FOURTEENTH CONGRESS OF THE REPUBLIC }
OF THE PHILIPPINES }
First Regular Session }

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SENATE

RECEIVED BY:

S.B. NO. 1251

Introduced by Senator Francis N. Pangilinan

EXPLANATORY NOTE

The United Nations Convention Against Corruption (UNCAC) stresses two veritable facts. First, corruption is a principal obstacle to nation building. Second, seriously addressing corruption according to international standards is determinant of a State's place in the community of progressive nations. Indeed, corruption defines in large part of the political and economic hazards that spell the viability of a nation as an investment destination.

A conventional strategy in dealing with corruption, upon which the various measures proposed in the UNCAC are built, it to make corrupt practices more risky and less profitable. In this jurisdiction, this principle of deterrence can be seen in, among others, Republic Act No. 1379 and Section 8 of Republic Act No. 3019, which prescribe forfeiture by the State of properties unlawfully acquired by public officials and employees from government service. It can be further seen in Republic Act No. 7080, as amended, likewise prescribes forfeiture of the fruits of plunder in favor of the State.

However, the present laws leave unpunished in the real sense the very acquisition and enjoyment by public officials and employees of wealth that cannot be explained through their legitimate incomes and funds. This means that those involved in unlawful enrichment in public service will simply have to conceal the very contracts and transactions that served as vehicles for the said acquisitions to avoid any real danger. They would then be merely faced with the possibility of forfeiture of wealth and dismissal from the service if caught, in what amount as a slap on the wrist for losing in the profitable hide-and-seek game of unlawful enrichment.

In this regard, the international standard does not stop at the level of simply forfeiting substantial wealth unlawfully acquired, and punishing unlawful acquisition of wealth only if done at a grand level accompanied by a showing of each and every specific contract and transaction through which the unlawful acquisition took place.

As provided in Section 20, Chapter III of the UNCAC:

Article 20
Illicit Enrichment

> *Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offense, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her unlawful income.*

There is compelling wisdom to criminalizing intentional illicit acquisition of wealth per se. As adverted to, a contrary situation – the one obtaining in this jurisdiction – makes illicit acquisition of wealth in public office a profitable and low-risk venture. For as long as the actual illegal source is concealed, a corrupt public official or employee can enjoy his unlawfully acquired wealth and assumes no danger for it

greater than forfeiture of such wealth and dismissal from the service, if caught. Criminalizing intentional illicit acquisition of wealth hopefully would dramatically tip this risk-profitability balance in favor of the campaign against corruption.

Hence, the passage of this measure is earnestly sought.

FRANCIS N. PANGILINAN

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AN ACT
AMENDING REPUBLIC ACT NO. 1379, PROVIDING CRIMINAL PENALTIES FOR VIOLATION THEREOF, AND FOR OTHER PURPOSES

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section 2 of Republic Act No. 1379 is hereby amended as follows:

"SEC. 2. ***ENRICHMENT THROUGH UNLAWFUL MEANS.*** **- ANY PUBLIC OFFICER OR EMPLOYEE WHO INTENTIONALLY ACQUIRES WEALTH THROUGH UNLAWFUL MEANS WHILE IN OFFICE SHALL SUFFER THE FOLLOWING PENALTIES:**

(A) IMPRISONMENT FOR TWO (2) YEARS AND ONE DAY UP TO FOUR (4) YEARS IF THE UNLAWFUL ENRICHMENT AMOUNTS TO AT LEAST ONE MILLION PESOS (PHP 1,000,000.00) BUT NOT MORE THAN TWO MILLION FIVE HUNDRED THOUSAND PESOS (PHP 2,500,000.00);

(B) IMPRISONMENT FOR FOUR (4) YEARS AND ONE DAY UP TO SIX (6) YEARS IF THE UNLAWFUL ENRICHMENT AMOUNTS TO MORE THAN TWO MILLION FIVE HUNDRED THOUSAND PESOS (PHP 2,500,000.00) BUT NOT MORE THAN FIVE MILLION PESOS (PHP 5,000,000.00);

(C) IMPRISONMENT FOR SIX (6) YEARS AND ONE DAY UP TO TEN (10) YEARS IF THE UNLAWFUL ENRICHMENT AMOUNTS TO MORE THAN FIVE MILLION PESOS (PHP 5,000,000.00) BUT NOT MORE THAN TEN MILLION PESOS (PHP 10,000,000.00);

(D) IMPRISONMENT FOR TEN (10) YEARS AND ONE DAY UP TO ELEVEN (11) YEARS IF THE UNLAWFUL ENRICHMENT AMOUNTS TO MORE THAN TEN

MILLION PESOS (PHPH 10,000,000.00) BUT NOT MORE THAN FIFTEEN MILLION PESOS (PHP 15,000,000.00);

