

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS

First Regular Session

COMMITTEE REPORT NO. _____

Submitted by the Committee on Justice on _____

Re: House Resolution No. _____ setting forth the Articles of Impeachment

Recommending its approval, together with the findings, conclusions, and recommendations of the Committee on the matter of the Impeachment Proceedings against Ombudsman Ma. Merceditas Navarro-Gutierrez

Sponsors: Representatives Niel C. Tupas, Jr., Rodolfo C. Fariñas, Romero Federico S. Quimbo, Reynaldo Umali, Raul A. Daza, Lorenzo R. Tañada III

Mr. Speaker:

The Committee on Justice respectfully recommends the approval of this Committee Report finding probable cause to impeach Ombudsman Ma. Merceditas Navarro-Gutierrez (hereinafter referred to as the "Respondent Ombudsman") for Betrayal of Public Trust, and the herein attached House Resolution No. _____ setting forth the Articles of Impeachment on the matter of the Verified Impeachment Complaint dated 22 July 2010 and the second Verified Impeachment Complaint dated 3 August 2010.

The first complaint was filed on **22 July 2010** by Risa Hontiveros-Baraquel, Danilo Lim, Felipe Pestaño, and Evelyn Pestaño and duly endorsed on even date by Honorables Kaka Bag-ao and Walden Bello, both of AKBAYAN Party List (hereinafter referred to as the “Baraquel Complaint”), attached herein as “**Annex A**”.

The second complaint was filed on **03 August 2010** by Renato Reyes of Bagong Alyansang Makabayan (BAYAN), Mother Mary John Mananzan of PAGBABAGO, Danilo Ramos of Kilusang Magbubukid ng Pilipinas, Atty. Edre Olalia of the National Union of Peoples’ Lawyers, Ferdinand Gaité of COURAGE, and James Terry Ridon of the League of Filipino Students, and endorsed on even date by Honorables Neri Javier Colmenares, Teodoro A. Casiño of Bayan Muna Party List, Rafael V. Mariano of Anakpawis Party List, Luzviminda C. Ilagan of Gabriela Party List, Antonio L. Tinio of ACT-Teachers Party List, and Emerenciana A. De Jesus of Gabriela Party List (hereinafter referred to as the “Reyes Complaint”), attached herein as “**Annex B**”.

The two (2) Verified Impeachment Complaints were simultaneously referred by the Plenary to the Committee on Justice (the “Committee” for brevity), on **11 August 2010** at 4:47 p.m. Both complaints were received by the Committee at 6:20 p.m. on 12 August 2010.

The Baraquel Complaint was anchored on the following grounds, to wit:

A. **Betrayal of Public Trust**

1. The dismal and unconscionably low conviction rates achieved by the Office of the Ombudsman from 2008 onward indicate a

criminal level of incompetence amounting to grave dereliction of duty which constitutes a clear betrayal of public trust.

2. The unreasonable failure of the Ombudsman to take prompt and immediate action, in violation of its own rules of procedure, on the complaints filed against various public officials including former President Gloria Macapagal-Arroyo, and her husband Jose Miguel T. Arroyo with regard to the NBN-ZTE broadband project constitutes betrayal of public trust.
3. The inexcusable delay of the Ombudsman in conducting and concluding its investigation into the wrongful death of Ensign Philip Andrew Pestaño aboard a Philippine Navy Vessel constitutes a betrayal of public trust.
4. The decision of the Ombudsman upholding the “legality” of the arrest and involuntary detention of then Representative Risa Hontiveros-Baraquel by the Philippine National Police in March 2006 in violation of the explicit rules provided in the Revised Penal Code and as established by jurisprudence constitutes a betrayal of public trust.
5. The failure of the Ombudsman to conduct an investigation into possible wrongdoing or impropriety with regard to the ₱1,000,000.00 dinner for the presidential party at Le Cirque Restaurant in New York in August 2009 despite widespread media coverage and public clamor, and a formal letter from Representative Walden F. Bello calling for an inquiry constitutes betrayal of public trust.

B. Culpable violation of the Philippine Constitution

1. The repeated failures of the Ombudsman to take prompt action on a wide variety of cases involving official abuse and corruption violates Article XI, Section 12 and Article III, Section 16 of the Constitution, which mandate prompt action and speedy disposition of cases.
2. The refusal of the Ombudsman to grant ready access to public records such as the Statement of Assets and Liabilities and Net Worth (SALN) required of all public officers under Republic Act No. 6713 constitutes a culpable violation of Article XI, Section 13 (6) and Article III, Section 7 of the Constitution.

On the other hand, the Reyes Complaint enumerated the following grounds,

to wit:

A. Betrayal of Public Trust

1. Ombudsman Gutierrez committed betrayal of public trust through her gross inexcusable delay in investigating and failure in prosecuting any one of those involved on the anomalous transactions arising from the fertilizer fund scam despite the blatant anomalous transactions revealed in the COA findings, Senate Committee Report 54 and the complaints filed with respondent on the “fertilizer scam”.
2. Ombudsman Gutierrez committed betrayal of public trust when she did not prosecute Gen. Eliseo De La Paz for violating BSP Circular 98 (1995), as amended by BSP Circular 507 (2006), in relation to Republic Act 6713, which prohibits the taking out of the country of currency in excess of US \$ 10,000.00 without declaring the same to the Philippine Customs, despite the fact that Gen. Eliseo De La Paz publicly admitted under oath before the Senate Blue Ribbon Committee that he took out of the country currency in excess of US\$ 10,000.00 without declaring the same with the Philippine Customs.
3. Ombudsman Gutierrez betrayed the public trust through her gross inexcusable delay or inaction by acting in deliberate disregard of the Supreme Court’s findings and directive in its decision and resolution in Information Technology Foundation of the Philippines, et al. vs. Commission on Elections, et al.

