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Senate
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Journal

SESSION NO. 52
Wednesday, January 19, 2011

FIFTEENTH CONGRESS
FIRST REGULAR SESSION

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CALL TO ORDER

At 3:39 p.m., the Senate President, Hon. Juan Ponce Enrile, called the session to order.

PRAAYER

Senator Sotto read the following prayer prepared by Sen. Manuel "Lito" M. Lapid:

Mahal na Panginoon, sa pagsimula namin sa bagong taon ng pagsisilbi sa aming bayan ay taos-puso Po kaming nagpapasalamat sa Inyong gabay sa mga taong nakaraan na kung saan naging matatag, malaya at malinaw ang naging pagpapaliwanagan ng bulwagang ito.

Dakilang Maykapal, sa Inyong kaluwalhatian, basbasan Mo Po ang Kapulungan na ito upang kami ay maging higit na karapat-dapat sa sagradong tiwala na ipinagkaloob Mo at ng sambayanang Pilipino.

Bendisyunan Mo Po ang sama-samang pagkilos ng aming Kapulungan at pairalin ang kadalisan ng aming mga layunin tungo sa minimithing kapayapaan at kaunlaran ng aming bayan.

Ang lahat ng ito ay hinihiling namin sa Pangalan ng Inyong mahal na Anak na si Hesus.

Siya nawa.

ROLL CALL

Upon direction of the Chair, the Secretary of the Senate, Atty. Emma Lirio-Reyes, called the roll, to which the following senators responded:

Angara, E. J.	Legarda, L.
Arroyo, J. P.	Marcos Jr., F. R.
Cayetano, A. P. C. S.	Osmeña III, S. R.
Cayetano, P. S.	Pangilinan, F. N.
Defensor Santiago, M.	Recto, R. G.
Drilon, F. M.	Revilla Jr., R. B.
Ejercito Estrada, J.	Sotto III, V. C.
Enrile, J. P.	Trillanes IV, A. F.
Escudero, F. J. G.	Zubiri, J. M. F.
Honasan, G. B.	

With 19 senators present, the Chair declared the presence of a quorum.

Senators Guingona, Lapid and Villar arrived after the roll call.

Senator Lacson was absent.

APPROVAL OF THE JOURNAL

Upon motion of Senator Sotto, there being no objection, the Body dispensed with the reading of the Journal of Session No. 51 and considered it approved.

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REFERENCE OF BUSINESS

The Secretary of the Senate read the following matters and the Chair made the corresponding referrals:

BILLS ON FIRST READING

Senate Bill No. 2639, entitled

AN ACT AMENDING SECTION 447(a) (3)(iv) OF THE LOCAL GOVERNMENT CODE OF THE PHILIPPINES, REQUIRING ALL SIGNS, SIGNBOARDS, OR BILLBOARDS WRITTEN IN A FOREIGN LANGUAGE OTHER THAN ENGLISH TO BEAR CORRESPONDING FILIPINO OR ENGLISH TRANSLATION

Introduced by Senator Lapid

To the Committee on Local Government

Senate Bill No. 2641, entitled

AN ACT RATIONALIZING THE ECONOMIC REGULATION OF WATER UTILITIES, CREATING THE WATER REGULATORY COMMISSION AND FOR OTHER PURPOSES

Introduced by Senator Angara

To the Committees on Public Services; Civil Service and Government Reorganization; and Finance

RESOLUTIONS

Proposed Senate Resolution No. 336, entitled

RESOLUTION DIRECTING THE COMMITTEE ON GAMES, AMUSEMENT AND SPORTS AND/OR SUCH APPROPRIATE COMMITTEE/S TO CONDUCT AN INVESTIGATION, IN AID OF LEGISLATION, INTO THE POOR STATE OF PHILIPPINE SPORTS AND THE POOR PERFORMANCE OF PHILIPPINE ATHLETES, DESPITE THE MILLIONS OF PESOS GOVERNMENT DISBURSED TO