(E) IMPRISONMENT FOR ELEVEN (11) YEARS AND ONE DAY UP TO TWELVE (12) YEARS IF THE UNLAWFUL ENRICHMENT AMOUNTS TO MORE THAN FIFTEEN MILLION PESOS (PHP 15,000,000.00) BUT NOT MORE THAN TWENTY MILLION PESOS (PHP 20,000,000.00);

(F) IMPRISONMENT FOR TWELVE (12) YEARS AND ONE DAY UP TO THIRTEEN (13) YEARS IF THE UNLAWFUL ENRICHMENT AMOUNTS TO MORE THAN TWENTY MILLION PESOS (PHP 20,000,000.00) BUT NOT MORE THAN TWENTY-FIVE MILLION PESOS (PHP 25,000,000.00);

(G) IMPRISONMENT FOR THIRTEEN (13) YEARS AND ONE DAY UP TO FOURTEEN (14) YEARS IF THE UNLAWFUL ENRICHMENT AMOUNTS TO MORE THAN TWENTY-FIVE MILLION PESOS (PHP 25,000,000.00) BUT NOT MORE THAN THIRTY MILLION PESOS (PHP 30,000,000.00);

(H) IMPRISONMENT FOR FOURTEEN (14) YEARS AND ONE DAY UP TO FIFTEEN (15) YEARS IF THE UNLAWFUL ENRICHMENT AMOUNTS TO MORE THAN THIRTY MILLION PESOS (PHP 30,000,000.00) BUT NOT MORE THAN THIRTY-FIVE MILLION PESOS (PHP 35,000,000.00);

(I) IMPRISONMENT FOR FIFTEEN (15) YEARS AND ONE DAY UP TO SIXTEEN (16) YEARS IF THE UNLAWFUL ENRICHMENT AMOUNTS TO MORE THAN THIRTY-FIVE MILLION PESOS (PHP 35,000,000.00) BUT NOT MORE THAN FORTY MILLION PESOS (PHP 40,000,000.00);

(J) IMPRISONMENT FOR SIXTEEN (16) YEARS AND ONE DAY UP TO SEVENTEEN (17) YEARS IF THE UNLAWFUL ENRICHMENT AMOUNTS TO MORE THAN FORTY MILLION PESOS (PHP 40,000,000.00) BUT NOT MORE THAN FORTY-FIVE MILLION PESOS (PHP 45,000,000.00);

(K) IMPRISONMENT FOR SEVENTEEN (17) YEARS AND ONE DAY UP TO EIGHTEEN (18) YEARS IF THE UNLAWFUL ENRICHMENT AMOUNTS TO MORE

THAN FORTY-FIVE MILLION PESOS (PHP *45,000,000.00*) BUT NOT MORE THAN FIFTY MILLION PESOS (PHP 50,000,000.00).

ANY PUBLIC OFFICER FOUND GUILTY OF THE ACT DEFINED AND PUNISHED HEREIN SHALL BE PERPETUALLY DISQUALIFIED FROM HOLDING PUBLIC OFFICE.

ANY PROPERTY FOUND TO HAVE BEEN UNLAWFULLY ACQUIRED SHALL, IN THE SAME CRIMINAL PROCEEDINGS, OR IN SEPARATE CIVIL PROCEEDINGS FILED FOR THE PURPOSE, BE FORFEITED IN FAVOR OF THE GOVERNMENT.

SEC. 2-A. [*Filing of Petition*] ***PRIMA FACIE UNLAWFUL ACQUISITION OF WEALTH.*** - [Whenever any public officer or employee has acquired during his incumbency] **FOR PURPOSES OF ESTABLISHING CRIMINAL AND CIVIL LIABILITIES AS DEFINED IN THIS ACT, THE FAILURE OF A PUBLIC OFFICER OR EMPLOYEE TO EXPLAIN THE LEGITIMATE SOURCE OF** *an amount of property* **ACQUIRED BY HIM DURING HIS INCUMBENCY** which is manifestly out of proportion to his salary as *such public officer or employee and to his other lawful income and the income from* legitimately acquired property, [said property] **SHALL** [be presumed] **CONSTITUTE** *prima facie* [to have been unlawfully acquired] **EVIDENCE OF INTENTIONAL ACQUISITION OF WEALTH IN OFFICE THROUGH UNLAWFUL MEANS. ANY ACQUISITION IN EXCESS OF A PUBLIC OFFICER OR EMPLOYEE'S GROSS INCOME AND OTHER FUNDS FROM LEGITIMATE SOURCES, INCLUDING LAWFUL LOANS AND DONATIONS, WITHIN A GIVEN YEAR, SHALL BE DEEMED AN INCREASE IN WEALTH WHICH IS MANIFESTLY OUT OF PROPORTION TO SAID LEGITIMATE INCOME AND FUNDS.**