B. Culpable violation of the Philippine Constitution

1. Through her repeated failures and inexcusable delay in acting upon the matters brought before her office, Ombudsman Gutierrez violated Section 12 and Section 13, paragraphs 1, 2, and 3, Article XI on which her constitutional duty is enshrined, as well as Section 16, Article III of the Constitution, which mandates prompt action and speedy disposition of cases.

I. PREFATORY STATEMENT

When an impeachable officer is no longer able to faithfully discharge his duties and protect the highest interests of the Republic, the fundamental law grants one remedy to vindicate the people's will and restore the trust in their government. That ultimate sovereign remedy is **IMPEACHMENT** by the popular branch of government¹.

Thus, Section 2, Article XI of the 1987 Constitution provides:

“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.”

This provision is designed to effectively enforce the constitutional principle that a public office is a public trust and that public officers must always be accountable for the faithful discharge of their office.²

*“Impeachment therefore, according to the constitution, may fairly be considered a kind of inquest into the conduct of an officer, merely as it regards his office; the manner by which he performs the duties thereof; and the effects his conduct therein may have on society”.*³

¹ Page 2, Comment filed by the House of Representatives Committee on Justice, et. al. in G.R. No. 193459

² Page 3, Comment filed by the House of Representatives Committee on Justice, et. al. in G.R. No. 193459

³ Page 4, Committee Report No. 150 filed by the Committee on Justice on 18 January 2002 citing Rexford G. Tugwell, *The Compromising of the Constitution*, p. 147

A. Nature of Impeachment. – The power of impeachment of Congress, or what the French call an act of “political justice,” is one of the two exceptions to the principle that the courts must have a monopoly in the exercise of judicial functions.⁴ When the American Founding Fathers were formulating the Constitution, their intention was not to set up a monarch that could be in power for life. Although they wanted to give him security of tenure, they believed that there might be a situation wherein it would be necessary to get rid of the presidency if such president was found to be unworthy of the office. The result of the impeachment process, therefore, was “to make the president virtually immune from legal action but at the same time removable in extreme cases when the only way of protecting the public is by removing him.” In the words of Justice Story in his commentaries on the Constitution, “impeachment is a proceeding, purely of a political nature. It is not so much designed to punish an offender as to secure the state against gross political misdemeanors. It touches neither his person nor his property, but simply divests him of his political capacity.”⁵ As such, impeachment results only in the removal of the person from office. The officer’s criminal and/or civil liability will be determined only after the removal of the officer by impeachment. This proceeding has since been transplanted into the Philippine Constitution. It is not limited to the president but extends to the Vice President, the Members of the Supreme Court, the Chairmen and members of the Commission on Civil Service, the Commission on Elections, the Commission on Audit and the Ombudsman.⁶

An impeachment proceeding is fundamentally a political process, circumscribed by legal precepts and procedures that the legislature may adopt.

⁴ Bernas, Joaquin G. *The 1987 Constitution of the Republic of the Philippines: A Commentary*. Rex Bookstore (2003), p. 1109.

⁵ *Ibid* p. 1110.

⁶ Sec. 2, Article XI of the Philippine Constitution

Given its political nature, the process of impeachment is entrusted to the duly elected representatives of the people in both Houses of Congress pursuant to Section 3 (1) of Article XI of the 1987 Constitution, which provides that “The House of Representatives shall have the exclusive power to initiate all cases of impeachment.” Fr. Joaquin Bernas, in his column in the 29 August 2005 issue of the Philippine Daily Inquirer, said that “Impeachment is a political process. For that reason, the responsibility for it has not been given to a court characterized by cold neutrality but to a political body.”⁷

In the deliberations of the 1986 Constitutional Commission of Committee Report No. 17 of the Committee on Accountability of Public Officers (Resolution Proposing to Incorporate in the 1986 Constitution an Article on Accountability of Public Officers), the nature of an impeachment proceeding was exhaustively discussed.⁸

“MR. MAAMBONG. x x x

x x x I will start by asking the Committee this question: What is really the thinking of the Committee as far as impeachment proceedings are concerned? Are impeachment proceedings criminal in nature or not? In order to answer this very clearly, I would like to indicate the following: In the case of *State v. Lorse*, 70 Nebraska 92, which is a United States case, the Supreme Court ruled that the proceeding is likened to a proceeding by indictment in a court of criminal jurisdiction. It is in its nature highly penal and is governed by rules of law applicable to criminal prosecution. On the other hand, I would like to indicate this to the Committee that in the case of official misconduct, we have here statements which I think the Committee should comment on. Official misconduct is supposed to fall into three categories:

⁷ Page 4, Committee Report No. 2483 filed by the Committee on Justice on 10 November 2009; also on page 5, Committee Report No. 1551 filed on 02 December 2008

⁸ Records of the Constitutional Commission, Vol. II, pp. 276-278, cited in Committee Report No. 150 filed by Committee on Justice on 18 January 2002

One, exceeding the constitutional bounds of the powers of the office in derogation of the powers of another branch of government; two, behaving in a manner grossly incompatible with the proper function and purpose of the office; and, three, employing the power of the office for an improper purpose or personal gain.

The provision which we have here says:

...impeachment and the criminal law serve fundamentally different purpose. Impeachment is the first step in a remedial process. The process is not personal punishment. Its function is primarily to maintain constitutional government. The general applicability of the criminal law also makes it inappropriate as the standard. In an impeachment proceeding, a President is called to account for abusing powers which only a President possesses. Impeachable conduct may include the serious failure to discharge the affirmative duties imposed on the President by the Constitution. Unlike a criminal case, the cause for removal may be based on his entire course of conduct in office. It may be a course of conduct more than individual acts that has a tendency to subvert constitutional government. (Power of Impeachment - Guide to Congress, p. 149)

For purposes of proper elucidation, what is the thinking now of the Committee as far as this impeachment procedure is concerned? Is this a criminal proceeding? If so, we have to use the principle of criminal law.

