

**SENATE BLUE RIBBON COMMITTEE
PARTIAL COMMITTEE REPORT
GARCIA PLEA BARGAINING AGREEMENT**

EXECUTIVE SUMMARY

The Committee has the honor to submit its Partial Report in relation to **Proposed Senate Resolution No. 337**, introduced by Senator Alan Peter "Compañero" Cayetano, after conducting an inquiry, to the Senate.

The following are the Committee's Findings and Recommendations:

THE COMMITTEE'S FINDINGS:

1. THE OFFICE OF THE SPECIAL PROSECUTOR BETRAYED PUBLIC TRUST BY ENTERING INTO THE GARCIA PLEA BARGAINING AGREEMENT. THERE WAS BETRAYAL OF PUBLIC TRUST THRU BREACH OF OFFICIAL DUTY.

There are at least **SIX GROUNDS** why Sulit, *et al.* betrayed public trust:

- **FIRST**, Sulit, *et al.* failed to strengthen the evidence and case built at the time of the filing of the Information for Plunder in 2005. By their own admission, Sulit, *et al.* merely prosecuted the case based on the evidence collected by the team of former Ombudsman Simeon Marcelo and the investigation started by him through the team of Ms. Heidi Mendoza. If Sulit, *et al.* truly believed the evidence to be insufficient, their obligation was to find more evidence to bolster the charge, in the language of the Supreme Court, "**clarifying contradictions and filling up gaps and loopholes in their evidence**".
- **SECOND**, Sulit, *et al.* failed to abide by the requisites of the Rules of Court with respect to plea bargaining agreements - making the agreement NULL AND VOID.
- **THIRD**, Sulit, *et al.* effectively counter, ignore, disregard and even abandon the favorable rulings made by the Sandiganbayan in its previous rulings in relation to the Garcia Plunder and Anti-Money Laundering cases.
- **FOURTH**, Sulit *et al.* has shown inconsistent positions in their manner of prosecuting the case. On March 19, 2010, **three days after** the Office of the State Prosecutor submitted to the Sandiganbayan their Joint Motion for the Approval of Garcia's Plea Bargaining Agreement on March 16, 2010, the same prosecutors filed an Opposition to the Motion for Reconsideration of Garcia for the denial of the latter's Petition for Bail which was issued on January 7, 2010.

In sum, Sulit et al. wavered between finding that the evidence is strong and the evidence is weak. By approving Garcia's plea bargaining agreement,

Sulit et al. deemed the evidence weak. But by subsequently opposing Garcia's petition for bail, Sulit et al. deemed the evidence strong. This vacillation brings to light the ineptitude of the Office of the Special Prosecutor. A less charitable observer might say that they had deliberately lost the case.

- **FIFTH**, the Plea Bargaining Agreement also amounts to a violation of Anti-Graft and Corrupt Practices Act (RA 3019) – Sections 3(e) and (g):

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

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(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. (emphasis supplied)

- **SIXTH**, Sulit, *et. al.* were grossly negligent in allowing Major General Garcia to plead guilty to a lesser offense without first asking the Sandiganbayan to approve the Plea Bargaining Agreement granting that their claim is true that the Plea Bargaining Agreement's approval is still pending. In the alternative, if there is already an approval by the Sandiganbayan of the PBA, then they are grossly ignorant of Court Procedures. Either way, they should be charged administratively.

2. THE OMBUDSMAN IS GUILTY OF NONFEASANCE FOR LACKING PROSECUTORIAL ZEAL IN HANDLING GRAFT AND CORRUPTION CASES

She admittedly resorted to a number of plea bargaining agreements with accused plunderers and corrupt government personnel just to dispose of their cases.¹ Her attitude in resolving cases is to resort to plea bargaining.

She has clearly conveniently resorted to blaming the team of the former Ombudsman for failing to gather all the evidence they need in the prosecution of the Garcia case while her own team did not exercise any form of due diligence before saying that their case is weak.

It is worth noting that nothing in the Rules of Court prevents the Special Prosecutors from gathering further evidence and looking for other witnesses once the trial has started. In this case, there was no effort to look for additional evidence. No wonder they assert that their case is weak. It is weak because they deliberately made it so. Worst, the Ombudsman herself allowed and tolerated her Special Prosecutors to have this detestable prosecutorial attitude.

