

Chapter 4

Dysfunctional bureaucracy, corruption and weak rule of law: a case study of policy implementation in the Philippines

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4.1 Introduction

In 2013, the population of the Association of Southeast Asian Nations (ASEAN) was almost twice that of the United States, one-fifth more than that of the European Union (EU) and nearly five times that of Japan (Haub and Kaneda 2013). Alongside their giant neighbours India and China, the increasing size and influence of ASEAN makes it an attractive destination for investment (Hew and Soesastro 2003). Among the ten very diverse countries of the ASEAN, six nations have emerged with more mature economies: these are the ASEAN-6 comprising Indonesia, Malaysia, Singapore, Thailand, the Philippines and Brunei Darussalam. These six economies within the ASEAN have ‘grown rapidly’ and ‘become industrially competitive’ (Severino 2007: 411). The recent history of the region reveals that in terms of ‘economic and institutional development’ as well as ‘global and capital market integration’ the ASEAN-6 remain far ahead of Vietnam, Cambodia, Laos and Myanmar (Gates and Than 2001: 3).

However, one country within the famed ASEAN-6 has experienced an ambivalent performance as regards policy

implementation – the Philippines. Heralded as a very promising nation in the 1960s and 1970s, the country has been often referred to as the ‘sick man of Asia’. Not only has it suffered from chronic deficits in the effective implementation of economic policies, it has also lagged behind most of its neighbours in implementing vital redistributive social policies. The Philippines ‘has the highest incidence of poverty measured by the proportion of population living below US\$1 per day and the highest income inequality’ among the ASEAN-6 (Balboa, Medalla and Yap 2007: 2).

This chapter provides a case study of policy implementation in the Philippines. It describes how a dysfunctional public bureaucracy aggravated by weak rule of law within a context of systemic corruption hinders the implementation of policies. In undertaking an evaluation of policy implementation, this chapter evaluates two specific ASEAN-wide policies from a Philippine perspective: the ASEAN Cosmetic Directive (ACD) and the ASEAN Ministerial Meeting on Transnational Crime/Senior Officials Meeting on Transnational Crime (AMMTC/SOMTC). Recognizing the unique context of the Philippines, this chapter analyses the issues and challenges related to the implementation of these two policies.

4.2 Policy context

In order better to appreciate the issues and challenges that face the Philippines – particularly its civil service, an analysis of the policy context is needed. An analysis of the situation of the Philippine public bureaucracy from a historical and institutional perspective reveals that its trajectory has been typified

by discontinuities and contradictions (Imperial 2007). The public bureaucracy is also hindered by an enormous system, the administration of which is ‘a daunting task’ (Congressional Commission on Education 1991: 60). Using the lens of governance, the Philippine civil service system has been described as suffering from ‘systemic corruption’ (Reyes 2009b: 95). Systemic corruption becomes worse when the principle of the ‘rule of law’ and the weaknesses that characterize it predictably make an indelible negative impact on politics and administration (Co et al. 2010: 216).

4.2.1 History

The roots of the crises that face the Philippine public bureaucracy, which is characterized by the interplay of highly centralized power structures, the challenge towards decentralizing power to the local levels and the perennially severe resource restrictions, can be traced to the beginning of the US occupation in the Philippines. Upon seizing control over the majority of the islands in the Philippines, US occupation forces decided to retain the system of government that had existed during the more than 300 years of Spanish colonial occupation of the country. The Spanish governmental system was highly centralized; local political power only rested at the municipal level, where the church, the government offices and the centres of local commerce were located. The *barrios* – composed of one or more *barangays* – which were the pre-Hispanic governmental units, remained isolated from the local power centres. The Americans built on the prevailing Spanish-inherited government system.

It is evident that the occupation of the Philippines was a tumultuous period in terms of political competition and strife within the US government. Partisan politics – evidenced by the historic disputes between the conservative Republicans and liberal Democrats – undoubtedly spilled over to the Philippines creating ripples that not only affected the tenor of political administration in the occupied islands during that era but also generated political implications that are still felt today. Control of the Philippines was a tenuous struggle within American political circles and the confusion and inconsistencies in policies that ensued left behind profound damages on the key Philippine political institutions (Powell and Wyndham 1931: 15). As early as 1930, crises in their incipient forms were already being detected in the Philippine public bureaucracy. Problems in priorities as well as political competition in the American homeland resulted in the establishment of a flawed public bureaucracy in the Philippines – an organization that, in the words of one of the American statesmen, did not have an existing colonial administrative service. The early tremulous history of the Philippine public bureaucracy under the Americans has undeniable repercussions on the contemporary administrative system.

An important legacy of more than three centuries of Spanish colonial rule in the Philippines was the introduction of corruption that resulted from the low salaries of civil servants, the sale of public offices for profit and the appointment of the governor-general and his officials by the King of Spain on the basis of patronage and not merit. By contrast, the legacy of the forty-eight years of American colonial rule was relatively more positive for two reasons: meritocracy was introduced in September 1900 with the enactment of the act

Table 4.1 *Policy context of the Philippines*

Key features	The Philippines
Land area	300,000 sq. km
Population	97,500,000 (2013)
Population growth rate	1.931 per cent (2010)
Fertility rate	3.23 children born/woman (2010)
Net migration rate	1.31 migrants/1,000 population (2010)
Education as percentage of GDP	2.5 per cent of GDP (2005)
GDP per capita	\$2,790 (2013)
Geography	Archipelago of 7,107 islands
Literacy rate	92.6 per cent
Type of government	Presidential democracy

Sources: Central Intelligence Agency 2014 and Schwab 2014.

for the establishment and maintenance of an efficient and honest civil service; and corruption declined because the bureaucrats were better paid and corrupt officials were punished (Quah 2011: 115–17). Table 4.1 provides an overview of the policy context of the Philippines.

4.2.2 *Roots of Philippine public bureaucracy*

The historical trajectory of the Philippine public bureaucracy since the American colonial period has been typified by highly fragmented political divisions. A 1931 debate among American officials presiding over the insular government of the Philippines provides interesting insights:

The policy is partisan and personal, changing with parties and men, and the steady evolution of a form of

government suitable to Philippine conditions and needs is thus rendered impossible. If the United States had a Colonial Service, these changes would not have so serious an effect. Permanent American officials would inevitably modify home instructions and preserve at any rate the essentials of uniformity. But so long as the Governors of the Philippines come direct from the United States and are subject to changing American political situations, and so long as the Islands are without [a] Colonial Administrative Service, no steady evolution of government is possible. (Powell and Wyndham 1931: 5)

The political struggles that dominated colonial America remained and became a permanent fixture of Philippine public administration. More contemporary Philippine scholars have been much more pointed in their analysis of the political nature of the Philippine public bureaucracy. They go a step further by arguing that it is not the absence of a steady evolution of government that prevails. What actually happens, they argue, is the proliferation of debilitating patronage networks that has besieged the creation and continued existence of Philippine public bureaucracy.

4.2.3 *Legal system*

The backbone of the Philippine legal system is the 1987 Philippine Constitution, described by Desierto (2010: 428) as 'a strong entrenchment of a rights-culture that appears more universalist in character' compared with the four previous versions of the Philippine charter. In relation to the Philippines' recognition of external legal systems such as those

espoused by the ASEAN, Article 2, Section 1 of the 1987 Constitution, or the incorporation clause, explicitly states that ‘generally accepted principles of international law form part of the law of the land’ (Office of the President of the Philippines 1987).

The colonial history of the Philippines having been under the control of Spain and the United States has created a unique legal system. It is a system ‘in which three of the world’s legal traditions (Roman law, Anglican or common law, and Mohammedan law)’ converge and find commonality and ‘where two traditions (civil and common) have been blended’ into a distinct form unique to the Philippines (Gamboa 1969: 59). Another way of describing it is the union of two ‘streams of law – the civil, the legacy of Rome to Spain, and the common, the inheritance of the United States from Great Britain, amplified by American written law’ (Bautista 2006: 3) converging into what is the Philippine legal system. Unfortunately, the colonial experience of the Philippines under both Spain and the United States was less than ideal and failed to provide a solid foundation for a legal system that respected the rule of law. Scholars state that corruption became prevalent in the patrimonial system propagated by the Spanish colonizers. This inquiry contends that the inability of America to establish a robust ‘Administrative Service’ (Powell and Wyndham 1931: 5) in colonial Philippines contributed to the weakened state of the contemporary civil service.

4.2.4 *Geography*

A succinct analysis of one of the major implementation pitfalls plaguing the Philippines is that it operates under

conditions of ‘extreme scarcity’ (Richter 1987: 71). The size, scope and vast differences that characterize the geographic and cultural landscape render the public bureaucracy in a situation where it experiences difficulties in delivering much needed services to its populace.