MR. ROMULO. Yes. Firstly, we agree with the quotation that the Commissioner has just read. Insofar as we are concerned, the procedure is analogous to a criminal trial but it is not a criminal prosecution per se. The goal of an impeachment is merely to remove the fellow from office for the crimes indicated. However, Section 3(6) of this proposed Article itself - and this is really very close to the provision of the 1935 Constitution - says:

Judgment in cases of impeachment shall not extend further than the removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the Government of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial and punishment according to law.

In essence, I think that answers the Commissioner's question. He is then subject to a separate prosecution, whether civilly or criminally, for the acts that he had committed."

Inextricably linked to the constitutional principle that public office is a public trust,⁹ impeachment is how one exacts accountability from certain public officers. What is important to note, however, is that such proceedings is not for the government's benefit but for the people. Verily, impeachment is "primarily for the protection of the people as a body politic, and not for the punishment of the offender."¹⁰

B. House Rules on Impeachment. – The Rules of Procedure in Impeachment Proceedings of the House of Representatives for the Fifteenth Congress was provisionally adopted on 03 August 2010 and published in a newspaper of general circulation on 02 September 2010.

The proceedings and deliberations before the Committee for purposes of finding probable cause relative to the complaints under consideration, are governed by the adopted Rules of Procedure in Impeachment Proceedings, particularly Sections 4, 5, 6 and 8, Rule III of the said Rules which provides:

Section 4. *Determination of Sufficiency in Form and Substance.* - Upon due referral, the Committee on Justice shall determine whether the complaint is sufficient in form and substance. If the committee finds that the complaint is insufficient in form, it shall return the same to the Secretary General within three (3) session days with a written explanation of the insufficiency. The Secretary General shall return the same to the complainant(s) together with the committee's written explanation within three (3) session days from receipt of the committee resolution finding the complaint insufficient in form.

Should the committee find the complaint sufficient in form, it shall then determine if the complaint is sufficient in substance. The requirement of substance is met if there is a recital of facts constituting

⁹ Sec 1, Article XI of the Philippine Constitution

¹⁰ De Leon and De Leon, Jr., *The Law on Public Officers and Election Law* (2003), p 467.

the offense charged and determinative of the jurisdiction of the committee. If the committee finds that the complaint is not sufficient in substance, it shall dismiss the complaint and shall submit its report as provided hereunder.

Section. 5. *Notice to Respondents and Time to Plead.* - If the committee finds the complaint sufficient in form and substance, it shall immediately furnish the respondent(s) with a copy of the resolution and/or verified complaint, as the case may be, with written notice that he/she shall answer the complaint within ten (10) days from receipt of notice thereof and serve a copy of the answer to the complainant(s). No motion to dismiss shall be allowed within the period to answer the complaint.

The answer, which shall be under oath, may include affirmative defenses. If the respondent fails or refuses to file an answer within the reglementary period, he/she is deemed to have interposed a general denial to the complaint. Within three (3) days from receipt of the answer, the complainant may file a reply, serving a copy thereof to the respondent who may file a rejoinder within (3) three days from receipt of the reply, serving a copy thereof to the complainant. If the complainant fails to file a reply, all the material allegations in the answer are deemed controverted. Together with their pleadings, the parties shall file their affidavits or counter-affidavits, as the case may be, with their documentary evidence. Such affidavits and counter-affidavits shall be subscribed before the Chairperson of the Committee on Justice or the Secretary General. Notwithstanding all the foregoing, failure of any respondent to file an answer will not preclude him/her from presenting evidence in support of his/her defenses.

When there are more than one respondent, each shall be furnished with a copy of the verified complaint from a Member of the House or a copy of the verified complaint from a private citizen together with the resolution of endorsement by a Member of the House of Representatives and a written notice to answer and in that case, reference to respondent in these Rules shall be understood as respondents.

Section 6. *Submission of Evidences and Memoranda.* - After receipt of the pleadings and affidavits and counter-affidavits and relevant documents provided for in Section 5, or the expiration of the time within which they may be filed, the Committee shall determine whether the complaint alleges sufficient grounds for impeachment.

If it finds that sufficient grounds for impeachment do not exist, the Committee shall dismiss the complaint and submit the report required hereunder. If the Committee finds that sufficient grounds for impeachment exist, the Committee shall conduct a hearing. To that end, the Committee, through the Chairperson, may limit the period of examination and cross-examination. The Committee shall have the

power issue compulsory processes for the attendance of witnesses as well as the production of documents and other related evidence.

The hearing before the Committee shall be open to the public except when the security of the State or public interest requires that the hearing be held in executive session.

After the submission of evidence, the committee may require the submission of memoranda, after which the matter shall be submitted for resolution.

Section 8. Report and Recommendation. – The Committee on Justice after hearing, and by a majority vote of all its Members, shall submit its report to the House containing its findings and recommendations within sixty (60) session days from the referral to it of the verified complaint and/or resolution. Together with the report shall be a formal resolution of the Committee regarding the disposition of the complaint which shall be calendared for consideration by the House within ten (10) session days from receipt thereof.

If the Committee finds by a vote of the majority of all its Members that a probable cause exists, it shall submit with its report a resolution setting forth the Articles of Impeachment on the basis of the evidence adduced before the Committee. Otherwise, the complaint shall be dismissed subject to Section 11 of these Rules.

x x x”

C. Disposition of the Motion to Inhibit and Disqualify the Chairman. -

During the first meeting on the Baraquel and Reyes Complaints held on 01 September 2010, the issue was raised as to whether or not the Chairman of the Committee should inhibit himself from the impeachment proceedings and/or temporarily resign as Chairman of the Committee, considering that his father, former Iloilo Governor Niel Tupas, Sr., has been charged by the Respondent Ombudsman before the Sandiganbayan.