The Office of the Special Prosecutor is directly under the Ombudsman's control and supervision. She allowed her prosecutors to enter into a Plea Bargaining

¹ TSN: SgIrobles VII-1 February 3, 2011 10:39 a.m. p. 5. ; TSN: SNTUPAZ III-1 FEBRUARY 3, 2011 9:59 A.M. p. 4.

Agreement that is manifestly disadvantageous to the Republic while they did not exhaust all the pieces of evidence available to Special Prosecutor Atty. Wendell E. Barreras-Sulit, Deputy Special Prosecutor Robert E. Kallos, Acting Deputy Special Prosecutor Jesus A. Micael, Assistant Special Prosecutor Atty. Jose Balmeo Jr., and Assistant Special Prosecutor Atty. Joseph Capistrano.

They did not give much value to the testimony of the COA Auditor Heidi Mendoza;² they did not even seek the assistance of the AFP which clearly has most of the documentary evidence against Garcia;³ and they did not fight for the full restitution of the Php 303 Million while it was within their power to do so.⁴ Ombudsman Gutierrez has clearly failed to show that she exercised due diligence in ensuring that the best interests of the Republic is protected.

In addition, as a result of the Plea Bargaining Agreement, Garcia may even walk a free man even if the Sandiganbayan would convict him with the lesser offenses of Direct Bribery and Facilitating Money Laundering, because he has already served the time for both offenses. He has been detained for 6 years.

Clearly, the Ombudsman has command responsibility over the actions of her prosecutors. Thus, if Garcia is eventually freed and the rest of the plundered money is never recovered, it is clear from the statements of the Ombudsman and the team of the Special Prosecutor themselves that it is not because of the weakness of the evidence but due to their failure to prosecute. This indeed is the height of prosecutorial misconduct.

In fact, in the course of the investigations, it seems that the Office of the Ombudsman and Special Prosecutor has made prosecutorial misconduct a custom and this can be seen in the case of Lt. Gen. Jacinto C. Ligot.

In the case of General Ligot whose alleged ill-gotten wealth amounts to at least Php 740 Million, no graft or plunder case has been filed against him.⁵ The only pending case against him is a civil case of forfeiture which does not include the alleged ill-gotten wealth that has been frozen by AMLC in spite of AMLC giving the Ombudsman a copy of the records since May 2008.⁶

Thus, it seems that the Ombudsman has made it a habit not only to sit on cases, thereby delaying them; but also ignoring the presence of the grounds with which to file cases.

This is the height of betrayal of public trust!

² TSN: CGCastro VI-1 February 3, 2011 10:29 a.m. , pp. 4-7.

³ TSN: CFDRIZ XIV-1 January 27, 2010 11:36 a.m. pp. 4-8.

⁴ TSN: ADMasicap X-1 January 27, 2011 10:56 a.m., pp. 2-6.

⁵ TSN: PLMANUEL V-2 February 18, 2011 1:03 pm. pp. 1-8.

⁶ Id at p. 6.

3. THERE ARE LAWS TO HOLD THE OMBUDSMAN, THE SPECIAL PROSECUTOR AND THE PROSECUTORS ACCOUNTABLE

OMBUDSMAN

The possibility of impeachment is the remedy that can be resorted to in removing an incompetent Ombudsman. Considering the manifest disregard of the Ombudsman to the rule of law and the perpetuation of a culture of lack of prosecutorial zeal that she has institutionalized in the Office of the Ombudsman, she has clearly betrayed public trust.

Section 2, Article XI of the Constitution enumerates the grounds by which the Ombudsman may be removed from office:

SECTION 2. The President, the Vice-President, the Members of the Supreme Court, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office, on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust. All other public officers and employees may be removed from office as provided by law, but not by impeachment.

THE SPECIAL PROSECUTOR AND PROSECUTORS

The Office of the President has the statutory authority and mechanism to discipline and remove Sulit, *et al.*

Under Section 8 of Republic Act (RA) No. 6670, otherwise known as the Ombudsman Act of 1989, the Special Prosecutor may be removed from office by the President of the Philippines for any of the grounds provided under the Constitution for the removal of the Ombudsman, and after due process:

SECTION 8. Removal; Filling of Vacancy. — (1) In accordance with the provisions of Article XI of the Constitution, the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.