Comprising 7,107 islands, the Philippines presents itself as a daunting implementation arena. As early as 1987, Richter had already seen the magnitude of implementation challenges that face the extensive and extremely diverse Philippine archipelago. Policy implementation in the vast archipelago is ‘characterized by unevenness and discontinuities’ exacerbated by the rugged geography. Furthermore, ‘while most of the 55 million people live on about ten of these islands, transport between islands and throughout their rugged mountainous interiors is time-consuming, expensive and frequently dangerous’ (Richter 1987: 57). Almost thirty years after the Richter article was published, the situation in the Philippines has not improved. Implementation deficits continue to plague various aspects of governance in the country. National government agencies and local government units experience sporadic bursts of implementation successes. However, a sustained ethos of efficient and effective implementation in governance continues to be an elusive objective of achieving positive policy implementation outputs.

4.2.5 *Culture*

Richter has also underscored the limitations of the role of leaders in policy implementation in the Philippines. She unequivocally identifies ‘culture’ as an important constraint

because ‘supervisors value personal popularity over a reputation for effective administration’ and ‘monitor performance only perfunctorily’ (Richter 1987: 73). This skewed and unprofessional behaviour (viewed from a Western perspective) of some local leaders – that has been attributed to cultural influences – nevertheless becomes a source of conflict and obstacle in policy implementation.

The literature on Philippine public administration has never failed to identify the impact of the cultural facets of this diverse archipelago on public administration. Varela (1996: 93) clearly stated that: ‘the practice of public administration in the country is influenced by the combined effects of Western administrative thought and technology and the local political and administrative culture’. She also mentioned that ‘any attempt to improve bureaucratic performance, either through reorganization or value implementation, is met with resistance’ (Varela 1996: 95). This resistance to change and particularly the introduction of values as indicated by Varela can be directly traced to the prevalence of local cultural traits like *pakikisama* (fellowship) and *ningas cogon* (starting things but never ending them) that prevail in Philippine bureaucratic environments that are reminiscent of the informal organizations existing within a formal setup that are the basis of the human relations movement in public administration. The influence of ‘culture’ on leadership in the pursuance of outputs of policy implementation can be seen even more clearly with the concept of ‘bureaucratic ambiguity’, which is defined by Varela thus:

The culture of bureaucratic ambiguity is rooted in the multiplicity of conflicting laws, executive orders, judicial

decisions, civil service and labour relations regulations, auditors' opinions and agency rules which render the organizational environment to be a legal jungle where policies and rules to guide action and behaviour of personnel are unclear and are constantly changing. When this mass of laws, rules and regulations is operationalized in the bureaucracy, confusion in interpretation makes them ambiguous. (Varela 1996: 305)

Varela's 1996 description of the mass of laws, rules and regulations – or red tape – is still very much a valid and relevant observation today. Globally, the Philippines is ranked ninety-fifth among 189 economies on the ease of doing business in 2015 (World Bank 2014: 4). A report generated by several international chambers of commerce in the Philippines has pointed out that 'red tape remains pervasive in the Philippines' (de Vera 2014: 1). Similarly, a survey of firms conducted by the Philippine Institute for Development Studies (PIDS) indicated that 'the most problematic issues indicated are bureaucracy and too much red tape' (Aldaba 2013: 30).

4.3 Profile of the civil service

4.3.1 Legal mandate

The genesis of the Philippine civil service can be traced to the historical period of colonial America. The formal establishment of the civil service system came into effect with the enactment of Public Law No. 5, known as the 'Act for the Establishment and Maintenance of Our Efficient

and Honest Civil Service in the Philippine Island' in 1900 by the Second Philippine Commission. One of the key provisions of the establishment of the service was the creation of a Civil Service Board (CSB) composed of a Chairman, a Secretary and a Chief Examiner. The CSB was entrusted with the administration of civil service examinations and was also responsible for setting standards for appointment in the government service. In 1905, the board was reorganized into a Bureau (Civil Service Commission 2010b).

Since 1905, the Philippine public bureaucracy was transformed into one of four constitutional bodies in the Philippine republic. Republic Act No. 2260 changed the Bureau into a Department, which became the Civil Service Commission (CSC) with the ratification of the 1973 Philippine Constitution. The CSC, which serves as the central personnel agency of the government, was further reorganized under Presidential Decree (PD) No. 181 dated 24 September 1972, and again under Executive Order No. 181 dated 21 November 1986. With the new Administrative Code of 1987, Executive Order (EO) 292, the CSC was constitutionally mandated to promote the morale, efficiency, integrity, responsiveness, progressiveness and courtesy in the civil service (Civil Service Commission 2010b).

4.3.2 Evolution and growth of the civil service

The Philippine civil service is the biggest employer of the nation. Civil servants make up approximately 0.2 per cent of the country's population. As of the second quarter of 2010,

Table 4.2 *Growth of the Philippine Civil Service, 1970–2010*

Year	Number of civil servants
1970	430,000
1980	840,000
1990	1,610,000
2000	1,435,468
2010	1,312,508

Source: Civil Service Commission 2010a.

the civil service has 1,312,508 employees.¹ About 834,327 (63.6 per cent) of civil servants belong to the National Government Agencies (NGAs) including State Universities and Colleges (SUCs). Local Government Units (LGUs) have 383,422 (29.2 per cent) of all civil servants while Government Owned and Controlled Corporations (GOCCs) have a total of 94,759 personnel (7.2 per cent) (Civil Service Commission 2010a). Table 4.2 shows the growth in personnel of the Philippine Civil Service from 1970 to 2010.

The civil service has been a target for criticism and this became more pronounced after the institution of the CSC in 1973. Among the most pointed criticism concerning the civil service is its bloated size and inefficient implementation performance. A careful perusal of the statistics of the civil service through the years provides evidence and support for criticisms of it being a bloated and wasteful institution.

¹ This is the latest inventory of official personnel available on the CSC website.

The rate of growth of the Philippine public bureaucracy has been short of phenomenal. Carefully inspecting the inventory of government personnel reveals that 'over the past 35 years, the number of government employees grew at a faster rate than did the population' (Civil Service Commission 2010a). According to the CSC's website:

Expressed in terms of ratio to the total population, the growth in the size of the Philippine government personnel lends some firm basis for the popular perception of a bloated bureaucracy. In 1970, the ratio of government personnel to the total population is 1:90. By 1990, the ratio stood at 1:52. The most telling indicator of the period of rapid expansion of the bureaucracy is reflected in the growth rate of government's cash disbursements for personal services. Yearly incremental rates from 1980 to 1991 were in double figures, averaging 21 per cent during the 11-year period, and grew as high as 35.8 per cent in 1984–1985. (Civil Service Commission 2010a)

The dramatic increase in the size of the Philippine public bureaucracy can be attributed to two main reasons: political reorganization of the CSC driven by political motives and the phenomenon of hiring casual appointments. This chapter argues that the successive rounds of reorganization that the CSC experienced contributed to a bloated bureaucracy. Although these efforts at reorganization were identified as attempts at generating greater efficiency, most were primarily driven by political reasons, particularly during the Marcos regime. Instead of rationalizing the organizational structure, these changes contributed in preserving those who were

already in the service and then bloating this further with the creation of new and politically motivated appointments. A concrete example of this was the creation of the Ministry of Human Settlements, headed by Imelda Marcos, an organization that effectively created another bureaucratic layer above existing local government units.

After the 1986 Revolutionary Constitution was accepted, courtesy of the newly installed Corazon Aquino presidency immediately after the 1986 EDSA revolution that toppled ex-President Marcos, an opportunity to purge the CSC became available. However, President Aquino refused to pare down the organization, electing instead to maintain it by adding another layer of officials by appointing allies who were known as Officers-in-Charge (OICs). In the early 1990s, the Republic Act 7041 or the Attrition Law managed to stem the tide of an expanding public bureaucracy. From 2005 onwards, though, the CSC has reported a continuing increase in the size of its public bureaucracy.

The second reason is due to the hiring of casually employed staff in the CSC. It must be pointed out that the entire Philippine bureaucracy is composed not only of NGAs but of local civil servants found in LGUs as well. In 2008, of a total of 381,502 local civil servants from LGUs, 29 per cent, or 108,892, were non-career officials and almost all were casual appointees (Brillantes and Sonco 2011: 362). In most cases these 'casuals' fail to satisfy employment requirements for the service, and are consequently mostly political appointees. Without a doubt, the civil service and its penchant for being a bloated bureaucracy is an issue that does not easily go away.

4.3.3 *Defective public administration and weak rule of law*

A highly politicized history, a geography that presents daunting challenges to a weak public bureaucracy and an organization permeated by ambiguity provide the critical backdrop to the prevalence of systemic corruption within the Philippine civil service. *The Global Competitiveness Report, 2014–2015* reinforces this argument when it states that the top four ‘most problematic factors for doing business’ in the Philippines were: corruption (17.6 per cent); inadequate supply of infrastructure (15.9 per cent); tax regulations (13.3 per cent) and inefficient government bureaucracy (12.6 per cent) (Schwab 2014: 308). This chapter argues that these four problematic factors could be subsumed into corruption and the problems of a dysfunctional public bureaucracy. The same report also provided information on the weak rule of law: in terms of ‘efficiency of legal framework in settling disputes’ the Philippines garnered a score of 3.5 (i.e., 1 = extremely inefficient and 7 = highly efficient), which is below the international average of 3.7 and a testimony to the difficulty of arriving at fair legal decisions (Schwab 2014: 415).