THE NATIONAL SPORTS ASSOCIATIONS AND OTHER ENTITIES

Introduced by Senator Trillanes IV

To the Committee on Games, Amusement and Sports

Proposed Senate Resolution No. 337, entitled

RESOLUTION DIRECTING THE SENATE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS (BLUE RIBBON COMMITTEE) AND OTHER APPROPRIATE SENATE COMMITTEES TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, INTO THE CIRCUMSTANCES SURROUNDING THE PLEA BARGAINING AGREEMENT BY AND BETWEEN GOVERNMENT PROSECUTORS AND GENERAL CARLOS GARCIA WHO IS CHARGED WITH PLUNDER WITH THE END IN VIEW OF CRAFTING LEGISLATIVE MEASURES TO CURTAIL CORRUPTION AND PROMOTE TRANSPARENCY AND ACCOUNTABILITY IN THE GOVERNMENT

Introduced by Senator Cayetano (A.P)

To the Committees on Accountability of Public Officers and Investigations; and Justice and Human Rights

COMMUNICATIONS

Letter from the Commission on Audit, dated 22 November 2010, furnishing the Senate with the 2009 Annual Audit Reports on the Supreme Court of the Philippines; and the Presidential Electoral Tribunal, pursuant to Section 4, Article IX-D of the Constitution.

To the Committee on Finance

Letter from the Department of Environment and Natural Resources, forwarding to the Senate the list of the Mineral Production Sharing Agreements approved from 15 May 2010 to 30 November 2010, in compliance with Section

29 of Republic Act No. 7942 (Philippine Mining Act of 1995).

To the Committee on Environment and Natural Resources

COMMITTEE REPORT

Committee Report No. 15, prepared and submitted jointly by the Committees on Finance; and Government Corporations and Public Enterprises, on Senate Bill No. 2640, with Senators Drilon, Angara, Recto and Villar as authors thereof, entitled

AN ACT TO PROMOTE FINANCIAL VIABILITY AND FISCAL DISCIPLINE IN GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS AND TO STRENGTHEN THE ROLE OF THE STATE IN ITS GOVERNANCE AND MANAGEMENT TO MAKE THEM MORE RESPONSIVE TO THE NEEDS OF PUBLIC INTEREST AND FOR OTHER PURPOSES,

recommending its approval in substitution of Senate Bill No. 2566, taking into consideration Senate Bill No. 2580, Proposed Senate Resolution Nos. 61, 66, 66 and 88.

Sponsor: Senator Drilon

To the Calendar for Ordinary Business

ACKNOWLEDGMENT OF THE PRESENCE OF GUESTS

At this juncture, Senator Sotto acknowledged the presence in the gallery of the following guests:

- College students from the Philippine Normal University, and Rizal Technological University;
- Members of the Sangguniang Panlalawigan ng Batangas led by Board Member Christopher de Leon; and
- Guests from Nueva Ecija.

Senate President Enrile welcomed the guests to the Senate.

PRIVILEGE SPEECH OF SENATOR EJERCITO ESTRADA

Availing himself of the privilege hour, Senator Ejercito Estrada questioned the plea bargain arrangement that Maj. Gen. Carlos Garcia, former AFP Deputy Chief of Staff for Comptrollership, entered into with government prosecutors. He described General Garcia as the true face of corruption in the military.

Following is the full text of the speech:

Our country has, in recent weeks, experienced natural calamities of many kinds which are in a sense unprecedented. I used this word principally to describe these events as having happened at the time when we should have been savoring the goodwill and magnanimity which the Yuletide season brings. The Christmas season, and the New Year, are periods of great gladness and renewal. A chance for individuals and even entire nations to make a fresh start

Yet all around the world, other countries are likewise grappling with the reality of a global climate gone berserk; snow in the U.S. State of Hawaii; massive flooding in Brisbane, Australia, and in Sri Lanka; and raging mudslides in Brazil. Hundreds dead, thousands missing and injured, hundreds of thousands rendered homeless.

