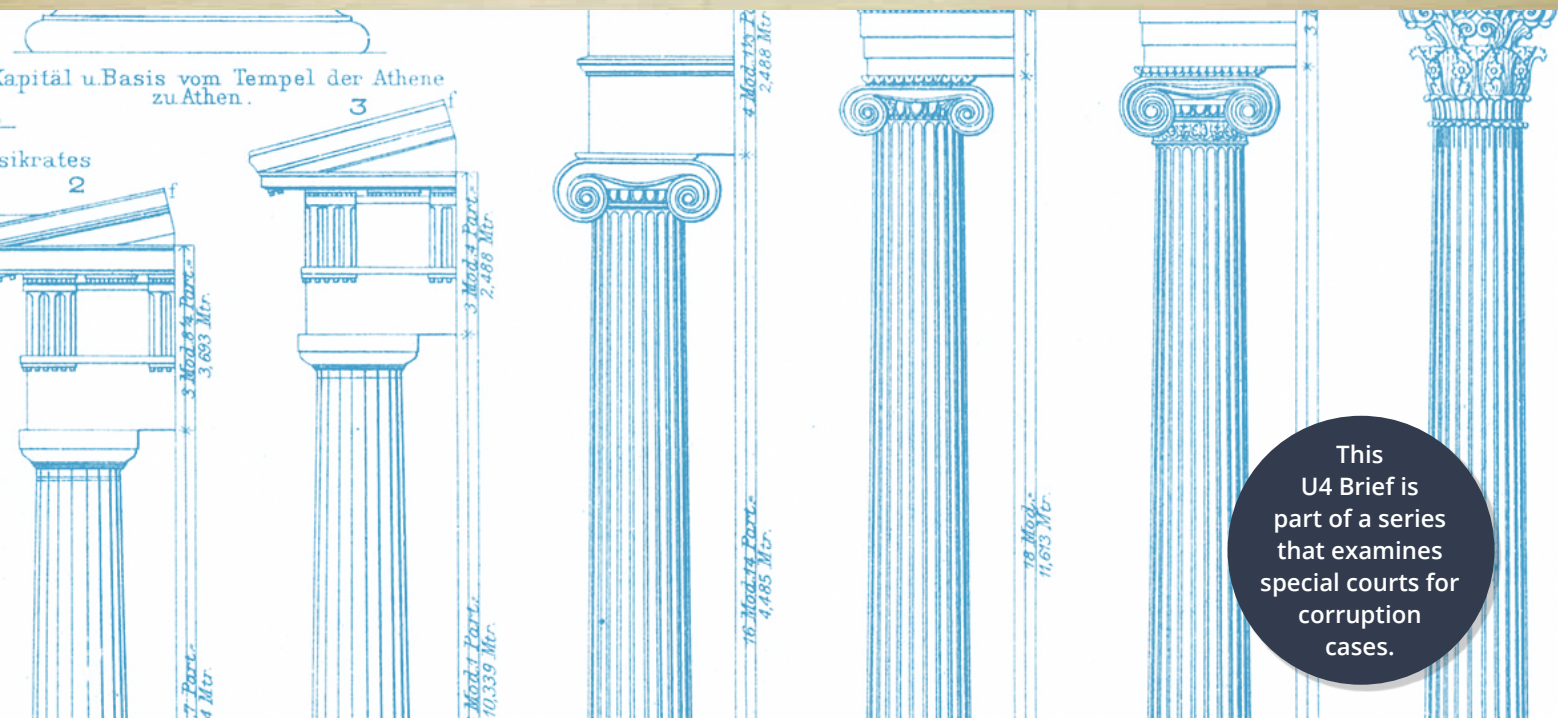


## Specialised anti-corruption courts: Philippines



This U4 Brief is part of a series that examines special courts for corruption cases.

