

## NBN-ZTE EXECUTIVE SUMMARY

After 13 hearings and 4 technical working groups, the Blue Ribbon Committee came up with the following indisputable facts:

This is a story of how people in high places—the relatives of the most powerful men and women in government took advantage of their relationships, either with their parent or spouse, to cajole the Executive into entering a national broadband contract that would obtain something our country did not need, and which is manifestly disadvantageous to the Filipino people. It is about the war of the most powerful, most influential and most organized syndicates in government, some members of which are public officers, who were at each other's throats because of an alleged double-cross. It is about the never-ending battle among the political elite for economic power, domination and control.

On the one hand, we have the former Comelec Chairman Benjamin S. Abalos who claims to have no less than the First Gentleman as his political sponsor. With him are Leo San Miguel, Ruben Reyes and General Quirino De La Torre. They are known as the Filipino group. They are the group that were lobbying for ZTE.

On the other hand, we have Mr. Jose De Venecia III, the son of then House Speaker Jose De Venecia, Jr. who had no less than former NEDA Director General Romulo Neri as well as Neri's confidante, Engineer Rodolfo Noel "Jun" Lozada, as staunch supporters of his BOT scheme. Mr. Jose De Venecia III claims that he is a whistleblower. However, there were many times in this scandal that he could have blown the whistle, but did not. He only started complaining when he did not get his way. Mr. Jose De Venecia III and his group were pushing for Amsterdam Holdings to capture the national broadband contract.

In the middle of it all, is a President who was unable to control and discipline her own men as they fight over their kickbacks. She kept her silence in the midst of the corruption—acquiescing and condoning the deed. The facts pointing to her may not be total, but the stink is perceived to have reached her office.

Because the NBN-ZTE controversy had reached fever pitch, the Philippine government had to cancel the contract. Former Comelec Chairman Benjamin Abalos also resigned from his position in the Constitutional Commission.

The NBN-ZTE scandal remains to be one of the most acrimoniously debated issues in the Philippines. If people look at the opportunists in this scandal, they will discover that they are all scavengers and predators ready to feast on the carrions of their preys. And when they cannot get their rightful share of the booty, one of them squeals and they start pointing fingers at another.

Everyone in this story stands accountable to the Filipino nation. This deal would have been kept hidden if all of the characters were able to "moderate their greed" and if ever they lived up to the saying that there is "honor among thieves." But, the situation got out of hand and the self-proclaimed loser, Mr. Jose De Venecia III, spilled the beans.

**RECOMMENDATIONS:**

**H.E. Gloria Macapagal- Arroyo**

- **The President's immunity from suit**

The Ombudsman is wrong in merely dismissing the case against the President on the mere pretext of presidential immunity from suit.

It is the duty of the Ombudsman to investigate impeachable officers. No exemption is provided in Section 22. What the Office should have done was to investigate and make findings for transmittal to the House, if an impeachment would have been warranted, rather than a blanket statement or exculpation because of supposed immunity. It is not for the Ombudsman to make a ruling as to immunity, but for the House to decide what to do once it receives the transmittal. Neither was it for the Ombudsman to say that there is no more impeachment process to be had because of the one-year bar. It is for the House to make that ruling. Private persons such as the First Gentleman could have been covered in this provision, as well.

Further, the Constitution in Article VII, Section 5 provides that the President "preserve and defend its Constitution, execute its laws, do justice to every man."

Also, Article VII, Section 17 of the Constitution provides that: "The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed."

Her acts in this case reveal that her performance of presidential duty has been wanting.

**FORMER COMELEC CHAIRMAN BENJAMIN S. ABALOS**

- **Violation of Section 3 (a) and (h) of Republic Act 3019 otherwise known as ANTI-GRAFT AND CORRUPT PRACTICES ACT**
- **Violation of Article 212 of the Revised Penal Code otherwise known as Corruption of Public Officials.**

**MR. JOSE "JOEY" DE VENECIA III**

- **Violation of Section 5 of Republic Act No. 3019, otherwise known as the ANTI-GRAFT AND CORRUPT PRACTICES ACT. Section 5. Prohibition on certain relatives.**

**FORMER SPEAKER JOSE DE VENECIA, JR.**

- **Violation of Section 5 of Republic Act 3019 otherwise known as ANTI-GRAFT AND CORRUPT PRACTICES ACT**
- **Violation of Republic Act No. 6713 Section 7 (d) otherwise known as Code of Conduct and Ethical Standards for Public Officials and Employees**

**FIRST GENTLEMAN JOSE MIGUEL ARROYO**

- Violation of Sections 4 (a) and 5 of Republic Act No. 3019, otherwise known as the **ANTI-GRAFT AND CORRUPT PRACTICES ACT.**

**SECRETARY LEANDRO MENDOZA, ASSISTANT SECRETARY LORENZO FORMOSO AND ASSISTANT SECRETARY ELMER SONEJA**

- **Violation of Section 3 (h) of RA 3019 otherwise known as the ANTI-GRAFT AND CORRUPT PRACTICES ACT.**

**ENGINEER RODOLFO NOEL LOZADA**

- **Violation of Sections 3 (a) and (h) of RA 3019 otherwise known as the ANTI-GRAFT AND CORRUPT PRACTICES ACT.**
  - **Violation of Civil Service Law, Book V Chapter 7 Section 54, Executive Order No. 292, Administrative Code of 1987**

**FORMER NEDA SECRETARY ROMULO NERI**

- **Violation of Section 3 (a) and (h) of RA 3019 otherwise known as the ANTI-GRAFT AND CORRUPT PRACTICES ACT.**

**SECRETARY JOSE "LITO" ATIENZA, JR. AND FORMER DEPUTY EXECUTIVE SECRETARY HUBERTO GAITE**

- **Violation Article 150 of the Revised Penal Code**

**ZTE Corporation**

An investigation must be done on the ZTE Corporation, as well, in order to determine its role in the whole mess. While we must, the government must, encourage the influx of foreign investors and corporations in order to contribute to employment, and wealth creation in the country, these corporations must be warned not to participate in illegal transactions. These companies must not contribute or encourage the corruption of public officers.



Republic of the Philippines

Senate

Pasay

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INFORMATION SHEET ON

**COMMITTEE REPORT NO. 743**

Short Title: **NBN-ZTE Scandal**

Filed On: NOV 11 2009

a) COMMITTEE (s) which reported out the bill(s)/resolution(s):

Primary: Committee on Accountability of Public Officers and Investigations (Blue Ribbon)

b) BILL(s) and/or RESOLUTION(s) reported out and taken into consideration.

Bill/Resolution/Others	Referred to the Ctte(s) on	Authors
1. <u>P.S. Res. No. 127</u>	<u>September 5, 2007</u>	<u>Sen. Aquilino Q. Pimentel Jr.</u>
2. <u>P.S. Res. No. 129</u>	<u>September 10, 2007</u>	<u>Sen. Panfilo M. Lacson</u>
3. <u>Privilege Speech entitled "Legacy of Corruption"</u>	<u>September 11, 2007</u>	<u>Sen. Panfilo M. Lacson</u>
4. <u>P.S. Res. No. 136</u>	<u>September 19, 2007</u>	<u>Sen. Miriam Defensor Santiago</u>
5. <u>P.S. Res. No. 144</u>	<u>September 24, 2007</u>	<u>Sen. Mar Roxas</u>
6. <u>Privilege Speech entitled "International Agreements in Constitutional Law: The Suspended RP-China (ZTE) Loan Agreement"</u>	<u>September 24, 2007</u>	<u>Sen. Miriam Defensor Santiago</u>
7. <u>Privilege Speech entitled "The Disappearance of NBN-ZTE Witness Rodolfo Lozada Jr."</u>	<u>February 6, 2008</u>	<u>Sen. Benigno Aquino III</u>

c) ACTION TAKEN by the Committee(s):

- Recommending Approval
- with amendments
- without amendments
- in substitution of \_\_\_\_\_
- in consolidation with \_\_\_\_\_
- Laid on the Table/Archived

d) COMMITTEE MEETINGS/PUBLIC HEARING CONDUCTED:

Date: <u>Sept. 18, 2007</u> Time: <u>9:30 a.m.</u> Venue: <u>Session Hall</u>	Date: <u>Sept. 20, 2007</u> Time: <u>2:30 p.m.</u> Venue: <u>Session Hall</u>	Date: <u>Sept. 26, 2007</u> Time: <u>9:30 a.m.</u> Venue: <u>Session Hall</u>	Date: <u>Sept. 27, 2007</u> Time: <u>9:30 a.m.</u> Venue: <u>Session Hall</u>
Date: <u>Oct. 25, 2007</u> Time: <u>9:30 a.m.</u> Venue: <u>Session Hall</u>	Date: <u>Nov. 20, 2007</u> Time: <u>10:00 a.m.</u> Venue: <u>Padilla Room</u>	Date: <u>Jan. 30, 2008</u> Time: <u>10:00 a.m.</u> Venue: <u>Padilla Room</u>	Date: <u>Feb. 8, 2008</u> Time: <u>10:00 a.m.</u> Venue: <u>Session Hall</u>
Date: <u>Feb. 11, 2008</u> Time: <u>10:30 a.m.</u> Venue: <u>Recto Room</u>	Date: <u>Feb. 18, 2008</u> Time: <u>10:00 a.m.</u> Venue: <u>Padilla Room</u>	Date: <u>Feb. 26, 2008</u> Time: <u>10:00 a.m.</u> Venue: <u>Recto Room</u>	Date: <u>March 11, 2008</u> Time: <u>10:00 a.m.</u> Venue: <u>Padilla Room</u>
Date: <u>Sept. 1, 2008</u> Time: <u>10:00 a.m.</u> Venue: <u>Session Hall</u>			

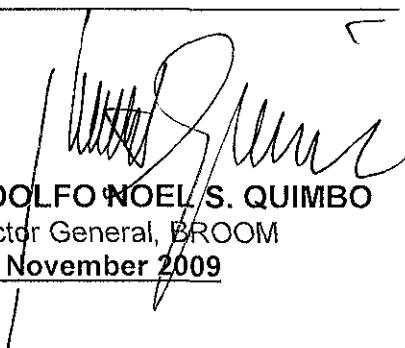
e) If this is a Substitute or Consolidated Bill, does it have any new REVENUE or APPROPRIATION Provision? \_\_\_\_\_

If yes, has the bill been referred to the Finance or Ways and Means Committee and what were its recommendations? \_\_\_\_\_

f) RELATED/COUNTERPART MEASURE from the HOUSE OF REPRESENTATIVES:  
Bill/Resolution No.                      Status in the House                      Status in the Senate  
\_\_\_\_\_

g) MEMBERS Who Failed to Sign the Report; and Reasons:  
Senators Ramon Bong Revilla Jr., Rodolfo G. Biazon, Loren B. Legarda, Manuel "Lito" M. Lapid, Anthony "Sonny" F. Trillanes IV, and Alan Peter "Compañero" S. Cayetano

h) Additional Remarks: \_\_\_\_\_

  
Submitted by: **RODOLFO NOEL S. QUIMBO**  
Director General, BROOM  
Date Submitted: 11 November 2009

SENATE

COMMITTEE REPORT NO. 743

Submitted by the Committee on Accountability of Public Officers and Investigations (*Blue Ribbon*) on NOV 11 2009

Re: Proposed Senate Resolution No. 127, Proposed Senate Resolution No. 129, Privilege Speech of Sen. Panfilo M. Lacson titled "Legacy of Corruption," Proposed Senate Resolution No. 136, Privilege Speech of Sen. Miriam Defensor Santiago titled "International Agreements in Constitutional Law: The Suspended RP-China (ZTE) Loan Agreement," Proposed Senate Resolution No. 144 and Privilege Speech of Sen. Benigno Aquino III titled "The Disappearance of NBN-ZTE Witness Rodolfo Lozada Jr."

Recommending its approval.

Sponsor: Senator Richard J. Gordon

MR. PRESIDENT:

The Committee on Accountability of Public Officers and Investigations (*Blue Ribbon*) has conducted an inquiry, in aid of legislation, on the following referrals:

Proposed Senate Resolution No. 127 introduced by Senator Aquilino Q. Pimentel, Jr., entitled:

**A RESOLUTION DIRECTING THE BLUE RIBBON COMMITTEE AND THE COMMITTEE ON TRADE AND INDUSTRY TO INVESTIGATE, IN AID OF LEGISLATION, THE CIRCUMSTANCES LEADING TO THE APPROVAL OF THE BROADBAND CONTRACT WITH THE ZTE AND THE ROLE PLAYED BY THE OFFICIALS CONCERNED IN GETTING IT**

**CONSUMMATED, AND TO MAKE RECOMMENDATIONS TO HALE TO THE COURTS OF LAW, THE PERSONS RESPONSIBLE FOR ANY ANOMALY IN CONNECTION THEREWITH AND TO PLUG LOOPHOLES, IF ANY, IN THE BOT LAW AND OTHER PERTINENT LEGISLATIONS**

**Proposed Senate Resolution No. 129**, introduced by Senator Panfilo M. Lacson, entitled:

**RESOLUTION DIRECTING THE COMMITTEE ON NATIONAL DEFENSE AND SECURITY TO CONDUCT AN INQUIRY IN AID OF LEGISLATION INTO THE NATIONAL BROADBAND NETWORK CONTRACT TO THE CHINESE FIRM ZHONG XING TELECOMMUNICATIONS EQUIPMENT COMPANY LIMITED (ZTE CORPORATION), WITH THE END VIEW OF PROVIDING REMEDIAL LEGISLATION THAT WILL FURTHER PROTECT OUR NATIONAL SOVEREIGNTY AND TERRITORIAL INTEGRITY**

**Proposed Senate Resolution No. 136**, introduced by Senator Miriam Defensor Santiago, entitled:

**RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE LEGAL AND ECONOMIC JUSTIFICATION OF THE NATIONAL BROADBAND NETWORK (NBN) PROJECT OF THE GOVERNMENT**

**Proposed Senate Resolution No. 144**, introduced by Senator Mar Roxas, entitled:

**A RESOLUTION URGING PRESIDENT GLORIA MACAPAGAL ARROYO TO DIRECT THE CANCELLATION OF THE ZTE CONTRACT.**

**Privilege Speech of Sen. Panfilo M. Lacson** delivered on 11 September 2007, entitled:

**"LEGACY OF CORRUPTION"**

**Privilege Speech of Sen. Miriam Defensor Santiago** delivered on 24 September 2007, entitled:

**"INTERNATIONAL AGREEMENTS IN CONSTITUTIONAL LAW: THE SUSPENDED RP-CHINA (ZTE) LOAN AGREEMENT,"**



and the **Privilege Speech of Sen. Benigno Aquino III** delivered on 6 February 2008, entitled:

***"THE DISAPPEARANCE OF NBN-ZTE WITNESS RODOLFO LOZADA JR."***

The Committee has the honor to submit its Report, after conducting an inquiry, to the Senate.

Recommending the adoption of the recommendations contained herein.

## **COMMITTEE REPORT**

### **1. INTRODUCTION**

[Y]ou know you are not a victim. Don't represent yourself as a victim here. All the Filipino people are victims.