Systemic corruption becomes aggravated when the supposed safeguards against it, namely the rule of law, are ineffective. However, in order to ensure that the rule of law is safeguarded, steps to curb corruption must be upheld at all times. Co et al. (2010: 215) have argued convincingly about how the weakness of the rule of law is grounded in the ineffective functioning of public administrative institutions. They have identified three vulnerabilities of Philippine public

administration that directly contribute to a weak rule of law. The first is the ‘insufficiency of budget allocation for the pillars of justice to enable’ agencies under the mantle of the Philippine public administration to ‘perform effectively and adequately’ (215). Secondly, they also point out that ‘the constraints on resources including the lack of public attorneys that should respond to the legal needs of the poor, and the slow disposition of court cases’ as another important deterrent to the establishment of a robust rule of law (215). The third and final reason points to the existence of systemic corruption that exposes ‘legal practitioners, justices, and law enforcers’ to vulnerable situations that diminish the effectiveness of a rule of law (216). The Philippine public bureaucracy – buffeted by systemic corruption on the one hand and an ineffective rule of law on the other – is thus enmeshed in a vicious cycle.

The politicization of the public bureaucracy is supported by findings from a study undertaken by the former Secretary of the CSC, Patricia Santo Tomas. She cites the pervasiveness of political patronage at the CSC as a stumbling block to ongoing professionalization efforts:

The bad news as shown by the numbers is that political patronage remains a stumbling block to professionalization efforts. And this is most evident at the local government level, the most politicized sector of the Philippine bureaucracy . . . We can surmise that heads of LGUs opt to hire people on a casual or contractual basis because the appointees (presumably political protégés) do not meet the qualification standards prescribed for the regular positions. (Santo Tomas 2003: 422–3)

In the history and continuing evolution of the civil service, it may be argued that the most remarkable moments could very well be the adoption of the merit system in the 1935 Philippine constitution as the basis for its corps of professionals and the expansion of its jurisdiction to also include the three branches of government: national, local and government corporations (Santo Tomas 2003: 423). This chapter argues that the adoption of the merit system in 1935 was too late and, more importantly, inadequate in addressing the historical defects of the Philippine civil service. The lack of a colonial administrative service, identified as early as the 1900s, and the continued domination of American governors, who came and went and were greatly affected by the vicissitudes of political contests in the United States, eliminated the chance of creating a deep-rooted, institutionalized and professional bureaucracy (independent of politics) in the Philippines. After the Philippines gained independence from America in July 1946, history continues to be a witness of how a defective public administration and weak rule of law continue to plague the public bureaucracy.

4.4 Policy formulation

Policy formulation occurs within the three branches of government – the executive, legislature and judiciary – in the Philippine context. Before laws are ratified by the bi-cameral Congress (Lower and Upper Houses), a period of consultation occurs that involves the other branches of government, namely the executive as the implementer of enacted laws and the Judiciary carrying out its mandate of ensuring the legality of policies. Consultations with sectoral representatives from

non-governmental organizations (NGOs) and other relevant entities also form part of the policy formulation process. The Executive branch, headed by the Philippine President and members of the Cabinet (appointed by the President), possess 'superior power in the budget process' (Civil Service Commission 2010b). In policy formulation, the executive branch provides the impetus as represented, for example, by the Philippine Development Plans and the General Appropriations Act. The other branches of government perform the important function of providing checks and balances to the formulation of policies.

However, a careful analysis of the Philippine public bureaucracy, which is supposed to be composed predominantly of a corps of professionals and career executives, reveals that more often than not they fall prey to the vicissitudes of patronage, spoils or, simply put, politicking. It may be argued that policy formulation in the Philippine context and within the boundaries of the Philippine public bureaucracy is highly politicized. De Dios and Esfahani contend that this phenomenon proliferates 'in the Philippines [because] the bureaucracy is underpaid and deficient in training and qualifications, making it vulnerable both to patronage politics and corruption. It is common practice in the country for winning candidates to treat government appointments as spoils to be distributed' (de Dios 2000: 15).

The observation of how the Philippine public bureaucracy is driven by patron–client networks originated from Carl Landé. He stated that a careful examination of Philippine public administration reveals 'legally prescribed lines of authority within the departments or agencies overlaid by

complex networks of dyadic alliances and patron-client relationships' (Landé 1965: 147), which are not only confined within the public bureaucracy but end up in the jurisdictions of prominent politicians. He goes on to suggest that these patron-client relationships have seriously undermined the efficacy of Philippine public administration.

Since the 1960s until today, the public bureaucracy has been condensed into Landé's dominant 'patron-client' paradigm. Lemarchand and Legg built on this patron-client paradigm and extended the analysis to 'paired relationships' in the vein of Landé's 'dyadic analysis' and highlighting the concept of more extended alliances in 'a clientage network'. This network 'involves an aggregate of role sets, serially linked in such a way that a patron also stands in the position of a client toward his superior' (Lemarchand and Legg 1972: 153). Anderson alluded to this when he described the 'cacique democracies' in the Philippines underlining the heavy colonial influence and resulting in a condition where the 'civilian machinery of state remained weak and divided' (Anderson 1988: 11). But the stigma of Philippine public bureaucracy could not solely be attributed to a colonial past. Hutchcroft argued that the worsening condition of Philippine politics has continued to be 'personalistic', coming mostly from an elite class of favoured oligarchs and cronies (Hutchcroft 1991: 415).

Cariño argues that in the field of policy transformation, implementation and governance, two other actors aside from the traditional state have increased in prominence: the market and civil society. Furthermore, she asserts that civil society 'attempt[s] to represent the interests of the inarticulate and the excluded' and also 'get[s] involved in governance

to the extent that they contest the power of the state or show alternate ways of service and policy formulation' (Cariño 2003: 69). Cariño depicts a picture of contemporary society that is no longer dominated by the state. On the contrary, it is a scenario where the state's monopoly on governance is being contested by market and civil society. She adds that the participation of market and civil society 'in governance adds a new role to the state – that of building partnerships and linkages to the two sectors'. Moreover, their engagement with the state 'shifts the social picture from elite control to active citizenship' (70). The state is in a situation where policy transformation is no longer seen as its exclusive purview. With the emergence of other actors, it forges partnerships, linkages and alliances that are without a doubt an arena for constant competition and compromise. Cariño underscores an increased role of civil society in the functions of governance and explicitly mentions a new role that states assume: 'building partnerships and linkages' (70).

The participation of civil society in public administration and governance has a legal basis. Bautista (2000: 137) has explicitly identified the provisions within the 1986 Philippine Constitution that ensure this: 'Article II, Sec. 23 of the Philippine Constitution specifies that: the State shall encourage non-governmental, community-based, or sectoral organizations that promote the welfare of the nation'. Bautista clarified that the 1986 Constitution 'identifies people's organizations as entities which could participate in decision-making'. Furthermore, Section 15 of Article XIII defines people's organizations as '*bona fide* associations of citizens with demonstrated capacity to promote the

public interest and with identifiable leadership, membership and structure' (Bautista 2000: 137).

4.5 The civil service's role in policy implementation

The civil service serves as the implementing arm of the executive branch of the government. Composed of career civil servants operating through a system of merit, government bureaucrats form the vital frontline of service delivery. Once a particular national policy has been enacted into law together with its Implementing Rules and Regulations (IRR) by Congress or if a Presidential Decree or an Official Declaration from the executive branch has been officially promulgated, these will be sent through the nationwide network of the Philippine public bureaucracy whose role would be to implement these. The current realities in Philippine society serve as intervening factors in policy implementation. A dysfunctional public bureaucracy overcome by lack of capacity and systemic corruption that saps the resources, and the entry of civil society and international organizations, are the conditions that shape policy implementation in the Philippines.

4.5.1 Conceptual framework

A major influence in this inquiry is the work of Van Meter and Van Horn (1975) in implementation analysis. According to them, the six important elements of policy implementation are: '(1) policy standards and objectives, (2) resources, (3) inter-organizational communication and enforcement

activities, (4) characteristics of the implementing agency, (5) economic, social and political conditions and (6) disposition of implementers' (Van Meter and Van Horn 1975: 462–74). These six variables provide the framework for analysing the effectiveness of the implementation of the ACD and AMMTC/SOMTC as an interactive progression, which not only confines itself to the process but more importantly recognizes the roles of the key stakeholders and the Philippine context of the implementation sites.

Another insightful concept from Van Meter and Van Horn is the relationship between the amount of change and goal consensus. They contend that the conflict of goals occurs when there are major amounts of change involved and where goal consensus is low. They likewise assert the presence of 'incrementalism', where subsequent policy decisions are carried out as a mechanical continuation of previous decisions, which explains why conflicts are less debilitating in cases of minor amounts of change and high goal consensus (465). They theorize that implementation gridlocks occur when the policies are in the quadrant of high change and low consensus, and that implementation successes can be better realized in situations where policies are located in the quadrant of high consensus and minor change.