The Philippines' Sandiganbayan is the oldest specialised anti-corruption court in the world. Though established mainly to resolve corruption cases more expeditiously, the Sandiganbayan is plagued by delays and inefficiency. This concern prompted recent legislative reforms and has led to calls for other changes as well, including procedural reforms such as further narrowing its jurisdiction, limiting postponements, improving case management, and introducing "continuous trials" rather than scheduling a series of piecemeal hearings stretched out over a long period of time.



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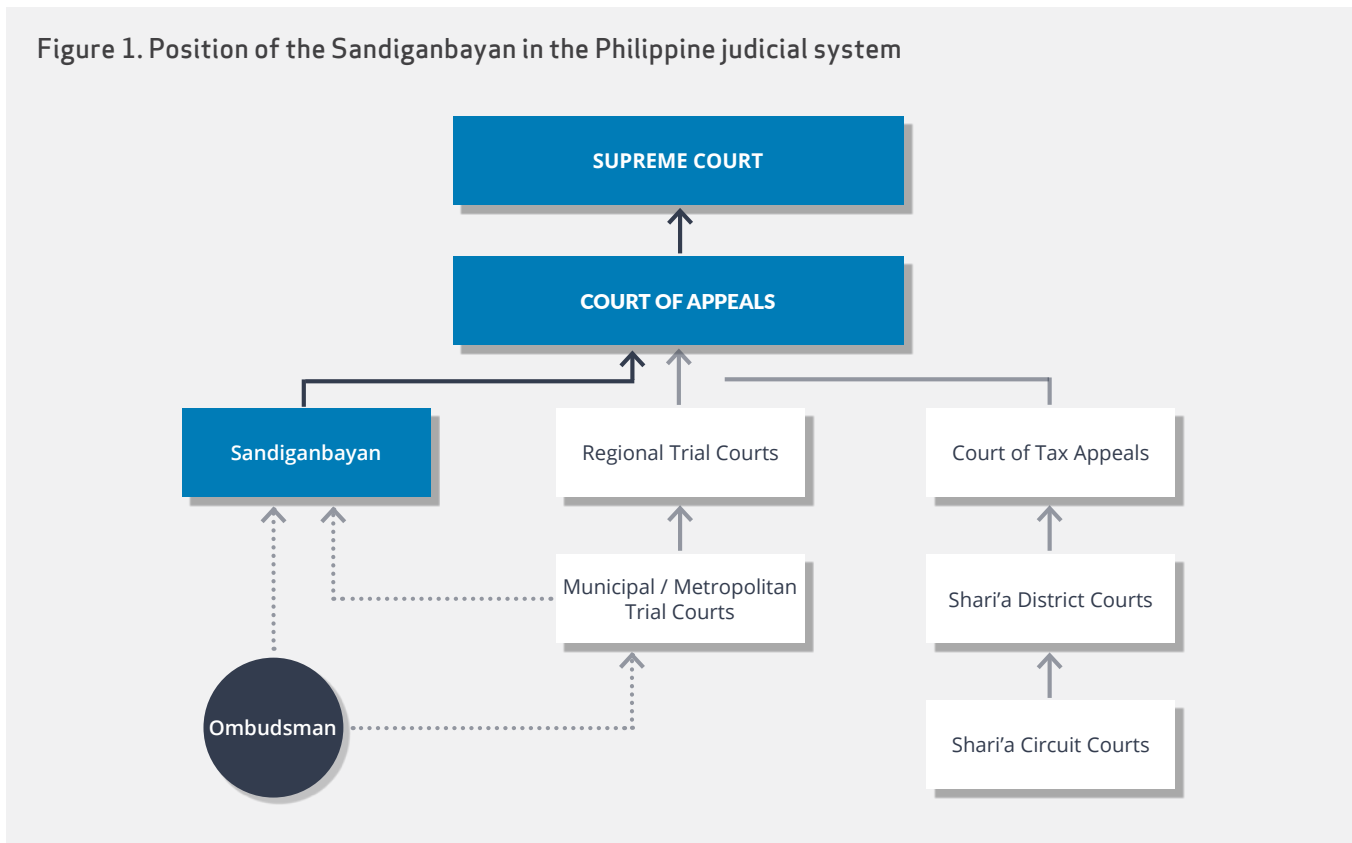
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### Background and key features