**Senator Richard J. Gordon to Mr. Jose de Venecia III**  
TSN: GUINHAWA II-3 September 1, 2009, 2:59 p.m., p. 4.

[I]t was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair, we had everything before us, we had nothing before us, we were all going direct to heaven, we were all going direct the other way - in short, the period was so far like the present period, that some of its noisiest authorities insisted on its being received, for good or for evil, in the superlative degree of comparison only.

**Charles Dickens, A Tale of Two Cities, English Novelist (1812-1870).**

The year is 2006 and China is a growing superpower. We want to be friends with her. She has so much excess liquidity that she is willing to lend money at practically bargain basement rates. We seek her friendship, we seek her investments. This is not without reason: for she is our close neighbour and this indeed is going to be China's century.



It was also nearing the 2007 midterm elections. It was a good time to make money or to raise money for the campaign; it was also a period to make more money with very few people noticing. And for the corrupt, it was the best time to make big money from government transactions.

This was the prevailing atmosphere when the most powerful and influential in government decided to broker the National Broadband Network deal with the Philippine government. There are no saints here. And the whole scene is a stink fest.

This is a story of how people in high places: the relatives of the most powerful men and women in government took advantage of their relationships, either with their parent or spouse, to cajole the Executive into entering a contract that would obtain something our country did not need, and that is manifestly disadvantageous to the Filipino people. It is about the war of the most powerful, most influential and most organized syndicates in government, some members of which are public officers, who were at each other's throats because of an alleged double-cross. It is about the never-ending battle among the political elite for economic power, domination and control.

On the one hand, we have the former Comelec Chairman Benjamin S. Abalos who claims to have no less than the First Gentleman as his political sponsor. With him are Leo San Miguel, Ruben Reyes and General Quirino De La Torre. They are known as the Filipino group.

On the other hand, we have Mr. Jose De Venecia III, the son of then House Speaker Jose De Venecia, Jr. who had no less than former NEDA Director General Romulo Neri as well as Neri's confidant, Engineer Rodolfo Noel "Jun" Lozada, as

staunch supporters of his BOT scheme. Mr. Jose De Venecia III claims that he is a whistleblower. However, there were many times in this scandal that he could have blown the whistle but he did not. He only started complaining when he did not get his way.

This, too, is the story of a son, taking advantage of a parent's power and influence in order to capture to himself a most lucrative government contract. This is not, unfortunately, the first offspring of a powerful official who abused their stations. We have in our history tales of sons (and daughters) who have in one way or another, used for their own benefit the power, popularity, or charisma of their progenitors. It is indeed sad that we, as a people, still allow this to happen.

In the middle of it all, is a President who was unable to control and discipline her own men as they fight over their kickbacks. She kept her silence in the midst of the corruption- acquiescing and condoning the deed. The facts pointing to her may not be total, but the stink is perceived to have reached her office.

If people look at the opportunists in this scandal, they will discover that they are all scavengers and predators ready to feast on the carrions of their preys. And when they cannot get their rightful share of the booty, one of them squeals and they start pointing fingers at another.

Everyone in this story stands accountable to the Filipino nation. This deal would have been perfect if all of the characters were able to "moderate their greed" and if ever they lived up to the saying that there is "honor among thieves." But, the situation got out of hand and the self-proclaimed loser, Mr. Jose De Venecia III, spilled the beans.



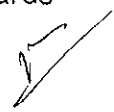
Hence, this Investigation and this Report.

### **1.1. PRELIMINARIES**

After 13 hearings, 4 Technical Working Groups and two Supreme Court rulings, *Neri vs. Senate Committees* (G.R. No. 180643, 25 March 2008 and 04 September 2008), the Committee on Accountability of Public Officers and Investigations (Blue Ribbon Committee) is submitting its Committee Report on the NBN-ZTE Controversy.

The NBN-ZTE investigations have yielded more than enough information to: propose remedial legislation to curb graft and corruption; discovered the culpability of public officers and private individuals who aided and abetted the commission of malfeasance, misfeasance and nonfeasance in government; and, unravelled enough data to paint a picture of how the most powerful and influential in public office sought to devour prized contracts in government to the detriment of the Filipino people.

The main task of the Blue Ribbon Committee is to investigate in aid of legislation. Fact-finding which should lead to prosecution is the task of another body, the Ombudsman. While the Ombudsman already released the results of its Investigation on August 27, 2009, we will still submit the findings of this Committee to aid them towards a further investigation.



The Ombudsman released two Joint Resolutions. First, on the Administrative Case against Romulo Neri; and Second, on the Criminal Case finding probable cause against Benjamin Abalos and Romulo Neri for violation of Section 3 (h) of RA 3019<sup>1</sup> and against Benjamin Abalos for violating Article 212<sup>2</sup> of the Revised Penal Code for Corruption of Public Officials.

The timing of the release is suspect since both Joint Resolutions were dated April 21, 2009 but they were released only on August 27, 2009 at the height of the impeachment proceedings against Ombudsman Merceditas Gutierrez, and before the reopening of this investigation on September 1, 2009.

Curiously, not only the Ombudsman's Joint Resolutions are wanting in its findings, 90% of the bases of the Resolutions are based on the Transcript of Stenographic Notes of these investigations and submissions given to this Committee. It makes us speculate that this is to pre-empt the Committee Report. In spite of that, we will show the Ombudsman how to conduct a proper, complete and impartial investigation through this Report.

The task of the Committee is finished. The story has reached its end. Now, conclusions can be drawn.

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<sup>1</sup> **Section 3. Corrupt practices of public officers.** – In addition to acts or omission of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(h) Directly or indirectly becoming interested having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by an law from having any interest.

<sup>2</sup> **Article 212. Corruption of public officials.** - The same penalties imposed upon the officer corrupted, except those of disqualification and suspension, shall be imposed upon any person who shall have made the offers or promises or given the gifts or presents as described in the preceding articles.

This report of the Blue Ribbon Committee will concentrate on the malfeasance, misfeasance and nonfeasance in office by officers and employees of government, its branches, agencies, subdivisions and instrumentalities as well as the provision of the Constitution on nepotism in relation to the NBN–ZTE scandal.

The task of the Committee is not to prosecute or convict the characters in this scandal. The task of the Committee is to investigate in aid of legislation and oversight. Thus, the findings of the Committee will be submitted to the body, the Ombudsman for it to do its constitutional role of further investigation and if warranted, prosecution.

As previously agreed upon by the Senate Blue Ribbon Committee, Committee on Trade and Commerce and Committee on National Defense and Security (collectively, the “Senate Joint Committees”), there will be three separate Committee Reports focusing on the following issues:

- The Blue Ribbon Committee to focus on the issue of accountability;
- The Committee on Trade and Commerce to focus on the need for the project and the alleged overprice; and
- The Committee on National Defense and Security to focus on the security aspect of the NBN–ZTE deal.

This report is divided into six (6) parts. The first part consists of the Introduction, which tackles the Preliminaries of the Report; enumerates the dates and guests of the hearings and the technical working groups; and the Narrative. The second part dwells on the major characters of the investigation and the contents of their testimonies. The third part will examine the alleged kidnapping of witness Mr. Rodolfo Noel “Jun” Lozada. The fourth part contains the Findings of the Blue Ribbon Committee which deals with the possible malfeasance, misfeasance and nonfeasance that may have been



committed. The fifth part presents the Recommendations of the Committee and proposed law reform. Finally, the sixth and last part is the Conclusion.

## **1.2. HEARINGS AND TECHNICAL WORKING GROUPS OF THE NBN-ZTE INVESTIGATIONS**

The 14<sup>th</sup> Congress conducted 13 hearings and 4 Technical Working Groups on the following dates with the following guests:

### **1.2.1. THE HEARINGS**

#### **September 18, 2007**

**Mr. Jose de Venecia III**, *President*, Amsterdam Holdings, Inc. (AHI); **Mr. Ramon P. Sales**, *Former Chairman*, Commission on Information and Communications Technology (CICT); **Iloilo Vice Governor Rolex T. Suplico**; **Mr. Jarius Bondoc**, *Columnist*, Philippine Star.

#### **September 20, 2007**

**Mr. Jose de Venecia III**; **Mr. Jarius Bondoc**; **Secretary Leandro R. Mendoza**, Department of Transportation and Communication (DOTC); **Secretary Margarito Teves**, Department of Finance (DOF); **Secretary Peter Favila**, Department of Trade and Industry (DTI); **Assistant Secretary Elmer Soneja**, DOTC; **Assistant Secretary Lorenzo Formoso III**, DOTC; **Vice-Governor Rolex T. Suplico**; **Atty. Frederick Belandres**, DOTC Lawyer; **Atty. Sergio Apostol**, Office of the Presidential Legal Counsel; **Undersecretary Ricardo Paras III**, Department of Justice (DOJ); **Secretary Rolando Andaya**, Department of Budget and Management (DBM).



**September 26, 2007**

**Mr. Jose de Venecia III; Secretary Leandro R. Mendoza; Chairman Romulo L. Neri, Commission on Higher Education (CHED), and Former Director General, National Economic and Development Authority (NEDA); Chairman Benjamin S. Abalos, Commission on Elections (COMELEC); Assistant Secretary Lorenzo G. Formoso; Vice-Governor Rolex T. Suplico; Mr. Jarius Bondoc; Mr. Ramon P. Sales; Mr. Ruben Reynoso, Director, CHED; Mr. Tan.**

**September 27, 2007**

**Assistant Secretary Lorenzo G. Formoso; Professor Raul Fabella, UP School of Economics; Professor Emmanuel de Dios, UP School of Economics; Atty. Josefina Lichauco, Former Secretary, DOTC.**

**October 25, 2007**

**Mr. Jose de Venecia III; Mr. Jarius Bondoc; Vice-Governor Rolex T. Suplico.**

**November 20, 2007**

**Mr. Ernesto Garcia, Managing Director, AHI; Atty. Rodolfo Salalima, Globe Telecom, Inc.; Atty. William Pamintuan, Senior Vice President, DIGITEL; Ramon Isberto, Smart Communications, Inc.; Mr. Eric Español, Smart Communications, Inc.; Mr. Joevel Rivera, Bayantel; Atty. Raul Lambino, Lambino Law Firm.**

**January 30, 2008**

**Mr. Jarius Bondoc.**

**February 8, 2008**

**Engineer Rodolfo Noel I. Lozada, President and CEO, Philippine Forest Corporation.**



**February 11, 2008**

Engineer Rodolfo Noel I. Lozada Jr.; Mr. Jose De Venecia III; Mr. Jarius Bondoc; Deputy Executive Secretary Manuel Huberto B. Gaité; Secretary Jose L. Atienza, Department of Environment and Natural Resources (DENR); Mr. Alfonso G. Cusi, General Manager, Manila International Airport Authority (MIAA); Mr. Octavio Lina, Assistant General Manager, MIAA; P/Gen Avelino I. Razon Jr., Chief, Philippine National Police (PNP); Mr. Michael T. Defensor, Director, PETRON, and former Chief of Staff, Office of the President; Sr. Supt. Paul Mascariñas, PNP-Police Security and Personnel Office (PSPO); Atty. Antonio R. Bautista, Bautista & Partners Law Offices.

**February 18, 2008**

Engineer Rodolfo Noel I. Lozada Jr.; Ms. Carmen Lozada; Bro. Felipe C. Belleza Jr., FSC, De La Salle Greenhills.

**February 26, 2008**

Engineer Rodolfo Noel I. Lozada Jr.; Mr. Jose de Venecia III; Mr. Jarius Bondoc; Deputy Executive Secretary Manuel Huberto B. Gaité; Mr. Angelito Banayo, Office of Senator Lacson; Mr. Dante Madriaga; Atty. Gary Jimenez, Office of Sen. Madrigal.

**March 11, 2008**

Engineer Rodolfo Noel I. Lozada Jr.; Mr. Jose de Venecia III; Mr. Dante Madriaga; Mr. Jarius Bondoc; Sec. Peter B. Favila; Cpl. Ronnilo R. Ramilla; Mr. Ramon P. Sales; Mr. Leo San Miguel; Atty. Felisberto L. Verano, Verano Law Office





September 1, 2008

**Mr. Jose de Venecia III**, *President*, Amsterdam Holdings, Inc. (AHI); **Engineer Rodolfo Noel I. Lozada**, *Former President and CEO*, Philippine Forest Corporation; **Mr. Ramon P. Sales**, *Former Chairman*, Commission on Information and Communications Technology (CICT); **Professor Benjamin Diokno**, UP School of Economics

### 1.2.2. THE TECHNICAL WORKING GROUPS

October 15, 2007


**Mr. Domingo A. Reyes, Jr.**, *Vice Chairman*, Bids and Awards Committee (BAC) for Communication; **Ms. Rebecca S. Cacatian**, *Member*, BAC; **Mr. Geronimo V. Quintos**, *Member*, BAC; **Asec. Elmer A. Soneja**, DOTC; **Ms. Lydia S. Malvar**, DOTC; **Mr. Ricardo C. Diaz**, DOTC; **Mr. Idelfonso Patdu**, DOTC.

October 16, 2007

**Mr. Jose De Venecia III**, AHI.

December 06, 2007

**Director Edgardo Cabarios**, National Telecommunications Commission (NTC); **Mr. Joevel Rivera**, *Vice President*, Bayantel; **Atty. Joel D. Peneyra**, *Assistant Vice President*, Bayantel; **Mr. Alexander Bengzon**, *Head*, Regulatory Policy Department, GLOBE TELECOM; **Engr. Emmanuel Estrada**, *Head*, Technology Policy Department, GLOBE TELECOM; **Atty. Roy Ibay**, *Head*, Legal Affairs, SMART; **Mr. Alfredo B. Carrera**, PLDT.



February 15, 2008

P/S Supt. Petronio A. Retirado, PNP-PSPO; P/Supt. Melchor H. Ysulat, PNP-PSPO; Atty. Ronaldo P. Ledesma, Bureau of Immigration (BI); Atty. Norman Tansingco, BI; Atty. Edgardo L. Mendoza, BI; AP/Capt. Teotimo M. Cruz, MIAA Airport Police; AP/Capt. Adrian C. Tecson, MIAA Airport Police.

### **1.3. THE NARRATIVE OF THE NBN-ZTE SCANDAL**

*“There is nothing hidden that will not be revealed, and nothing secret that will not be known and come to light.” (Luke 8:17)*

Based on the evidence and testimony submitted to us, the following are the indisputable facts<sup>5</sup>:

The NBN-ZTE controversy can be traced from the dinner in the Dasmariñas Home of then Speaker Jose De Venecia, Jr. That dinner was attended by His Excellency Li Jinjun, Ambassador to the Philippines of People’s Republic of China. In that dinner, he was joined by Secretary Peter B. Favila, NEDA Secretary Romulo L. Neri, Department of Finance Secretary Margarito B. Teves and Department of Energy Secretary Raphael P.M. Lotilla. There, a Framework of Cooperation between the Government of the Republic of the Philippines and the People’s Republic of China was conceived.

On March 1, 2006, Secretary Peter B. Favila, NEDA Secretary Romulo L. Neri, Department of Finance Secretary Margarito B. Teves, and Department of Energy Secretary Raphael P.M. Lotilla wrote a letter to His Excellency, Li Jinjun, Ambassador, People’s Republic of China. This letter was endorsed by then Speaker Jose De Venecia.

