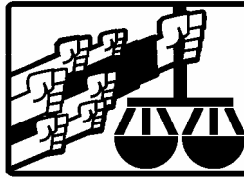


**COMMITTEE FOR THE
DEFENSE OF LAWYERS**

4th F KAIJA Bldg.
7836 Makati Ave.
cor. Valdez St.,
Makati City,
Philippines
Mobile No.:
09209509406
E-mail Address:
lawcodal@gmail.com



CODAL

COMMITTEE FOR THE DEFENSE OF LAWYERS

28 June 2005

CONVENORS

Lawyers:

Atty. Florisa Almodiel
Prof. Victoria Avena
Comm. Remedios Balbin
Atty. Hubert Bustos
Atty. Emilio Capulong, Jr.
Atty. Neri Colmenares
Atty. Charmaine de la Cruz
Atty. Cora Fabros
Atty. Gregorio Fabros
Atty. Ingrid Gorre
Atty. Nenita Mahinay
Comm. Nasser Marohomsalic
Atty. Noel Neri
Atty. Edre Olalia
Atty. Julian Oliva, Jr.
Atty. Jobert Pahilga
Atty. Rachel Pastores
Atty. Ma. Luz Rañeses-Raval
Atty. Amelyn Sato
Atty. Cleto Villacorta

Law Students:

Ms. Jo Abaya
Ms. Cherryl Aguilar
Mr. Julius Matibay
Ms. Shirley Nuevo
Ms. Jill Santos

Paralegals:

Mr. Daniel Javier
Mr. Cesar Arellano

SECRETARIAT

Comm. Victoria Avena
Comm. Remedios Balbin
Atty. Florisa Almodiel
Atty. Rachel Pastores
Atty. Neri Colmenares

Atty. Edre Olalia
International Affairs

Ms. Jill Santos
*Linkperson for
Law Students*

Atty. Amelyn Sato
Mr. Daniel Javier
Ms. Shirley Nuevo
Ms. Jo Abaya

LEGAL MEMORANDUM ON THE ‘GLORIA-GATE TAPES’

**Prepared by Atty. Neri Javier Colmenares for
The Committee for the Defense of Lawyers (CODAL)**

The Committee for the Defense of Lawyers (CODAL) conducted a legal study on whether or not President Gloria Arroyo committed illegal acts now that she has admitted that she is the person in the tapes talking with Comm. Virgilio Garcillano of the COMELEC. CODAL is a lawyers’ organization campaigning against attacks on lawyers and other threats against the legal profession and civil liberties. It believes that the current issue on the ‘tapes’ is a legitimate concern for lawyers as it involves possible violation of the Constitution and threatens the administration of justice.

This legal study is in response to the statements of Pres. Gloria Arroyo that her acts merely constitute an error of ‘*judgment*’ and that of many government officials who declare that despite the admission of President Arroyo, no crime was committed .

Summary of the Study

The CODAL study concluded that Pres. Gloria Macapagal Arroyo, contrary to her claim, may have committed crimes and offenses in violation of the Revised Penal Code, the Omnibus Election Code, the Anti-Graft and Corrupt Practices Act and the 1987 Constitution for the following acts:

1. Despite knowing that she was the person in the tape, Pres. Arroyo ordered (or at least, allowed) Sec. Bunye to declare that the said ‘tape’ is a concoction of the opposition to destabilize the government—a very serious charge against members of the opposition. The use of one’s public office (the Office of the President and the Press Secretary) for personal ends or interest (in this case to cover up her actions) and spread misinformation, is unlawful.
2. Pres. Arroyo allowed, if not ordered, Sec. Bunye to present the ‘*genuine*’ CD containing her supposed conversation with Mr. Edgar Ruado in a Malacanang press conference on June 6, despite her knowledge that the said ‘*genuine*’ CD is completely

false. Pres. Arroyo is aware that she had the conversation with a COMELEC official and not with Edgar Ruado. The use of the resources of a government office (such as the Office of the Press Secretary) to disseminate false information for the purpose of defending and covering up her personal (and illegal) acts is a criminal offense. This is violative of Section 1 (f) and (i) of PD 1829 on Obstruction of Apprehension and Prosecution of Criminal Offenders which provides makes illegal, the following:

“(f) Making, presenting or using any record, document, paper or object with the knowledge of its falsity and with the intent to affect the course or outcome of the investigation of or official proceedings in criminal cases.