In the Philippines, these tragedies are compounded by a calamity of a different sort. This is the kind that for the most part is conducted behind closed doors, by a handful of powerful individuals who believe themselves to be above the law, and thus entitled to enrich themselves and their families at the expense of poor and uneducated Filipinos, perhaps, the very same Filipinos who even now live huddled and miserable in evacuation centers, fleeing their homes because the roads and dams built in their communities were of the substandard kind after the commissions collected by corrupt government officials left little to construct solid infrastructure that would have protected the people they were supposed to have been built for.

Now, these same poor and uneducated Filipinos might find it difficult to quickly explain what a word like comptroller means. But they know almost instinctively that it deals with the great deal of responsibility, and that responsibility has to do with finances.

Likewise, these same poor and uneducated Filipinos may not be able to name all the officials of the Armed Forces of the Philippines at any

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given time, but if we ask them the name of its most corrupt official, only one name comes to mind: Former AFP Deputy Chief of Staff for Comptrollership, Maj. Gen. Carlos P. Garcia.

The extent of General Garcia's unflinching and criminal sense of entitlement of funds that were never his to begin with first caught the public eye in year 2003, after his sons were arrested by U.S. Customs at the San Francisco International Airport for failing to declare US\$100,000.

Since that first incident, more shocking revelations have been brought to our collective attention such as how his private peso accounts ballooned from P5.26 million in 1999 to a staggering P92.81 million in 2004. The balance in his dollar account likewise zoomed from US\$19,500 to US\$1.9 million also in the same period. All these for a man who was collecting a measly P37,000.00 salary plus allowances from the government as a military official on active duty.

May I also relay to this august Chamber the alleged properties of General Garcia. The U.S. Department of Homeland Security has so far identified three Garcia assets - US\$765,000 Trump Park Avenue Condominium at No. 502 Park Avenue in New York; a US\$750,000 apartment at No. 222 East 34th Street, New York; and a house at No. 625 Vancouver Drive, Westernville, Ohio. At least US\$785,630 or its equivalent, P43.995 million, was transferred to the United States by General Garcia and his family in the past 11 years, according to the documents from an investigation conducted by the Ombudsman.

Citing U.S. Immigration and Customs enforcement record, the Ombudsman report said:

"Money was carried by Garcia, his wife Clarita, and their two sons Ian Carl and Juan Paulo during six trips to the U.S. between 1993 and 2004."

Other assets in the Philippines include lands in Guimaras, in Batangas, in Iloilo, in Baguio, and several vehicles, shares of stocks in the names of his children and his wife. When wife of General Garcia was interrogated by U.S. Customs officials, she admitted that General Garcia gets 4,000 liters of gasoline per month charged to the Armed Forces of the Philippines. Groceries were provided to him for his personal use, likewise charged to the Armed Forces of the Philippines. And the contractors with connections with the Armed Forces of the Philippines have been regularly providing gifts including cash to General Garcia.

When charges were first brought against the disgraced General and members of his family residing abroad, we saw clearly for the first time the true face of corruption in the military. Like millions of other Filipinos, I wanted to see closure in the Garcia case, closure in the resounding conviction to be handed down by a Philippine court. Thus, this Representation was astounded by news of a plea bargaining arrangement entered into with General Garcia. I also stand foursquare behind all those who regard the plea bargain arrangement as outrageous and unconscionable.

Without a doubt, the plea bargain makes a mockery of the more than five-year crusade of previous prosecutors, members of media, and other concerned individuals to bring this person to justice. Accused of amassing more than P300 million of illegal wealth in the course of his career, General Garcia was the poster boy for all that was wrong with the military and represented the sneakiest and dirtiest side of the Armed Forces. His actions were an affront to the distinguished service offered by our soldiers who suffered, were wounded and even died in the battlefield while this corrupt general sat comfortably in his air-conditioned office serving no one but himself.

I can only commiserate with others in and out of government who strongly urge that this plea bargain agreement should be scuttled permanently.