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<sup>5</sup> Senator Gordon’s PowerPoint presented on September 1, 2009 is attached as Annex A.

The letter thanks Ambassador Li Jinjun for his presence "last January 9, 2006" at the residence of Speaker Jose De Venecia to discuss the highlights of a possible framework for economic cooperation backed by indicative projects between the Philippines and the People's Republic of China.

Major items discussed and brought forward by both sides during the said meeting were:

1. A plan to hold an RP-China Business Economic Forum from May 24-27, 2006. Conference will be hosted by the Philippine Secretary of Trade and Industry, Secretary Peter Favila and his counterpart PROC Minister of Commerce Bo Xilai.
2. An objective to plan a business program for China to invest, and the Philippines to develop business/economic and tourism opportunities totalling about US\$32-billion.
3. Areas of investment includes – a) Housing needs of the Philippines; b) Northrail Project; c) Investment in Nonoc Nickel Mines and Samar Bauxite Mines; d) Public works and infra projects; e) Energy and Power Projects; f) Industrial Parks/economic zones; g) Tourism Projects; h) Agriculture Projects; i) Fisheries Projects and j) Textile Mill/Garment Factories.

**There is no mention of any Broadband deal during the meeting.**

It is worth noting that for the lending operations, the Philippine government prefers project financing mode whereby, as much as possible, the loan payments will come from project cash flows. This means that there will be no government guarantee.

On **June 5, 2006**, the Government of the Republic of the Philippines (GRP) entered into a Memorandum of Understanding with the People's Republic of China (PROC) for the establishment of a Philippine–China Economic Partnership. Then NEDA Secretary Romulo L. Neri and DTI Secretary Peter B. Favila signed for the Philippines while Minister of Commerce Bo Xilai signed for China.

The MOU came about when the Ministry of Commerce of China and the Department of Trade and Industry of the Philippines jointly hosted the China-Philippines Economic Partnership Forum on June 5-6, 2006 in Manila. In attendance during the forum were China's Minister of Commerce Bo Xilai, Speaker Jose De Venecia Jr., DTI Secretary Peter Favila, DENR Secretary Angelo Reyes and NEDA Secretary Romulo L. Neri.

The MOU contained the following:

1. Promote the development of Chinese-Filipino trade and economic relations;
  2. Sign the framework agreement to enable the establishment of the Philippines-China economic partnership; and,
  3. The proposed framework will cover the following:
    - (a) Agriculture and fishery, Housing construction, Public works and infrastructure, Tourism, Mining, Energy and power, Industrial parks, Rehabilitation and investments in textile mills/garments factories, Container inspection machines, **ICT-based education**;
    - (b) Establishing a functional working mechanism under the Joint Trade Committee (JTC) to substantiate the above-mentioned cooperation; and
    - (c) Making mutually acceptable financing arrangements to substantiate the above mentioned cooperation.
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Please note that the MOU between the Philippines and China did not mention any Broadband network. It only mentioned an ICT-based education.

On July 12, 2006, another Memorandum of Understanding was executed this time between the Philippines and ZTE International Investment Limited (ZTE). Department of Trade and Industry Secretary Peter J. Favila represented and signed for the Philippines and ZTE International Investment Limited President Yu Yong represented and signed for ZTE International Investment Limited. Included in that Memorandum of Understanding are provisions regarding investments in a nationwide government broadband communication infrastructure project and the establishment of an information technology school and training center.

**The investment activities include the following:**

1. Nationwide Government Broadband Communication Infrastructure Project;
2. Establishment of Information Technology School and Training Center;
3. Exploration, Development and Operation of Mining Areas in North Davao;
4. Exploration, Development and Operation of Mining Areas in Diwalwal; and
5. Establishment of a Special Economic Zone in the Davao area.

**This is the first time that Broadband appears in an Agreement.**

The following are the Terms of the Agreement between the Philippines and ZTE:

***Strategic Commitments:***

The capital and operating costs for the development and implementation of the Investment Projects, in the amount of US\$4 Billion, shall be funded and fully provided for by ZTE International. ZTE International shall provide the technical know-how and specialized technologies for the development and implementation of the Investment Projects.

The GRP, particularly the DOF, DTI, DILG, DENR, DOTC, DBM, NEDA and all other Government Agencies and Offices, shall assist ZTE



International in the development and implementation of the Investment Project.

Subsequently, on **July 24, 2006**, President Gloria Macapagal Arroyo in her State of the Nation Address (SONA) mentioned the Cyber Corridor Initiative of her government.

She said:

We will enhance the competitive advantage of the natural "super regions" of the Philippines: North Luzon Agribusiness Quadrangle, Metro Luzon Urban Beltway, Central Philippines, Mindanao and the Cyber Corridor."

**"The Cyber Corridor will boost telecommunications, technology and education.** The corridor runs the length of all super regions, from Baguio to Cebu to Davao. x x x (I)n this corridor, the English and Information Communication Technology Skills of the Youth give them a competitive edge in call centers and other business process outsourcing. <sup>6</sup> (emphasis supplied)

President GMA mentions a Cyber Corridor but not broadband.

Allegedly, because of this statement of the President, AHI proponent, Jose "Joey" de Venecia III, the son of then Speaker of the House of Representatives Jose de Venecia, Jr. submitted an unsolicited proposal to the NEDA.

On **August 7, 2006**, ZTE submitted with the Commission on Information and Communications Technology (CICT) their proposal for the NBN Project.

Based on the testimony of Engineer Jun Lozada, it was also on September 2006 when former NEDA Secretary Neri asked him to assist NEDA in evaluating the national broadband network project.

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<sup>6</sup> President Gloria Macapagal-Arroyo, State of the Nation, 24 July 2006.

Engineer Rodolfo Noel “Jun” Lozada was a very good friend of NEDA Chairman Romulo Neri. Their friendship goes way back even when Chairman Neri was still with the Department of Budget Management (DBM). In fact, Jun Lozada even said that, “When Secretary Neri was in DBM, I drafted a memo for him directing all government agencies to submit their telecom expenses classified into fixed, mobile and data.”<sup>7</sup>

On **September 4 and 6, 2006**, ZTE sent letters to CICT regarding clarification on the project proposal and incorporating the suggestions of CICT.

The following are the changes suggested by CICT as included in the letters dated September 4 and 6, 2006:

1. Accommodation for more remote education coverage to include high schools.
2. Optimization from the original video conferencing based real-time interactive remote education solution to an Internet-based multimedia remote education solution.
3. Provision for an extended operation and maintenance.

As early as **September 8, 2006**, Export-Import Bank of China (“China Exim Bank”) already wrote to NEDA informing them that they are ready to exchange opinions and explore cooperation opportunities after China EXIMBANK and ZTE held discussions resulting in the conclusion that they may be available for transactions on the NBN project.

On **October 10, 2006**, the unsolicited Build-Own-Operate (BOO) proposal of AHI was first submitted to National Economic Development Authority (NEDA) by its private

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<sup>7</sup> TSN, Aliccatimbang V-I, February 8, 2008, 10:53 a.m., pp. 6-7.

proponent Mr. Jose de Venecia III as Chairperson of the Bandila Communications Holdings, Inc. in partnership with private Chinese enterprises and institutions.

NEDA transmitted the proposal to DOTC. DOTC Assistant Secretary Soneja told Mr. Jose de Venecia III to submit the final version of the proposal not later than February 26, 2007.

It is worth noting that Mr. Jose de Venecia III's unsolicited Build-Own-Operate (BOO) proposal of AHI was first submitted to NEDA and not to DOTC- the implementing agency.

On the one hand, Amsterdam Holdings, Inc. was incorporated on August 5, 2002. It has an authorized Capital Stock of P 5 Million. Its paid-up capital is P 312,800. Mr. Jose de Venecia III admits that he is the majority shareholder of AHI.<sup>8</sup> Mr. Jose de Venecia III also admits that he is one of the beneficial owners of AHI.<sup>9</sup>

On the other hand, Bandila Communications Holdings, Inc., has an authorized capital stock of P 40 Million with paid-up capital of P 10 Million. It was incorporated on July 14, 2006,<sup>10</sup> two days after the MOU between the Philippines and ZTE was signed.

NEDA passed on the proposal to DOTC. DOTC Assistant Secretary Soneja told Mr. Jose de Venecia III to submit the final version of proposal not later than Feb. 26, 2007.

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<sup>8</sup> Affidavit of Jose De Venecia, III, par. 1, September, 10, 2007.

<sup>9</sup> TSN, Lpamorca 1-2, September 18, 2007, 10:33 a.m. p. 6.

<sup>10</sup> Securities and Exchange Commission, Articles of Incorporation, Bandila Communications Holdings Corporation.



It is notable that the unsolicited Build-Own-Operate (BOO) proposal of AHI was submitted to NEDA first and not to DOTC.

On **October 17, 2006**, NEDA Secretary Romulo Neri wrote to Mr. Jose de Venecia III, Chairman of Bandila Communications Holdings, Inc., regarding the latter's proposed Orion Network Project. Secretary Neri expressed support for the objectives of the project.

This letter is contrary to the statements that Secretary Neri in a Memorandum dated September 20, 2007 submitted to the Blue Ribbon Committee on September 26, 2007. There, he said:

4. The NEDA-ICC in its project review process observes and applies the presumption of regularity in the performance of functions by the implementing agency with respect to those responsibilities vested in it by law.

5. Moreover, ICC likewise presumes that the expertise and specialized knowledge with respect to various aspects of the proposed project reside in the implementing agency. Hence, in the review process, **the inter-agency ICC does not substitute its judgment for that of the implementing agency except where the responsibility and expertise reside in the ICC or its member agencies.**<sup>11</sup>

On **October 23, 2006**, CICT formally endorsed to NEDA for further evaluation and action the NBN Communications Infrastructure Project proposal of ZTE Corporation.

On **October 28, 2006**, the national broadband network was officially endorsed to NEDA by CICT as a government project, not as a Build-Operate-and-Transfer (BOT) project.

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<sup>11</sup> Romulo Neri, Memorandum, September 20, 2007.

This October 28, 2006 endorsement is being denied by former CICT Chairman Sales in the 13<sup>th</sup> and last hearing. However, Engineer Jun Lozada alleges that this endorsement came from Assistant Secretary Lorenzo G. Formoso of DOTC, the head of TELOF.<sup>12</sup>

On **October 29 2006**, President Gloria Macapagal-Arroyo, First Gentleman Jose Miguel Arroyo and Speaker Jose De Venecia go to Hong Kong.

On **October 30, 2009**, Comelec Chairman Abalos goes to Hong Kong.

Travel documents also indicate that Engineer Jun Lozada was also in Hong Kong from **October 29 – November 6, 2006**.<sup>13</sup>

On **November 2, 2006**, President Gloria Macapagal-Arroyo and the First Gentleman Jose Miguel Arroyo, together with House Speaker Jose De Venecia, and the then Comelec Chairman, Benjamin Abalos played golf and had lunch with ZTE officials at the ZTE Headquarters in Shenzhen, China.<sup>14</sup>

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<sup>12</sup> TSN: Solidum I-2 September 1, 2009 12:49 p.m., pages 6-7.

<sup>13</sup> Bureau of Immigration and Deportation Records, Rodolfo Noel Jun Lozada.

<sup>14</sup> Presidential Decree No. 46 (1972) makes it punishable for Public Officials to receive, and for private persons to give, gifts on any occasion, including Christmas.

It should also be noted that Section 7(d) of RA 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees) provides: “Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by or any transaction which may be affected by the functions of their office.”

On **November 21, 2006**, then Presidential Chief of Staff Michael Defensor, inquired from China's Minister of Commerce Bo Xilai if they were interested in arranging the financial facility and technical support of the NBN project.

Also on **November 21, 2006**, during a meeting of the NEDA, President Arroyo supposedly laid down the following conditions regarding the NBN project:

- The NBN should be undertaken via a BOT scheme;
- It should be paid for by private funding;
- There should be no government subsidy or outlay for the project;
- A "pay as you use" instead of a "take or pay" scheme should be utilized; and
- The result of the undertaking should be a reduction in government telecommunication expenses.<sup>15</sup>

Although the Senate Joint Committees had requested for the minutes of the NEDA meeting and other pertinent documents during the ZTE hearings of September and October 2007, the NEDA refused to submit these on the basis of "executive privilege." Senators Mar Roxas and Benigno "Noy" Aquino III filed with the Supreme Court on October 26, 2007, a petition to clarify the bounds of executive privilege and whether it was applicable to that situation. The case remains pending.

Also, it is quite disturbing that despite the President's insistence that the Government Broadband Network be undertaken via BOT (November 21, 2006 NEDA Meeting), the Presidential Chief of Staff on the same day writes to China's Minister of Commerce Bo Xilai if they are interested in providing a "financial facility and tech support for NBN project."

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<sup>15</sup> TSN, CFDRIZ IX-1, September 20, 2007, 4:23 p.m., pp. 5-6.

On **December 2, 2006**, China's Ambassador to the Philippines Li Jinjun informed the Philippine government, through then Presidential Chief of Staff Mike Defensor, that their government would provide a Preferential Buyer's Credit financing support through China Exim Bank. China also designated ZTE Corporation as the prime contractor.

In the testimony of former Comelec Chairman Abalos, he said: "It was probably this letter that JDV learned about the situation... This was in response to the letter of Sec. Defensor where there has been an appeal for the Chinese Government to finance the project."<sup>16</sup>

Some time also in **December**, Mr. Jose de Venecia III alleges that Comelec Chairman Benjamin Abalos offered him a technical partnership with ZTE in exchange for US\$ 10,000,000.00.

On **December 4, 2006**, Ernesto Garcia, Managing Director of AHI wrote a letter addressed to Secretary Mendoza stating that: "The Speaker's Office had instructed me to forward the attached material to your office, ASAP."<sup>17</sup>

The aforesaid "material" was a draft letter to be signed by Secretary Mendoza endorsing the rival AHI-constructed NBN project to the NEDA.

On **December 5, 2006**; Mr. Jose de Venecia III filed his AHI Proposal with the DOTC. This is 2 months after Secretary Neri's endorsement that Mr. Jose de Venecia III files his application with DOTC.

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<sup>16</sup> TSN, HSGayapa VI-I, September 26, 2007, 10:39 a.m., p.3.

<sup>17</sup> TSN, Cisotto V-2 September 26, 2007 , 1:33 p.m., p. 4.

On **December 8, 2006**, CICT informs NEDA of AHI proposal and that the former cannot continue with its evaluation because it is incomplete.

On **December 27, 2006**, Mr. Jose de Venecia III accompanied former Comelec Chairman Benjamin Abalos to Shenzhen, China where Chairman Abalos allegedly demanded from ZTE the balance of the latter's commission from the project as well as the share of the Speaker and the President.<sup>18</sup>

On **January 3, 2007**, NEDA requests DOTC to take the lead in the preparation and implementation of the Cyber Corridor Projects.

