

SUMMARY OF IMPEACHMENT COMPLAINT (2008)
Prepared by Atty. Neri Javier Colmenares
Bayan Muna General Counsel

The impeachment complaint that will be filed is in accordance with Art. XI section 2 and 3 of the Constitution. It is a verified Complaint, in the name of the Filipino people and for the Filipino people, to impeach and bring to trial Gloria Macapagal-Arroyo, for her betrayal of public trust, culpable violation of the Constitution, bribery, graft and corruption and other high crimes.

The Complainants are:

Jose De Venecia III, Editha Burgos, Erlinda Cadapan, Rolex Suplico, Josefina Lichauco, Harry Roque, Renato Constantino, Jr., Henri Kahn, Francisco Alcuaz, Rez Cortez, Virgilio Eustaquio, Jose Luis Alcuaz, Leah Navarro, Danilo Ramos, Concepcion Empeño, Elmer Labog, Armando Albarillo, Roneo Clamor, and Bebu Bulchand

The complaint's main causes of actions are:

I. NBN-ZTE

RESPONDENT COMMITTED BETRAYAL OF PUBLIC TRUST AND BRIBERY WHEN SHE (i) ABETTED AND/OR TOLERATED THE COMMISSION OF A CRIME IN REGARD TO THE ANOMALOUS "ZTE NATIONAL BROADBAND CONTRACT", (ii) KNOWINGLY AND WILLFULLY OBSTRUCTED, IMPEDED OR DELAYED THE APPREHENSION OF SUSPECTS AND THE INVESTIGATION OF CRIMINAL CASES ARISING FROM THE SAME, AND (iii) PARTICIPATING AND GIVING SUPPORT TO OR APPROVING THE NBN-ZTE BROADBAND CONTRACT DESPITE HER KNOWLEDGE THAT THE SAME IS TAINTED WITH GRAFT AND CORRUPTION.

II. HUMAN RIGHTS VIOLATIONS

RESPONDENT COMMITTED CULPABLE VIOLATIONS OF THE CONSTITUTION, BETRAYAL OF PUBLIC TRUST AND OTHER HIGH CRIMES BY EXPLICITLY AND IMPLICITLY CONSPIRING, DIRECTING, ABETTING, AND TOLERATING WITH IMPUNITY AS A STATE POLICY, EXTRAJUDICIAL EXECUTIONS, INVOLUNTARY DISAPPEARANCES, TORTURE, MASSACRE, ILLEGAL ARREST AND ARBITRARY DETENTION, FORCED DISLOCATION OF COMMUNITIES AND OTHER GROSS AND SYSTEMATIC VIOLATIONS OF CIVIL AND POLITICAL RIGHTS AND ENGAGING IN A SYSTEMATIC CAMPAIGN TO COVER-UP OR WHITEWASH THESE CRIMES BY SUPPRESSING AND OBLITERATING THE EVIDENCE, BLAMING THE VICTIMS, TERRORIZING, INTIMIDATING AND PHYSICALLY ATTACKING WITNESSES, THEIR RELATIVES, LAWYERS AND SUPPORTERS, AND HUMAN RIGHTS WORKERS.

III. NORTHRAIL

RESPONDENT COMMITTED CULPABLE VIOLATION OF THE CONSTITUTION BY ENTERING INTO THE NORTHRAIL PROJECT WITHOUT THE REQUISITE APPROVAL OF THE MONETARY BOARD AND WITHOUT GIVING PREFERENCE TO FILIPINO LABOR AND INVESTMENT.

RESPONDENT, BY APPROVING THE OVERPRICED NORTHRAIL PROJECT, VIOLATED SECTION 3 (G) OF RA 3019.

IV. THE MT. DIWALWAL PROJECT

RESPONDENT BETRAYED THE PUBLIC TRUST BY SELLING THE COUNTRY'S GOLD RESERVES IN MT. DIWALWAL TO THE ALREADY CONTROVERSIAL ZTE CORPORATION UNDER THE TERMS OF AN AGREEMENT THAT ARE GROSSLY DISADVANTAGEOUS TO THE COUNTRY'S INTERESTS.

V. FERTILIZER SCAM CONSTITUTIVE OF GRAFT AND CORRUPTION

RESPONDENT COMMITTED GRAFT AND CORRUPTION, BY PROFITING FROM THE FERTILIZER SCAM, VIOLATED SECTION 3 (B) OF RA 3019.

VI. BRIBERY OF MEMBERS OF CONGRESS

RESPONDENT COMMITTED BRIBERY WHEN SHE AUTHORIZED THE DISTRIBUTION OF BRIBE MONEY TO MEMBERS OF CONGRESS IN EXCHANGE FOR THE HASTY REFERRAL OF THE PULIDO IMPEACHMENT COMPLAINT TO PREVENT THE FILING OF GENUINE IMPEACHMENT COMPLAINT.