An analysis of the ACD and AMMTC/SOMTC, which contain analogous and overlapping policy actors but which produce contrasting results, would benefit greatly from using the consensus and change interface of Van Meter and Van Horn. This delicate balance serves as a starting point in the analysis of implementation effectiveness of the ACD and AMMTC/SOMTC policies. The study considers the variations

of change and consensus that these two policies require from the stakeholders involved in their implementation.

This chapter extends Van Meter and Van Horn's thesis by contending that implementation analysis must go beyond the study of the effectiveness of policy resulting from the environment that affects the jurisdiction and organization of policy. It asserts that effective implementation analysis must also look at the levels of satisfaction of the target clientele (target beneficiaries) towards the policy being implemented as well as the levels of local actors' participation as a benchmark of the performance of policy. One example of this would be Donald P. Warwick's 'environment of the public organization'. The concepts of 'remote and proximate elements' (Warwick 1975: 61) and his reliance on 'cultural norms, patterns of social stratification', and, more importantly, the use of 'controllers, clientele groups, constituencies, allies and adversaries' (61), provide a starting point for the analytical enrichment of the local actors' perspectives as located in the Philippine case in relation to the implementation of the two selected ASEAN-wide policies. For this chapter, local actors would be synonymous to the stakeholders.

This chapter recognizes that the preconditions for successful policy implementation are appropriate in studying the histories of developing nations like the Philippines. Leadership, a competent public bureaucracy and the presence or absence of corruption (Quah 1987: 91) are characteristics that bedevil not only the Philippines, but similar developing nations that share a history of autocratic regimes in which bureaucracies are instrumentalized for particularistic and elite

interests. Another significant factor in the preconditions of successful implementation is the minimal or low level of bureaucratic corruption. A review of the literature in the Philippine setting indicates an acute shortage of implementation studies affected by systemic corruption. This is a research gap that this chapter acknowledges.

This chapter uses the preconditions of successful policy implementation in carefully reviewing the implementation experiences of the ACD and AMMTC/SOMTC in the Philippines. Particular attention is focused on the deficits experienced by the public bureaucracy in meeting the above preconditions. A close scrutiny of the impact of international organizations represented by the ASEAN and civil society organizations on whether they complement or compete with the state in meeting the above preconditions is undertaken. The effects of widespread corruption in the implementation efforts of the public bureaucracy are analysed. A contextual approach is adopted throughout, in order to account for the influence of the unique political, geographic and cultural milieu of the Philippines and its impact on policy implementation.

4.5.2 Determinants and obstacles in policy implementation

In order fully to explore the causal linkages between implementation and corruption, a conceptual map has been formulated. The map relies heavily on the points of view of the implementation actors. By combining Chase's 1979 analysis of the obstacles to implementation with Van Meter and Van

Table 4.3 *Factors of implementation*

Operational demands	Nature and availability of resources	Power and shared authority
<ul style="list-style-type: none"> • policy standards and objectives • inter-organizational communication 	<ul style="list-style-type: none"> • resources • disposition of implementers 	<ul style="list-style-type: none"> • characteristics of the implementing agencies • economic, social and political conditions

Source: Reyes 2009b.

Horn's variables of implementation, the construct 'factors of implementation' is formulated (see Table 4.3). With this construct, the parameters of implementation that describe progress (determinants) and those that lead to problematic implementation (obstacles) are analysed in a systematic manner.

4.5.3 Lack of technological capability and inter-organizational weaknesses

In her study on tourism development and agrarian reform policies, Richter analysed the adverse impact of limited technological capabilities on the policy implementation capabilities of the Philippine public bureaucracy. Recognizing the immense scarcity of resources in the Philippine public bureaucracy she noted that 'training and planning become substitutes for action and policy evaluation. Implementation is often behind schedule and the problem becomes acute when agency coordination is needed and sequencing important' (Richter 1987: 71). Not only does

she acknowledge that technological shortfalls prevent successful implementation, she has also noted that the implementation deficit is exacerbated by the difficulties in agency coordination and sequencing. She reinforces this chapter's argument that the lack of technological capabilities contributes to conflict – an implementation deficit – in the carrying out of policy.

A more serious pitfall that ails a highly centralized bureaucracy is the frequent systemic failures in relation to inter-organizational communication. Evidence of this was discovered in an analysis of education reform programmes in the biggest bureaucracy of the Philippines – the Department of Education (DepEd). An analysis of specific programmes revealed a communication gap among the key implementers of DepEd programmes 'seems to be the rule rather than the exception' (Reyes 2009b: 240). But it is not only in education where technology gaps exist. In the comprehensive *Global Competitiveness Report*, the technological status of the Philippines, particularly in its levels of vital infrastructure needed to fuel its economy, remain poor, especially in relation to airport and seaport facilities (Schwab 2014: 28). In a PIDS survey conducted to determine the country's readiness for the ASEAN Economic Community, respondents pointed out fundamental technological weaknesses in the Philippine bureaucracy manifested by 'lengthy procedures, delayed issuance of permits due to slow processing, lack of transparency in the guidelines' (Aldaba 2013: 25). For the Philippine public bureaucracy whose scope spans the entire nation and whose service delivery requirements constitute a vital cog in the country's drive for progress,

communication breakdowns severely incapacitate its implementation performance.

4.5.4 Reorganization and corruption in the public bureaucracy

The Philippine government has experienced several attempts at reorganization. The very first system-wide change happened with the issuance of the Education Act of 1901. Fifty years later, this was followed by the very first nationwide attempt at reorganization, the Republic Act (RA) 997 or the 1954 Reorganization Act. Twenty years later, the Integrated Reorganization Plan (IRP) of 1972 was drawn up. A relatively recent attempt was RA 6656 or the 1988 Implementation of the Philippine Government Reorganization Act. As can be seen, the civil service has made several attempts at reorganization reform. This study contends that civil service actors in the midst of reorganization manifest important dispositions that have an impact on implementation success. A critique of the reform policies in the DepEd has found that reorganization, streamlining and reforms are usually greeted by affected civil servants with ‘lack of compliance’ and ‘insubordination’. This weakness in the bureaucracy becomes much more apparent in bureaucratic contexts that foster ‘high levels of discretion’, a situation that can be found, for example, in the Philippine’s largest bureaucracy – the DepEd (Aldaba 2013: 25).

Aside from systemic weaknesses, a ‘serious attempt to analyse policy implementation deficits in a Philippine setting requires an explicit recognition of the almost ubiquitous impact of corruption’ (Reyes 2009b: 3). Scholars and

practitioners have identified the debilitating impact that corruption has on the implementation of programmes in the Philippines designed to address basic social needs (Reyes 2009a: 515). Estimates from scholars as well as from the World Bank have identified that 20 per cent of the annual government budget is lost to corruption (Balboa, Medalla and Yap 2007: 13). This amount has been estimated to be about 3 per cent to 4 per cent of the nation's GDP (Johnston 2008: 216). Quah stated that the problem of corruption in the country 'is a way of life' (Quah 2003: 81). In Transparency International's study on the 'Ten Most Corrupt Leaders', the Philippines earned the dubious distinction of having two of its ex-Presidents in the list: Ferdinand Marcos and Joseph Ejercito Estrada (Hodess et al. 2004: 13). Furthermore, corruption and the perennial implementation shortfalls have led to the 'utter failure of the system to deliver economic prosperity and reduce inequality' that has resulted in 'the greatest source of mass alienation' (Bello et al. 2004: 3). International rankings reinforce arguments about corruption's stranglehold in the Philippines. The country averaged a 2.7 score (on a 10-point ascending scale) from 1995 to 2011 and a score of 36 (on a 100-point ascending scale) in the Transparency International's Corruption Perceptions Index, from 2012 to 2014 (Transparency International 2014), positioning it as one of the underperforming countries in its fight against corruption. Surveys conducted by the Political and Economic Risk Consultancy (PERC) on the impact of corruption on the business environment in the Philippines revealed an average score of 8.5 (on a 10-point ascending scale) from 2005 to 2014 (Political & Economic Risk Consultancy Ltd. 2014: 4),

placing the nation very near the top of worst performers in relation to anti-corruption efforts.

4.5.5 Implementing agencies and the advent of civil society and international organizations

A case study of power and shared authority in the DepEd reveals that the characteristics of implementing agencies determine policy outcomes. Where DepEd reform initiatives are described as problematic, analysis reveals the prominent characteristic of a ‘dysfunctional bureaucracy’ (Reyes 2009b: 58) typified by a general breakdown of organizational capability. On the other hand, where DepEd reform initiatives have been described as functional, organizational characteristics are typified by the presence of active and engaged ‘stakeholder networks’ (Reyes 2009b: 119). Another agency, equally noted as a hotbed for corruption and inefficiency, is the Bureau of Customs (BOC). The recent logjam in the port area that has caused major traffic backlogs in Manila as well as delays in the delivery of vital resources to and from the port area have been blamed on the ‘lack of clarity in implementation procedures by the BOC’ (Aldaba 2013: 26). The labour market of the Philippines, which is managed by multiple agencies such as the Department of Labour and Employment (DOLE), the Philippine Overseas Employment Agency (POEA) and Bureau of Labour Relations, ‘suffers from rigidities and inefficiencies’ and is yet another example of how government organizations belonging to the public bureaucracy manifest an overall structural weakness (Schwab 2014: 28).