Also, **sometime in January 2007**, former Comelec Chairman Abalos said to NEDA Secretary Neri: "Sec, may 200 ka dito."<sup>19</sup>

Secretary Neri said he mentioned such conversation to the President, where the President told him not to accept the bribe.<sup>20</sup>

On **January 18, 2007**, former Comelec Chairman Benjamin Abalos allegedly called Engineer Jun Lozada and berated and cursed him over the phone since Chairman Abalos was accusing Mr. Jose de Venecia III and Jun Lozada of double-crossing him. Chairman Abalos was claiming that he has in his possession several wiretapped conversations of Mr. Jose de Venecia III and Engineer Jun Lozada. After this conversation, Engineer Jun Lozada allegedly distanced himself from the project.

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<sup>18</sup> Mr. Jose de Venecia III admitted in the September 1, 2009 hearing that he also subsequently met with ZTE officials in Diamond Hotel.

<sup>19</sup> TSN: GUINHAWA III-1, September 26, 2007, 10:09a.m., p.8; ADMasicap IV-1, September 26, 2007, 10:19a.m., p.9.

<sup>20</sup> TSN, L. Sapida II-5, September 26, 2007, 7:30 p.m., p.4; BRHGonzalies VII-I, September 26, 2007, 10:49 a.m., p. 6.

**Sometime in February 2007** at the height of the campaign for national elections, at a reconciliatory meeting at Wack Wack Golf and Country Club in Mandaluyong, the First Gentleman allegedly shouted at Mr. Jose de Venecia III to “back-off.”

On **February 13, 2007**, the Office of the President Issues EO 603 reverting the supervision and control of the Telecommunications Office (TELOF) and the operating units of the DOTC from CICT to DOTC. The significance of which is that the implementing arm of the broadband project would be DOTC-TELOF.

Also on **February 13, 2007**, The Joint NEDA–ICC (Investment Coordinating Council) and Cabinet directed DOTC to sort out possible overlaps of proposed Cyber Education Project of the Department of Education with existing and proposed projects of similar nature on communications infrastructure backbone network.

Six days after, on **February 19, 2007**, a meeting was held at NEDA where representatives of the DepED, NEDA, DOTC, TELOF, and CICT discussed the proposals of the DepEd, ZTE and Orion Network for National Broadband Network.

The following day, on **February 20, 2007**, NEDA requests DOTC to reconcile Cyber Education Program (CEP) of the Department of Education with NBN project as financed by the People’s Republic of China and the NBN project for Build Operate and Own.

Immediately, the day following, on **February 21, 2007**, the TWG - ICT composed of members from TELOF, NTC, CICT, and DOTC met and reviewed the project proposals.

The TWG-ICT determined that the Department of Education's proposal for its own broadband network directly overlaps the IP-based National Broadband Network. Further, that the Orion proposal was an unsolicited proposal which aims to service both private sector and government needs through a Build Operate and Transfer (BOT) scheme, while ZTE "will establish a telecommunications network to service a single platform for all ICT services which shall be financed through loans."

On **February 27, 2007**, NEDA again requests DOTC to submit a reconciled project proposal on CEP – NBN projects.

The following day, on **February 28, 2007** said TWG-ICT issues a Memorandum for the BAC Chairman for ICT Projects of the DOTC recommending the establishment of single national broadband network to cater to the needs of the government in VOIP, e-Governance, e-Government services, and e-Learning services through the Department of Education.

On the same day, **February 28, 2007**, DOTC TWG submits its report on the evaluation it has conducted on the proposals of ZTE and AHI on the NBN project to DOTC BAC.

On **March 1, 2007**, ZTE submits its revised proposal to DOTC.

On the very same day, on **March 1, 2007**, The Bids and Awards Committee (BAC) reviewed and evaluated the revised proposal and presented the conditions to ZTE.



Also, on **March 1, 2007**, DOTC Secretary Mendoza and CICT Ramon Sales write a joint letter to NEDA recommending the establishment of a single Broadband Network.

DOTC and CICT said in the letter that the Bids and Awards Committee (BAC) came up with the following conditions:

- The project should satisfy the network requirements of the various government agencies for VOIP, e-Government and e-Education;
- The system should be designed and implemented considering the demands in areas not covered by existing services. Corollarily, the system should take into account and utilize and integrate, if possible, existing private and public telecommunications infrastructure; and
- The funding should fully cover all requirements of the project including those for its initial operation and maintenance.

Worth noting, however, is the fact that this letter of DOTC Secretary Mendoza and CICT Secretary Sales of **March 1, 2007** addressed to NEDA Chairman Neri comes **five days in advance** of the BAC Resolution No. ICT 07-0002 dated **March 6, 2007**. Resolution No. 07-0002 of the BAC-ICT of the DOTC is the document which formally adopted the findings of the Technical Working Group (TWG) and recommended that the findings be forwarded to the National Economic and Development Authority (NEDA).

It is to say the least, incredible how DOTC Secretary Mendoza and CICT Chairman Sales can attach said BAC Resolution to their **March 1, 2007** letter to NEDA Secretary Neri when the BAC for ICT only came out with its findings on **March 6, 2007**. Further, Assistant Secretary Soneja's Memo of **March 1, 2007** was stamped received by the Office of the DOTC Secretary only on **March 7, 2007**.



Clearly, this shows that there is an unbelievably hyper-efficient government at work or a fast and speedy express to ensure the “commissions.”

On **March 29, 2007**, NEDA Director Reynoso Jr. recommends the implementation of the project provided that an EO be issued directing government offices to utilize the NBN project and for DOTC to secure an ECC from DENR.

**On the very same day**, NEDA approves the NBN-ZTE project.

NEDA-ICC and NEDA Board approved the NBN project on the basis of its technical and socio-economic merits and with DOTC as the implementing agency.

On **April 3, 2007**, NEDA Director and Board Secretary issued a certification that NEDA approved the NBN-ZTE project on May 29, 2007.

On **April 10, 2007**, BAC for Information and Communications Technology (ICT) recommends that the procurement for the Supply and Equipment of the NBN project be undertaken thru direct contracting.

Thereafter, on **April 16, 2007**, the DOTC requested the opinion of the Government Procurement Policy Board (GPPB) on whether or not the contract with ZTE Corporation was exempted from Republic Act (RA) 9184 or the Philippine Procurement Law. GPPB opined that since the procurement was premised on Section 4 of RA 9184, the favourable opinion of GPPB was not required. It then suggested that instead, the DOTC should get a DOJ Opinion stating that the contract with ZTE Corporation was an

executive agreement and thus exempt from the requirements of RA 9184 or the "Government Procurement Reform Act".

Also all **on the same day**, the following were accomplished by the Technical Working Group (TWG)<sup>21</sup> of DOTC:

- The TWG for ICT conducted an evaluation of the ZTE proposal.
- The TWG recommends signing of contract.
- The TWG recommends that DOTC legal review the contract.
- The TWG recommends that a DOJ opinion be sought on the mode of procurement used.
- The TWG recommends that a Special Authority be granted to the Secretary by the Office of the President allowing the latter to enter into a contract with ZTE Corp.

On **April 20, 2007**, the eve of the signing of the Contract, President Arroyo granted Secretary Mendoza full powers to sign the NBN project contract with ZTE Corporation even without the aforesaid DOJ Opinion.

Also, **on April 20, 2007**, the following government agencies did the following:

- DOTC Legal Service issues a Memo to the Secretary stating that they have reviewed ZTE contract and finds it in order.
- DOTC Legal Service opines that no public bidding is required on the NBN project based on the exchange of notes between the GRP and PROC.
- NEDA sends letter to Minister Bo Xilai and Chair Li Ruogu of China Exim Bank endorsing NBN project for loan financing of the PROC.

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<sup>21</sup> The DOTC Technical Working Group are composed of: Santiago O. Testor-Head; Artemio P. Anda- Assistant Head; Eulogio Aguila, Rolando M. Recio, Jose S. Tanqueco Jr, Romeo T. Lalamunan, Norberto A. Conti, Nemesio Claudio, Froilan Jamias, Manuel Lazam, Nilo Colinares, Armin Fabricante, and John Javiñas as Members.

Also on **April 20, 2007**, President Gloria Macapagal-Arroyo already knew that there was something wrong with the NBN-ZTE deal. This was admitted by GMA on February 23, 2008, in her DZRH interview. She said that she first learned of irregularities in the US\$ 329.48 million broadband contract with ZTE Corporation on the eve of the signing of the Supply Contract in China on April 21, 2007.

On **April 21, 2007**, the DOTC, through Secretary Leandro R. Mendoza, and Zhong Xing Telecommunications Equipment (ZTE), through its Vice President Yu Yong, executed in Boao, China, a "Contract For the Supply of Equipment and Services for the National Broadband Network Project" worth US\$329,481,290 (approx. Php16 Billion).

The signing was witnessed and attended also by President Gloria Macapagal-Arroyo (PGMA), who took time out from her multifarious duties and pressing family crisis; the First Gentleman was in hospital at that time. The ZTE contract was to be financed through a loan that would be extended by the PRC, through the Export-Import Bank (EximBank) of China.

The original Supply Contract signed in Boao, China on 21 April 2007 was thereafter (on the same day) lost by the Phil. Commercial Attaché Mr. Emmanuel T. Ang. Charges have reportedly been filed against Ang.

Then, on **April 27, 2007**, Philippine Star columnist Jarius Bondoc wrote in his column that an unnamed Comelec official had a hand in the approval of the NBN deal, which was supposedly overpriced.

On **May 28, 2007**, DOTC requests the Department of Finance (DOF) to facilitate the loan from EximBank of China.

Significantly, it was only on **July 26, 2007** – or three months after the GRP had already entered into the Supply Contract – when DOJ Opinion No. 46 (2007) was issued, stating that: a) the exchanges and correspondence between then Presidential Chief of Staff Defensor and Chinese Minister of Commerce Bo and Ambassador Li may be considered an Executive Agreement between the RP and the PROC; b) the designation of ZTE Corporation as the project's prime contractor in the exchange of notes has to be observed pursuant to Section 4 of R.A. No. 9184 and the principle of *pacta sunt servanda*; and c) the guidelines of China Exim Bank on procurement shall be followed, unless the loan agreement with said institution is silent as to the governing guidelines, in which case, the IRR-A of R.A. No. 9184 may apply.

On the issue of procurement, DOJ Opinion No. 46, series of 2007 expressly mentioned the provision of Commonwealth Act No. 138 which states that:

*Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is a signatory shall be observed.*

DOJ Opinion No. 46 also classifies the Supply Agreement signed by Secretary Mendoza on April 21, 2007 as an Executive Agreement.

Iloilo Vice Governor Rolex Suplico then filed before the Supreme Court, on **August 1, 2007**, a Petition with Application for a Temporary Restraining Order (TRO) and Writs of Permanent Injunction to stop the implementation NBN–ZTE deal. It alleged the awarding of the contract to ZTE Corporation lacked transparency; was manifestly disadvantageous to the government; was overpriced; and was shrouded with kickbacks.

Subsequently, on **August 15, 2007** Secretary Neri, for reasons only known to him and President Arroyo, was transferred from NEDA to the Commission on Higher Education (CHED).

On **August 29, 2007**, Representative Carlos Padilla identified COMELEC Chairman Abalos as the official who brokered the project.

On **September 3, 2007**, ZTE Corporation then issued a press statement that there had been "complete transparency in the proposal, evaluation, and approval of ZTE's application for the Philippines NBN contract."

However, the Supreme Court, acting on the Suplico petition, issued a TRO on **September 11, 2007** restraining the GRP from proceeding with the NBN-ZTE project.

On **September 18, 2007**, the Senate began its series of investigations. This hearing was followed by the **September 20, 26, 27, October 25 and November 20** hearings. In **2008**, the Senate conducted hearings on **January 30, February 8, 11, 18, 26 and March 11**. The final hearing of the Senate was on **September 1, 2009**.

On **September 22, 2007**, President Arroyo suspends the NBN-ZTE contract.

In the course of the investigations, on **October 1, 2007**, then Chairman Benjamin Abalos resigned from the Comelec.

Thereafter, on **October 2, 2007**, President Arroyo, while on a State Visit to China, cancelled the NBN deal with ZTE Corporation.



On **January 30, 2008**, both Secretary Neri and Engineer Jun Lozada snub the Senate subpoenas to testify before the Senate. Engineer Lozada allegedly flies to London for a seminar.

After snubbing the **January 31, 2008** hearing, the Senate ordered the arrests of Secretary Neri and Engineer Jun Lozada.

On **February 4, 2008**, Speaker Jose De Venecia was ousted as the Speaker of the House of Representatives.

On **February 5, 2008**, the Supreme Court granted Secretary Neri's request for the issuance of a TRO to prevent the implementation of the Senate arrest order. On that same day, Engineer Lozada arrived from Hong Kong but supposedly disappeared upon his arrival.

On **February 6, 2008**, Violeta Lozada, the spouse of Engineer Lozada filed a *writ of habeas corpus* before the Supreme Court. On the same day, the brother of Engineer Lozada, Arturo Lozada, filed a *writ of amparo* also before the Supreme Court. Both cases were later referred to the Seventeenth Division of the Court of Appeals. Eventually, the Court of Appeals denied Engineer Lozada's *writ of amparo* while the *writ of habeas corpus* became moot.

On **February 7, 2008**, Engineer Jun Lozada resurfaces after evading the Senate warrant of arrest issued on January 31, 2007. In subsequent Senate hearings, he alleges that he was kidnapped by State agents to prevent him from testifying before the Senate. He linked Comelec Chairman Abalos and First Gentleman Mike Arroyo to the US\$329.5-million national broadband deal with ZTE Corporation.

On **February 26, 2008**, the Senate takes custody of Dante Madriaga. Mr. Madriaga testifies that he was a consultant of Mr. Leo San Miguel and that he received an e-mail from Leo San Miguel detailing the “tongpats” made in the project.

On **March 11, 2008**, Mr. Leo San Miguel testifies before the Blue Ribbon Committee that he was just a consultant with ZTE and he did not know of any anomalies in the transaction. In previous testimonies, Mr. Jose de Venecia III and Mr. Dante Madriaga allege that Mr. Leo San Miguel was part of the Abalos group.

On **March 25, 2008**, The Supreme Court voted 9–6 in favor of Romulo Neri’s petition where the President invoked executive privilege in relation to three questions that the Senate required him to answer during the hearings on the NBN–ZTE. The questions were:

- 1) Whether the President followed up on the NBN-ZTE project?
- 2) Whether Secretary Neri was instructed to prioritize the NBN-ZTE project?
- 3) Whether President Arroyo ordered Secretary Neri to go ahead and approve the NBN-ZTE project even after being informed about the alleged bribe?

This judgment was later affirmed by the Supreme Court on September 4, 2008 after dismissing the Senate’s Motion for Reconsideration.

The Supreme Court’s affirmation of the President’s claim of executive privilege became a major stumbling block in the Committee’s quest for truth.



On **August 27, 2009**, the Office of the Ombudsman ordered the filing of criminal charges against former Comelec Chairman Benjamin Abalos and former NEDA Secretary Romulo Neri in connection with the controversial NBN-ZTE broadband deal.

Finally, on **September 1, 2009**, Senator Richard J. Gordon conducts the 13<sup>th</sup> and final hearing of the NBN-ZTE controversy to tie up loose ends and verify the veracity of the data gathered.