VII. ELECTORAL FRAUD IN 2004 CONSITUTIVE OF BETRAYAL OF PUBLIC TRUST AND GRAFT AND CORRUPTION

RESPONDENT BETRAYED PUBLIC TRUST BY TAMPERING WITH THE RESULTS OF THE 2004 ELECTIONS.

RESPONDENT COMMITTED GRAFT AND CORRUPTION, THROUGH HER INVOLVEMENT IN THE "HELLO GARCI" SCANDAL, VIOLATED SECTION 3 (A) OF RA 3019.

FOR THE NBN-ZTE DEAL

There were many irregularities in the NBN ZTE transaction. Among the irregularities was the lack of proper bidding procedures before awarding the contract to ZTE. The acts of the DOTC in awarding the contract to ZTE, without competitive bidding and in blatant violation of the law on procurement, was the act of respondent Arroyo. The President not only failed to implement the law, she, more importantly, violated the law which she was tasked to do.

All the elements of the crime of direct bribery, through the second mode—i.e., where the gift is received in consideration of an act which does not constitute a crime—are present in the transaction, to wit:

- a) Respondent is the President of the Republic of the Philippines;
- b) Respondent accepted the promise of bribe money from ZTE officials, as Chairman Abalos told the ZTE officials that the President is waiting for the money promised to them;
- c) Respondent accepted promise of bribe money so that the ZTE-NBN deal, which is clearly overpriced, will push through;

d) The approval of the ZTE-NBN deal is connected to the performance of her official duties since she was the approving authority to the contract.

HUMAN RIGHTS VIOLATIONS

Pres. Gloria Arroyo's culpability and responsibility for the extrajudicial killings, enforced disappearances, torture and other human rights violations, through her state security forces including the AFP and the PNP are clearly established. It is well to stress that the political killings and disappearances are concentrated in Southern Tagalog, Central Luzon, Bicol, Eastern Visayas, Ilocos and the Cordillera – places that have been identified in *Oplan Bantay Laya* as “priority areas” and where “counter-insurgency” military operations are most intense and sustained. Several victims have survived their ordeal and lived to tell the horrors of state terrorism against its very own people.

The evidences in the disappearances of Jonas Burgos, Sherlyn Cadapan and Karen Empeño point to the AFP as responsible for the said disappearances. Even the Court of Appeals has declared that the AFP took into custody Sherlyn and Karen and ordered the Philippine Army to surface both students. In the case of the abduction of the Manalo Brothers, the Supreme Court itself has affirmed the responsibility of the AFP in the abduction and torture of Reynaldo and Raymond Manalo.

That the killings and disappearances form part of a policy under Pres. Arroyo's counter insurgency program has been confirmed by UN Special Rapporteur Philip Alston who declared that *“One response has been counter-insurgency operations that result in the extrajudicial execution of leftist activists. In some areas, the leaders of leftist organizations are systematically hunted down by interrogating and torturing those who may know their whereabouts, and they are often killed following a campaign of individual vilification designed to instill fear into the community”*

The attacks on communities, various sectors such as the media, church people, and party list groups, and many other heinous human rights violations are not only criminal acts but also acts intended to preserve Pres. Arroyo's stay in power and an abuse of her powers as president and therefore a ground for her impeachment.

In the case of Pastor Berlin Guerrero, the Court of Appeals quoted the Supreme Court which chastised the Department of Justice for prostituting the office of the prosecutor for the abuse of procedures to harass political opponents of the president. Prof. Alston on the other hand while dismayed at the enthusiasm of the executive in filing cases against dissenters, bewailed the lack of investigation and prosecution of the perpetrators of extra judicial killings and enforced disappearances.

Pres. Arroyo also violated human rights through the implementation other policies such as the Calibrated Preemptive Response, Proclamation 1017 imposing emergency rule in the country, and EO 464.

NORTHRAIL PROJECT

Respondent committed culpable violation of the Constitution by entering into the Northrail project without the requisite approval of the Monetary Board and without giving preference to Filipino labor and investment.

During negotiations and after the contract was signed, allegations of overpricing and questions on the feasibility of relocating 40,000 residents started to hound the project.

According to reports, the North rail reconstruction costs US\$15 million per kilometer, more expensive than the ground-breaking 2,000-km Qinghai to Tibet system, which only

cost US\$3.6 billion, or US\$1.8 million per kilometer. A substantial part of the initial down payment allegedly went to kickbacks and payoffs. Since 2004, the Philippine government has reportedly paid out P1.4 billion for the project that has yet to commence, with interest payments amounting to a massive P1 million a day.

