Legacy of Corruption

11 September 2007

Mr. President:

I rise today on a matter of personal and collective privilege. I rise as a Filipino who has been paying by way of onerous tax impositions and deprivation of proper services, the burden of a huge public debt. I rise on behalf of two generations that will come after us who will be saddled with paying the debts this administration has contracted and obligated.

In the Special Joint Investment Coordinating Committee (ICC) and Technical Board Meeting of the President's Cabinet held on 26 March 2007, the Department of Transportation and Communications took up with the economic team, particularly Finance Sec. Margarito Teves and then NEDA Director-General Romeo Neri along with their support staff, the so-called National Broadband Network Project.

Conceptualized in view of the Cyber-Corridor Initiative enunciated by President Gloria Macapagal Arroyo during her State of the Nation Address on July 2006, the NBN is supposed to serve as a comprehensive solution to fast-track the national information and communications technology infrastructure (ICT).

Indeed, on 21 November 2006 while presiding over a NEDA Board meeting which she chairs, President Arroyo laid down the following conditions for a government broadband network:

It should be established along a build-operate-transfer or such similar undertaking using private funding;

There should be no government subsidies;

There should be no "take or pay" conditionalities and instead a "pay for use" facility;

And it should result in a substantial reduction of government telecommunications expenses.
Very good!

However, in the ICC meeting with DOTC and Telecommunications Office (TELOF) proponents on 26 March 2007, what was presented as the NBN Project completely changed the broad terms of reference set by President Arroyo on 21 November 2006.

What Assistant Secretaries Lorenzo G. Formoso III and Elmer Soneja presented for ICC consideration was an NBN project that would cost the Republic of the Philippines an estimated 19.4 billion pesos of which 19 billion would be sourced through foreign loans, and 380 million pesos from the DOTC/Telof budgets. It would involve the utilization of Voice Over Internet Protocol, or VOIP-based single infrastructure network.

To justify such a huge project cost, the DOTC/Telof officials cited savings from the retirement of old government communications network, savings on communications expenses due to VOIP use, savings on internet connections, and a centralized internet data center. On top of that, there would be savings because of internet connections to be used by the public school system.

No financial analysis was submitted since the said project will not generate revenues, but supposedly result in government savings on telecommunications expenses, estimated at a total of 3.7 billion pesos annually. But the DOTC/Telof officials clarified that the government would be able to save only 50% of its fixed-line telephone expenses and 80% of its telefax expenses. The NBN will not save on cellphone usage.

Then NEDA Secretary Romeo Neri pointedly wondered how savings could be generated on the retirement of the obsolete analog system carried by Telof. Asec Formoso replied that they would no longer have to buy expensive spare parts.

Secretary Neri wondered how huge savings could be generated from present internet usage, when in truth and in fact, very few government offices have internet connections. He also asked how the DOTC/Telof quantified the savings in education, and would these not overlap with the previously-approved Department of Education's Cyber-Education Project, the infrastructure cost of which was another 26 billion pesos.

Undersecretary Paul Valderrama asked an even more basic question. Why must government have its own interconnectivity infrastructure, when there are private sector players in the industry?

Using contorted reasoning, the answer was in effect -- because of the President's vision of a Cyber Corridor her cabinet must simply operationalize.

Mr. President, two eminent members of the academe, Professors Raul Fabella and Emmanuel de Dios of the UP School of Economics had already debunked the economic sanity of this project and I shall no longer perorate on these. Far be it for this layman in economics to add or detract from their well-written and well-researched paper, already made public.

Suffice it to say that we have a broadband backbone in PLDT, another in TELECPHIL, both well-run by the pivate sector. Even the National Power Corporation has one.

But because there was a Cyber Corridor grand vision, we had to have a National Broadband Network, and a separate Cyber-Education Project, the total cost of which would conservatively add up to some 40 billion pesos, and more when we count the maintenance and operating costs of these new government-owned facilities through the years.

Both Secretary Teves and Secretary Neri asked about the very obvious overlaps between the two cyber-corridor projects, one for DOTC and another for DEP-ED.

Again, the reason advanced by the technical men of DOTC was that: One, the Chinese Government wanted the NBN and the Cyber-Education Projects treated separately. And two, Secretary Jesli Lapus of DECS had indicated that he wanted the CEP network solely dedicated to his department.

Kanya-kanyang ahensya; kanya-kanyang bilyun-bilyong proyekto. Kanya-kanyang middleman; *kanya-kanya rin bang kurakot?*

May fixer *sa NBN; may* middleman *rin sa* Cyber-Ed. *Hindi pwedeng pagsamahin, dahil sinadyang pinag-iba ang disenyo at teknolohiya. Ergo, magkahiwalay ang komisyon.*

Sa NBN ang fixer *ay isang ubod ng makapangyarihang opisyal tuwing tatlong taon, tuwing may*

halalan.