In view of the foregoing indisputable facts, it is incumbent upon the Blue Ribbon Committee now to analyze the events and the extent of participation and involvement of the succeeding characters in the NBN-ZTE scandal.

## **2. THE MAIN CHARACTERS OF THE NBN-ZTE SCANDAL**

Although the Blue Ribbon Committee invited around 43 personalities to its hearings and around 22 resource persons to its Technical Working Groups, we have chosen to focus on these 12 personalities since they are the ones who, seem to us, the main actors in the NBN-ZTE scandal.

### **2.1. Former COMELEC Chairman BENJAMIN S. ABALOS**

The third NBN-ZTE public hearing on September 26, 2007 revealed the extent of the role, interest and influence of former COMELEC Chairman Benjamin S. Abalos over the NBN-ZTE deal controversy.

Chairman Abalos's alleged involvement in the subject controversy was established and strengthened by the testimony of CHED Chairman Romulo L. Neri, the former Director General of the NEDA.



Chairman Neri affirmed having met and talked with Chairman Abalos on three occasions.

The first was when Chairman Abalos visited Chairman Neri in the latter's office at NEDA presumably to talk about the ZTE project; although, the latter could not recall what they had specifically discussed.<sup>81</sup>

The second meeting was at the Makati Shangrila Hotel where Chairman Neri had a lunch meeting arranged by the Chinese Embassy. In attendance were two officials of the Chinese Embassy, ZTE officials and Chairman Abalos.<sup>82</sup>

The third meeting was in Wack Wack Golf and Country Club where Chairman Abalos and Chairman Neri both played golf with Chairman Abalos acting as the "very charming host".<sup>83</sup>

Chairman Neri, together with his friends, was invited by Chairman Abalos to a few rounds of golf. When the two of them were inside the golf cart, Chairman Abalos said something that surprised Chairman Neri. Chairman Abalos said to Chairman Neri, "*Sec, may 200 ka dito*".<sup>84</sup>

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<sup>81</sup> TSN: GUINHAWA III-1, September 26, 2007, 10:09a.m., p.7.

<sup>82</sup> TSN: GUINHAWA III-1, September 26, 2007, 10:09a.m., p.8.

<sup>83</sup> TSN: GUINHAWA III-1, September 26, 2007, 10:09a.m., p.8.

<sup>84</sup> TSN: GUINHAWA III-1, September 26, 2007, 10:09a.m., p.8; ADMasicap IV-1, September 26, 2007, 10:19a.m., p.9.

Chairman Neri was shocked upon hearing the said offer because he was not used to being offered a bribe, and the bribe amount was “huge”.<sup>85</sup>

While no specific denomination was cited, Chairman Neri presumed that the “200” meant 200 million pesos, considering the magnitude of the NBN-ZTE project, which, they were discussing while playing golf.<sup>86</sup>

Chairman Neri said he reported the attempted bribe offer to President Arroyo in a phone conversation in which he specifically said, “*Chairman Abalos offered me 200 million for this*”. President Arroyo replied, “*Don’t accept it*”.<sup>87</sup>

Chairman Neri could not give an exact answer as to the role or participation of Chairman Abalos in the NBN–ZTE deal. What Chairman Neri testified to was the fact that Chairman Abalos mentioned the project to him on several occasions. The clearest indication was when they had lunch with the representatives of Zhong Xing Telecommunication Equipment Company Limited [ZTE for short] at the Makati Shangri-la Hotel upon the invitation of the Chinese Embassy.<sup>88</sup>

On the other hand, Chairman Abalos declared that his involvement with the NBN-ZTE project had nothing to do with his official functions as COMELEC Chairman.<sup>89</sup>

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<sup>85</sup> TSN: Ctsotto V-1, September 26, 2007, 10:29a.m., p.1.

<sup>86</sup> TSN: Ctsotto V-1, September 26, 2007, 10:29a.m., p.2.

<sup>87</sup> TSN: Ctsotto V-1, September 26, 2007, 10:29a.m., p.2.

<sup>88</sup> TSN: BRHGonzales VII-1, September 26, 2007, 10:49a.m., p.8.

<sup>89</sup> TSN: PEGutierrez VIII-1, September 26, 2007, 10:59 a.m., p.5.

Chairman Abalos vehemently denied brokering the NBN project for his Chinese businessmen friends. He said that there was no need for anyone to broker for ZTE Corporation because it was designated by its own government.<sup>90</sup>

With regard to the bribery issue, Chairman Abalos at first declared that he could not comment on something he neither understood nor had knowledge of. Chairman Neri stated that he himself did not know whether it was two hundred million, two hundred thousand, or two hundred that Abalos was referring to.<sup>91</sup>

Later, Chairman Abalos neither confirmed nor denied the allegations of Chairman Neri with regard to the "200" offer. He stressed that he could not recall making the said offer.<sup>92</sup>

Finally, Chairman Abalos denied having approached and offered Chairman Neri a bribe for he had no reason to do so. He said that it was Chairman Neri who was lying under oath.<sup>93</sup>

However, Mr. de Venecia III admitted that Chairman Abalos offered him a U.S. \$ 10 million "bribe" in the private office of Chairman Abalos at the Wack Wack Golf and Country Club.<sup>94</sup> De Venecia III also described it as "suhol."<sup>95</sup>

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<sup>90</sup> TSN: PEGutierrez VIII-1, September 26, 2007, 10:59a.m., p.6.

<sup>91</sup> TSN: ADMasicap IV-1, September 26, 2007, 10:19a.m., p.3.

<sup>92</sup> TSN: HSGayapa, VI-1, September 26, 2007, 10:39a.m., p.8.

<sup>93</sup> TSN: BRHGonzales, VII-1, September 26, 2007, 10:49a.m., p.1; BRHGonzales, VII-1, September 26, 2007, 10:49a.m., p. 6.

<sup>94</sup> TSN: PEGutierrez, VIII-1, September 26, 2007, 10:59a.m., p.2; CFDRIZ III-2, September 18, 2007, 10:53a.m., p.4.

<sup>95</sup> TSN of September 1, 2009.

Chairman Abalos also denied the allegation that he offered Mr. de Venecia III the US\$10 million bribe in exchange for the withdrawal of the latter's company from the NBN project.<sup>96</sup>

In his testimony, Mr. de Venecia III also revealed that it was Chairman Abalos who was pushing for the ZTE proposal and who stood to receive for himself kickbacks from the colossal overpricing of the NBN project.<sup>97</sup>

Chairman Abalos never denied his close ties with the ZTE officials. His closeness with the ZTE officials was the reason why Mr. de Venecia III wanted him to act as a bridge between Mr. De Venecia III and ZTE officials.<sup>98</sup>

Chairman Abalos admitted that he was present during the meeting between Mr. de Venecia III and the ZTE officials at Kempinski Hotel in China.<sup>99</sup> However, he vehemently denied banging his fist on the table during the meeting or asking for any commission in relation to the NBN-ZTE deal.<sup>100</sup>

Chairman Abalos admitted that ZTE officials requested him if they could have a dinner meeting with Secretary Mendoza at the Wack Wack Golf and Country Club and being a member of that club, Chairman Abalos agreed to sponsor and host the dinner meeting.<sup>101</sup>

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<sup>96</sup> TSN: PEGutierrez VIII-1, September 26, 2007, 10:59a.m., p.2.

<sup>97</sup> TSN: Solidum II-2, September 18, 2007, 10:43a.m., p.5.

<sup>98</sup> TSN: Ctsotto VI-1, September 26, 2007, 10:29a.m., p.7.

<sup>99</sup> TSN: CPMendoza, XI-2, September 26, 2007, 2:33p.m., p.1.

<sup>100</sup> TSN: CPMendoza, XI-2, September 26, 2007, 2:33p.m., p.2.

<sup>101</sup> TSN: Amador X-1, September 26, 2007, 11:19a.m., pp.8-9.

Chairman Abalos confirmed that Secretary Teves attended the said dinner meeting. However, Chairman Abalos pointed out that he did not attend the dinner meeting and left after a brief exchange of pleasantries with Secretary Teves.<sup>102</sup>

Chairman Abalos explained that it was Secretary Teves who talked with the Chinese.<sup>103</sup>

On the other hand, Secretary Teves, during the September 20, 2007 hearing said: *"What I did recall was my meeting with Chairman Abalos and Secretary Mendoza in Wack Wack. That's what I did recall that the meeting was on Broadband."*<sup>104</sup>

Finally, Leo San Miguel testified that... "the participation of Chairman Abalos in my vantage point of view, in some meetings of ZTE, Chairman Abalos is there, together with Mr. Ruben Reyes xxx I know he's been helping ZTE." And, that he had met with then Chairman Abalos about five times with regard to ZTE.<sup>105</sup>

## **2.2. Mr. JOSE "Joey" DE VENECIA III**

Mr. de Venecia III is the son of Representative Jose de Venecia, who was the Speaker at the time the transaction took place.

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<sup>102</sup> TSN: Amador X-1, September 26, 2007, 11:19a.m., p.9.

<sup>103</sup> TSN: Amador X-1, September 26, 2007, 11:19a.m., p.10.

<sup>104</sup> TSN: CGCastro XII-3, September 20, 2007, 8:33a.m., p.3.

<sup>105</sup> TSN: BRHGonzales IX-1, March 11, 2008, 12:00 p.m. p10; Ctsotto X-1, March 11, 2008, 12:10 p.m , p.1.

Mr. de Venecia III is one of the beneficial owners of AHI. In December 2006, AHI filed its unsolicited proposal for the NBN project.<sup>106</sup>

The DOTC and NEDA then considered AHI as the original proponent for the NBN project.<sup>107</sup> This supposedly prompted Chairman Abalos, whom Mr. de Venecia III often referred to as the “senior powerful person,” to persuade the latter to fly to China to discuss a partnership with Zhong Xing Telecommunication Equipment Company Limited [ZTE for short].<sup>108</sup>

It was at this meeting in China where Mr. de Venecia III allegedly found out that the ZTE proposal was overpriced by 100 percent of the contract price, or by US\$130 million, to accommodate the advances and kickbacks of Chairman Abalos.<sup>109</sup> However, it is worth noting that in spite of this, Mr. De Venecia still met with ZTE in January 2009 at Diamond Hotel. Then Comelec Chairman Abalos was also within the premises of the hotel.<sup>110</sup>

With this information about undisclosed advances and kickbacks, Mr. de Venecia III avers that he informed his partners of his objection and refusal to enter into a partnership with ZTE.<sup>111</sup>

The intention of Mr. de Venecia III to pursue AHI’s proposal allegedly on the basis of its merits made Chairman Abalos furious. Thus, Secretary Mendoza arranged a

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<sup>106</sup> TSN: Lpamorca I-2, September 18, 2007, 10:33a.m., p.6.

<sup>107</sup> TSN: Lpamorca I-2, September 18, 2007, 10:33a.m., p.6.

<sup>108</sup> TSN: Solidum II-2, September 18, 2007, 10:43a.m. p.1.

<sup>109</sup> TSN: Solidum II-2, September 18, 2007, 10:43a.m., p.1.

<sup>110</sup> TSN: Jmbaisa VI-2 September 1, 2009, 1:39 p.m., p. 6.

<sup>111</sup> TSN: Solidum II-2, September 18, 2007, 10:43a.m., p.2.

“reconciliatory” meeting between Mr. de Venecia III and Chairman Abalos to seek to reconcile their conflicting positions regarding the NBN deal and attempt to repair their relationship.

In the said reconciliatory meeting which was held in the middle of March 2007 at the Wack Wack Golf and Country Club, the ZTE broadband proposal was discussed and AHI's unsolicited proposal was shelved in favor of the overpriced ZTE proposal.<sup>112</sup>

Mr. de Venecia III revealed that it was Chairman Abalos who pushed for the ZTE proposal and who stood to receive for himself any kickbacks from the colossal overpricing of the NBN project.<sup>113</sup>

Present during that reconciliatory meeting was a powerful person whose participation in the NBN project or ZTE deal was unclear. Mr. de Venecia III then testified that: *“I had previously mentioned to reveal the identity of the mystery man under oath and in the proper forum. It is with a heavy heart that I cannot deny that it was the First Gentleman Mike Arroyo at the reconciliatory meeting.”*<sup>114</sup>

In that reconciliatory meeting, First Gentleman Mike Arroyo allegedly, pointed an accusing finger at Mr. de Venecia III and shouted at him to “back off.”<sup>115</sup>

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<sup>112</sup> TSN: Solidum II-2, September 18, 2007, 10:43a.m., p.4.

<sup>113</sup> TSN: Solidum II-2, September 18, 2007, 10:43a.m., p.5.

<sup>114</sup> TSN: Solidum II-2, September 18, 2007, 10:43a.m., p.5; CFDRIZ III-2, September 18, 2007, 10:53a m , p.5.

<sup>115</sup> TSN: CFDRIZ III-2, September 18, 2007, 10:53a.m., p.6.

These words uttered by the First Gentleman Mike Arroyo gave Mr. de Venecia III the impression that he was being ordered by the former to withdraw his NBN project application with the DOTC and that it was upon the prodding of Chairman Abalos.

In the words of Mr. de Venecia III: *"I believe, sir, that the – my impression is that Chairman Abalos had asked him (referring to Mike Arroyo) to ask me to back off because the Chairman himself could not convince me to back off. And giving – like all men and boys when we were kids, normally when you have trouble in a fight you would ask a heavier person to back you up in order to support you in whatever you're asking."*<sup>116</sup>

Mr. de Venecia III pointed out that it was not his desire to bring down the Arroyo administration and that his father was a staunch ally of President Arroyo and that his NBN proposal was independent of that relationship.<sup>117</sup> (Mr. de Venecia III's father, former Speaker de Venecia, Jr. has since joined the ranks of the opposition against President Arroyo, most believe as a result of Mr. de Venecia III's damaging testimony regarding the NBN-ZTE controversy.)

Mr. de Venecia III subsequently filed a petition before the Supreme Court seeking to compel the DOTC to reveal the terms of the ZTE deal contract on the grounds of transparency and public information.<sup>118</sup>

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<sup>116</sup> TSN: CFDRIZ III-2, September 18, 2007, 10:53a.m., p.7.

<sup>117</sup> TSN: CFDRIZ III-2, September 18, 2007, 10:53a.m., p.5.

<sup>118</sup> TSN: Solidum II-2, September 18, 2007, 10:43a.m., p. 4.



### 2.3. First Gentleman: Atty. JOSE MIGUEL ARROYO

The first public hearing held on September 18, 2007 gave us a picture of the extent of the involvement of First Gentleman Mike Arroyo in the NBN–ZTE deal controversy.

His alleged involvement in the subject controversy was revealed by the testimony of Mr. de Venecia III, son of Jose de Venecia Jr., who was the Speaker of the House of Representatives at the time the transaction took place.

As discussed earlier, Secretary Mendoza arranged a meeting between Mr. de Venecia III and Chairman Abalos to seek to reconcile their conflicting positions regarding the NBN project and to attempt to repair their relationship. This meeting was held in the middle of March 2007 at the Wack Wack Golf and Country Club.