(i) Giving of false or fabricated information to mislead or prevent law enforcement agencies from apprehending the offender x x x”

3. Her order or ‘request’ for Comm. Garcillano to ‘delay’ the canvassing of Senatorial elections is in violation of various provisions of the Omnibus Election Code prohibiting the delay or disruption of election processes.
4. Her implied ‘request’ for Comm. Garcillano to deny any petition filed by Sen. Rodolfo Biazon to open the election documents in Tawi-Tawi is an unlawful interference in the quasi-judicial function of a member of an independent constitutional body.
5. Even if Pres. Arroyo will not admit to being privy to Comm. Garcillano’s fraudulent acts, she still violated Art. 208 of the Revised Penal Code, among others, for her failure to file the necessary legal action for the impeachment and prosecution of Comm. Garcillano despite his open admission to the commission of the following crimes:
 - a) Comm. Garcillano committed a crime when he informed Pres. Arroyo that he will ‘hide’ the Election Officer of Pagundaran ‘para hindi maka testigo’.
 - b) Comm Garcillano committed Electoral Fraud when informed her that ‘ganito ang pagpataas ng iyong boto, eh malinis naman ang pagkagawa’.
 - c) Comm. Garcillano committed electoral fraud when he told Pres. Arroyo that he will ‘ensure’ (pipilitin) that her votes will not go below one million. Considering that elections are over except the counting, there is no other way to ensure this except through manipulation of votes.
6. Talking with her appointee, Comm. Garcillano, is a betrayal of public trust and violates the the Anti-Graft and Corrupt Practices Act for Undue Influence on a public official. Reappointing Comm. Garcillano to the COMELEC despite her knowledge of said electoral fraud can be used as proof of conspiracy to commit fraud. If Pres. Arroyo intended to

officially communicate with the COMELEC, she should have corresponded with Chairman Abalos rather than her appointee. This also puts into question her persistence in appointing Comm. Garcillano to his post despite widespread opposition.

DISCUSSION

This Legal Memorandum will no longer go into whether Comm. Virgilio Garcillano committed illegal acts in his conversations with candidates and persons other than the President. If Comm. Garcillano is the person in the tape, his commission of illegal acts is clear from the transcripts of his conversations with various politicians in the tape: Comm. Garcillano manipulates votes in exchange for money, influences election officials to favor particular candidates, threatens to kidnap witnesses or their families and brazenly solicits money for election favors.

This study will focus on the possible illegal acts committed by Pres. Arroyo not only in her dealings with Comm. Garcillano but on her acts in relation to the tapes.

(a) Act to Delay the Canvassing

GMA : Hello, hindi kaya puwedeng ma delay yung senatorial canvassing until after the voting on the rules tonight.
Garcy : on the rules? Ahh, sigé po...

Delaying the canvassing is an election offense. The Omnibus Election Code provides that the canvassing should be continuous subject only to the availability of election documents. *Secondly*, influencing a supposedly independent official to rule in favor of delaying the canvassing is exercising undue influence (or intimidation), considering her position not only as President but also as the person with the appointing power over Garcillano.

Laws Violated

- i. Under various provisions of the Omnibus Election Code such as Section 231, Canvassing should be continuous. Election rules strictly prohibit the disruption or delay of election processes. By asking, if not ordering, Comm. Garcillano to delay the canvassing, Pres. Arroyo is violating Section 231 of the Omnibus Election Code which mandates continuous canvassing, among many other provisions of the Code.
- ii. Pres. Arroyo violated Article 210 on **Direct Bribery** which punishes a public official and the person who induces him to '*perform an act which constitutes a crime, in connection with the performance of his official duties, in consideration of an offer, promise, gift xxx*'. The offer or promise in this case is the reappointment of Com. Garcillano to the Comelec if he is bypassed by the Commission on Appointments.
- iii. Pres. Arroyo also violates Section 3 (a) of RA 3019 or the Anti Graft Law for '*persuading or influencing another public officer to perform an act constituting a violation of rules and regulation*' promulgated by the Comelec.