The 1973 constitution of the Philippines, ratified shortly after President Ferdinand Marcos declared martial law, called for creation of the Sandiganbayan; the court began operations in 1979.<sup>1</sup> After the 1986 "People Power" revolution deposed Marcos, the new 1987 constitution altered or eliminated many of the institutions associated with the Marcos era, but retained the Sandiganbayan. The court has continued to operate without interruption, though there have been a number of amendments, most recently in April 2015.<sup>2</sup>

In the Philippines, ordinary criminal cases are heard in the first instance by either regional trial courts or municipal trial courts. Trial court decisions can be appealed to the Court of Appeals, and from there to the Supreme Court (the highest court in the Philippines, with general appellate as well as constitutional jurisdiction). The Sandiganbayan is on the same level in the judicial hierarchy as the Court of Appeals (Figure 1), but it functions mainly as a court of first instance. It has original jurisdiction over any case, for either public or private defendants, that involves alleged criminal violations of specified anti-corruption laws, provided two conditions are met: the public official involved is sufficiently senior (determined mainly by civil service pay grade, though additional categories of officials are also included) and the amount of money allegedly involved is sufficiently large. For corruption cases in which these conditions are not met, the regional trial courts retain original jurisdiction and the Sandiganbayan has appellate jurisdiction. In practice, however, the court's main role is as a first instance trial court; most experts in the Philippines seem to treat its appellate function as an afterthought.<sup>3</sup> Sandiganbayan decisions may be appealed to the Supreme Court. A special office called the

Figure 1. Position of the Sandiganbayan in the Philippine judicial system



Office of the Ombudsman has exclusive authority to bring cases to the Sandiganbayan.

The Sandiganbayan hears cases in “divisions” of three judges each. The recent legislative amendments to the Sandiganbayan law increased the number of divisions from five to seven, expanding the total size of the court from 15 to 21 judges.<sup>4</sup> The same three judges always sit together unless one of the judges in a division is unable to participate (for example, due to illness or a conflict of interest); in such cases, the presiding judge designates a judge from another division to hear the case.<sup>5</sup> The senior judge in each division presides over the trial, and the disposition of the case itself is determined by a majority vote of the three division judges.<sup>6</sup>

The procedures for appointing Sandiganbayan judges are the same as those for appointing judges to the Court of Appeals, and are stipulated in the constitution. When a vacancy occurs, a body called the Judicial and Bar Council, consisting of representatives from the legislature, the judiciary, the legal profession, the executive branch, academia, and the private sector, receives applications and prepares a list of at least three candidates; the president then selects a candidate from this list to fill the vacancy. Ordinarily, Sandiganbayan judges hold their offices until the mandatory retirement age of 70, unless they resign voluntarily, become incapacitated, or are removed by the Supreme Court for misconduct.

## Rationales and performance

### Efficiency

The main rationale for adopting and retaining the Sandiganbayan, aside from political symbolism, was to expedite the disposition

of corruption cases. The Philippine judiciary is notoriously inefficient, with cases – especially complex cases – taking years or even decades to reach final resolution.<sup>7</sup> This problem is not specific to corruption cases, but delays in corruption cases are perceived as particularly damaging, in part because such delays undermine public confidence that the country’s legal system is capable of holding corrupt public officials accountable. The hope was that the Sandiganbayan would put these high-level corruption cases on a fast track.