Aside from the persons concerned, also in attendance was a powerful person whose participation in the NBN–ZTE project was not clear and who was later on identified by Mr. de Venecia III as the First Gentleman Mike Arroyo.<sup>119</sup>

Mr. de Venecia III also narrated and demonstrated how First Gentleman Mike Arroyo pointed an accusing finger and shouted at him to “back off”.<sup>120</sup>

Moreover, the testimony of former Speaker de Venecia, Jr. before the House of Representatives Justice Committee on November 24, 2008 confirmed that the First Gentleman had a hand in the NBN deal and having played a golf game in Shenzhen,

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<sup>119</sup> TSN: Solidum II-2, September 18, 2007, 10:43a.m., p.5; CFDRIZ III-2, September 18, 2007, 10:53a.m., p.5.

<sup>120</sup> TSN: CFDRIZ III-2, September 18, 2007, 10:53a.m., p.6-7.



China sponsored by ZTE on November 2, 2006 where he, the President, the First Gentleman and Comelec Chairman Abalos were all present:

Pray, tell me, what is the husband of the President of the Philippines doing there at the ZTE headquarters, a company that is bidding for a massive project in the Philippines? Pray, tell me, why the Chairman of the Commission on Elections would be there at the ZTE headquarters? Why the Speaker of the House of Representatives, to my surprise why I am there – on advice and on invitation of the President of the Philippines? Very clear.

Mike Arroyo said yesterday when leaving the hospital that I am lying. Well, let me say to you, my colleagues in the House of Representatives, that pictures do not lie. Repeat pictures do not lie. Ang litrato po hindi nagsisinungaling. Very clear. There, al... the talking was done mostly by Chairman Abalos, the President was quiet. In fairness to Mike Arroyo, he was quiet. I was quiet. And then we bade our farewells. We rode the coaster once again.

And then when we arrived in Hongkong, before we disembarked, Mike Arroyo said, "Perhaps it is best that this project be done on a government to government basis," that this project be undertaken by the Philippine government for 329 million dollars at the government's own risk, at the Philippine government's expense, with...<sup>121</sup>

...the Philippine government's guaranty, with repayment to be done by the Philippine government and by the Filipino people, as against other proposals which called for no government expense, 100% private sector investment, 100% private sector initiative, BOT.<sup>122</sup> (emphasis supplied)

#### 2.4. Former Speaker JOSE DE VENECIA, JR.

Mr. de Venecia III testified that when he joined Chairman Benjamin Abalos in Shenzhen, China to meet with ZTE officials, the Chairman demanded from ZTE the balance of his commission that were supposedly due President Arroyo and former Speaker de Venecia, Jr.<sup>123</sup>

Former Speaker de Venecia, Jr. confirmed news reports that President Arroyo invited him to join her on a trip to China in November 2006, and that he did not know

<sup>121</sup> TSN of the House of Representatives Committee on Justice, 24 November 2008, WBC, IV-1.

<sup>122</sup> Id.

<sup>123</sup> TSN: Lpamorca, I-4, September 18, 2007, 11:53a.m., p.4.

that they would play golf and have lunch with ZTE officials at the Chinese telecommunications company's headquarters in Shenzhen, China.<sup>124</sup>

Press Secretary and Presidential Spokesman Ignacio Bunye confirmed that President Arroyo had a meeting with ZTE officials in November 2006.<sup>125</sup>

During the November 24, 2008 hearing of the Committee on Justice of the House of Representatives, former Speaker de Venecia, Jr. testified that:

Having said that, let me say that during the last two days, the newspapers, radio and television have made reference to why we were in Shenzhen across the border from Hong Kong last All Saints Day, two years ago I was in Hong Kong with my wife Gina and the President had just arrived in Hong Kong coming from a visit to many provinces in China And she phoned me and she said, "Joe, can I invite you to play golf tomorrow early in the morning?" I said, "Yes, I'll be honored, Madam President." She said, "We will be playing with the First Gentleman". I said, "I will be honored, Madam President". So I went to their hotel at about 7:00 or 7:30 in the morning. I didn't have any golfing attire because I didn't know that we would be playing golf. I went to Hong Kong on a small vacation. And when I reached the hotel we boarded a coaster and I thought we will be playing golf in one of the golf course in Hong Kong then all of a sudden we were at the border between Hong Kong and Shenzhen in South China....<sup>126</sup>

...started the conversation because I was reading the newspaper, And she said, "You know, Joe", she said, "this ZTE project, let us consider it and approve it on the basis of a Build-Operate-Transfer formula so that the Philippine government will have no risk, will have no expense, will have no cost, and there will be no government guaranty. And it will be purely a 100% private sector investment." And then she started to praise my son who made the proposal to undertake the ZTE project on a Build-Operate-Transfer basis as a 100% private sector investment without any cost to the government, without any guaranty from the Philippine government, without the Filipino people having to repay a massive loan...

And then, finally, we arrived in Shenzhen and the coaster proceeded to the golf course in Shenzhen and, lo and behold!, my biggest surprise was that Chairman Abalos was waiting for us at the golf course. I did not expect...<sup>127</sup>

...expecting the Chairman of the Commission on Elections, who is supposed to be managing the elections of the nation and in a few months the election shall be held, waiting for us there at Shenzhen. And so he was there with some ZTE executives. We

<sup>124</sup> GMANEWS.TV, November 23, 2008, 9:45 PM.

<sup>125</sup> Manila Bulletin Online, May 17, 2008.

<sup>126</sup> TSN of the House of Representatives Committee on Justice, 24 November 2008, EAT, III-2.

<sup>127</sup> TSN of the House of Representatives Committee on Justice, 24 November 2008, EAT, III-3



changed to golfing attire, and then after breakfast we proceeded to play golf. And after one hour we joined by Chairman Abalos because the first threesome was the President, Mike Arroyo and myself, then we were joined by Chairman Abalos who said "Madam President, Mr. Speaker, please join us because we will have lunch at the headquarters of ZTE and they are preparing a grand luncheon for us with Shanghai crabs which are in season at the board room of ZTE". And this is very clear in my book, the picture of this meeting in this book which was written by Brett Becker of the Wall Street Journal, former editor of the Wall Street Journal, published in Washington D. C., shows the picture of President Arroyo, Mike Arroyo, Chairman Abalos, myself and a Chinese official there at the golf course in Shenzhen...

Mike Arroyo said yesterday when leaving the hospital that I am lying. Well, let me say to you, my colleagues in the House of Representatives, that pictures do not lie. Repeat pictures do not lie. Ang litrato po hindi nagsisinungaling. Very clear. There, al... the talking was done mostly by Chairman Abalos, the President was quiet. In fairness to Mike Arroyo, he was quiet. I was quiet. And then we bade our farewells. We rode the coaster once again.

**And then when we arrived in Hongkong, before we disembarked, Mike Arroyo said, "Perhaps it is best that this project be done on a government to government basis", that this project be undertaken by the Philippine government for 329 million dollars at the government's own risk, at the Philippine government's expense, with...**<sup>128</sup>

...the Philippine government's guaranty, with repayment to be done by the Philippine government and by the Filipino people, as against other proposals with called for no government expense, 100% private sector investment, 100% private sector initiative, BOT.

And so remembering the debates and the allegations at the Senate Blue Ribbon Committee, and let me apologize to the Senate Blue Ribbon Committee for not attending their invitation because I was declared unconscious in Qatar for almost 24 hours when I was stricken ill in Qatar, and on my way to deliver a speech in South Africa after I delivered a speech in Qatar. And I was also invited by the Catholic Bishops. I was also invited by the foreign correspondents to appear before them. But I said I would rather that I appear before my peers in the House of Representatives. And that is why I have come here today, Mr. Chairman, to tell you what had happened at Shenzhen and to discuss the other points of the Impeachment Complaint...<sup>129</sup> (emphasis supplied)

Speaker de Venecia, Jr. also invited Secretary Mendoza to the former's home to discuss the NBN project with Mr. de Venecia III, upon which Secretary Mendoza endorsed Mr. de Venecia III to the technical working group of the NBN project.<sup>130</sup>

<sup>128</sup> TSN of the House of Representatives Committee on Justice, 24 November 2008, WBC, IV-1.

<sup>129</sup> TSN of the House of Representatives Committee on Justice, 24 November 2008, WBC, IV-2.

<sup>130</sup> TSN: ADMasicap I-2, September 20, 2007, 4:43p.m., pp.10-11; PLMANUEL II-2, September 20, 2007 4:53 pm, p.1

MR. MENDOZA. No, Your Honor. Actually, there was a previous meeting with the Speaker, Your Honor, and this was held at his house. This was, I think, in the early part of 2007 when I was invited by the Speaker to have some breakfast with him and there, he introduced his son to me. And then...

SEN. DEFENSOR SANTIAGO Oh, he invited you for breakfast and then he introduced his son...

MR. MENDOZA. Yes.

SEN. DEFENSOR SANTIAGO. ...and then he just say, "This is my son..."

SEN. DEFENSOR SANTIAGO. ... "This is my son of whom I am well pleased," as they say in the Bible. Was that all that he said?

MR. MENDOZA. No. The son has a – well – he is a proponent in a project at DOTC, Your Honor.

SEN. DEFENSOR SANTIAGO. So, did you understand that this breakfast introduction was made in connection with the Amsterdam Holdings?

MR. MENDOZA. Well, there are other topics discussed, Your Honor, but the issue of Amsterdam Holdings was discussed also.

While it may be argued that the above-mentioned incidents do not constitute a violation of Sec. 3 of Republic Act 3019, nor can they be clearly considered as direct evidence of guilt thereto, the same may be deemed as being done in bad taste and could clearly be skirting close to being a violation thereof.

## **2.5. Chairman ROMULO L. NERI**

Chairman Neri testified that he and President Arroyo did not talk about his attendance at the Senate hearing though he did not deny consulting some Palace officials about it. He also clarified that he had not received any threats, to prevent him from attending the Senate Blue Ribbon Committee hearings.

He also informed the Senate Joint Committees that his transfer from NEDA to CHED had nothing to do with the ZTE broadband scandal. He explained that President Arroyo wanted him to help address the problems of CHED where his unique talents and

capabilities could provide some out-of-the-box solutions. Chairman Neri in fact claimed that there was an agreement for him to return to the NEDA after six months, just like when he was temporarily assigned to the DBM.<sup>131</sup>

During the September 26, 2007 hearing of the Blue Ribbon Committee, Chairman Neri disclosed a supposed bribe offer from Chairman Abalos.

Chairman Neri narrated that he met Chairman Abalos thrice regarding the project.

The first meeting was when Chairman Abalos came to his office at the NEDA but Chairman Neri could not recall what they discussed. The second meeting was at the Wack Wack Golf and Country Club where they played golf and Chairman Abalos played the role of "the very charming host". It was during this meeting where Chairman Abalos allegedly told Chairman Neri: "*Sec, may 200 ka dito*" an offer which surprised Chairman Neri. And, the third meeting was a lunch meeting at the Makati Shangri-La Hotel arranged by the Chinese Embassy and where two Chinese embassy officials, the ZTE officials and Chairman Abalos himself were present.<sup>132</sup>

Chairman Neri further testified that in one of his conversations with President Arroyo, he mentioned the alleged ₱200 million bribe offer, and that President Arroyo told him not to accept the money. Senator Pangilinan then asked him whether President Arroyo followed up this matter with him after that conversation, upon which Chairman Neri refused to answer the question on the ground of executive privilege. According to

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<sup>131</sup> TSN: Guinhawa III-1, September 26, 2007, 10:09a.m., pp.4-7.

<sup>132</sup> TSN: CPMendoza XI-1, September 26, 2007, 11:29a.m., p.3.; Amador X-2, September 26, 2007, 2:23p.m., p.7.

him, Senator Pangilinan's question involved conversations between him and President Arroyo which was confidential in nature.

## 2.6. Engineer RODOLFO NOEL "Jun" I. LOZADA

Engineer Lozada said that his involvement in the NBN-ZTE deal started when Secretary Neri introduced him to Chairman Abalos at the Wack Wack Golf and Country Club where they met with Ruben Reyes, Leo San Miguel and ZTE representatives Fan Yang and Yu Yong.<sup>142</sup> However, prior to his involvement in NBN-ZTE deal, he admitted that he was also working with Secretary Neri in the Department of Budget and Management (DBM). In fact, he drafted a Memorandum for Secretary Neri directing all government agencies to submit their telecom expenses.<sup>143</sup>

Engineer Lozada said that a few weeks after that meeting, the first NBN proposal came through from CICT to NEDA.

He further testified that later, he was again invited to a meeting at the NEDA where Mr. de Venecia III was to present a competing proposal for the NBN broadband project. Engineer Lozada explained that the difference between the two proposals was that AHI's was to be undertaken on a BOT basis while that of ZTE and Chairman Abalos' was to be financed by a loan to be incurred by the Philippine government. Engineer Lozada testified further that Secretary Neri instructed him to reconcile the two proposals. He sought to accomplish this by proposing that AHI be awarded the project

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<sup>142</sup> TSN: Aliccatimbang V-1, February 8, 2008, 10:53a.m., p.5.

<sup>143</sup> TSN, Aliccamtimbang, V-1, February 8, 2008, 10:53, pp 6-7.

on a BOT basis, with ZTE supplying AHI's needs through a supply agreement with AHI.<sup>144</sup>

Engineer Lozada then said that trouble started when Chairman Abalos insisted that his US\$130 Million interest in the US\$262 Million, which was the amount of the NBN-ZTE project<sup>145</sup>, be maintained.

Engineer Lozada explained that he relayed Chairman Abalos's demand to Mr. de Venecia III who responded that that amount was too hard to justify and put in the books. Engineer Lozada then said that he informed Chairman Abalos that the amount he was asking for was too big considering that the project was to be undertaken on a loan basis and further, that the instructions of Chairman Neri and President Arroyo indicated their preference to undertake the NBN project on a BOT, and not a loan, basis. He then suggested to Chairman Abalos if it can be reduced to sixty five (65) million dollars. However, the latter did not accede to his suggestion.<sup>146</sup>

Engineer Lozada then said that Chairman Abalos then called up First Gentleman Mike Arroyo. Thereafter, a letter arrived from the Chinese Ambassador stating the loan availability to facilitate the NBN project.<sup>147</sup>

Engineer Lozada also stated that ZTE representatives continued to meet with him over lunch and dinner where he assured them that the NBN project had already

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<sup>144</sup> TSN: RLTumampos V-1, February 8, 2008, 11:03a.m., pp.1-2.

<sup>145</sup> TSN: CFDRIZ VII-1, February 8, 2008, 11:13 a.m., p.3.

<sup>146</sup> TSN: RLTUMAMPOS, VI-1, February 8, 2008, 11:03 a.m., p 3

<sup>147</sup> TSN: RLTumampos V-1, February 8, 2008, 11:03a.m., pp.2-4.



started moving despite their expressed worries and complaint that there seemed to be no accomplishments-despite their prior advances to Chairman Abalos.<sup>148</sup>

At one time, Engineer Lozada testified that Chairman Abalos invited him and Mr. de Venecia III to dinner at the Makati Shangri-La Hotel because First Gentleman Mike Arroyo was there. The group exchanged pleasantries.