Tama ang pagkakahambing sa pang-yayaring ito sa isang laro ng basketball. Tambak na ang kalaban, sigurado na ang panalo pero anong nangyari at biglang nabaliktad at mukhang matatalo pa yata ang dapat ay panalo?

This echoes precisely the statement made last Monday by the government's top lawyer, Solicitor General Anselmo Joel Cadiz, in the course of his radio interview over DZMM. Atty. Cadiz had no compunction about using the word "unfathomable" to describe the developments in General Garcia's case.

And the stink created by this plea bargain agreement goes way beyond General Garcia. There is something else at work in this sordid mess. There are other hands, unseen as yet, which much be placed in handcuffs, and they do not all belong to Garcia's namesake.

For logically, and with all the information we have, this was a crime that could not have been perpetrated by just one man. Garcia may have been a top official of the AFP, but like any other member of a large organization, he had to report

to others. His actions could not have escaped the attention of others around him. His success at concealing his illegal actions needed support from inside. And considering the amount involved in the crime, only someone higher could have acted as his enabler, his keeper, and his protector.

The name Angelo Reyes - great enabler to the previous administration - once again comes to the fore.

Under his leadership - if such a word can be used to describe his tenure - the AFP was politicized like never before and Garcia's criminal activities flourished.

Mr. Reyes' utter failure as a public servant is apparent even in his later postings: As Secretary of the Environment and Natural Resources, no real headway was made against illegal logging or other pressing environmental problems. As Secretary of Energy, his stint was a total failure. The big three oil companies had a field day in jacking up their pump prices with hardly any protest from Reyes.

Which now begs a number of questions: Was this same recurring inaction of his superior the reason Garcia boldly went about his money-making career?

Would it be plausible to think that Garcia alone made money from this scheme, and that no one else - not even those above him - were interested in making a fast buck as well?

Could Garcia have succeeded in amassing his illegal fortune without help from those below- and above-him in the military hierarchy?

And with two former comptrollers of the Armed Forces - Carlos Garcia and his immediate predecessor, Jacinto Ligot - apparently launching and strengthening their criminal activities while Angelo Reyes serves as AFP and later as DND chief, does this not in itself underscore the failure of Reyes to rein his own people in? Or was he complicit in all this, as many people believe, including myself?

These are not questions that can be taken lightly

The case of General Garcia symbolizes the giant step the Philippines can make in dealing a serious blow against corruption in the ranks of the military, and within government itself.

But the blow must not be aimed solely at the man who was caught red-handed in his act. There must also be action aimed at bringing before the bar of justice those who helped or those who coddled General Garcia in his act of plunder.

The Senate, the entire Philippine government apparatus, must not rest until Garcia's enablers are likewise hauled before the courts and meted the harshest punishment available under our laws.

Dapat parusahan ang may sala upang maipamalas natin ang tamang landas, ang tuwid na landas na pinapangarap nating lahat.

MANIFESTATION OF SENATOR DEFENSOR SANTIAGO

Senator Defensor Santiago explained that in a plea bargain, which is part of the Rules of Court, if the accused entered a plea of not guilty during the arraignment, the pre-trial conference shall proceed, at which stage plea bargain becomes the primary objective of the prosecution and the defense. She said that while there is no question that a plea bargain is allowed by law, the law does not state the whys and wherefores of the process so it is for the readers to refer to the decisions of the Supreme Court to see its effects and consequences.

Senator Defensor Santiago pointed out that the landmark case in Philippine jurisprudence on plea bargain is *Daan vs. Sandiganbayan*, G.R. No. 163972-77, March 28, 2008, which was reiterated in all other related cases. *Daan vs. Sandiganbayan*, she noted, quoted the decision in *People vs. Villarama* (1978), to wit: "Plea bargaining in criminal cases is a process whereby the accused and the prosecution work out a mutually satisfactory disposition." She stated that the first question that must be asked is whether or not the plea bargain in *People vs. Garcia* was mutually satisfactory to both parties, namely, the State, which is being represented by the prosecution, and the accused, who is also referred to as the suspect. A plea bargain, she underscored, must give an advantage not only to the accused but also to the State.

