, the PNCC management had earlier raised questions about awarding the contract to a corporation with no track record in road construction. Public Works Secretary Gregorio Vigilar countered that Benpres' lack of experience in road-building was not an obstacle as it was being called in mainly for its financial clout and managerial experience. Instead of a public bidding, Benpres won the contract on a negotiated basis. Government apparently wanted to fast-track the project so the highway would be ready for use by the leaders heading for Subic for the 1996 Asia-Pacific Economic Community (APEC) summit.

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Because of the APEC aspect, the contract with Benpres was rushed as government took several “short cuts” on established procedures. While the Department of Justice (DOJ) ruled in June 1994 that a competitive bidding was not necessary (because the PNCC franchise allows it to enter into joint ventures even without a bidding), it also said that the joint venture agreement had to pass through the Gov-

ernment Corporate Monitoring and Coordinating Committee (GCMCC), an inter-agency body that screens transactions made by government corporations. But Vigilar asked President Ramos to do away with this requirement, supposedly to avoid delay. Vigilar also brushed aside the objections of the DOJ and the Office of the Government Corporate Counsel (OGCC) to the transfer of the usufruct—or the right to use and benefit—from the PNCC franchise to the joint venture company to be formed by Benpres and PNCC but controlled by Benpres through ownership of 80% of said company. Apropos to this, one can note that Justice Oscar Garcia, the government corporate counsel, is de Venecia’s protégé.

### New players

As the *modus operandi* of corruption with respect to procurement contracts and disposition of public assets has changed, new players have emerged in the post-Marcos period to claim their own share of the corruption loot. The most significant of these new players are leaders of the religious movements that have emerged during the past few decades. Of particular interest is Mariano Velarde, more popularly known as Brother Mike, leader of the El Shaddai charismatic prayer movement.<sup>5</sup>

In the past, organized religions have been unable or unwilling to parlay their political clout into the ability to corner lucrative procurement contracts from government. A case in point is that of the powerful Iglesia ni Kristo (INK), whose political cachet stems from its ability to impose an electoral slate on its

more than 2 million members following a theological principle of maintaining church unity at all times. But the church (or any of its leaders), has never, to public knowledge, attempted to extract political concessions from those it supported except for having some of its members appointed to important government positions. For instance, the first Secretary of Justice of the Estrada administration, Serafin Cuevas, was an INK member. However, he was fired from office by Estrada who was displeased by the former's zealotry in pursuing the tax cases filed by earlier administrations against Lucio Tan, one of Estrada's key cronies.

This case is quite different for the more amorphous religious movements such as the El Shaddai charismatic prayer movement headed by Velarde, who was appointed President Estrada's spiritual adviser, apparently in exchange for El Shaddai's support of Estrada's candidacy during the 1998 presidential elections. Velarde was a real estate businessman who organized a Mariano Z. Velarde group of companies with the Amvel Land Development Corporation (Amvel) as the group's flagship firm before he started the charismatic ministry in the 1980s.

In 1998, several pieces of Amvel property in Barangay San Dionisio, Parañaque City were affected by the C-5 Link project connecting the Manila South Expressway and the Cavite coastal road through the existing C-5 highway. Since private property was affected by the road project, the government had to enter into right-of-way-acquisition (ROWA) talks with Amvel and other private landowners. Initially, Amvel and other landowners demanded payments of up to P25,000 per square meter on the strength of a land valuation report made by the Parañaque City appraisal committee which had placed the fair market value of private property in Barangay San Dionisio at P14,000 to P25,000 per square meter.

The Toll Regulatory Board headed by executive director Mariano Benedicto II, then the government body in charge of right-of-way-acquisition (ROWA) talks with Amvel, balked at the P25,000 initial quote, claiming it was too high. A study conducted earlier by the Parañaque City assessor's office reported the prevailing land market values in the area to be from P490 to P700 per square

meter in the interior to P1,000 per square meter along A. Santos avenue.<sup>6</sup> The Asset Valuation Division (AVD) of the Bureau of Internal Revenue (BIR) reported that the affected properties had a zonal valuation of only P4,500 per square meter.<sup>7</sup> The TRB then commissioned three private land appraisal companies to evaluate the affected properties. The three companies came up with a wider valuation range: from a low of P3,000 to a high of P18,000 per square. Note that the highest quote is still less than Amvel's initial demand by P7,000 per square meter. Even if this was the price to be paid for the land, the government would have saved P912.7 million. If the lowest quote was the acquisition price, the government would have saved P2.87 billion.

Eventually, the affected properties were bought by government for P15,335 per square meter and Amvel collected about P1.22 billion for its land. While TRB executive director Benedicto claimed that the deal was aboveboard, Malacañang insiders said that sometime in March 1999, President Estrada "personally directed the TRB to proceed with the acquisition of the Velarde-owned lands" (Esplanada 2000b). In fact, the deed of sale of the property was reportedly executed and then transmitted to the Office of the President and the contracts for land acquisition were approved by President Estrada on 30 March 1999.

Critics of the deal insisted that Amvel should have been paid only P4,500 instead of P15,335 per square meter, or a difference of P10,835 per square meter. Government would have saved about P760 million. They cited Administrative Order No. 50 issued on 17 February 1999 by Malacañang which set the purchase price for right of way easements at a property's "zonal value plus 10 percent," instead of its *fair market value*.