That hope, however, has gone largely unfulfilled. Estimates of average time from case filing to final disposition vary, but some put the figure at approximately seven years, with a few cases taking significantly longer.<sup>8</sup> The case backlog is substantial, with over 3,000 filed cases still awaiting disposition.<sup>9</sup> Although that figure might be misleading, as many filed cases may be meritless, the number of new filings each year is close to the number of annual dispositions (about 140–150), making it difficult for the court to clear its backlog. Some observers nonetheless believe the Sandiganbayan is at least more efficient than the regular courts, though the data do not seem to support this. That question aside, there is widely shared frustration with the special court’s slow pace.<sup>10</sup> Addressing this problem was the main objective of the 2015 legislative reforms, which expanded the court from five to seven divisions, adopted a monetary threshold for original jurisdiction, and allowed cases to be decided by majority vote, among other provisions.

### Integrity and independence

While efficiency is the main justification for the Sandiganbayan, some observers point to uncertainty about the ability of the ordinary trial courts to handle corruption cases appropriately as another factor contributing to the desire to have a specialised

court take these cases. There is concern about the sometimes troublingly close personal relationships that judges, or their families, may have with influential local officials and businessmen. Indeed, part of the thinking behind having Sandiganbayan judges sit in panels was the idea that it would be harder to improperly influence multiple judges. Likewise, making it a high-level court, based in Manila, was thought to better insulate the special court from local politicians.

The Sandiganbayan's reputation for integrity and independence is generally good. There are some blemishes, most significantly the charges of gross misconduct that led to the removal of Justice Gregory Ong in connection with his role in a massive bribery scheme.<sup>11</sup> Most observers view this case as unusual and do not have serious concerns about corruption in, or direct political interference with, the Sandiganbayan.<sup>12</sup> Some critics, however, note that although there is little evidence of crude direct pressure on the court, the webs of personal and family relationships among political and legal elites in the Philippines, as well as the fact that some Sandiganbayan judges aspire to a position on the Supreme Court, mean that the court's decisions in high-profile cases may be susceptible to subtle, indirect forms of political influence. Others worry that the Judicial and Bar Council, principally responsible for generating lists of candidates, is in practice dominated by the president's allies.

### Expertise

A need for specialised expertise was not a significant factor behind the creation of the Sandiganbayan. There are no special qualification requirements, nor does the Judicial and Bar Council focus on experience in handling corruption cases when vetting candidates. Although Sandiganbayan judges have access to judicial training through the Philippine Judicial Academy and other programs, they do not receive any special training focused specifically on corruption. Nonetheless, most observers seem satisfied with the judges' understanding of the issues in corruption cases and do not see much need for additional measures to boost the court's expertise.<sup>13</sup> The fact that the Sandiganbayan is prestigious seems to help, as the applicants tend to be very capable, often with a great deal of general criminal law experience, even if they do not have much specific experience with anti-corruption law.<sup>14</sup> And the fact that Sandiganbayan judges hear only corruption cases helps them gain expertise on the job.

## Challenges and controversies

The Philippine experience with the Sandiganbayan highlights four issues that are likely to be relevant to anti-corruption courts in other contexts as well. These are case management and trial procedure, relationship with prosecutors, resources, and scope of appropriate jurisdiction.

### Case management and trial procedure

The Sandiganbayan's performance demonstrates that the creation of a special court is not sufficient to achieve significant efficiency gains. Rather, the underlying causes of judicial inefficiency must be addressed. In the Philippines, as in many other jurisdictions, the slow pace of justice is attributable in part to the procedural rules for criminal trials. In particular, many

observers have emphasised the need for "continuous trials" in the Sandiganbayan – that is, the entire trial proceeding should be conducted from start to finish, rather than scheduling a series of piecemeal hearings, stretched out over a long period of time. Other procedural reforms (not necessarily specific to corruption cases), such as limiting postponements, might also be helpful. Of course, procedural reforms need not be limited to a specialised anti-corruption court. Yet it might be easier or more appropriate for a special court to innovate, avoiding the resistance that one might encounter when attempting to reform the practices of the entire judiciary. Moreover, corruption cases might be sufficiently distinct that certain procedural reforms are more justified for these cases than for other criminal cases.