It was said that the amount of \$125.75 million (P6.5 billion) has already been advanced out of the \$503-million funding, and yet the project, scheduled to be completed in May this year, appears to be heading nowhere. The loan was allegedly contracted without the approval of the Monetary Board as required by Section 20, Article VII of the 1987 Constitution.

Under the agreement, the China National Machinery and Equipment Corporation Group (CNMEG), a Chinese corporation, was designated as the prime contractor of the project. This designation was made without providing qualified Filipino contractors and corporations the opportunity to bid for the project.

Moreover, the contract was entered into in violation of Sections 10 and 12 of Article XII of the Constitution¹ which gives preference to Filipino labor and investment.

The contract did not even go through competitive public bidding, which not only prejudiced the rights of qualified Filipino contractors and corporations, but blatantly violated the provisions of the Procurement Reform Act. While admittedly, there are exceptions where competitive public bidding may be dispensed with, these exceptions do not apply in the selection of CNMEG as a contractor.

Furthermore, by approving the overpriced Northrail Project, Pres. Arroyo violated Section 3 (g) of RA 3019. By giving the Northrail project to the Export-Import Bank of China, respondent not only committed culpable violation of the Constitution, but also violated Section 3 (g) of RA 3019, which provides:

(g) Entering, on behalf of the government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

The said project is manifestly and grossly disadvantageous to the government for the following reasons:

- a. It is grossly overpriced;
- b. It is based on a grossly inflated estimate of the project cost in the amount of US\$ 503,000,000, for a 32.2 kilometer length of rail line, or an average of nearly US\$ 16 million (P900 million) per kilometre, exclusive of the costs for clearing, relocation, and resettlement of informal dwellers occupying the railroad Right of Way;
- c. It provides for an interest rate of three percent (3%) per annum on the amount of the loan, which is much higher than the rate on other loan packages the Republic of the Philippines could have availed of;

¹ Section 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty *per centum* of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

Section 12. The State shall promote the preferential use of Filipino labor, domestic materials and locally produced goods, and adopt measures that help make them competitive.

- d. It provides that the Agreement will be governed by and construed in accordance with the laws of the People's Republic of China, and that any suit, legal action or proceeding arising from the agreement may be brought before the courts of that country, without prejudice to the Export-Import Bank of China commencing any action, at its option, against the Republic of the Philippines or its property in any other jurisdiction. Such one-sided concession unduly favors the Export-Import Bank of China and is extremely onerous to the Republic of the Philippines.
- e. Article 5 of the agreement provides that control over the proceeds of the loan is not placed with the Republic of the Philippines but is retained by the Export-Import Bank of China. This prevents the funds from becoming part of the National Treasury in contravention of the Constitution and applicable laws.

MT. DIWALWAL MINING PROJECT

Respondent betrayed the public trust by selling the country's gold reserve in Mt. Diwalwal to China's already controversial ZTE corporation under the terms of an agreement that are grossly disadvantageous to the country's interests.

Respondent herself signed through her agent, Trade Secretary Peter Favila, a Memorandum of Understanding (MOU) with ZTE effectively giving away 90 percent of the country's gold reserve in Mt. Diwalwal, Compostela Valley. The country stands to lose in the agreement because based on a P200-million study conducted by the Philippine Mining Development Corp., the gold reserve in Mt. Diwalwal is worth at least \$1 billion. The government, under the agreement, is only entitled to 10 percent of the find while ZTE, an entity which virtually has no experience in the mining sector, gets the lion share of 90 percent. For this, respondent is likewise liable for graft and corruption.

Moreover, the respondent, through her agent, Sec. Peter Favila, betrayed the public trust when she agreed to a provision in the five-page MOU requiring that the deal should be kept from the Filipino people.²

Electoral Fraud, Fertilizer Scam, Bribery in the Sham Pulido complaint

Other than the above, Pres. Arroyo also committed bribery when she bribed members of Congress to dismiss the genuine impeachment complaints in favor of the sham Pulido complaint. She also committed impeachable offenses for her involvement in the fertilizer scam, and electoral fraud in 2004 by tampering with the election results of the presidential election and by her involvement in the Hello Garci scandal.

PRAYER FOR RELIEF

Complainants ask that the impeachment complaint be immediately referred to the House Justice Committee so that a genuine processing of the complaint is undertaken, and that the House of Representatives approve the same and therewith draft the Articles of Impeachment so that a trial in the Senate may be undertaken to find out whether indeed Pres. Gloria Arroyo committed the impeachable offenses charged and therefore should be removed from office for the said acts. #

² See Gov't giving away 90% of Mt. Diwalwal gold in ZTE mining deal, at <http://news.abs-cbn.com/nation/09/13/08/govt-giving-away-90-mt-diwalwal-gold-zte-mining-deal> <last visited Oct. 10, 2008>.