After that meeting, the group went to China without Engineer Lozada. According to Engineer Lozada, he was supposed to be part of the China trip but Chairman Neri advised him not to go.<sup>149</sup>

When they returned from China, Engineer Lozada and Chairman Neri met with Chairman Abalos, ZTE representatives and the new commercial counselor of the Chinese embassy at the Makati Shangri-La Hotel. Chairman Neri expressed the preference to undertake the NBN project on a BOT basis, while ZTE representatives insisted that they wanted to undertake the project on a loan basis. Engineer Lozada testified that Chairman Neri left the meeting as disagreements between ZTE representatives and Chairman Abalos continued.<sup>150</sup>

Engineer Lozada also testified that on January 18, 2007, he received a call from Chairman Abalos who allegedly threatened him because of the NBN project. After that incident, he decided to lie low and limit his involvement in the project. According to Engineer Lozada, he learned that sometime in February 2007, the NBN-ZTE project was transferred from the CICT to the DOTC. Engineer Lozada further said that

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<sup>148</sup> TSN: RL Tumamos V-1, February 8, 2008, 11:03a.m., p.5.

<sup>149</sup> TSN: RL Tumamos VI-1, February 8, 2008, 11:03 a.m., p.5.

<sup>150</sup> TSN: RL Tumamos V-1, February 8, 2008, 11:03a.m., pp.5-7.

sometime in April 2007, the National Economic and Development Authority (NEDA) Investment Coordination Committee – Cabinet Committee (ICC - Cab Com) approved the NBN project at a cost of US \$329 Million.<sup>151</sup>

Mr. Lozada further admitted that he was not officially contracted as a consultant of NEDA. He was just being treated to lunch or dinner as a fee for his services to facilitate the project.<sup>152</sup> The things he did for the project and other jobs were purely based on his friendship with Neri.

He also admitted that he told Secretary Atienza that he did not want to appear and testify before this Committee.<sup>153</sup>

## **2.7. Secretary LEANDRO R. MENDOZA**

Secretary Mendoza said that the ZTE contract did not need GPPB approval because it was covered by an executive agreement and that further, the system of Chinese concessionary loans specifically designated the contractor.<sup>154</sup>

(According to Secretary Andaya, the supply contract that was signed by Secretary Mendoza was merely a conditional contract and that if there was no loan agreement and executive agreement subsequently executed, that supply contract would not then be perfected.<sup>155</sup>)

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<sup>151</sup> TSN: CFDriz VII-3, February 8, 2008, 11:13a.m., p.2.

<sup>152</sup> TSN: Jmbaisa 1-3, February 8, 2008, 3:38 p.m., pp 5-6

<sup>153</sup> TSN: LDGalapon III-1, February 8, 2008, 10:33 a.m., p. 2

<sup>154</sup> TSN: RLTUMAMPOS VIII-1, September 20, 2007, 3:53p.m., p.9.

<sup>155</sup> TSN: mhSantos X-1, September 20, 2007, 4:13p.m., pp, 3-4.

Secretary Mendoza also mentioned that there were two petitions filed before the Supreme Court with respect to the NBN project. The first petition sought to prevent the execution of the project; produce the contract; and, declare the contract null and void.<sup>156</sup>

The second petition, which was filed by AHI, was a petition for Mandamus with urgent application for temporary restraining order and/or with preliminary injunction.<sup>157</sup>

There was also a complaint filed by Congressman Carlos Padilla before the Ombudsman against himself, Messrs. Formoso and Soneja and ZTE officials.<sup>158</sup>

Secretary Mendoza explained also to Senator Santiago that the Commission on Information and Communications Technology's (CICT) recommendation was for the government to deny the AHI's proposal for it could not bid for a US\$500 million project when it's authorized capital stock was only ₱5 million of which only ₱312,000 was paid up.<sup>159</sup>

Secretary Mendoza was also invited by former Speaker de Venecia, Jr. to the latter's home to discuss the NBN project with Mr. de Venecia III, upon which Secretary Mendoza endorsed Mr. de Venecia III to the technical working group of the NBN project.<sup>160</sup>

MR. MENDOZA. No, Your Honor. Actually, there was a previous meeting with the Speaker, Your Honor, and this was held at his house. This was, I think, in the early part of 2007 when I was invited by the Speaker to have some breakfast with him and there, he introduced his son to me. And then...

SEN. DEFENSOR SANTIAGO. Oh, he invited you for breakfast and then he introduced his son...

<sup>156</sup> TSN: MELNovero V-1, September 20, 2007, 3:23p.m., pp.4-5.

<sup>157</sup> TSN: MELNovero V-1, September 20, 2007, 3:23p.m., p.5.

<sup>158</sup> TSN: MELNovero V-1, September 20, 2007, 3:23p.m., p.6.

<sup>159</sup> TSN: PLMANUEL II-2, September 20, 2007, 4:53 p.m., pp. 3-4.

<sup>160</sup> TSN: ADMasicap I-2, September 20, 2007, 4:43p.m., pp.10-11; PLMANUEL II-2, September 20, 2007 4:53 pm, p.1

MR. MENDOZA. Yes.

SEN. DEFENSOR SANTIAGO. ...and then he just say, "This is my son..."

SEN. DEFENSOR SANTIAGO. .... "This is my son of whom I am well pleased," as they say in the Bible. Was that all that he said?

MR. MENDOZA. No. The son has a – well – he is a proponent in a project at DOTC, Your Honor.

SEN. DEFENSOR SANTIAGO. So, did you understand that this breakfast introduction was made in connection with the Amsterdam Holdings?

MR. MENDOZA. Well, there are other topics discussed, Your Honor, but the issue of Amsterdam Holdings was discussed also.

Secretary Mendoza also claimed that Mr. de Venecia III owed ZTE US\$12 million.<sup>161</sup>

Secretary Mendoza also denied that he organized the reconciliatory meeting at the Wack Wack Golf and Country Club. He also explained that after the meeting at the residence of former Speaker de Venecia, Jr., Mr. de Venecia III went to his office several times and that on several occasions, such as dinner with friends, he saw Mr. de Venecia III hanging around the area.<sup>162</sup>

## **2.8. Deputy Executive Secretary MANUEL HUBERTO B. GAITE**

The extent of the participation of then Deputy Executive Secretary Gaite in the NBN–ZTE deal controversy was clearly defined during the 9<sup>th</sup> and 11<sup>th</sup> public hearings held on February 11, 2008 and February 26, 2008, respectively.

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<sup>161</sup> TSN: PLMANUEL II-2, September 20, 2007, 4:53p.m. pp.5-6.

<sup>162</sup> TSN: PLMANUEL II-2, September 20, 2007, 4:53p.m., p.8.; Lpamorca III-2, September 20, 2007, 5:03p.m., p.1.

Then Deputy Executive Secretary Gaité bared the fact that it was Chairman Neri who requested him to assist Engineer Lozada with regard to the Senate hearings on the NBN–ZTE deal controversy.

During their meeting on January 29, 2008, Lozada told Gaité: *“Manny, I don’t want to go to the Senate. I don’t want to attend the hearing. Is it possible that you can find a way to challenge legally the subpoena?”*<sup>163</sup>

Gaité answered Lozada with: *“You know, the only way that you can challenge a subpoena is either you are sick, indisposed, or have a prior commitment that you cannot cancel. Otherwise, you have to attend the Senate hearing.”*<sup>164</sup>

Lozada then informed Gaité that he would travel to London to attend a conference.<sup>165</sup>

Gaité, in response to Lozada, said: *“Okay, that is a valid excuse but provided you have to inform the Senate about that, okay.”*<sup>166</sup>

At this juncture, Gaité wanted to clear his name and correct the misconception that it was he who pushed Engineer Lozada to travel abroad.

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<sup>163</sup> TSN: Aliccatimbang XII-1, February 11, 2008, 12:40p.m., p.2.

<sup>164</sup> TSN: Aliccatimbang XII-1, February 11, 2008, 12:40p.m., p.2.

<sup>165</sup> TSN: Aliccatimbang XII-1, February 11, 2008, 12:40p.m., p.2.

<sup>166</sup> TSN: Aliccatimbang XII-1, February 11, 2008, 12:40p.m., p.3.

Gaite said that Engineer Lozada might have misinterpreted the way he said it: *"You can go provided that you have to inform the Senate. But this will only mean that it will just be postponing. When you come back, you have to attend."*<sup>167</sup>

Deputy Executive Secretary Gaite reiterated that, *"I did not instruct him (Jun Lozada) to go abroad. I did not instruct him to go to Hongkong...He was the one who informed me that he had this travel to London. I did not prepare his travel papers nor did I prepare his flight arrangement."*<sup>168</sup>

Engineer Lozada on the other hand made it clear that he had to travel in order to avoid the Senate hearing. His travel, the travel orders and certain arrangements were made in the furtherance of the plan to prevent him from attending the Senate hearing. In fact, Engineer Lozada said: *"Opo kaya nga po inantedate (antedate) pa yung aking mga travel orders."*<sup>169</sup>

Gaite also clarified the issue regarding the ₱500,000 that he allegedly gave Lozada while the latter was still in Hong Kong. During the February 26, 2008 hearing, Gaite explained that that ₱500,000 would not have been given to Lozada had the latter not asked for funds by text message.<sup>170</sup>

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<sup>167</sup>TSN: Aliccatimbang XII-1, February 11, 2008, 12:40p.m., p.4.

<sup>168</sup>TSN: Aliccatimbang XII-1, February 11, 2008, 12:40p.m., p.4.

<sup>169</sup>TSN: HSGayapa I-3, February 26, 2008, 2:47 p.m., pp. 5-6.

<sup>170</sup>TSN: CFDRIZ VIII-1, February 26, 2008, 11:57a.m., p.1.

At 2:00 a.m. of February 3, 2008, explained that he received a text from Lozada that the latter was feeling cold as he had with him no winter clothing and that he was running out of funds.<sup>171</sup>

At about 1:30 p.m. of February 4, 2008, Gaité further stated that he saw another text from Lozada- which reminded him of Lozada's predicament. He then decided to lend Engineer Lozada the amount of ₱500, 000.<sup>172</sup>

Gaité then explained that he texted Lozada to ask the latter where the money should be sent and Lozada replied that the money should be sent to Lozada's finance office at the Philippine Forest Corporation and that Engineer Lozada's brother, Owe, will call Gaité.<sup>173</sup>

Gaité also explained that when Owe called up that same day of February 4, 2008, Gaité informed him about the money that Lozada was requesting<sup>174</sup> and that they meet after office hours at the Shangri-La Mall where Deputy Executive Secretary Gaité would give Owe the P500, 000.<sup>175</sup>

Gaité further testified that his meeting with Lozada's brother, Owe, at the Dome Café in Shangri-la Mall lasted only for about ten (10) minutes and that he told Owe: *"Your brother texted me about his running out of cash. I have this money, I want to help*

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<sup>171</sup>TSN: CFDRIZ VIII-1, February 26, 2008, 11:57a.m., p.1.

<sup>172</sup>TSN: CFDRIZ VIII-1, February 26, 2008, 11:57a.m., p.1.; CFDRIZ VIII-1, February 26, 2008, 11:57a m , p.2.

<sup>173</sup>TSN: CFDRIZ VIII-1, February 26, 2008, 11:57a.m., p.2.

<sup>174</sup>TSN: CFDRIZ VIII-1, February 26, 2008, 11:57a.m., p.2.

<sup>175</sup>TSN: CFDRIZ VIII-1, February 26, 2008, 11:57a.m., p.3.

him.” However, it did not occur in Gaité’s mind whether or not to treat the P500, 000 as a loan because he pitied Lozada.<sup>176</sup>

Before giving the money, Gaité also testified that he had Owe sign a receipt for the P500, 000 and told him: *“Ikaw na ang bahalang magpadala sa kapatid mo.”*<sup>177</sup>

Gaité stated that the following day, February 5, 2008, he was surprised to receive a text from Engineer Lozada that said: *“I’m coming home”*. That made Gaité wonder: *“Why was he (Lozada) asking from me 500 – why was he asking from me money? Kabibigay ko pa lang kahapon and then the following day he was now coming home.”*<sup>178</sup>

Gaité however made it clear that it was he who decided upon the amount of P500, 000 to give Lozada as Engineer Lozada did not mention any amount.

Gaité further explained that he even expected or waited for Engineer Lozada to mention the P500, 000 during the Senate hearing and did not want to bring it up himself because he considered it a personal thing between him and Lozada.

Deputy Executive Secretary Gaité likewise made it clear that the P500, 000 was partly sourced from money that his uncles intended for the renovation of their house.

With regard to the statement of Executive Secretary Ermita that the P500,000 came from public donors and did not belong to Deputy Executive Secretary Gaité, the

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<sup>176</sup>TSN: CFDRIZ VIII-1, February 26, 2008, 11:57a.m., p.3.

<sup>177</sup>TSN: CFDRIZ VIII-1, February 26, 2008, 11:57a.m., p.3.

<sup>178</sup>TSN: CFDRIZ VIII-1, February 26, 2008, 11:57a.m., p.4.



latter said that *"...I do not know what he said about public donors...No government funds was used in the money that I gave to Mr. Lozada."*<sup>179</sup>

## 2.9. Mr. LEO SAN MIGUEL

Mr. San Miguel testified during the 12<sup>th</sup> public hearing held on March 11, 2008.

Mr. San Miguel informed the Committee that he attended the hearing on the basis of the subpoena issued by the Senate and that he was hired by ZTE as a technical advisor/consultant for the NBN project. He added that he did not belong to the group of Chairman Abalos and that, instead, he had a direct relationship with ZTE.<sup>180</sup>

Moreover, he informed the Committee that there were only two groups that were competing for the NBN project, that were AHI and ZTE.

Mr. San Miguel made it clear that he hired Mr. Dante Madriaga on the basis of gathering more information about the Arescom proposal. However, the job assigned to Mr. Madriaga did not materialize because the Arescom proposal was already dead in the water before the proposals of ZTE and AHI were made. There was no need to gather any more information about Arescom. The reason for the death of the proposal was that the people behind it failed to secure the support of any sponsoring agency.<sup>181</sup>

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<sup>179</sup>TSN: CFDRIZ VIII-1, February 26, 2008, 11:57a.m., p.6.

<sup>180</sup> TSN: CFDRIZ, V-1, March 11, 2008, 11:20a.m., pp.8-9.

<sup>181</sup> TSN: CFDRIZ V-1, March 11, 2008, 11:20a.m., pp.8-9.

He said that he dealt with ZTE Vice President Mr. Yu Yong, who was based in Shenzhen and who was in charge of special projects outside of China. He further informed the Committee that he had no written employment contract with ZTE.<sup>182</sup>

As regards the increase of the NBN-ZTE project cost, Mr. San Miguel testified that the original ZTE proposal to the CICT had a project cost of US\$262 million. He explained further that based on the meetings with the CICT, there was a configuration of electronic equipment requirement and the cost of the configuration was US\$262 million.<sup>183</sup>

When the responsibility for the NBN project was transferred from the CICT to the DOTC, Mr. San Miguel testified that they again had another meeting with the DOTC who had a different requirement for configuration of electronic equipment than that of the CICT, which led ZTE to withdraw the original electronic equipment configuration they previously submitted. Thus, he pointed out, the final cost went up from US\$262 million to US\$329 million but that the number of barangays covered also increased from 1,733 to 25,000 barangays and that the configuration cost not only covered transmission equipment, but also included the computer network (sometimes called, the integrated data center). In summary, he explained that the cost increase was based on the change of the requirement for configuration of electronic equipment.<sup>184</sup>

Mr. San Miguel added that Mr. Madriaga's knowledge relative to the NBN-ZTE project was limited only to the information about the original proposal submitted to the CICT and that he did not have any complete knowledge of the final proposal submitted

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<sup>182</sup> TSN: L. Sapida VI-1, March 11, 2008, 11:30a.m., p.4.