### The relationship with prosecutors

The Sandiganbayan is not the only institution responsible for the long delays in holding corrupt officials and their co-conspirators accountable. Many claim that the main culprit for the court's slow pace is the Office of the Ombudsman.<sup>15</sup> According to these critics, the Ombudsman's Office is frequently unprepared on hearing dates and therefore requests continuances, which the court feels that it must grant. Some insist that the Sandiganbayan could compel improvements in prosecutorial performance, for example by making clear that the court will not indulge repeated requests for continuances, which would force the Ombudsman's Office to prepare more quickly and effectively. Others counter that this is an unrealistic expectation, at least until there are more fundamental reforms to the Ombudsman's Office itself.

### Resources

Putting aside issues of procedure, case management, and jurisdiction, a specialised anti-corruption court can reduce delays if its creation sufficiently increases the judge-to-case ratio. In the Philippines, however, there is little evidence that the creation of the Sandiganbayan has had much of this effect, given that the number of divisions (until recently five, now seven) is still quite small relative to the total case backlog (over 3,000 cases) and the number of new cases each year (around 140–150). The recent legislation does increase the size of the Sandiganbayan from 15 to 21 judges, which could conceivably have a substantial impact, though there is debate about this. Former ombudsman Simeon ("Sonny") Marcelo urged a much larger expansion of the court, and he laments that the increase mandated by the legislation is too small to make much difference.<sup>16</sup> Others disagree with this assessment and believe the changes are sufficient. Some also point out that allocating more judicial resources to the Sandiganbayan comes at a cost – it may draw judges away from the regular courts and/or lead to a diminution in the average quality of judges on the special court.

### Scope of appropriate jurisdiction

Another way to improve the judge-to-case ratio is to reduce the number of cases. The Sandiganbayan's original jurisdiction is limited to cases involving sufficiently high-level public officials and – under the 2015 legislative amendments – sufficiently large amounts of money. Whether the current law draws the lines in the right place is an open question; some say yes, while others advocate even more stringent limits on the Sandiganbayan's original jurisdiction, so that the court can focus its resources





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on the most important cases and process them more quickly. Of course, the problem with limiting the court's jurisdiction is that many corruption cases, including ones that might be considered quite serious even though they fall below the thresholds, could end up in the less-efficient regional trial courts, where there might also be worries about integrity and independence. This concern is especially acute for local-level corruption, an area where an institution like the Sandiganbayan arguably has the greatest potential to make a positive impact.

## Lessons learned

In sum, the Philippine experience with the Sandiganbayan suggests the following lessons:

- It is important to consider procedural and case management issues when designing a specialised anti-corruption court, particularly if the objective is efficiency. It is often these problems, rather than a lack of special expertise, that are the main cause of backlogs and delays in corruption cases.
- The prosecution service and the court, though separate, should be considered together as a system, and they must be designed to

function effectively together. On this same point, it is helpful to develop tools for assessing where the problems lie. Arguably, one of the difficulties facing the Philippines with respect to reform of its anti-corruption system is the difficulty in allocating responsibility for delays between the Ombudsman's Office and the Sandiganbayan.

- Proponents of specialised anti-corruption courts must consider the number of judges and other judicial resources to be devoted to the court. This would likely entail estimating the size of the expected docket and considering the average number of judicial person-hours required to resolve each case. This analysis should take into account the available judicial talent pool and its allocation between the special anti-corruption court and other parts of the judicial system.
- Similarly, reformers must consider – carefully, explicitly, and in advance – the appropriate scope of an anti-corruption court's jurisdiction. The key trade-off is between the effectiveness of the court and the scope of its impact. If the decision is to limit the court's jurisdiction to a subset of corruption cases, there are several ways of doing this: for example, based on the seniority of the public official, the seriousness of the offense, or both.