The issue of inhibition of members of the Committee in impeachment proceedings has been raised in the 2006¹¹ and 2008¹² impeachment proceedings

¹¹ Page 14, Committee Report No. 1886 filed by the Committee on Justice on 22 August 2006

against former President Gloria Macapagal-Arroyo. In both proceedings, it has been consistently ruled that the Committee has no jurisdiction to disqualify, nor has it the power or authority to compel its members to inhibit themselves from participating in the impeachment proceedings.

The issue on inhibition was settled in this wise:

“Paraphrasing the ruling of the Supreme Court in the case of *Abbas v. Senate Electoral Tribunal (G. R. No. 83767 – October 27, 1988)*, the proposed mass inhibition, if sanctioned and ordered, would leave the Committee no alternative but to abandon a duty no other court or body can perform, but which it cannot lawfully discharge if shorn of the participation of its duly elected members. It was the view of the Committee that it should be an overriding consideration that the Committee not be prevented from discharging a duty which it alone has the power to perform, the performance of which is in the highest interest as evidenced by its being expressly imposed by no less than the fundamental law of the land and the Rules of Procedure in Impeachment Proceedings. **The decision to inhibit oneself from the proceedings is left primarily to the sound discretion of the Members of the Committee on Justice**, based on rational and logical assessment of the circumstances prevailing. Indeed, **there is no question that voluntary inhibitions are addressed to the sound discretion of the Members of the Committee.**” (*Emphasis supplied*)

Corollarily, the Supreme Court itself squarely addressed the issue of the alleged partiality of the Chairman of the Committee on Justice in the present impeachment proceedings against the Respondent Ombudsman.

In the case of ***Ma. Merceditas N. Gutierrez vs. The House of Representatives Committee on Justice, et. al.***¹³, Respondent Ombudsman alleged that the cases investigated and filed by the Office of the Ombudsman against Chairman Tupas, Jr. and his father influenced the impeachment proceedings against

¹² Page 7, Committee Report No. 1551 filed by the Committee on Justice on 02 December 2008

¹³ G. R. No. 193459.

her in such a way that “bias and vindictiveness played a big part in arriving at the finding of sufficiency of form and substance of the complaints against her”¹⁴. She added that the “indecent and precipitate haste” displayed by the Committee in finding the Baraquel and Reyes Complaints sufficient in form and substance is a “clear indication of bias”¹⁵.

In its *En Banc* decision, the Supreme Court found such allegations bereft of merit. The Court concluded that there is no indication of bias and vindictiveness in the acts and rulings made by Chairman Tupas, Jr., and that mere suspicion of partiality does not suffice. According to the Court:

“The act of the head of a collegial body cannot be considered as that of the entire body itself. So *GMCR, Inc. v. Bell Telecommunications Phils.* teaches:

First. We hereby declare that the NTC is a collegial body requiring a majority vote out of the three members of the commission in order to validly decide a case or any incident therein. Corollarily, the vote alone of the chairman of the commission, as in this case, the vote of Commissioner Kintanar, absent the required concurring vote coming from the rest of the membership of the commission to at least arrive at a majority decision, is not sufficient to legally render an NTC order, resolution or decision.

Simply put, Commissioner Kintanar is not the National Telecommunications Commission. He alone does not speak and in behalf of the NTC. The NTC acts through a three-man body x x x.

In the present case, **Rep. Tupas**, public respondent informs, **did not, in fact, vote and merely presided over the proceedings** when it decided on the sufficiency of form and substance of the complaints.

Even petitioner’s counsel conceded during the oral arguments that there are no grounds to compel the inhibition of Rep. Tupas.” (*Citations omitted. Emphasis supplied.*)

¹⁴ *Supra*

¹⁵ *Supra*

Thus, during the 01 September 2010 meeting, the Chairman ruled that inhibition in impeachment proceedings is a matter of sound discretion among the members of the Committee, consistent with the previous rulings of the Supreme Court and the Committee on the issue. This ruling is further supported by the above *En Banc* decision of the Supreme Court.

D. Issuance of a *Status Quo Ante* Order and Decision of the Supreme Court *En Banc* on the Petition for Certiorari and Prohibition. - On 13 September 2010, Respondent Ombudsman filed with the Supreme Court a Petition for Certiorari and Prohibition with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, docketed as ***Ma. Merceditas N. Gutierrez vs. The House of Representatives Committee on Justice, et. al.***, G. R. No.193459. The petition sought to nullify the 01 September 2010 and 07 September 2010 Resolutions of the Committee finding the Baraquel Complaint and the Reyes Complaint sufficient in form and substance. The next day, or on 14 September 2010, the Supreme Court *En Banc*, acting on the above petition, issued a *Status Quo Ante* Order, ordering the petitioner and respondents therein to observe the status quo prevailing before the issuance of the 01 September 2010 and 07 September 2010 Resolutions of the Committee.

The Committee then sent a letter dated 20 September 2010 to the Office of the Solicitor General (OSG) requesting the latter to represent the Committee in the hearings of the Supreme Court on the above petition. On 21 September 2010, the Supreme Court directed the OSG to file its Comment on the Respondent

Ombudsman's petition. During the meeting of the Committee on the same day, the Committee approved a duly seconded motion authorizing the Chairman of the Committee to sign and verify all pleadings and to coordinate with the OSG and the Speaker, with respect to the abovementioned petition.