She noted that in the plea bargain entered into by General Garcia with the prosecutors, the State asked General Garcia to return P300 million of plundered wealth but he offered to return only P1.3 million. She asked the prosecutors what benefits the State derived from the plea bargain since instead of agreeing to return P300 million, General Garcia offered to return only P1.3 million. Absent any benefit that the State would derive from this plea bargain arrangement, she stressed that the plea bargain must be disapproved by the Sandiganbayan.

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Again quoting the *Daan* ruling, Senator Defensor Santiago underscored that in a plea bargain, the consent of the offended party, meaning the person who suffered from the crime, and the prosecutor must be obtained first; and in the event both the prosecution and the defense reached an agreement, the same is still subject to the approval of the Court.

Since the plea bargain was beneficial only to General Garcia, Senator Defensor Santiago proposed that the Senate ask the Sandiganbayan, even through media, if it already approved the agreement, to rescind its approval, or, if it has not approved it yet, to reject it. She stressed that in *Daan vs. Sandiganbayan*, the Supreme Court exhorted the courts "to keep in mind that a plea of guilty for a lighter offense than that actually charged is not supposed to be allowed as a matter of bargaining or compromise for the convenience of the accused." If the Sandiganbayan has not yet approved the plea bargain, she stated that it should, at least, take cognizance of the statements of the senators. Plea bargain, she said, should not be entered into if the government cannot benefit from it.

She stated that caution must be exercised in considering the plea of an accused to a lesser offense because according to the *Daan* ruling, "the rules allow such a plea only when the prosecution does not have sufficient evidence to establish the guilt of the crime charged." She pointed out that it must be borne in mind that it is the prosecutor who conducts the preliminary investigation and who recommends the filing of a charge in court and under the Rules of Court, a case should not be filed in the absence of evidence. She noted that in the *Garcia* case there was an inconsistency in logic between the filing of the information in court and the plea bargain.

She quoted from the *Daan* ruling, "As regards plea bargaining during the pre-trial stage, as in the present case, the trial court's exercise of its discretion should neither be arbitrary nor should it amount to a capricious and whimsical exercise of discretion xxx. Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility; and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined by law, or to act at all in contemplation of law."

She noted that while the Rules of Court was promulgated by the Supreme Court, Congress has the power to amend laws that it may find unjust. She stressed that any agreement entered into must have the approval of the court. She reiterated that the High Court was very explicit in ruling that plea bargain is permitted only when it clearly appears that the prosecutor erred during the preliminary investigation and that there is no sufficient evidence to indict the accused, such that the trial would only result in a waste of time and resources of the government.

She underscored that in the case of General Garcia, there was *prima facie* evidence of guilt because he admitted ownership of several real properties, including a condominium unit at the Trump Tower in the United States, and motor vehicles here and abroad, millions in assets that a mere military comptroller can inconceivably acquire. It is for this reason, she said, that the government should not allow him to walk away from his crime, otherwise, criminals at the Muntinlupa Penitentiary who are similarly situated must also be afforded the same privilege of entering into plea bargains. She asserted that Congress did not enact the law on plunder only to be set aside and downgraded to direct bribery or money laundering at the instance of the prosecutors. She pointed out that in the case of *People vs. Estrada*, the Sandiganbayan allowed the accused, Charlie "Atong" Ang, to enter into a plea bargain agreement after he committed to cooperate with the government by naming the masterminds or the others involved in the crime.

Relative thereto, she opined that Garcia was only a fall guy because it is inconceivable that the loss of millions of pesos of the people's money over a period of five years went unnoticed by Angelo Reyes, Secretary of National Defense. She suspected that the Secretary was involved in the anomaly.

Senator Defensor Santiago stressed that General Garcia should at least provide information on the identities of those involved in the anomaly to show that he was acting in good faith and really wanted to help the government battle corruption. Allowing General Garcia to go scot-free with only P1.3 million in settlement, she believed that would be one of the most outrageous travesty of justice in the annals of human history and everyone would lose the right to criticize corruption in this country.