In a situation where systemic weakness and resource scarcity are experienced by the government (the primary source of service delivery in the Philippines) and are aggravated by the prevalence of corruption, two other alternative agents of service delivery emerge: international organizations and civil society. Cariño states that the 'delivery of public goods and services is not limited to the government. Both the private sector and civil society are actively engaged in the production, marketing and distribution of public goods' (2003: 70). One of the most dominant exponents of civil society in the Philippine context without doubt would be the NGOs. Chronic deficits in the provision of services of the state have resulted in the emergence of NGOs as an alternative delivery system for the state. Shigetomi states that 'the existence of people who have been left out by both the market and the state seems to be the most fundamental factor behind the establishment and continued existence of NGOs' (Shigetomi 2002: 2).

It is also within the context of an ineffective government perennially plagued by corruption where international organizations enter the picture: 'as economic globalization proceeds, and as political and administrative relations between countries grow closer and stronger, issues concerning development, which were once domestic problems, are being affected ever more profoundly by international agreements and international consensus' (Shigetomi 2002: 2). Haque (2001: 73), arguing about the decreasing 'publicness' of public bureaucracies, says that international organizations have played a 'significant role in popularizing the "miracle" of market forces and reinforcing an unfavourable public perception of state agencies'. In a period of increased globalization,

international organizations have thus become a major factor in the implementation of domestic issues of development concerning nations. Finnemore (1993: 566) has provided empirical evidence to prove that ‘organizational innovation was supplied to the state from outside, from an international organization, rather than being the product of any characteristics internal to or inherent in the state itself. She concludes from her study that an international organization, ‘represented by UNESCO’, which ‘becomes a principal (rather than an agent)’, provides an example of how these organizations play dominant roles in promoting and implementing new norms (594). Galicia (2000: 45) has noted that the Philippines, which is indebted to the International Monetary Fund (IMF), provides numerous examples of varying degrees of interventions of international organizations like the IMF, in the implementation of national development goals. The Philippine public bureaucracy provides a case study of how a huge inefficient public bureaucracy functions alongside the influence of civil society and international organizations.

A concrete example of how civil society and international organizations work towards improving the Philippine public bureaucracy is the valuable work undertaken by the ‘World Bank, and a consultative group consisting of labour lawyers, employer and employee representatives, experts from the International Labour Organisation (ILO), the Organisation for Economic Cooperation and Development (OECD) as well as the private sector and members of civil society’ in their collective efforts to search for ways to improve the limping labour market regulation sector of the Philippines (World Bank 2014: 86).

4.6 Case studies on implementing the ASEAN Cosmetic Directive (ACD) and the ASEAN Ministerial Meeting on Transnational Crime (AMMTC)/Senior Officials Meeting on Transnational Crime (SOMTC)

4.6.1 ASEAN 2015: Lessons in the implementation of specific policies

One of the primary goals in the creation of the ASEAN in 1967 was for geopolitical reasons: ‘a firm foundation for common action to promote regional cooperation in South-East Asia in the spirit of equality and partnership and thereby contribute towards peace, progress and prosperity in the region’ (ASEAN 1967: 1). However, aside from pursuing geopolitical aspirations, the ASEAN has embarked, painstakingly and ambitiously, on the creation, by 2015, of the ASEAN Economic Community (AEC) (ASEAN 2008: 1). This aspiration was partly inspired after the progress achieved by European nation states in ushering in the institutionalization of the European Union. The AEC provided an optimistic blueprint towards achieving a community strategically connected not only by geopolitical concerns but also united along mutually beneficial economic imperatives. A cornerstone of the AEC would be the implementation of its existing economic initiatives, namely ‘(i) accelerating regional integration in the priority sectors; (ii) facilitating movement of business persons, skilled labour and talents; and (iii) strengthening the institutional mechanisms of the ASEAN’ (ASEAN 2008: 2).

4.6.2 ASEAN economic trade deals: the 'noodle bowl syndrome'

Realistically however, with the wide variety and disparity in their respective political and economic histories, the countries of the ASEAN face daunting challenges as they collectively attempt to implement the pertinent provisions related to AEC 2015. Scholars and practitioners have aptly pointed out that in the specific area of implementing Free Trade Agreements (FTAs), an 'existing large disparity in the level of development will likely lead to divergence or greater disparity in development' (Balboa, Medalla and Yap 2007: 2). Astute observers of the ASEAN regional challenges have described the existing quagmire of trade deals as a 'noodle bowl syndrome' (an unorganized tangle of bilateral trade deals) (Baldwin 2007: 4). The implications of the messy state of the 'noodle bowl (diverse time frames for completion, diverse exclusion lists, and diverse rules of origin and technical and product standards)' would invariably lead to an increase in 'administrative and business transaction costs and discourage utilization of the tariff preferences' (Chia 2011: 62).

Notwithstanding the current state of affairs in relation to complex trade arrangements existing in the ASEAN, the implementation of AEC 2015 was foreseen to be carried out through four interrelated stages. The first stage requires the promotion of transparency and improvement of the notification procedures under all ASEAN economic agreements via the Protocol on Notification Procedures. The second stage is the ratification of all pertinent ASEAN legal instruments made within six months. This would be followed by the third

stage, which involved the decision-making processes of economic bodies primarily through consensus. The fourth and final stage underscored the utilization of the Enhanced Dispute Settlement Mechanism (DSM) with the end of promoting a rules-based community (ASEAN 2008: 35).

It is within this context that this chapter is situated. One of the challenges posed by experts on the future of the ASEAN region is the ability of most of its nations, known to be traditionally state-centred, to be able to increase understanding and collaboration with international institutions that are above the level of the state and with civil society that is below the level of the state. This inquiry seeks to study the dynamics of policy implementation, corruption and the interaction of government, civil society organizations and international institutions. The focus is on how the ACD and AMMTC/SOMTC are implemented in the Philippines.

In the Philippine context, the Department of Foreign Affairs (DFA) acts as the agency tasked with the role of a 'clearing house' in matters pertaining to relations with the ASEAN or for other international organizations for that matter. In the implementation of specific ASEAN policies, such as the ACD and AMMTC/SOMTC, the DFA facilitates the communication and linkages with various national departments and offices. Implementation of ASEAN policies are given legal force through Executive Orders emanating from the Office of the President. Inter-Agency Committees (IACs) are created and these are mandated with the implementation of ASEAN-wide policies in the Philippine context. In the subsequent sections, the specific agencies and offices involved in the implementation of the ACD and AMMTC/SOMTC are identified.

4.6.3 *What is the ASEAN Cosmetic Directive?*

On 2 September 2003, the ten-nation ASEAN adopted the ASEAN Cosmetic Directive (ACD) (ASEAN 2006: 8). The ACD is the natural progression from the Principles of Harmonization of Cosmetic Regulations and the Common Technical Documents for Cosmetics. The genesis of these policies derive from the ASEAN Mutual Recognition Agreement of Product Registration Approval for Cosmetics and the 'last resort' Protocol on Dispute Settlement Mechanism, signed on 20 November 1996 (ASEAN 2006: 7). What can be gleaned from a careful perusal of the historical documents within the ASEAN that ushered in the finalization of the ACD is that the economics of free trade in the highly marketable cosmetics industry and the continuous search for mutually beneficial regimes for all participating stakeholders are critical factors that led to the passage of the ACD. One can even argue that the progress of the passage and current implementation of the ACD as well as the issues and challenges that face it lie squarely on the dynamics of interaction between the key stakeholders.

4.6.4 *What is the AMMTC/SOMTC?*

The SOMTC was formalized in 1997, during the first AMMTC, which is the highest policy-making body in the ASEAN region for transnational crime. The SOMTC, as mandated in 1997, is the implementing arm of the AMMTC and is mainly responsible for crafting the implementation of the ASEAN Plan of Action to Combat Transnational Crime (ASEAN 1999). A scrutiny of the ASEAN documents pertinent to the AMMTC

and the SOMTC reveals that great strides have been accomplished in relation to the pursuance of diplomacy. However, in the efforts of implementing a systemic and binding rule of law that governs the flashpoints identified in transnational crime (i.e., money laundering, trafficking in persons, drug trafficking, arms smuggling and piracy) the performance of the AMMTC/SOMTC is still very much a work in progress.

A review of the pertinent literature composed of ASEAN official documents, Philippine rulings as well as scholarly studies on the ASEAN and particularly the implementation of the ACD and AMMTC/SOMTC form the bulk of the data sources for this chapter. The literature review was complemented by primary data obtained from interviews with selected stakeholders of the ACD and AMMTC/SOMTC. A total of thirteen stakeholders carrying out duties within the context of the two policies were the respondents for this study.² Table 4.4 provides a brief description of the respondents for the two case studies.

4.7 Assessing the implementation of the ACD

Using the factors of implementation as an analytical lens, it can be argued that deliberate efforts on the part of the key stakeholders are made in order to address the operational demands of the ACD. The key stakeholders are also able strategically to manage the nature and availability of resources needed for the functional implementation of the ACD. Power

² All the names of the respondents have been changed to maintain confidentiality.