With respect to the petition of Respondent Ombudsman before the Supreme Court, counsels for private respondents Risa Hontiveros-Baraquel, Danilo Lim, Felipe Pestaño, and Evelyn Pestaño filed a Comment *Ex Abundanti Ad Cautelam* on 27 September 2010. Likewise, counsels for private respondents Renato Reyes, Mother Mary John Mananzan, Danilo Ramos, Atty. Edre Olalia, Ferdinand Gaité, and James Terry Ridon filed their respective Comment on 29 September 2010. The OSG and Retired Justice Vicente V. Mendoza, representing the Committee, likewise filed their Comment on the petition on 30 September 2010. On 04 October 2010, Speaker Feliciano Belmonte, Jr. filed a Motion for Leave to Intervene with the Supreme Court, which was granted by the latter through its Resolution dated 05 October 2010.

Oral arguments on Respondent Ombudsman's petition were conducted on the 5th and 12th of October, 2010. On 15 October 2010, Respondent Ombudsman filed a Consolidated Reply to the above Comments of the respondents in her petition. The said respondents then filed their respective Memoranda with the Supreme Court.

After due deliberation, the Supreme Court, on 15 February 2011, rendered its decision. The dispositive portion of the *En Banc* decision provides:

“WHEREFORE, the petition is DISMISSED. The assailed Resolutions of September 1, 2010 and September 7, 2010 of public respondent, the House of Representatives Committee on Justice, are NOT UNCONSTITUTIONAL. The Status Quo Ante Order issued by the Court on September 14, 2010 is LIFTED.

SO ORDERED.”

On 25 February 2011, Respondent Ombudsman filed a Motion for Reconsideration on the above Decision. The Supreme Court *En Banc*, acting on the Motion for Reconsideration, issued a Resolution dated 08 March 2011, denying the said Motion, the pertinent portion of which states:

“FINALLY, the Court has, in its February 15, 2011 Decision, already lifted its September 14, 2010 *Status Quo Ante* Order which, as said Order clearly stated, was “effective immediately and continuing **until further orders from this Court.**” Such “further order” points to that part of the disposition in the February 15, 2011 Decision that directs the lifting of the *Status Quo Ante* Order.

“The lifting of the *Status Quo Ante* Order is effective immediately, the filing of petitioner’s motion for reconsideration notwithstanding, in the same way that the *Status Quo Ante* Order was made effective immediately, respondents’ moves to reconsider or recall it notwithstanding. There is thus no faulting the Committee if it decides to, as it did proceed with the impeachment proceeding *after* the Court released its February 15, 2011 Decision.

WHEREFORE, the Motion for Reconsideration is **DENIED** for lack of merit.

SO ORDERED.” (*Citations omitted. Emphasis in the original.*)

II. DETERMINATION OF SUFFICIENCY IN FORM AND SUBSTANCE

A. THE BARAQUEL AND REYES COMPLAINTS ARE SUFFICIENT IN FORM

Under Section 4, Rule III of the Rules of Procedure in Impeachment Proceedings, “[u]pon due referral, the Committee on Justice shall determine whether the complaint is sufficient in form and substance x x x.”

Pursuant thereto, the Committee, in its meeting held on 01 September 2010, declared the Baraquel and Reyes Complaints sufficient in form considering that both complaints satisfied the requirements that it should be verified and duly endorsed by any Member of the House.

The vote on the motion to declare said Complaints sufficient in form is, as follows:

(a) First Impeachment Complaint (Baraquel Complaint)¹⁶, endorsed by Representatives Kaka Bag-ao and Walden Bello: **In favor – 39 members; Against – 1 member; Abstention - 0**; and,

(b) Second Impeachment (Reyes Complaint)¹⁷, endorsed by Representatives Neri Javier Colmenares, Teodoro A. Casiño, Rafael V. Mariano, Luzviminda C. Ilagan, Raymond Palatino, Antonio L. Tinio, and Emerenciana A. De Jesus: **In favor – 31 members; Against – 9 members; and Abstention – 0**.

¹⁶ Transcript of Stenographic Notes, 01 September 2010: ETB/VIII-1

¹⁷ Transcript of Stenographic Notes, 01 September 2010: ETB/VIII-2

B. THE BARAQUEL AND REYES COMPLAINTS ARE SUFFICIENT IN SUBSTANCE

After determining that both the Baraquel and Reyes Complaints are sufficient in form, the Committee proceeded to determine whether the complaints are sufficient in substance.

In determining the sufficiency or insufficiency in substance of said Complaints, the Committee referred to the standards set forth under Section 4, Rule III of the Rules of Procedure in Impeachment Proceedings, namely: (1) that there must be a recital of facts; and (2) that the recital of facts must constitute the offense charged which are determinative of the jurisdiction of the Committee.

Pursuant thereto, the Committee, in its meeting held on 01 September 2010, declared the Baraquel and the Reyes Complaints sufficient in substance considering that both Complaints met the standards laid down in Section 4, Rule III of the Rules of Procedure in Impeachment Proceedings.

The vote on the motion to declare the Impeachment Complaints sufficient in substance is, as follows:

(a) First Impeachment Complaint (Baraquel Complaint) ¹⁸: **In favor – 41 members; Against – 14 members; Abstention - 0**; and,

(b) Second Impeachment (Reyes Complaint) ¹⁹: **In favor – 41 members; Against – 16 members**; and with **1 member refusing to vote**.

¹⁸ Transcript of Stenographic Notes, 07 September 2010: CGF/XI-1

¹⁹ Transcript of Stenographic Notes, 07 September 2010: AMP/XII-1

C. NOTICE TO RESPONDENT TO FILE ANSWER

After finding the impeachment complaints sufficient in substance and pursuant to Section 5, Rule III of the Rules of Procedure in Impeachment Proceedings, the Committee on 07 September 2010 furnished the Respondent Ombudsman with copies of the complaints, with a notice, that she should file an answer within (10) days from receipt of such notice, attached herein as “**Annex C**”.

The Respondent Ombudsman, having been served summons and copies of the complaints, was required to submit her answer to accord her the opportunity to refute the allegations in the complaints and to set up all the defenses in her favor including the alleged insufficiency in form and substance.