(b) Allowing Comm. Garcillano to ‘ensure’ (pipilitin) that her lead does not go below one million

- Garcy : OK mam, mas mataas siya pero , ma compensate po sa Lanao yan.
GMA : So I will lead by more than 1 M overall ?
Garcy : More or less, it’s the advantage mam, parang ganun din ang lalabas
GMA : It cannot be less than one M?
Garcy : Pipilitin mam, natin yan. But as of the other day 982...
GMA : Kaya nga eh
Garcy : and then if we can get more in Lanao

Pres. Arroyo is actually asking Comm. Garcillano to ensure that her lead does not go below one million. This is electoral fraud. Even if Pres. Arroyo will claim that she did not order the same, at the very least, Comm. Garcillano is informing her that he will increase (pipilitin) her lead by more than one million. As a public official it is unlawful for her not to report Comm. Garcillano’s offense to the proper authorities and institute the necessary legal action. Since the election is over, there is no other way for Comm. Garcillano to increase the lead of Pres. Arroyo except to manipulate the results.

Laws Violated:

- i. Since Pres. Arroyo is asking or at the very least acquiescing to the padding of her votes, she is liable for violating the Omnibus Election Code particularly Section 261 (j) on exercising Undue Influence on a public official and Section 261 (Z) (21) on violating the integrity of Election Returns and other election documents and other electoral fraud.¹ She can be charged as a conspirator in the commission of an electoral fraud.
- ii. Even if Pres. Arroyo will not admit to being a conspirator in the offense, she is still guilty of abetting or tolerating the commission of a crime when she allowed Comm. Garcillano to commit an election offense without reporting the same to the Comelec. She is therefore liable under Art. 208 of the Revised Penal Code which provides for a penalty of *prision correccional* upon a public official who in dereliction of his duties, ‘*shall maliciously refrain from instituting prosecution or the punishment of violators of the law or shall tolerate the commission of offenses.*’

(c) Ordering or Influencing Comm. Garcillano not to allow the opening of election documents in Tawi tawi should Sen. Biazon petition for it.

- GMA : OO, oo, si Biazon nagbabanta, kung madaya daw siya pabubuksan niya ang ___ at sa Tawi-Tawi, eh baka raw ako ang matalo dun.
- Garcy : Baka nga ho.

Pres. Arroyo is worried that the opening of election documents in Tawi-tawi will be detrimental to her personal interest. She was essentially ordering Comm. Garcillano to ***deny*** Sen. Rodolfo Biazon’s petition (if he should file one) to reopen election documents in Tawi-Tawi. It is election offense for Pres. Arroyo to influence a Comelec official’s decision in his official capacity. This is undue influence over an independent official who is supposed to exercise a quasi-judicial function once Biazon files his petition. Pres. Arroyo has the power to

¹ Should Comm. Garcillano claim that he is being coerced, Pres. Arroyo is still liable under Section 261 (f) on Coercion of Election Officials, Section 261 (g) on Coercion of Subordinates of the Omnibus Election Code.

reappoint Comm. Garcillano to the Comelec if his confirmation is bypassed by the CA and therefore holds coercive influence over him.

Laws Violated

- i. Influencing an official to decide one way or the other in a case to be filed or pending before him violates Section 261 of the Election Code (see above).
- ii. Her act also violates RA 6713 or the "*Code of Conduct and Ethical Standards for Public Officials and Employees*" particularly Section 4 (C) which requires public officials to refrain from "*committing acts contrary to law, morals, public policy and public interest*".
- iii. It also violates Section 3 of RA 3019 or the anti graft law for '*persuading and influencing a public official*' to commit an offense in connection with his official duty.
- iv. Pres. Arroyo is also criminally liable under Art. 212 in relation to Art. 210 (Direct Bribery) of the Revised Penal Code.
- v. These acts also violates Art. VII, Sec. 17 of the Constitution which requires the President to '*ensure that all laws be faithfully executed*'.