Table 4.4 *Philippine interview respondents*

Names (pseudonyms)	Institutional affiliation	Date of interview
1. R. Cruz	international cosmetics industry executive	19 March 2012
2. I. de la Cruz	international cosmetics industry executive	19 March 2012
3. V. Santos	local cosmetics industry enterprise executive	23 March 2012
4. J. Tan	local cosmetics industry enterprise executive	23 March 2012
5. J. Santos	Food and Drug Administration official	19 March 2012
6. J. de la Cruz	Cosmetic Chamber of the Philippines official	20 March 2012
7. F. Tan	anti-trafficking Philippine NGO official	19 March 2012
8. B. Tan	anti-trafficking Philippine NGO official	19 March 2012
9. H. Flores	Philippine National Police official	21 March 2012
10. F. Bautista	Philippine National Police official	21 March 2012
11. I. Tan	Philippine National Police official	21 March 2012
12. D. Santos	Department of Foreign Affairs	21 March 2012
13. I. Santos	Philippine National Police official	22 March 2012

and shared authority among the key stakeholders remain the most complex component in the implementation of the ACD.

4.7.1 Operational demands

Concerted efforts from the different stakeholders are made to uphold the policy standards and objectives of the ACD.

On the whole, the implementation of the ACD from a Philippine experience has been encouraging but real challenges remain. The historical trajectory of the ACD from its genesis to its present form is a testament to the positive experience of the regional organization: the 'ASEAN has thrived in finalizing the ASEAN Harmonized Cosmetic Regulatory Scheme, which consists of two phases: the Mutual Recognition Agreement (MRA) and the ACD' (Horikoshi 2006: 41). In the Philippine context, the implementation of the ACD lies squarely on the Food and Drug Administration (FDA) of the Department of Health (DOH) (House of Representatives 2009). The fundamental policy objective of the FDA in relation to implementing the ACD lies in their role 'to transpose the Directive into national legislation and put in place a notification system for placement of cosmetics' (Chia 2011: 60).

In relation to the consistent transposition of the ACD into national legislation, the key stakeholders from industry and the FDA have claimed that the Philippines have been implementing this task rather diligently (R. Cruz, pers. comm., 19 March 2012). The main issues raised by the key stakeholders – particularly those coming from the cosmetics industry – have been the lack of a binding ASEAN legal framework especially in regard to perceived violations in the transposition by other ASEAN countries (I. de la Cruz, pers. comm., 19 March 2012). In fact, the industry stakeholders have claimed that among the industries in the various ASEAN countries, the integration is not real and that what actually pervades is factionalism (R. Cruz, pers. comm., 19 March 2012). The notion of factionalism is a very strong position advocated by the Philippine-based ACD stakeholders specifically those dealing with traditional cosmetics

products and those representing small and medium-sized enterprises (SMEs). These stakeholders argue that the policy goal espoused in the ACD, which is ‘harmonization of standards’, ‘is an advantage to [the European Union] but a disadvantage to small, local manufacturers in the ASEAN’ (R. Cruz, pers. comm., 19 March 2012). V. Santos (pers. comm., 23 March 2012) and I. de la Cruz (pers. comm., 19 March 2012) confirm this similar observation. Not surprisingly, even the stakeholders representing the biggest cosmetics industries in the Philippines acknowledge how the current policy standards and objectives of the ACD deter SMEs from entering and flourishing in the planned AEC (J. de la Cruz, pers. comm., 20 March 2012).

One area of strength recognized in this chapter is the ‘inter-organizational communication among the key stakeholders of [the] ACD’s implementation from a Philippine context’ (R. Cruz, pers. comm., 19 March 2012). Government officials as well as the industry partners have very regular communications: as a matter of fact, the senior leaders of the Chamber of Cosmetics Industry of the Philippines (CCIP) ‘regularly initiate communications with the FDA as these are related to the approval and marketing of cosmetic products’. The key stakeholders in the implementation of the ACD in a Philippine perspective have indicated that senior government officials and industry representatives are merely ‘a phone call or a text away’ (J. de la Cruz, pers. comm., 20 March 2012).

4.7.2 Nature and availability of resources

With the full-scale implementation of the ACD, the Philippine’s DOH had to lobby for the passage of legislation that

converted its Bureau of Food and Drugs Administration (BFDA) to an FDA plus the accompanying and necessary additional powers. This needed to be done in order to anticipate the broader and more specialized tasks that the ACD required from the FDA and other national agencies related to cosmetics. In the Philippines, RA 9711 or the Food and Drug Administration Act of 2009 was the answer that the DOH was looking for (House of Representatives 2009).

An implication of the greater powers of the Philippine FDA was the flexibility to modify the registration fees for new products (i.e., some drugs may be considered as cosmetics). The Philippine FDA, indicating that resource mobilization was essential in order for it to carry out its greater role, proposed an increase of a whopping 1004 per cent in the price of a notification licence (J. Santos, pers. comm., 19 March 2012). This massive increase in registration fees can clearly be seen by scrutinizing how product registration for a new drug increased from its original price to its newly stated rate:

Accordingly, the biggest fee increases are for product registration. A new drug's initial registration used to be 6,667 Philippine Pesos (approximately \$144), but is now 210,000 PHP (\$4,544). Though initial registration used to be for one year, the FDA has extended it for three years. However, the renewal fee has increased from 20,000 PHP (\$432) to 70,000 PHP (\$1,515) and only lasts for one year. (Pacific Bridge Medical 2009)

FDA officials rationalized that, with the increased role that the new office needed to perform resulting from the reorganization of the agency, a massive infusion of qualified

personnel and state of the art equipment was necessary. One of the most effective ways to generate much needed resources was to increase the charges levied on drug manufacturers. In the FDA's estimation, the huge increase in registration fees was justified.

The key stakeholders possess varying amounts of resources; nonetheless, these are maximized in order to effect the implementation of the ACD. Historically, the cosmetics industry (both in the ASEAN and in the specific countries like the Philippines) carries quite a lot of weight in terms of influence (market share) and impact (economic contribution). In the experience of implementing the ACD in the Philippines, the cosmetics industry has enough leverage so that in 2003 industry partners provided professional training to the then FDA field and central officers free of charge. This is an example of the 'muscle of the cosmetics association in the Philippines' (R. Cruz, pers. comm., 19 March 2012).

4.7.3 Power and shared authority

Power and shared authority in the implementation of the ACD in a Philippine perspective has been a complicated experience. The difficulties arise from the characteristics and capacities of the FDA in implementing the ACD, and the perceptions of other key stakeholders of 'unfairness towards SMEs' resulting from the new regulations that are disadvantageous to those small enterprises with limited capital in the implementation of the ACD.

The FDA as the main implementing agent of the ACD in the Philippines is a lightning rod for criticism. The

main complaints that have been raised by key stakeholders about the FDA are: 'lack of manpower – no warm bodies and current staff lack competence (mostly fresh graduates with Bachelor of Science (Pharmacy) degrees who may lack experience) – and leadership'. Stakeholders have pointed out that a change of leadership in 2003, and the drastic policy changes that ensued, unsettled most of the established actors involved in the implementation of the ACD (J. Santos, pers. comm., 19 March 2012).

With the increased roles that the Philippine FDA is supposed to undertake, stakeholders involved in the ACD have questioned – quite legitimately – whether or not the FDA is fully prepared to carry out its newly constituted roles. Previously, the FDA's task was more administrative. However, with the revisions brought about by the ACD, the Philippine FDA would need to have a cadre of trained operatives (such as biochemists, chemical engineers and industrial engineers, as well as qualified and (more importantly) experienced pharmacists) to undertake the required scientific and technical review of products under the ACD. Stakeholders involved in the ACD who are very familiar with the Philippine FDA categorically state that at the moment the FDA is ill-prepared.

The key stakeholders in the implementation of the ACD from a Philippine perspective also lament how some ASEAN nations flout the policy objectives and standards of the ACD. These Philippine cosmetics industry representatives state that this becomes particularly acute during the transposition of the ACD's pertinent rules to the local legislation of some ASEAN nations. Stakeholders have disclosed that 'each

country undertakes separate and different transpositions of ACD agreements into local national laws'. For example, a country like Vietnam transposes the ACD agreement pertaining to the need to identify clearly the ingredients used on product labels into their local context. However, in the Vietnamese context, product labels are not strictly required. What happens is that multinational firms entering Vietnam spend a great deal on producing detailed labels consistent with ACD agreements while their Vietnamese competitors do not spend anything at all, as the local context does not require this rule to be implemented. The disparity of transposition of ACD agreements illustrated by this example goes against the objective of standardization (I. de la Cruz, pers. comm., 19 March 2012). This remains one of the complex components of power and shared authority, as it is difficult to achieve common standards and Mutually Recognized Agreements (MRAs) among the ASEAN countries as the more developed countries have imposed more stringent standards than their less developed counterparts (Chia 2011: 52).