Instead of filing her answer, Respondent Ombudsman filed on 13 September 2010 with the Supreme Court a Petition for Certiorari and Prohibition under Rule 65 of the Revised Rules of Court with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction challenging the Resolutions of 01 and 07 September 2010 of the House of Representatives Committee on Justice and seeking to enjoin the Committee from proceeding with the impeachment proceedings. The next day or on 14 September 2010, the Supreme Court *En Banc* resolved to direct the issuance of a *Status Quo Ante* Order.

In the meantime, the Committee held a meeting on 21 September 2010 where Deputy Speaker Lorenzo R. Tañada III informed the members of the Committee about the *Status Quo Ante* Order and that the Solicitor General will act as counsel

for the Committee. In said meeting, the Committee authorized the Chairman to sign and verify pleadings, documents and papers in connection with the Petition for Certiorari and Prohibition filed by the Respondent Ombudsman.

In the meeting of the Committee held on 28 September 2010, the Chair informed the body that the Committee is in the process of finalizing its comment to the *Status Quo Ante* Order and that the Committee will be represented by the Office of the Solicitor General and retired Supreme Court Justice Vicente V. Mendoza. It was also announced that the Committee is in receipt of a written motion, attached herein as “**Annex D**”, signed by 17 members of the Committee, which states that the “House Committee on Justice shall **not** abdicate its Constitutional duty under Article XI, Section 3 (2) of the 1987 Constitution which mandates it to conduct hearings and submit its Report to the House in Plenary within sixty (60) session days from the referral of the complaint, together with the corresponding resolution”. The Chair opened the floor for debates on the motion. Thereafter, there being an objection to the motion, the Chair divided the house. With **33 votes in favor** of the motion, **14 against**, and **1 abstention**, the Chair declared the motion approved²⁰.

Pursuant to the approved motion, the Committee sent another letter, herein attached as “**Annex E**”, to Respondent Ombudsman dated 11 November 2010 directing her to submit her Answer within the remaining three (3) days from receipt of the same. However, the Committee did not receive any answer from the Respondent Ombudsman after the lapse of the three (3) day period.

²⁰ Transcript of Stenographic Notes, 28 September 2010: ESM/XVII-2

After a five-month hiatus from the finding of sufficiency in form and in substance of the two (2) complaints, the Committee met anew on 22 February 2011 where the Chair announced to the members and read the dispositive portion of the decision of the Supreme Court dismissing the Respondent Ombudsman's Petition for Certiorari, and lifting the *Status Quo Ante* Order²¹. Following the reading of the dispositive portion, the Senior Vice Chairman of the Committee, Rep. Rodolfo Fariñas, moved for the Committee to issue an Order requiring Respondent Ombudsman to submit her answer to the impeachment complaints filed against her within the remaining period which is three (3) days; otherwise, she will be deemed to have controverted all matters raised in the complaints. There being an objection, the Chair called for a division of the house. With **21 members voting in favor** of the motion and **5 members voting against**, the motion was carried²².

Thereafter, the Committee issued the Order, attached herein as "**Annex F**", requiring the Respondent Ombudsman to submit her Answer to the complaints within the remaining period of three (3) days from receipt of the Order. The Committee served the Order to Respondent Ombudsman on 22 February 2011.

Instead of filing an answer, Respondent Ombudsman, through counsel, filed with the Committee a letter dated 24 February 2011, hereto attached as "**Annex G**", informing the Committee that she is preparing her Motion for Reconsideration on the Supreme Court decision dated 15 February 2011, and requesting the Committee to defer the impeachment proceedings until after the decision of the Supreme Court shall have become final and executory. The Respondent Ombudsman also filed with the Committee, through counsel, a letter dated 28 February 2011, attached herein as

²¹ Ma. Mercedes N. Gutierrez vs. The House of Representatives Committee on Justice, et. al. G.R. No 193459, 15 February 2011, p. 39

²² Transcript of Stenographic Notes, 22 February 2011: ACV/IX-3

“**Annex H**”, furnishing the Committee with a copy of her Motion for Reconsideration filed with the Supreme Court, and further reiterating her request to defer the impeachment proceedings.

Respondent Ombudsman having failed to file her answer within the period prescribed, the Committee entered a general denial to the allegations in the complaint on her behalf in its meeting held on 01 March 2011. The Committee then proceeded with the determination of the sufficiency of the grounds for impeachment.

III. DETERMINATION OF THE SUFFICIENCY OF THE GROUNDS FOR IMPEACHMENT

Section 6, Rule III of the Rules of Procedure in Impeachment Proceedings provides that: “[a]fter receipt of the pleadings and affidavits and counter-affidavits and relevant documents provided for in Section 5, or the expiration of the time within which they may be filed, the Committee shall determine whether the complaint alleges sufficient grounds for impeachment”.

The specific charges in the two (2) verified impeachment complaints are betrayal of public trust and culpable violation of the Constitution.

The Records of the 1986 Constitutional Commission provide clear standards for determining sufficiency of the grounds for impeachment. These are:

Culpable violation of the Constitution means willful and intentional violation Constitution and not violation committed unintentionally or involuntarily or in good faith or thru an honest mistake of judgment. It implies deliberate intent, even a certain degree of perversity for it is not easy to imagine that individuals in the category of these officials would go so far as to defy knowingly what the Constitution commands;²³ and,

²³ Records of the Constitutional Commission, Vol. II, pages 276-278, quoting the report of the General Committee on the Impeachment of President Quirino, Volume IV, Congressional Records, House of Representatives 1553