It is true that negotiations for the land started in 1998, before AO No. 50 was issued. Amvel vice president for business development Carlos Ramon Baviera claimed that the company was "supposed to be paid by the government as early as the first quarter of 1998" (Esplanada 2000b). In a May 7, 1998 resolution, the TRB board approved payment for the said Amvel properties. But it is also true that *final* approval of the deed of sale and the contracts for land acquisition were all signed by President Estrada on 30 March 1999, one and a half months after AO 50's issuance. Did the fact that negotiations begun,

or that the TRB board approved payment for the said properties in 1998 exempt the deal from the provisions of the said administrative order?

It is true that there were no allegations of bribes reported in connection with this land deal. However, the law on corruption (Republic Act 3019 or the Anti-Graft and Corrupt Practices Act) is quite stringent, defining as a corrupt act the “entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.” A year and a half after paying Velarde’s firm P1.22 billion, the Estrada administration shelved the C-5 Link project indefinitely. This prompted some critics of Estrada, including DPWH personnel, to assail the government for alleged “misappropriation of public funds” (Esplanada 2000d).

...fundamental changes in the way government does business ought to be at the heart of any reform agenda.

### Concluding remarks

Our inquiry into concrete cases of corruption in connection with procurement contracts and the sale of public assets indicates significant changes in *modus operandi*, especially in response to the stimuli of economic growth, decentralization and the restoration of formal democratic processes in the post-Marcos period. However, the key ingredient remains the exchange of “goods” between a rent-seeking private entrepreneur and public officials with discretionary powers to the detriment of public interest. To this end, the vast powers enjoyed by the Philippine president to approve and finalize contracts should be carefully reviewed in the effort to reform the over-all socio-political environment that fosters corruption.

While the industrial structure of corruption appears to be looser in non-authoritarian settings, there remain exceptions to the rule. Again, the vast powers of the President are implicated. In our prologue, we alluded to how Presi-

dent Estrada organized a protection racket for *jueteng*. The corruption here was tightly organized in behalf of Estrada through the efforts of his crony, Jaime Dichaves, who apparently called the shots at the Department of Transportation and Communications (DOTC).

There is likewise need to reform our electoral laws, especially in relation to campaign financing. Most of the cases of grand corruption undertaken within a non-authoritarian context were perpetrated for the purpose of amassing hefty campaign chests.

With the demise of the Estrada administration, the organization of a national anti-graft body may finally come to pass. However, this will not be enough. Rose-Ackerman (1999: 5-6) reminds us of a fundamental lesson: "Reform should not be limited to the creation of "integrity systems." Instead, fundamental changes in the way government does business ought to be at the heart of any reform agenda. The primary goal should be to reduce the underlying incentives to pay and receive bribes, not to tighten systems of ex post control. Enforcement and monitoring are needed but they will have minimal long-term impact if the basic conditions that encourage payoffs are not reduced. So long as these incentives remain, the elimination of one set of "bad apples" will not stop the creation of a new group of corrupt officials and private bribe payers.

This is an apt reminder for all of us who rejoiced at the downfall of Estrada and his unprecedented arrest for plunder on 25 April 2001. The subsequent events of *EDSA Tres* and *Mendiola Dos*, drove the point home even further.

## Notes

- 1 *Jueteng* is a variant of a Chinese numbers game where the bettor is asked to pick two numbers between 1 and 37. The lucky pair is drawn and the winnings depend on how much and which numbers others has bet on. The survival of *jueteng* depends on a network of operators whose activities are protected by officials and law enforcers from the village to the national level. Bet collectors (*cobradores*) report to *cabos* (headmen) who in turn are supervised by a *jueteng* operator. The operator ensures that the racket is protected by civilian, military and police officials. The layers of protection begin at the town level, to the provincial, regional, all the way up to the national. Singson's revelations indicate that Estrada did what none of his predecessors had done: systematize and centralize *jueteng* payoffs in the Office of the President. For more information on *jueteng* and its protectors, see Coronel (2000) and PCIJ/IPD (2000/1995).
- 2 Guides to documents are provided in Mendoza (1992a, 1992b and 1992c).
- 3 Most of the information regarding the Centennial Expo scandal were taken from the Senate Blue Ribbon Committee Report Nos. 19 and 30, Yamsuan and Gonzales (1999), Florentino-Hofileña and Sayson (2000/1999) and Cueto (2000a and 2000b).
- 4 Most of the data regarding these scandals were taken from Tordesillas and Coronel (2000/1998), Coronel (2000/1996) and Fletcher (1997).
- 5 Much of the data in this section is taken from Esplanada (2000a, 2000b, 2000c, 2000d).
- 6 We know that there is a wide disparity between the assessed value and the fair market value of real estate everywhere in the country. Landowners tolerate the wide disparity because the lower assessed values are the basis for the payment of real estate and other pertinent (e.g., inheritance) taxes.
- 7 The BIR zonal valuation does not distinguish property in the interior portion of a community from those along a major thoroughfare. It is common knowledge, however, that properties in the interior areas have a lower value than those along main roads.

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