Aside from the manpower issues that surface with the implementation of the ACD (from a regime of simple registration to the current stringent submission of more elaborate product dossiers), the key stakeholders have argued that SMEs would find barriers to entry almost impossible to overcome. V. Santos and J. Tan (pers. comm., 23 March 2012) strongly pointed out this negative implication. The existence of barriers to entry to SMEs is a phenomenon that is not only confined to the Philippine context as a result of the ACD. Non-traditional cosmetics stakeholders in different parts of the world, who usually belong to the ranks of the SMEs, have also raised these

issues. American and European SMEs have highlighted how intermittent changes that come from national and international agencies can adversely impact their operations:

SMEs complained that constantly scrutinising changing lists of ingredients put out by authoritative bodies, hiring legal advisors, and reformulating their products to keep up with these changes would force their product costs up, and they would become uncompetitive and collapse. The American situation described above is, of course, similar to that of European SMEs. (Burfield 2010)

The key stakeholders in the implementation of the ACD have indicated that ‘corruption still occurs in the system’ (R. Cruz, pers. comm., 19 March 2012). Most of the industry partners of the ACD stated that corruption still occurs in the Philippines (e.g., importing raw materials through the Bureau of Customs with the accompanying problems that arise) albeit on a smaller scale. Several measures to make the processes of the Bureau of Customs more transparent (e.g., the installation of closed circuit television in customs-bonded warehouses), and simplifying procedures in order to eliminate complex and multiple interactions with various agents through one-stop shops, have made an impact in slowing down widespread corrupt activities. Other respondents have stated that the Philippine cosmetics industry has ‘matured through the decades’ to make it less vulnerable to rampant corruption (J. de la Cruz, pers. comm., 20 March 2012).

Perhaps the loudest and most vociferous voices against the implementation of the ACD are two of the respondents who remain vigilant and actively advocate a

review of the ACD's implementation. V. Santos and J. Tan (pers. comm., 23 March 2012) are of the strong opinion that corruption prevails but on a scale that happens not in the Philippines alone but with multinational cosmetics manufacturers 'bribing government officials of the FDA' and 'crowding out SMEs'. They also state that the ACD is a 'blatant display of power from multinational agencies' bullying SMEs in the Philippines.

4.8 Assessing the implementation of the AMMTC/SOMTC

Using the factors of implementation as an analytical lens, it can be argued that communication among the key stakeholders is consistently maintained whilst the fundamental laws pertinent to transnational crime undergo renegotiation and refinement in order to address the operational demands of the AMMTC/SOMTC. The key stakeholders have underscored the inherent difficulties faced in managing the nature and availability of resources needed for the implementation of the AMMTC/SOMTC. Power and shared authority among the key stakeholders persist as the most challenging component in implementing the AMMTC/SOMTC.

4.8.1 Operational demands

In the implementation of the AMMTC/SOMTC in the Philippines, inter-organizational communication among the key stakeholders remains highly functional. The AMMTC/SOMTC has mobilized several ASEAN nation-based groups

to tackle transnational crime. In the Philippine perspective, this group is composed of the Secretaries of the Department of Justice and Department of Social Work (both sit as co-chairs), Heads of the DFA, DOLE, POEA, the Bureau of Immigration, the Philippine National Police, National Commission on the Role of Filipino Women and three representatives from NGOs as members (B. Tan, pers. comm., 19 March 2012). From the perspective of the DFA, the implementation of the SOMTC has been functional (D. Santos, pers. comm., 21 March 2012). Among the Philippine-based members, the implementation of the AMMTC/SOMTC has been translated to ‘diplomacy is taking place’ through ‘the sharing of information’ (B. Cruz, pers. comm., 21 March 2012).

The more tenuous aspect of the operational demands of implementing guidelines from the SOMTC can be found in the contested definitions of transnational crime. Money laundering, piracy and drug trafficking are among the serious problems encountered by the Philippines and other ASEAN countries and by various other nations in the world. One particular transnational crime that has attracted much attention to the ASEAN from other countries is trafficking in persons. The history of the ASEAN region has given it quite an unsavoury reputation in relation to trafficking in persons. This becomes a very urgent and serious issue particularly when one considers the linkage of sex trafficking to the region and the problematic legal approach that is generally pursued in the ASEAN. Cheah elaborates on these contradictions:

Despite sex trafficking’s historical and long-standing roots in the ASEAN region, ASEAN States have failed to deal

with the problem effectively. This is due to the criminal law model adopted by most ASEAN States in combating sex trafficking. The criminal law model focuses on penalization of the trafficking act and fails to adequately address the socio-economic causes and consequences of sex trafficking. As a result, victims of sex trafficking are neglected or re-victimised by authorities of the destination country, are left in limbo while awaiting repatriation, and upon repatriation are ostracised or marginalized in the States of origin. (Cheah 2006: 47)

In response to the increased pressure for the ASEAN seriously to address the issue of trafficking in persons, a number of the ASEAN nations have already adopted the Trafficking Protocol (United Nations 2000). However, as already pointed out by Cheah, ASEAN's approach to trafficking in persons (particularly sex trafficking) relies on either a criminal law model or a victim-centred approach (Cheah 2006: 47). The varied approach to dealing with trafficking in persons in the ASEAN provides a glimpse of how this serious phenomenon is dealt with in different ways in the region.

In the ASEAN region, there is a clamour to adopt the victim-centred approach. Notably in the Philippines, the implementation of approaches to combat trafficking in persons has been progressing steadily. In 2003, the Philippine Congress was able to put into law anti-trafficking legislation provisions that address this critical issue (House of Representatives 2003). Despite these legal achievements 'on paper', the key stakeholders at the forefront of the implementation of the AMMTC/SOMTC guidelines indicate that 'more needs to be done beyond the mere sharing of information' and that

a concerted effort to arrive at a ‘universally accepted interpretation of the rule of law is needed’ as opposed to the current state of affairs which accommodates varied interpretations within the ASEAN (I. Santos, pers. comm., 22 March 2012).

4.8.2 *Nature and availability of resources*

The key stakeholders have underscored the inherent difficulties faced in managing the nature and availability of resources needed for the implementation of the AMMTC/SOMTC. Government agencies in the Philippines tasked to implement the pertinent guidelines of the AMMTC/SOMTC have lamented the difficulty of acquiring funds. Aside from the initial outlays provided (i.e., allocation of office space for AMMTC/SOMTC officials at Camp *Crame* – the Philippines National Police Headquarters), there are currently no recurrent funds being pumped into AMMTC/SOMTC to address their operational needs. What happens is that the AMMTC/SOMTC officials use the budget allocated originally for the key functions of their agencies and use some of these to fund the AMMTC/SOMTC activities. The key stakeholders have indicated that the accessibility and availability of internally allotted funds for the smooth functioning of their organizations remain a pressing challenge (F. Tan, pers. comm., 19 March 2012 and H. Flores, pers. comm., 21 March 2012).

Civil society representatives implementing the AMMTC/SOMTC have also underscored the phenomenon of ‘capacity-building fatigue’ that not only saps the energy of volunteers but also threatens to compromise the coffers of

civil society (B. Tan, pers. comm., 19 March 2012). Additionally, civil society representatives, who have had vast experience in dealing with specific transnational crimes such as trafficking in persons, have expressed surprise that their knowledge and expertise are only used in a limited way by the government. These civil society representatives are asked to be merely 'resource speakers'. Civil society stakeholders argue that they should form part of a more strategic and integrated approach to transnational crime. They propose that the anti-trafficking curriculum for law enforcers could benefit greatly from civil society as they transform outdated concepts of trafficking specifically to identify 'victims as those that need protection and traffickers as those that need to be tracked down and persecuted' (I. Santos, pers. comm., 22 March 2012).

The disposition of implementers is another source of contention in addressing the implementation of the AMMTC/SOMTC. The key stakeholders have explicitly stated that 'compliance versus real practical decisions that leads to real action is not currently happening in the [AMMTC]/SOMTC'. The experience of the Philippine stakeholders in implementing the AMMTC/SOMTC proves to be constantly a complex issue. An example of this complexity from a Philippine perspective can be seen in the controversial Trafficking Protocol, which Brunei Darussalam and Singapore have not signed or ratified, for several reasons. Singapore and Brunei Darussalam are heavy importers of foreign workers. Commentators have opined that some of the provisions of the proposed Trafficking Protocol have been considered by officials of these nations as disadvantageous to

their current national manpower hiring practices. Indonesia, Malaysia, Vietnam, Thailand, Myanmar and Laos have ratified the Trafficking Protocol but have raised reservations. Only Cambodia and the Philippines have signed and ratified the Trafficking Protocol without any conditions, reservations or objections (United Nations 2014). In short, there is no consensus among the ASEAN countries in implementing the Trafficking Protocol.