Betrayal of public trust “refers to his oath of office”. It is a “catchall phrase to include all acts not punishable by statutes as penal offenses but, nonetheless, render the officer unfit to continue in office. It includes betrayal of public interest, inexcusable negligence of duty, tyrannical abuse of power, breach of official duty by malfeasance or misfeasance, cronyism, favoritism, etc. to the prejudice of public interest and which tend to bring the office into disrepute”. Betrayal of public trust also encompasses “acts which are just short of being criminal but constitute gross faithlessness against public trust, tyrannical abuse of power, inexcusable negligence of duty, favoritism and gross exercise of discretionary powers”.²⁴

Pursuant to the standards that were carefully considered by the Committee, the members thereof voted on the sufficiency of the grounds of impeachment of the two (2) impeachment complaints on 01 March 2011. With a vote of **forty-one (41) members in favor** and **twelve (12) against**, the motion to declare the sufficiency of the grounds of impeachment of the Baraquel Complaint was carried.²⁵ The motion to declare the sufficiency of the grounds of impeachment of the Reyes Complaint was carried by a vote of **forty-two (42) members in favor** and **twelve (12) against**.²⁶

IV. CONDUCT OF HEARING

A. Hearing Proper

Section 6, Rule III of the Rules of Procedure in Impeachment Proceedings requires the Committee to conduct a hearing after it has found sufficient grounds for impeachment.

“Section 6. *Submission of Evidences and Memoranda.* –

²⁴ Records of the Constitutional Commission, Vol. II, page 272 and 286

²⁵ Transcript of Stenographic Notes, 01 March 2011: GVO/XIV-5

²⁶ Transcript of Stenographic Notes, 01 March 2011: LBL/XV-1

x x x

If it finds that sufficient grounds for impeachment do not exist, the Committee shall dismiss the complaint and submit the report required hereunder. **If the Committee finds that sufficient grounds for impeachment exist, the Committee shall conduct a hearing.** To that end, the Committee, through the Chairperson, may limit the period of examination and cross-examination. The Committee shall have the power to issue compulsory processes for the attendance of witnesses as well as the production of documents and other related evidence. x x x" (*Emphasis supplied*)

Pursuant to the above rule, the Committee conducted a hearing on the impeachment complaints against Respondent Ombudsman on 02 March 2011. The Committee sent a notice dated 01 March 2011, herein attached as "**Annex I**", to Respondent Ombudsman inviting her to the said hearing, and informing her of her right, under the said Rules of Procedure, to submit evidence in support of her defense notwithstanding her failure to file an answer.

B. Presentation of Testimonial and Documentary Evidence

The complainants in the Baraquel Complaint and the Reyes Complaint appeared on the 02 March 2011 hearing, together with their respective witnesses.

The Rules of Procedure having been suspended, counsel for Respondent Ombudsman, Atty. Anacleto Diaz, was allowed to make a manifestation appealing that she be permitted and be given reasonable time to file her Answer *Ad Cautelam*. He likewise reiterated that Respondent Ombudsman will not attend the subsequent hearings of the Committee. Some members expressed their disagreement on the ground that sufficient time was already given for Respondent Ombudsman to file her Answer pursuant to the Rules but she did not comply. It was also contended that

giving due course to the request may be deemed tantamount to amending the Rules governing the impeachment proceedings which would require plenary action. There were those who also manifested their reservation as this would entail a reconsideration of the previous action of the Committee.

The Committee agreed that Respondent Ombudsman shall be given the chance to file her Answer until 04 March 2011 and that the same shall be treated only as part of the evidence in support of her defense, considering the time to file Answer pursuant to the Rules had already expired and that the Committee had already entered a general denial of the allegations on her behalf.

Thereafter, the Committee allowed the complainants to present their testimonial and documentary evidence.

For the Baraquel Complaint, the documentary evidence as presented by Rep. Kaka Bag-ao consisted, among others, of the following:

1. **The Transparency and Accountability Network (TAN) Report Issue 2008/2009**, which shows the downward trend in the actual performance of the Office of the Ombudsman in its primary function of prosecuting erring public officials;
2. The **United Nations Development Program (UNDP) – Philippine Human Development Report 2008/2009**, showing the low conviction rate of the Office of the Ombudsman under the leadership of Respondent Ombudsman;

3. A **report made by the Philippine Center for Investigative Journalism (PCIJ)**, which gives in-depth analysis of the factual basis behind the low conviction rate of Respondent Ombudsman;
4. **Annual Reports of the Office of the Ombudsman** from 2003 – 2009, which allegedly show “window dressing” or exaggerations in the conviction rates of the Office of the Ombudsman;
5. **Sandiganbayan Annual Reports from 2003 – 2009;**
6. **Copies of the two (2) information filed against Hernando Perez;**
7. **Transcript of stenographic notes of the meeting of the Committee on Appropriations** dated 30 September 2009, which dealt with the budget hearing for the Office of the Ombudsman;
8. **Video** of the arrest of then Rep. Risa Hontiveros-Baraquel by police authorities for alleged illegal assembly during the Women’s Day Rally at Welcome Rotonda in 2006.

The testimonies of the witnesses Ms. Risa Hontiveros-Baraquel and Mr. Felipe Pestaño for the Baraquel Complaint were likewise presented by Rep. Kaka Bag-ao.

After the presentation of the evidence for the Baraquel Complaint, the Committee allowed the complainants in the Reyes Complaint to present their evidence.

The following witnesses presented their testimonies to the Committee: Mr. Renato Reyes, Jr., who was presented by Rep. Teddy Casiño, Former Solicitor General Frank Chavez who was presented by Rep. Neri Javier Colmenares, Mr.

Danilo Ramos who was presented by Rep. Rafael Mariano; Mr. Gus Lagman; and Mr. Ferdinand Gaité, also presented by Rep. Casiño.

During the presentation of the testimonial and documentary evidence, members of the Committee, and counsel for the Respondent Ombudsman, through the Chair, asked clarificatory questions directed to the complainants and the witnesses who, in turn gave their replies thereto.