SEC. 2-B. ***CIVIL PROCEEDINGS FOR FORFEITURE.*** - The Solicitor General, [upon] **IN** complaint [by any taxpayer] **FILED WITH** the city or provincial [fiscal who shall conduct a previous inquiry] **PROSECUTOR WHERE THE PROPERTIES INVOLVED WERE ACQUIRED ON OR BEFORE FEBRUARY 25, 1986, OR THE OFFICE OF THE**

OMBUDSMAN WHERE THE PROPERTIES INVOLVED WERE ACQUIRED AFTER FEBRUARY 25, 1986, AFTER THE CONDUCT OF INQUIRY similar to preliminary investigations in criminal cases **[**and shall certify to the Solicitor General that there is**]** **AND UPON A FINDING OF** reasonable ground to believe that there has been committed a violation of this Act and the respondent is probably guilty thereof, shall file, in the name and on behalf of the Republic of the Philippines, **[**in the Court of First Instance**]** **IN THE SANDIGANBAYAN OR THE REGIONAL TRIAL COURT** of the city of province where said public officer or employee resides or holds office, **AS THE CASE MAY BE,** a petition for a writ commanding said officer or employee to show cause why the property aforesaid, or any part thereof, should not be declared property of the State: *Provided,* That no such petition shall be filed within one year before any general election or within three (3) months before any special election.

The resignation, dismissal or separation of the officer or employee from his office or employment in the Government or in the Government-owned or controlled corporation shall not be a bar to the filing of the petition. **[**: *Provided, however,* That the right to file such petition shall prescribe after four (4) years from the date of the resignation, dismissal or separation or expiration of the term of the officer or employee concerned, except as those who have ceased to hold office within ten (10) years prior to the approval of this Act, in which case the proceedings shall prescribe after four (4) years from the approval hereof**]**

SEC. 2-C. ***INDEPENDENT PROCEEDINGS.*** **- NOTWITHSTANDING ANY LAW OR RULE PROVIDING THE CONTRARY, FORFEITURE PROCEEDINGS AT THE SANDIGANBAYAN AND THE REGULAR TRIAL COURTS MAY PROCEED INDEPENDENTLY OF, AND SIMULTANEOUSLY WITH, ANY CRIMINAL ACTION ARISING FROM, OR RELATED, DIRECTLY OR INDIRECTLY, TO THE UNLAWFUL ACQUISITION OF WEALTH."**

SEC. 2. Section 3 of the same Act is hereby amended as follows:

"SEC. 3. *The Petition* ***FOR FORFEITURE.*** - The petition shall contain the following information:

(a) The name and address of the respondent;

(b) The public office or employment he holds and such other public offices or employment which he has previously held;

(c) The approximate amount of property he has acquired during his incumbency in his past and present offices and employments;

(d) A description of said property, or such thereof as has been identified by the Solicitor General **OR THE OFFICE OF THE OMBUDSMAN, AS THE CASE MAY BE**;

(e) The total amount of his government salary and other proper earnings and incomes from legitimately acquired property; and

(f) Such other information as may enable the court to determine whether or not the respondent has unlawfully acquired property during his incumbency."

SEC. 3. Section 9 of the same Act is hereby amended as follows:

"SEC. 9. *Immunity.* - The Solicitor General **IN COMPLAINTS FILED WITH THE CITY OR PROVINCIAL PROSECUTOR WHERE THE PROPERTIES INVOLVED WERE ACQUIRED ON OR BEFORE FEBRUARY 25, 1986, OR THE OFFICE OF THE OMBUDSMAN WHERE THE PROPERTIES INVOLVED WERE ACQUIRED AFTER FEBRUARY 25, 1986, OR THE OFFICE OF THE OMBUDSMAN,** may grant immunity from criminal prosecution to any person who testifies to the unlawful manner in which the respondent has acquired any of the property in question in cases where such testimony is necessary to prove violations of this Act."

SEC. 4. *Section 11 of the same Act is hereby amended as follows:*

"SEC. 11. **[***Laws on***]** *Prescription.* - **[**The laws concerning acquisitive prescription and limitation of actions cannot be invoked by, nor shall they benefit the respondent, in respect of any property unlawfully acquired by him.**]** **THE CRIME PUNISHABLE UNDER THIS ACT SHALL PRESCRIBE IN TWENTY (20) YEARS.**

HOWEVER, THE LAWS ON PRESCRIPTION, LACHES OR ESTOPPEL CANNOT BE INVOKED BY, NOR SHALL THEY BENEFIT THE RESPONDENT, IN RESPECT TO ANY PROPERTY UNLAWFULLY ACQUIRED BY HIM AND SOUGHT TO BE RECOVERED BY THE STATE."

SEC. 5. *Separability Clause.* - If for any reason any provision of this Act is declared unconstitutional or invalid, such parts or portions not affected thereby shall remain in full force and effect.

SEC. 6. *Repealing Clause.* - All acts, decrees, general orders and circulars, or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

SEC. 7. *Effectivity.* - This Act shall take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation.

Approved,