(2) A Deputy or the Special Prosecutor, may be removed from office by the President for any of the grounds provided for the removal of the Ombudsman, and after due process... (emphasis supplied)

Based on the foregoing, it is submitted that the Office of the Special Prosecutor may be removed by the Office of the President on the grounds of culpable violation of the Constitution, bribery, graft and corruption, and betrayal of the public trust.

In this regard, **graft and corruption** is to be understood in the light of the prohibited acts enumerated in RA No. 3019 or the Anti-Graft and Corrupt Practices Act.⁷ **Betrayal of public trust** is a new ground added by the Constitutional Commission as a catch-all to cover all manner of offenses unbecoming a public functionary but not punishable by the criminal statutes, like "inexcusable negligence of duty, tyrannical abuse of authority, breach of official duty by malfeasance or, misfeasance, cronyism, favoritism, obstruction of justice."⁸

While it may be expected that there may be some reasonable divergence of opinion among lawyers and legal experts as to the appreciation of the sufficiency of evidence, which allegedly prompted the current prosecutors to enter into the PBA, there are immutable norms and standards of legal conduct that have been violated which amount to no less than corruption or betrayal of public trust.

Previously, under Executive Order No. 12, Series of 2001, it was the Presidential Anti-Graft Commission ("PAGC") which had jurisdiction to investigate and hear all administrative cases against presidential appointees, such as the Special Prosecutor. Thus, Sections 4(a) and (b) of Executive Order No. 12 states:

SECTION 4. Jurisdiction, Powers and Functions. — (a) The Commission, acting as a collegial body, shall, on its own or on complaint, have the power to investigate or hear administrative cases or complaints involving the possible violation of any of the following:

(1) Republic Act No. 3019 as amended, otherwise known as the 'Anti-Graft and Corrupt Practices Act;'

(2) Republic Act No. 1379 on the unlawful acquisition of property by a public officer or employee;

(3) Republic Act No. 6713, otherwise known as the 'Code of Conduct and Ethical Standards for Public Officials and Employees;'

(4) Presidential Decree No. 46, making it punishable for public officials and employees to receive gifts on any occasion, including Christmas;

(5) Any provision under Title Seven, Book Two of the Revised Penal Code; and

(6) Rules and regulations duly promulgated by competent authority to implement any of the foregoing laws or issuances.

*(b) The Commission, acting as a collegial body, shall have the authority to investigate or hear administrative cases or complaints against **all presidential appointees in the government and any of its agencies or instrumentalities** (including members of the governing board of any instrumentality, regulatory agency, chartered institution and directors or officers appointed or nominated by the President to government-owned or controlled corporations or corporations where the government has a minority interest or who otherwise represent the interests of the government), **occupying the position of assistant regional director, or an equivalent rank, and higher**, otherwise classified as Salary Grade '26' and higher, of the Compensation and Position Classification Act of 1989 (Republic Act No. 6758). In the same manner, the Commission shall have jurisdiction to investigate a non-presidential appointee who may have acted in conspiracy or may have been involved with a presidential appointee or ranking officer mentioned in this subsection. The Commission shall have no jurisdiction over members of the*

⁷ Section 3 of Republic Act No. 3019 as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.

⁸ Records of the Constitutional Commission, Vol. 2, page 272.

Armed Forces of the Philippines and the Philippine National Police.” [Emphasis and underscoring supplied]

However, on 15 November 2010, Executive Order No. 132 was issued which abolished the PAGC and transferred its powers, duties and functions to the Investigative and Adjudicatory Division of the Office of the Deputy Executive Secretary for Legal Affairs (“ODESLA”) of the Office of the President. Thus, it is within the powers of the Executive to discipline the Special Prosecutor and her cabal.

THE COMMITTEE’S RECOMMENDATIONS:

We enjoin our colleagues in the House of Representatives to impeach Ombudsman Ma. Merceditas N. Gutierrez and transmit the Articles of Impeachment to the Senate so as to hold the Ombudsman accountable using Article XI of the 1987 Constitution on the Accountability of Public Officers.