The key stakeholders have explicitly stated that law enforcement is 'infested' with 'corruption' (B. Tan, pers. comm., 19 March 2012). Civil society stakeholders have unequivocally indicated how in the interventions that they carry out, particularly in relation to efforts addressing trafficking in persons, they encounter 'corrupt practices' (I. Santos, pers. comm., 22 March 2012). These allegations of how corruption worsens the problems of trafficking of persons, particularly in a Philippine context, are supported by various international multilateral agencies. Those engaged in human trafficking usually operate in highly effective networks with considerable resources: the success of their illegal trade is bolstered by corruption (UNICRI & AIC 2000). A specific example provided by I. Santos (pers. comm., 22 March 2012) illustrates that alleged human traffickers whom they have identified and reported to law enforcers still 'magically get away during sting operations'. On several occasions, they have observed how known human traffickers have been 'approached by several law enforcers minutes before a raid' thus escaping from the 'clutches of the law'. A very specific action that civil society has initiated is the preparation of corruption vulnerability maps that they share with all

AMMTC/SOMTC stakeholders to improve vigilance and promote anti-corruption (I. Santos, pers. comm., 22 March 2012). Law enforcers party to the AMMTC/SOMTC have ‘acknowledged that there are lawless elements within their ranks’ (F. Bautista, pers. comm., 21 March 2012) but these have become much more limited (B. Cruz, pers. comm., 21 March 2012).

4.8.3 Power and shared authority

Power and shared authority among the key stakeholders persist as the most challenging component in the implementation of the AMMTC/SOMTC. Perhaps one of the most troubling aspects that face the implementers of efforts against transnational crime is that most of its existing provisions are non-binding (I. Tan, pers. comm., 21 March). B. Cruz (pers. comm., 21 March 2012), as a law enforcer, is particularly frustrated with how the non-binding nature of the AMMTC/SOMTC dampens the efficacy of their activities. The key stakeholders from across the various representatives of the AMMTC/SOMTC in a Philippine context have openly clamoured for the adoption of the Trafficking Protocol (Melican 2011) – for all the ASEAN countries (R. Cruz, pers. comm., 21 March 2012) – but to date have been unsuccessful.

However, with the current reality of the non-binding nature of its statutes, stakeholders have acknowledged that the AMMTC/SOMTC is ‘an opportunity’; as ‘coordination is essential to combat transnational crime, shared knowledge is valuable’ (I. Santos, pers. comm., 22 March 2012).

Also, stakeholders from both civil society and government have recognized that ‘NGOs’ decisions, which are by nature “quicker”, [are] therefore much easier to make versus government bureaucracy’ (B. Tan, pers. comm., 19 March 2012), and have thus worked around arrangements to maximize this type of situation. It can be argued that the very real existing limitations (e.g., non-binding laws) have given birth to novel approaches in implementing the AMMTC/SOMTC. One solution that has arisen from among some of the ASEAN nations is the formation of trans-governmental networks. In this approach, various ‘organs within each state – police departments, immigration departments, the military, legislators’ have created ‘transnational networks’ that allow for direct coordination among the ASEAN level counterparts (Renshaw 2008: 3).

4.9 Conclusion: implications for current ASEAN processes and outputs

This chapter provides an analysis of the civil service’s role in policy implementation in the Philippines. It argues that the Philippine civil service is currently weak, fragmented and afflicted by systemic corruption. Its current weakened state could be attributed to three main factors. First, owing to its highly political nature caused primarily by its unsteady colonial origins, the Philippine public bureaucracy has been typified by continuities and discontinuities making implementation of policies a haphazard affair. Secondly, the breadth and width that the Philippine Civil Service is mandated to serve remains a daunting challenge: an archipelago of

7,107 islands with still undeveloped infrastructure. Lastly, systemic corruption is a malaise that troubles the civil service and is worsened by the weak rule of law. Consequently, a careful assessment of the implementation of policies would need to be cognizant of these three constraints of the Philippine civil service.

4.9.1 Change versus consensus

Consistent with the arguments of Van Meter and Van Horn, implementation gridlock occurs in quadrants where there is great change and very little goal consensus. The Philippine experience of creating the FDA in order to address the mandate of the ACD has produced a situation where the price of product registration has risen by 1004 per cent and a dearth of trained manpower to implement the new requirements of the FDA review has been revealed. These are examples of situations where there are great changes with very little consensus.

The Philippine experience of implementing the AMMTC/SOMTC has been similar to the ACD, although it has occurred at a more deliberate and sustained pace (e.g., non-adoption of the Trafficking Protocol – a policy that requires great change and a lack of consensus among some specific ASEAN nations).³

³ In the issue of Trafficking in Persons, the division among the ASEAN states exists more sharply between ‘sending nations’ (usually poverty-stricken) and the ‘receiving nations’ (usually more-developed).

In the Philippine case, the ACD has experienced greater progress. The legal adoption of the key ACD code embodied in the ASEAN Harmonized Cosmetic Regulatory Scheme has undoubtedly hastened this process. Notwithstanding the undeniable fact that the civil service, represented by the FDA, was undermanned and underfunded to take on its new roles, the ACD still moved forward. Based on this assessment, this progress was due mainly to the active participation of other stakeholders – those who do not belong to the civil service, namely the private sector.

By contrast, the AMMTC/SOMTC has experienced a much more belaboured progress. Although non-civil service stakeholders played very active roles, a key element of the policy – the adoption of the Trafficking Protocol – remained unresolved. This uncertainty created a ‘foot-dragging effect’ where civil service stakeholders found themselves increasingly frustrated and demoralized with what they perceived was a deliberate and inexplicably laggard behaviour of other stakeholders (the civil servants of other ASEAN nations) in relation to the AMMTC/SOMTC.

4.9.2 Achieving a balance between change and consensus

For the ACD, the change that was adopted in the Philippines was drastic. The amount of consensus was moderate. Perhaps as the civil service moves forward the amount of change can be tweaked in order to make it ‘slight to moderate’. This could be done by implementing change through stages in order to balance out the moderate consensus. For the

AMMTC/SOMTC, the suggested drastic change was aggravated by the lack of consensus in relation to the Trafficking Protocol. Using Van Meter and Van Horn's change and goal consensus model, one can see the high degree of required change and the low amount of consensus that the Trafficking Protocol required of most of the ASEAN members. Balancing and perhaps repackaging the change to be less drastic (e.g., using staggered phases of implementation instead of a sudden transformation) and then taking realistic efforts to arrive at greater consensus (e.g., allowing for greater and meaningful discussion within the ASEAN in relation to reservations raised by some of the states in relation to the Trafficking Protocol) could mean better progress for policy implementation.

The experience of implementing the ACD and AMMTC/SOMTC provides lessons for ASEAN-wide attempts at policy formulation and implementation. Balancing the need to change (cognizant of the contextual conditions of the member state) with the degree of consensus (familiar with the levels of flexibility of member states) seems a plausible way to ensure that ASEAN policies move forward.

One powerful lesson that the ASEAN countries can learn in relation to arriving at a feasible balance between change and consensus is the region's experience in addressing the transnational crime of terrorism. Scholars and practitioners have identified that the experience of Southeast Asia in addressing terrorism in the region has been met with a 'broad general consensus' (Soeslilowati 2011: 239) among the ASEAN members. It has been suggested that this happened with the astute combination of 'depoliticizing terrorism' (treating

terrorism as a technical problem rather than the more sensitive 'nation and ethnicity' problem and thereby arriving at a careful consensus) and the application of 'ASEANization' of counterterrorism policies (the introduction of change via the well-known ASEAN way) (Gerstl 2010: 72).

4.9.3 Policy borrowing and policy transference

The experience of the ACD as it was adopted from the EU provides some critical insights in relation to policy borrowing. The explicit resistance demonstrated by SMEs and the non-traditional cosmetics industries (in the Philippines in particular) as echoed by more established cosmetics industry players may need careful reflection. The words of one of the ACD stakeholders regarding this issue are worth considering: 'In 1996, the policy borrowing of the ASEAN from the EU model was done without a deep understanding. Now, ACD is becoming a threat to established manufacturers as well as SMEs' (R. Cruz, pers. comm., 19 March 2012).

The AMMTC/SOMTC provides a valuable learning experience in policy transference with particular attention to the inherent shortcomings that accompany them. Civil service stakeholders in the Philippines, as well as non-civil service actors, witnessed how policy transference – in the form of key AMMTC/SOMTC policies – varied greatly as they were introduced, interpreted and adopted by the other ASEAN member states. Initial euphoria at the signing of the AMMTC/SOMTC documents turned into dismay when ratification did not follow; worse still, some ASEAN member states neither signed nor ratified the Trafficking Protocol. Philippine stakeholders

involved in the AMMTC/SOMTC have expressed frustration at the unpredictability and uncertainty of the AMMTC/SOMTC.

The implementation of the ACD from the perspectives of civil service and non-civil service stakeholders has crystallized the limitations of policy borrowing. For the future, what would be most promising would be contextualized policy borrowing: adopting what works and discarding what does not as these are carefully considered within the unique policy contexts of the member states. More importantly, the effort of policy borrowing must be tempered with a very critical perspective of who benefits and who is disadvantaged, and therefore what compromises are needed in order to move forward.

The difficult implementation of the AMMTC/SOMTC as experienced by the stakeholders has highlighted the drawbacks of policy transference. Different nation states of the ASEAN clearly have different perspectives in relation to the implementation of the AMMTC/SOMTC. Perhaps a more productive way to succeed in policy transference would be to arrive at workable strategies as far as possible so that all the stakeholders see advantages in adopting region-wide policies.

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