*Much of this brief is based on interviews with experts in the Philippine government, judiciary, and civil society. All the interviews were conducted in Manila between 27 August and 1 September 2015. Due to the political sensitivity of issues related to the Sandiganbayan, several of these experts requested that they not be identified by name or institutional affiliation.*

## Endnotes

1. Philippine Constitution (1973), art. XIII, sec. 5; "Creating a Special Court to Be Known as 'Sandiganbayan' and for Other Purposes," Presidential Decree 1486 (11 June 1978); "History of the Sandiganbayan," on the Sandiganbayan website, <http://goo.gl/748KkS>.
2. Since its establishment, the Sandiganbayan's charter has been amended nine times, most recently through Republic Act 10660 (hereinafter R.A. 10660) of 16 April 2015. N. Gutierrez, "Aquino Signs Law Expanding Sandiganbayan to 7 Divisions," Rappler.com, 21 April 2015, <http://goo.gl/FrQ271>.
3. Based on the Sandiganbayan records, only 123 of the 32,230 cases filed from February 1979 to September 2015 are appealed cases.
4. R.A. 10660, sec. 1; R. Santos Jr., "Get to Know the Anti-graft Court Sandiganbayan," Rappler.com, <http://goo.gl/Qn2WiA>; Gutierrez, "Aquino Signs Law Expanding Sandiganbayan to 7 Divisions."
5. Revised Internal Rules of the Sandiganbayan, Rule II, sec. 4(b)(c), <http://goo.gl/8G2Po5>.
6. This majority-rule procedure is another change effected by the 2015 legislation. Previously, a minimum of three judges had to agree on the disposition of a case, and if the three division judges were divided, two additional judges would be added to cast their votes. That procedure, viewed as too cumbersome, has been replaced by a simple majority vote of the three division judges. R.A. 10660, sec. 3; Revised Internal Rules of the Sandiganbayan.
7. Santos, "Get to Know the Anti-graft Court Sandiganbayan"; R. Pangalangan, "The Philippines' Sandiganbayan: Anti-Graft Courts and the Illusion of Self-Contained Anti-Corruption Regimes," chap. 14 in *New Courts in Asia*, ed. A. Harding and P. Nicholson (London: Routledge, 2010).
8. Asian Development Bank, *Report from the ADB Symposium on Challenges in Implementing Access to Justice Reforms* (Manila, 2005), pp. 23–24, <https://goo.gl/h1ByGI>.
9. Sandiganbayan, "Statistics on Cases Filed, Pending and Disposed of as of September 30, 2015," p. 1, <http://goo.gl/4njnzN>.
10. M. C. Mangahas, "Wheels of Justice Grind Slow, Results, Audit of Funds Slower," Philippine Center for Investigative Journalism, 8 July 2010, <http://goo.gl/DUWCDk>.
11. M. Merueñas, "SC Affirms Dismissal of Sandiganbayan Justice Gregory Ong," GMA News, 21 October 2014, <http://goo.gl/jxsblf>.
12. That said, in July 2015 a congressman convicted of graft subsequently accused another member of the Sandiganbayan, Justice Jose Hernandez, of trying to extort money from him. T. Torres-Tupas, "Gov. Umali Accuses Sandigan Justice of Grave Misconduct," *Philippine Daily Inquirer*, 15 July 2015, <http://goo.gl/3Xwquc>.
13. This view is not universal, however. Some observers lament the fact that Sandiganbayan judges are often generalists with no specific background or interest in corruption cases. They would favour more active steps to both screen applicants and train judges.
14. Here, however, the fact that the Sandiganbayan judges are already so senior may reduce their willingness or ability to learn new things.
15. R. Hunter, "Reconsidering 'Globalisation': Judicial Reform in the Philippines," *Law Text Culture* 6 (January 2002), <http://goo.gl/6zpsCn>; Pangalangan, "The Philippines' Sandiganbayan," 306–8. The other institution with authority to file cases in the Sandiganbayan is the Presidential Commission on Good Government, a special body set up to recover assets stolen during the Marcos regime. But the overwhelming majority of Sandiganbayan cases (upwards of 90%) are filed by the Ombudsman.
16. Gutierrez, "Aquino Signs Law Expanding Sandiganbayan to 7 Divisions."