Hinihikayat naming ang aming mga kasama sa Mababang Kapulungan na pausarin na ang proseso ng Impeachment at ibigay na dito sa amin sa Mataas na Kapulungan ang Articles of Impeachment ng Ombudsman. Nararapat lamang na harapin ng kasalukuyang Ombudsman, si Ombudsman Ma. Merceditas N. Gutierrez ang mga paratang sa kanyang pagtataksil sa bayan.

However, the Ombudsman can also resign. The Committee believes that any self-respecting lawyer with *delicadeza* will resign if he or she finds oneself in the position of the present Ombudsman. Her present occupancy of the Office of the Ombudsman has definitely tarnished the institution’s reputation.

As for the case of the Ombudsman, the Committee appeals to her sense of patriotism and nationalism to save the Office of the Ombudsman as an institution and tender her resignation.

Further, The Committee recommends to the Chief Executive, the President of the Philippines, through the Department of Justice (DOJ), to institute the appropriate administrative and criminal proceedings against the Special Prosecutor Wendell E. Barreras-Sulit, Deputy Special Prosecutor Robert E. Kallos, Acting Deputy Special Prosecutor Jesus A. Micael, Assistant Special Prosecutor Jose Balmeo, Jr., Assistant Special Prosecutor Joseph Capistrano and the rest of the Prosecutors for betraying public trust.

Administrative Action against the abovementioned individuals would fall under Section 8⁹ of Republic Act (RA) No. 6670, otherwise known as the Ombudsman Act of 1989.

⁹ Section 8. *Removal; Filling of Vacancy.* —

(1) In accordance with the provisions of Article XI of the Constitution, the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.

(2) A Deputy or the Special Prosecutor, may be removed from office by the President for any of the grounds provided for the removal of the Ombudsman, and after due process.

Criminal Action against the abovementioned individuals would fall under Sections 3 (e)¹⁰ and (g)¹¹ of the RA 3019 or the Anti-Graft and Corrupt Practices Act.

FINALLY, the following law reforms are hereby recommended by the Committee to ensure that this kind of prosecutorial treason will no longer be committed against the Republic:

1. Passage of the Freedom of Information Act
2. Passage of a law that requires all Plea Bargaining Agreements involving Graft and Corruption of Public Officers, Plunder and Money Laundering to be executed in the format of the Atong Ang Plea Bargaining Agreement where there is the participation of the Ombudsman, Solicitor General and Department of Justice.
3. As an alternative to the immediately preceding recommendation, passage of a law that would prohibit plea bargaining agreement under the Plunder Law
4. Passage of a law that designates the Department of Justice to have the concurrent jurisdiction to investigate and prosecute administrative and criminal cases against the employees of the Ombudsman
5. Passage of a law that would amend the Anti-Money Laundering Law¹² of the country

In the landmark case of REPUBLIC OF THE PHILIPPINES, Represented by THE ANTI-MONEY LAUNDERING COUNCIL (AMLC) vs. HON. ANTONIO M. EUGENIO, JR., AS PRESIDING JUDGE OF RTC, MANILA [G.R. No. 174629, February 14, 2008] the Supreme Court of the Philippines, in effect restrained the initiatives of the Anti-Money Laundering Council (AMLC) by ruling that the AMLC cannot inquire into bank deposits of individuals ex parte or without the latter's permission.

The Supreme Court argued that since Congress specifically granted such ex parte power to the AMLAC in Section 10 (Freezing of Monetary Instrument or Property) of Republic Act 9194, its absence in Section 11 (Authority to inquire Into Bank Deposits) cannot now be construed as having been automatically granted by Congress.

(3) XXX

(4) XXX

¹⁰ (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

¹¹ (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.

¹² R.A. 9160

To remedy this situation, the AMLC should be given the power to inquire into bank deposits *ex parte* upon order of any competent court in cases of violation of this Act when it has been established that there is probable cause that the deposits or investments are related to an unlawful activity as defined in Section 3 (i) or a money laundering offense under Section 4 of the Money Laundering Act.

6. Passage of a law that would amend the Ombudsman Act of 1989¹³ by making the Office of the Special Prosecutor independent from the Office of the Ombudsman

AND SINCE THE PLEA BARGAINING AGREEMENT IS NULL AND VOID, THE OMBUDSMAN SHOULD PURSUE THE PLUNDER CASE AGAINST GARCIA.

¹³ R.A. 6770.