(d) Failure to take proper action against Comm. Garcillano despite his admission that he will 'hide' the election officer of Pagundaran in order to preempt him from testifying

GMA : Hello, dun daw sa Basilan at Lanao del Sur di daw nag match ang SOV sa COC

Garcy : Ang sinabi niya, nawawala na naman ho

GMA : Hindi na nag match

Garcy : May posibilidad ho na hindi nag match kung di nila sinunod yung individual SOV ng munisipyo. Pero aywan ko lang ko lang ho kung pabor sa atin o hindi. Doon naman sa Basilan at Lanao del Sur ito ho yung ginawa nilang magpataas sa inyo, maayos naman ang paggawa eh.

GMA : so nag mamatch?

Garcy : Oho, sa Basilan, alam niyo naman ang military dun hindi masyadong marunong kasi silang gumawa eh. Katulad ho doon sa Sulu, si Gen. Habatan. Pero hindi naman ho, kinausap ko na yung chairman of the Board ng Sulu, yung sa akin. Pattaguin ko muna ang EO ng Pagundaran na para hindi sila maka testigo ho. X x x x

x x x

GMA : OO .. tapos nun, sa Calanguyan may teacher daw sila na nasa witness protection program.

Garcy : sino ho?

GMA : yung kabila, may teacher daw silang hawak

Garcy : wala naman ho, baka nanakot lang sila.

GMA : Calanguyan, Tawi tawi?

Garcy : Calanguyan Tawi Tawi? Wala naman ho tayong kwan dun, wala naman ho tayong ginawa dun, sa calanguyan. In fact talo nga tayo dun, talo nga si Nur dun.

GMA : oo, oo

Garcy : Sige, aanuhin kong lahat ng yan.

Firstly, the words of Comm. Garcillano is an open admission of an illegal act, notably: *“Doon naman sa Basilan at Lanao del Sur ito ho yung ginawa nilang magpataas sa inyo, maayos naman ang paggawa eh”*. Comm. Garcillano informs Pres. Arroyo that something was done to ‘increase’ her votes, and that it was well done (and therefore she need not worry about SOVs matching with COCs). His use of the words ‘atin’ (while Pres. Arroyo uses the word ‘kabila’) shows his bias for a particular candidate.

Secondly, Comm. Garcillano admitted to another electoral fraud when he said : *“kinausap ko na yung chairman of the Board ng Sulu, yung sa akin. Pataguin ko muna ang EO ng Pagundaran para hindi sila maka testigo ho.”* A COMELEC official is not supposed to ‘hide’ an election officer or any member of the electoral board to prevent said official from testifying. Garcillano even admitted to her that they did not cheat in Calanguya, that is why they lost: *“Calanguyan Tawi-Tawi? Wala naman ho tayong kwan dun, wala naman ho tayong ginawa dun, sa Calanguyan. In fact talo nga tayo dun”*

He even implicated the military in helping in the cheating although they did not do it well: *“Oho, sa Basilan, alam niyo naman ang military dun hindi masyadong marunong kasi silang gumawa eh.”*

Comm. Garcillano’s frank admission to Pres. Arroyo of the above frauds can be used as a strong and clear evidence that she is privy to the fraud. Garcillano will not inform her of the same, if he is not sure that she knows what he was talking about.

However, even if Pres. Arroyo will claim to have no knowledge of the fraud, she is still guilty of tolerating or abetting the commission of a crime. *Pres. Arroyo not only failed to take the necessary legal action against Comm. Garcillano despite such admission, but has even REAPPOINTED him to the Comelec!*

Laws Violated: This is the conversation where Pres. Arroyo may have committed many illegal acts and violated all laws mentioned above. These acts also violates Section 4 (b) in relation to Section 3 (e) of RA 3019 or the Anti-Graft Law.

An additional offense is the violation of PD 1829 Section 1 (a) provides that :

“A penalty of prision correccional in its maximum period shall be imposed upon any person who knowingly and willfully obstructs, impedes or delays the apprehension of suspects and the investigation of criminal cases by x x x (a) preventing witnesses from reporting the commission of any offense x x x”

Are these offenses impeachable offense ? Yes, these are impeachable offenses under the 1987 Constitution.

If Pres. Arroyo committed the above crimes and offense she can be impeached for (i) culpable violation of the Constitution, (ii) bribery, (iii) graft and corruption and (iv) betrayal of public trust under Art. XI, Sec. 2 of the Constitution. These constitute four of the six grounds for impeachment under the Constitution.