A copy of the list of documentary evidence, together with the corresponding documents marked as exhibits, in support of the charges in the Baraquel Complaint, submitted to the Committee during the meeting on 02 March 2011, is hereto attached as **Annex “J”** and forms an integral part of this Report.

A copy of the list of documentary evidence, together with the corresponding documents marked as exhibits, submitted by the counsel of complainants in the Reyes Complaint is also hereto attached as **Annex “K”** and forms an integral part of this Report.

Likewise, the two Answer *Ex Abundanti Ad Cautelam* dated 04 March 2011 of the Respondent Ombudsman to the two verified impeachment complaints are hereto attached as **Annexes “L”** and **“M”**.

All the documentary evidence submitted to the Committee were distributed to all the members of the Committee on 07 March 2011.

C. Issuance of Subpoena *Duces Tecum*

In the hearing held on 02 March 2011, the Committee members addressed clarificatory questions to the witnesses and complainants with regard to the allegations made in the Reyes Complaint.

Upon a motion, duly seconded, the Chair ordered the issuance of a subpoena *duces tecum* addressed to the Office of the Ombudsman, requiring the submission on or before 04 March 2011 of the records of the following cases: (a) “Euro Generals”; (b) Mega Pacific case; (c) “Fertilizer Fund Scam”; and (d) Pestaño case.

The Committee issued the subpoena, hereto attached as “**Annex N**”, on 03 March 2011, and the Office of the Ombudsman received it on the same day. On 04 March 2011, the Committee issued another subpoena *duces tecum*, ordering the Office of the Ombudsman to submit on or before 07 March 2011 the documents enumerated therein which are in the possession of the Office of the Ombudsman, attached herein as “**Annex O**”.

Despite the issuance of the said subpoena, the Office of the Ombudsman refused to submit the documents indicated therein. Instead, Respondent Ombudsman, through counsel, filed with the Committee on 07 March 2011 a Reply *Ex Abundanti Ad Cautelam* to the two subpoenas. In her Reply, attached herein as “**Annex P**” Respondent Ombudsman averred that: (a) the production of the documents under the subpoenas would render moot and academic the issues raised in her Motion for Reconsideration filed with the Supreme Court; (b) the subpoenas are defective as to form and substance; and, (c) the subpoenas are unreasonable and oppressive.

On the date of the last hearing on the impeachment complaints or on 08 March 2011, the Committee received a letter dated 07 March 2011 from Respondent Ombudsman, addressed to the Chairman of the Committee, reiterating the reasons for her refusal to comply with the two subpoena issued by the Committee, attached herein as “**Annex Q**”.

V. FINDING OF PROBABLE CAUSE

There is no specific definition for “probable cause” when it comes to impeachment proceedings. The Committee, however, has decided to define it as the facts and circumstances that engender a well-founded belief that an impeachable offense has been committed and that the respondent is probably guilty thereof, and should be held for trial.

Pursuant thereto, the Committee in its meeting held on 08 March 2011, found probable cause to impeach Respondent Ombudsman for betrayal of public trust based on the following allegations in the Baraquel Complaint, namely:

(1) “the Office of the Ombudsman has performed dismally as shown by the low conviction rate achieved by the office”;

(2) “the unreasonable failure to take prompt and immediate action on complaints filed against various public officials, including former President Gloria Macapagal-Arroyo and Jose Miguel Arroyo with regard to the NBN-ZTE broadband project”; and

(3) “the inexcusable delay of the Ombudsman in conducting and concluding its investigation into the wrongful death of Ensign Philip Andrew Pestaño aboard a Philippine navy vessel resulting in the United Nations Human Rights Commission finding that the Philippine government violated Article 5, paragraph 4 of the Optional Protocol to the International Convention on Civil and Political Rights by failing to provide the parents of Ensign Pestaño an effective remedy in the form of an impartial, effective and timely investigation”²⁷.

In the Baraquel Complaint, the roll call vote on the motion that probable cause exist is as follows: **39 members in favor; 9 against and 1 abstention**²⁸.

Also, the Committee found probable cause to impeach Respondent Ombudsman for betrayal of public trust based on the following allegations in the Reyes Complaint, namely:

- (1) “inaction of the Ombudsman in the matter of the Fertilizer Fund Scam”;
- (2) “inaction in the matter of the Mega Pacific deal”; and
- (3) “inaction in the matter of the Euro Generals”²⁹.

In the Reyes Complaint, the roll call vote on the motion that probable cause exist is as follows: **39 members in favor; 6 against and 1 abstention**³⁰. The results

²⁷ Transcript of Stenographic Notes, 08 March 2011: EMA / XVII-4

²⁸ Transcript of Stenographic Notes, 08 March 2011: RCN / XX-1

²⁹ Transcript of Stenographic Notes, 08 March 2011: EMA / XXI-1

³⁰ Transcript of Stenographic Notes, 08 March 2011: EMA / XXI-4

of the voting on the finding of probable cause for each of the two (2) verified impeachment complaints are hereto attached as “**Annex R**” and “**Annex S**”.

VI. FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

ACCORDINGLY, the Committee on Justice finds, resolves and concludes that:

1. The Baraquel Complaint and the Reyes Complaint are sufficient in form and substance;
2. The Baraquel Complaint and the Reyes Complaint both allege sufficient grounds for impeachment; and,
3. **PROBABLE CAUSE EXISTS TO IMPEACH Ombudsman Ma. Merceditas Navarro-Gutierrez for Betrayal of Public Trust.**

It is further recommended that this Committee Report and its accompanying Resolution setting forth the Articles of Impeachment be approved in a Plenary Roll Call vote pursuant to Section 3(3) of Article XI of the 1987 Constitution.

14 March 2011, Constitution Hills, Quezon City

Respectfully submitted,

NIEL C. TUPAS, JR.
Chairman
Committee on Justice