Sa Cyber-Ed, *iba naman ang taga-ayos. Pero saka na natin talakayin ito.*

Mr. President, I have here the minutes of that ICC-Cabinet Committee and Technical Board Meeting of 26 March 2007.

Despite the clear objections and apprehensions of the erudite gentlemen in finance and economic planning, the DOTC proceeded post-haste with their NBN project.

On the same day, 26 March, the DOTC, through Asec Soneja proceeded to eliminate other proponents of the NBN. It told Amsterdam Holdings, Inc. (AHI) that its proposal was incomplete. On 3 April, AHI took exception to Soneja's finding and requested proper re-evaluation. On 10 April, Soneja rejected AHI's position.

On 20 April 2007, Ambassador Kristie Kenney of the United States of America, wrote to Secretary Romeo Neri, expressing her government's interest in the NBN, and asking the national government "… to avoid undue haste and take time to carefully review (other)
proposals", which would include the proposal of Arescom, Inc., an American company which had likewise been eliminated by DOTC.

On that same day, 20 April 2007, the same Romeo Neri who three weeks earlier questioned in so many respects the DOTC-proposed NBN project, had signed a letter addressed to China's Minister Bo Xilai of Commerce, and Li Ruogu, Chairman and President of the Export-Import Bank of China, nominating the NBN Project.

Something very strange must have happened between 26 March and 20 April. Did the DOTC adequately explain away Secretary Neri's cogent and reasonable apprehensions?

Or did the fixer, who once boasted to his ZTE friends that he would be "the most powerful official of the Philippines" come the elections of 2007, get to convince Secretary Neri? How, if so?

Most everybody in government have a high regard for Secretary Neri's probity and integrity. Before media he would neither confirm nor deny that he was offered a kickback of 200 million pesos by the Comelec Chairman, who had taken an inordinate interest in pushing the NBN project, with his friends at Zhong Zhing Telecommunications Equipment bagging the project.

But before close friends, Secretary Neri confided the truth. That is one truth we in the Senate and our counterparts in the House should hear.

What or who could have pressured the otherwise upright Mr. Neri to suddenly sign approval of the NBN project he and his staff vehemently objected to earlier? The man who boasted to be the "most powerful" come election time, or someone who truly is most powerful, all of the time?

I personally think it was heroic of Sec Neri to reject 200 million pesos in bribe money reportedly offered by someone who wanted "one last hurrah" before he leaves government early next year.

But I also think it was idiotic of him to have signed the approval of the NBN contract on 20 April 2007, or a day before the President witnessed the signing ceremony of the NBN Supply Contract with DOTC

and ZTE executives in Hainan, China.

I wish I could find a word, an adjective if you will, to describe Mr Neri.

Mr. President, distinguished colleagues:

I have here a copy of the "Contract for the Supply of Equipment and Services for the National Broadband Project" between the Government of the Republic of the Philippines through the Department of Transportation and Communications and ZTE Corporation, signed in Hainan Province in China.

The 39-page contract was signed on 21 April 2007 by Leandro R. Mendoza, DOTC Secretary for and in behalf of the Republic of the Philippines, and Yu Yong, Vice-President of ZTE Corporation.

Signing as witnesses were Lorenzo G. Formoso III and Chairman Hou Weigui of ZTE.

Present and beaming while the contract was being signed for and in behalf of the Republic was Her Excellency, President Gloria Macapagal Arroyo, who had gone to Boao in Hainan Province officially to attend an economic forum.

This copy was reported to have been stolen that very same night in a hotel room in Hainan, as alleged by the signing witness, Asec Formoso, two months after, only on 20 June 2007, before a forum on the subject of the NBN organized by the Ateneo Professional Schools.

Lost -- stolen, my foot!

Yet, two weeks thereafter, during a cabinet meeting in Legazpi City on 3 July, President Arroyo ordered then up and about Justice Secretary Raul Gonzalez to review the NBN-ZTE transaction and come up with a recommendation before the opening of this 14th Congress on July 23.

On 26 July, the DOJ issued Opinion No. 46, Series of 2007, upholding the validity of a contract that was lost and stolen! Miracles do happen in the DOJ, where they review contracts that do not exist, and pass approval of the same.

Even the Presidential Legal Counsel Sergio Apostol declared before the press that there is no NBN-ZTE project, because there is no contract.

Yet DOTC Secretary Leandro Mendoza insisted that there is a contract, while his Assistant Secretary, the project's whiz kid, kept saying all along that the contract, having been stolen in a hotel room, would be reconstituted.

Mr. President, from my sources at the DOTC, here in my hand is the so-called "reconstituted" contract. Except for intercalating pagination on every sheet, it is word-for-word similar to the "lost" original signed contract.