MANIFESTATION OF SENATOR SOTTO

Senator Sotto associated himself with the speech of Senator Ejercito Estrada, as well as Senator Defensor Santiago's manifestation.

REMARKS OF SENATOR ARROYO

Senator Arroyo noted that the *Garcia* case presented a policy question of whether the State should prioritize recovering the stolen money or sending a corrupt official like Garcia to jail, but with the plea bargain agreement, he noted that the government seemed more interested in recovering the stolen money and letting General Garcia go scot-free. He stressed that in a corruption case, the government is primarily obligated to send the accused to jail, with the recovery of the money being only an incidental result of the process. He suggested that the Executive clearly define its position and objectives. In the *Garcia* case, he stated that the government had failed because it had chosen to recover the money over a decision that would have sent General Garcia to jail if he was indeed guilty.

MANIFESTATION OF SENATOR CAYETANO (A)

Senator Cayetano (A) disclosed that he had filed a resolution that was referred to the Committee on the Accountability of Public Officers and Investigations to look into the plea bargain agreement. He underscored two points regarding the general policy framework of such agreement: first, there was no need for the government to enter into a compromise arrangement with General Garcia because in the forfeiture case involving P134 million worth of ill-gotten wealth, the Sandiganbayan declared General Garcia in default, with the Supreme Court affirming with finality, thereby depriving him of any right to present evidence against the forfeiture case; second, why the government entered into a plea bargain arrangement when the Sandiganbayan earlier denied Garcia's application to be released on bail after declaring that evidence against him was strong.

He stressed that the case has a tremendous implication to policy, and he urged Senator Guingona to look into the issue since its outcome would impact government policy on past, present and future cases.

MANIFESTATION OF SENATOR ESCUDERO

Senator Escudero pointed out that since all the unexplained wealth involved in the forfeiture case would have been confiscated in favor of the State because General Garcia was already declared in default, the General could neither offer a deal nor have the power to surrender any of the assets by way of a compromise agreement or plea bargain. He noted that the Office of the Solicitor General questioned the validity of the plea bargain because the Armed Forces of the Philippines, being the client of the prosecutors, had not been notified of the agreement entered into between the accused and the Office of the Ombudsman.

Senator Escudero believed that the case was a policy question of whether the government would prioritize punishing a thief over recovering a portion of the ill-gotten wealth and returning these to the government coffers. He believed that by instructing the Solicitor General to intervene and question the plea bargain arrangement, the Executive department clearly showed that it was not after a compromise arrangement but was bent on making Garcia account for his crime and letting his case serve as an example to discourage those who might want to follow his footsteps.

He acknowledged that the Office of the Ombudsman is an independent office over which the Executive has no control, thus it must also be asked of its position with respect to the prosecution of cases pending before the Sandiganbayan.

REMARKS OF SENATOR SOTTO

For his part, Senator Sotto believed that the government should show that it is fighting graft and corruption.

Referring to Senator Defensor Santiago's earlier manifestation, Senator Sotto inquired on the English translation of the Filipino word that had been used to describe Secretary Angelo Reyes. Senator Defensor Santiago said that the proper term would be "air head."

REFERRAL OF SPEECH TO COMMITTEES

Upon motion of Senator Sotto, there being no objection, the Chair referred the privilege speech of


Senator Ejercito Estrada, as well as the related manifestations, primarily to the Committee on Accountability of Public Officers and Investigations, and secondarily, to the Committee on Justice and Human Rights.

ADJOURNMENT OF SESSION

Upon motion of Senator Sotto, there being no objection, Senate President Pro Tempore Ejercito Estrada declared the session adjourned until three o'clock in the afternoon of Monday, January 24, 2011.

It was 4:31 p.m.

I hereby certify to the correctness of the foregoing.


EMMA LIRIO REYES
Secretary of the Senate

Approved on January 24, 2011