Mysteriously Mr. President, the "re-constituted" contract is signed exactly on the same manner and the same space by its two principal signatories, Mendoza and Yu, as well as by the witnesses Formoso and Hou. And each page has been initialed by the contract reviewer on exactly the same spot in every page.

Who did Formoso think he could fool about his cloak-and-dagger yarn of a theft in the hotel room of a DTI trade attaché in Hainan?

I would say, they were purposely hidden because as soon as the President and Secretary Mendoza came back to this country, the stink that is the NBN-ZTE mega-deal began to smell all over, thanks to the enterprising stories of Mr. Jarius Bondoc of the Philippine Star, and later, the paper of the UP professors.

And what does the contract state, Mr. President?

"To design, supply, install, test, commission and deliver the Network", the Republic is obligated to pay 329 million 481 thousand 290 US dollars, broken down as follows:

194 million, 51 thousand, 628 US Dollars for the Equipment;

Plus Engineering Services of 118 million, 605 thousand, 650 US Dollars;

Plus Managed Services of 14 million, 875 thousand, 507 US Dollars; and,
1 million, 948 thousand, 505 US dollars for Training Services.

For a total, I repeat, of 329,481,290 million American dollars.

The NBN-ZTE deal is to be financed by the Export-Import Bank of China, and paid by the Republic through its Shenzhen Branch.

Upon release of the loan, the Republic would immediately pay 15% of the contract price for the Equipment as advance payment.

For each Provisional Acceptance of equipment, and upon receipt of the commercial invoices, we pay 35% of the contract price.

Roughly similar terms of payment are involved in the engineering services, which together with the equipment purchase, constitute the bulk of the contract.

Evident in the Scope of Work is the realization that the DOTC has tasked ZTE with the preparation of all the detailed engineering studies, plans, specifications and designs for the broadband project.

ZTE is supposed to complete supply and installation, testing and commissioning within 36 months from the effective date of the contract.

Ah! Legacy…36 months. That would be after 2010, when a new government shall have presumably taken over, the project is turned over. Whether it works as well as it should, given that the contractor themselves will plan, design, test and implement, that's the problem of the next government. That's the problem of the generation that will pay for the huge loans contracted for the project.

After all, the "commissioners" shall have received their commissions well in advance, and would be laughing all the way to some foreign banks.

As usual, Mr. President, there could be "change orders", which of course, will mean a change in costs.

After all, the whole project has yet to be designed, by the contractor, and the technology involved could change as quickly as each equipment is delivered, and each service is rendered.

For all intents and purposes, Mr. President, the signatory to this contract has declared that he has the full power and authority to obligate the Republic. The presence of no less than the President lends more than just symbolic imprimatur to it.

The effectivity of the contract shall be subject to the fulfillment of certain conditions precedent, namely:

The issuance of a Forward Obligational Authority (FOA) by the Department of Budget and Management.

Conclusion of the Loan Agreement between Eximbank China and our Department of Finance. Secretary Teves tells us that this requires concurrence on our part of the Monetary Board.

Legal Opinion of the Department of Justice. This has been done, by a DOJ that certified on a "stolen" and therefore un-presented and un-read contract. In fact the DOJ admitted on 26 July 2007 that it was never given a copy of the contract or relevant agreements,
and its review was made on the basis of the DOTC's and CICT's representations.

The broadband backbone, as well as the cyber-education project, on top of a so-called French Protocol, and a Preginet contract of the DOST, among several others in varying stages of completion or in the pipeline, constitute a long list of IT projects entered into by this government, Mr. President.

Altogether, their combined value will reach more than a trillion pesos. They constitute a major part of what the present administration proudly claims will be its "legacy" to the nation.

A legacy too costly, not because they are intrinsically good, or necessary, or can pass the tests of cost-benefit or public-service effectiveness. But because what is under the table is larger than the table itself.

And they will be paid, by the toil and sacrifices of generations yet to come, while those who profited handsomely, indeed, exceedingly well, in over-pricing and kickbacks, shall have more than several generations of their descendants could ever spend.

We are somewhat mollified by the statement from Australia that this government will, after conferring with President Hu Jintao of China, review the NBN-ZTE mega-deal. We hope this is not another play of mirrors, where after the furor has quieted somewhat,
the sinister work resumes towards approving a somewhat modified deal. Will the humongous commissions be trimmed somewhat, the "change orders" reinstating them
eventually?

We ask the members of the President's cabinet whose consciences are rightly bothered and who yet appreciate the meaning of "karma", to now be possessed by the courage of their convictions, and tell the truth, the whole truth, no matter how sordid, and no matter who gets hurt.

Mr. President, distinguished senators of the Republic of the Philippines -- If all these are what constitute "legacy", then the Filipino people would rather have none.