<sup>183</sup> TSN: CGCastro VII-1, March 11, 2008, 11:40a.m., p.4.

<sup>184</sup> TSN: CGCastro, VII-1, March 11, 2008, 11:40a.m., pp.4-5

to the DOTC. He added that he hired Mr. Madriaga only from August to November 2006.<sup>185</sup>

Mr. San Miguel also confirmed that he met Chairman Neri, Engineer Lozada and Mr. Madriaga but denied that he ever met President Arroyo or First Gentleman Mike Arroyo. He likewise denied that he was present at the Wack Wack Golf and Country Club meeting where First Gentleman Mike Arroyo allegedly told Mr. de Venecia III to "back off". However, he did not deny the possibility that he could have been in the vicinity during that incident since in most NBN meetings, he would generally be required to standby should there be some technical questions regarding the project.<sup>186</sup>

Mr. San Miguel stressed that his job in the ZTE was more on the technical aspect of the project while a Filipino group was the one that facilitated and coordinated with the Philippine government for the ZTE. In fact, Mr. San Miguel said that it was Mr. Ruben Reyes, a non-government official, who led this Filipino group as far as coordinating with the Philippine government was concerned. It was also Mr. Reyes who introduced Mr. San Miguel to the ZTE people.<sup>187</sup>

Mr. San Miguel knew for a fact that Chairman Abalos was also communicating with the ZTE and that Chairman Abalos and Mr. Reyes appeared to be friends.<sup>188</sup>

Mr. San Miguel also pointed out that in some meetings with the ZTE, Chairman Abalos was also present together with Mr. Reyes. With this scenario, Mr. San Miguel

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<sup>185</sup> TSN: CGCastro VII-1, March 11, 2008, 11:40a.m., pp.6.

<sup>186</sup> TSN: CGCastro VII-1, March 11, 2008, 11:40a.m., pp.6-7.

<sup>187</sup> TSN: BRHGonzales IX-1, March 11, 2008, 12:00 p.m., pp. 2-3.

<sup>188</sup> TSN: BRHGonzales IX-1, March 11, 2008, 12:00 p.m., p. 4.

could only assume the fact that Chairman Abalos was part of the Philippine or Filipino group though he (Mr. San Miguel) did not have any first-hand knowledge or information of what exactly was the status of such relationship.<sup>189</sup>

Mr. San Miguel said that the Philippine or Filipino group was helping the ZTE because of friendship. He also confirmed the fact that Chairman Abalos was helping ZTE.<sup>190</sup>

He also confirmed that he personally knew Mr. Reyes, Chairman Abalos, Mr. Jimmy Paz, and General De La Torre.<sup>191</sup>

He informed the Committee that he was not aware of any kickbacks received by certain personalities but he added that the practice of giving commissions in exchange for help securing a project would be a standard practice. However, he explained that he had no knowledge as to how much such commissions were.<sup>192</sup>

Mr. San Miguel testified that he did not know personally Mr. Madriaga outside of the work but what he only knew was that Mr. Madriaga was capable of giving him (Mr. San Miguel) information regarding broadband.<sup>193</sup> He also denied sending an e-mail message to Mr. Madriaga about "tongpats".<sup>194</sup>

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<sup>189</sup> TSN: BRHGonzales IX-1, March 11, 2008, 12:00 p.m., p.10; Ctsotto X-1, March 11, 2008, 12:10 p.m., p.1.

<sup>190</sup> TSN: Ctsotto X-1, March 11, 2008, 12:10 p.m., p.1.

<sup>191</sup> TSN: BRHGonzales IX-1, March 11, 2008, 12:00p.m., p.4.

<sup>192</sup> TSN: MDAbueg XI-1, March 11, 2008, 12:20p.m., pp.6-7.

<sup>193</sup> TSN: Caturia XII-1, March 11, 2008, 12:30p.m., p.6.

<sup>194</sup> TSN: melNOVERO III-2, March 11, 2008, 1:00p.m., p.8.

Lastly, Mr. San Miguel denied that he knew the costing of the ZTE proposal since he was a mere technical consultant: *"It is quite but prudent on ZTE that they should keep their costing to themselves. And I would not want to also interfere because that's their right. I am external to their organization. I just say that based on my work, I just draw the framework of what the project is all about, and it's all up to them to put the costing. In a parallelism, I'm an architect; there's another builder. The builder should be the one to put a pricing; the architect would just be interested to find out how much the cost is because their compensation is based on the cost."*<sup>195</sup>

## **2.10. MR. MICHAEL T. DEFENSOR**

The extent of the participation of Mr. Michael T. Defensor in the NBN–ZTE deal controversy was revealed during the 9<sup>th</sup> public hearing held on February 11, 2008.

Mr. Defensor made it clear to the members of the Blue Ribbon Committee that he and Engineer Lozada were friends long before the NBN–ZTE controversy and that during his time as DENR Secretary, Engineer Lozada became the Chief of Staff of General Victor Corpus after which, they formed the Philippine Forest Corporation, where upon his recommendation, Engineer Lozada was appointed President of Philippine Forest Corporation.<sup>196</sup>

He informed the Committee that he did not have any knowledge that Engineer Lozada left the country and that it was only on February 5, 2008 at around 5:00 p.m., when he received text messages informing him that Engineer Lozada had been kidnapped that he received updates on Engineer Lozada. At first, he explained that he

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<sup>195</sup> TSN: BRHGonzales IX-2, March 11, 2009, 3:53p.m., pp.2-3.

<sup>196</sup> TSN: Caturla IX-1, February 11, 2008, 12:10p.m., p.8.

ignored the messages but that he was alarmed when at about 6:00 or 6:30 p.m., he saw the wife of Engineer Lozada on TV informing the public that Engineer Lozada was missing.<sup>197</sup>

He explained that he subsequently learned that Engineer Lozada was at the La Salle Greenhills Dormitory through PNP-PSPO Col. Paul Mascariñas and that he visited Engineer Lozada on February 6, 2008. He further disclosed that he asked Engineer Lozada what happened and Engineer Lozada informed him of a 1:30 p.m. Senate hearing the next day that he did not want to attend regarding which he was asking for help so that he would not be obliged to attend. Mr. Defensor testified that he told Engineer Lozada that he would relay Engineer Lozada's message but that Engineer Lozada should tell the Senate Blue Ribbon Committee that he did not want to attend that hearing.<sup>198</sup>

He added that when he asked Engineer Lozada about his needs at that moment, Engineer Lozada told him that he did not have any money, which prompted Mr. Defensor to offer some help. Mr. Defensor disclosed that at first, Engineer Lozada was hesitant to accept the ₱50, 000 he offered but later on agreed when he said that the help was personal in nature. Mr. Defensor further disclosed that the ₱50, 000 came from his wife, Julie who was with him at that time. He also clarified that he helped Engineer Lozada out of the fear that something might have happened to him.<sup>199</sup>

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<sup>197</sup> TSN: Solidum X-1, February 11, 2008, 12:20p.m., p.1.

<sup>198</sup> TSN: Solidum X-1, February 11, 2008, 12:20p.m. p 8.

<sup>199</sup> TSN: M.R. Catadman XI-1, February 11, 2008, 12:30p.m., pp.5-6.

## 2.11. MR. DANTE MADRIAGA

Dante R. Madriaga, in his Affidavit<sup>200</sup> dated March 10, 2008, stated that he was engaged as chief designer/consultant of the ZTE proposal and that his specific function was to oversee and supervise the drafting, designing/re-designing, and drawing up of plans for a complete nationwide Internet protocol network called the National Broadband Network.

In his testimony during the February 26, 2006 public hearing, Mr. Madriaga claimed that his involvement with the ZTE proposal began in 2003. He stated that he was hired by Mr. San Miguel, whom he had worked with before and who was also his "compadre". Mr. San Miguel was part of the group composed of Chairman Abalos, Mr. Ruben Reyes and General Quirino De La Torre.<sup>201</sup>

However, Mr. Madriaga later claimed that he was only a consultant of the NBN-ZTE project from May 2006 up to March 26, 2007.<sup>202</sup>

Mr. Madriaga said that he reported to work at ZTE almost every day and that he was also a liaison officer of ZTE.<sup>203</sup> He disclosed that he was paid allowance money and the rest of his salary was to be paid once the NBN ZTE project contract was approved.<sup>204</sup>

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<sup>200</sup> Affidavit, par. 4.5, p.4.

<sup>201</sup> TSN: Ctsotto X-3, February 26, 2006, 5:19p.m., p3.

<sup>202</sup> TSN: RL TUMAMPOS XI-3, February 26, 2008, 5:29p.m., p.1.

<sup>203</sup> TSN: RL TUMAMPOS XI-3, February 26, 2008, 5:29p.m., p.2.

<sup>204</sup> TSN: RL TUMAMPOS XI-3, February 26, 2008, 5:29p.m., p.2.

Mr. Madriaga explained that as a consultant, he had a scope of work<sup>205</sup> and that he reported to Mr. San Miguel but went to work at ZTE everyday, where they conceptualized the project, and whose main office was located at the 25<sup>th</sup> Floor of Pacific Star Building, Makati City.<sup>206</sup>

As to the issue of whether Mr. Madriaga asked for money in exchange for his testimony, he stressed that he willingly appeared before the Senate hearing in order to clear his name. He said there were some people who used his name to demand several millions of pesos in exchange for his testimony.

Mr. Madriaga further stressed that it was Senator Lacson who spread the information that he (Madriaga) was asking for P5 million or P10 million and to belie all the accusations, Mr. Madriaga in fact went to the office of Senator Lacson, without a lawyer, to explain and signify his willingness to testify.<sup>207</sup>

Mr. Madriaga was also asked whether he approached some personalities in the Senate to facilitate his voluntary testimony. Before his meeting with Senator Lacson, Mr. Madriaga denied approaching anybody who could facilitate his testimony in the Senate. He said, *"I heard the same people offered for me to testify. Pero how can I testify hindi ko naman kilala kung sino itong mga senators na ito? I never met any of you."*<sup>208</sup>

Mr. Madriaga clarified however, that an outsider with the name of Archie Antonio tried to facilitate his participation in the NBN-ZTE deal investigation. Mr. Madriaga said

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<sup>205</sup> TSN: Ctsotto X-3, February 26, 2008, 5:19p.m., p. 6.

<sup>206</sup> TSN: Ctsotto X-3, February 26, 2008, 5:19p.m., p. 7.

<sup>207</sup> TSN: Ctsotto X-3, February 26, 2008, 5:19p.m., p. 8.

<sup>208</sup> TSN: RL TUMAMPOS XI-3, February 26, 2008, 5:29p.m., p. 4.



he did not know the people whom Archie Antonio approached to facilitate his (Madriaga) testimony.<sup>209</sup>

When asked if he knew any of the witnesses or resource persons present in the hearing, Mr. Madriaga mentioned columnist Jarius Bondoc.<sup>210</sup> Mr. Madriaga also mentioned seeing Engineer Lozada, whom he identified as the consultant of Chairman Neri, at NEDA.<sup>211</sup>

Mr. Madriaga further testified that:

**2.11.1.** Mr. San Miguel was Mr. Madriaga's boss. It was Mr. San Miguel who asked him about the project's development or progress. In turn, it was Mr. San Miguel who would relay such development to Chairman Abalos, Mr. Reyes and General De La Torre.<sup>212</sup>

**2.11.2.** The cost of their project at first was about US\$130 million. But when they were about to start, the group could not survive on US\$130 million alone. The splitting of the money was to be made as follows: US\$40 million for the Filipino group and another US\$40 million for ZTE. Mr. Madriaga said: "*So, in the very beginning, mayroon ng patong iyan. Dalawang patong yan. Patong ng Pilipino, patong ng Chinese.*"<sup>213</sup>

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<sup>209</sup>TSN: RL TUMAMPOS XI-3, February 26, 2008, 5:29p.m., p. 5.

<sup>210</sup>TSN: RL TUMAMPOS XI-3, February 26, 2008, 5:29p.m., p. 6.

<sup>211</sup>TSN: RL TUMAMPOS XI-3, February 26, 2008, 5:29 p.m., p. 8.

<sup>212</sup>TSN: RL TUMAMPOS XI-3, February 26, 2008, 5:29 p.m., pp. 9-10.

<sup>213</sup>TSN: Jmbaisa XII-3, February 26, 2008, 5:39 p.m., p. 1; p. 4.

**2.11.3.** In the original US\$130 million cost, the commission was 80 million U.S. dollars. In short, the real cost of the project was only US\$50 million.<sup>214</sup>

**2.11.4.** The Filipino group was composed of Chairman Abalos, Mr. Reyes, General De La Torre and Mr. San Miguel. Included also in the Filipino group were President Arroyo and First Gentleman Mike Arroyo. As Mr. Madriaga said: *"Eh, from the very beginning alam ko na iyan, eh, dahil sinasabi sa akin noong aking mga amo, eh, na 'Protected tayo rito. Walang haharang sa atin."*<sup>215</sup>

**2.11.5.** When Assistant Secretary Formoso said that the cost of the project was increased from US\$130 million to US\$329 million, there was an assumption that the commission would also increase. Mr. Madriaga said: *"Kasi, Senator, pagka sa 130 mayroon ka ng patong, pagdating mo sa 329, iyong patong mo, exponential, tataas din."*<sup>216</sup>

**2.11.6.** The Filipino group made some advances from ZTE worth US\$41 million.<sup>217</sup> It was Mr. San Miguel who informed Mr. Madriaga about these advances.

**2.11.7.** The advances were allocated and given in three tranches, as follows:

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<sup>214</sup>TSN: Jmbaisa XII-3, February 26, 2008, 5:39 p.m., p. 2.

<sup>215</sup>TSN: Jmbaisa XII-3, February 26, 2008, 5:39 p.m., p. 5.

<sup>216</sup>TSN: Jmbaisa XII-3, February 26, 2008, 5:39 p.m., p. 2.

<sup>217</sup>TSN: Jmbaisa XII-3, February 26, 2008, 5:39 p.m., p. 6.

- The first was made on August 2006 worth US\$1 million as representation fees,<sup>218</sup>
- The second was made on March 2007 worth US\$10 million as success fee.<sup>219</sup>
- The third, and last, advance that the Filipino group made was on April 2007 worth US\$30 million to aid the administration during the 2007 elections. It was Fan Yang of ZTE who informed Mr. Madriaga about this.<sup>220</sup>
- (Another tranche worth US\$5 million was allocated on December 2006 and was intended for Mr. de Venecia III but was not given because Mr. de Venecia III walked out of a meeting in China;<sup>221</sup>)

**2.11.8.** The Chinese will not give out any more money unless the President of the Philippines would show up during the contract signing, which was the reason why President Arroyo went to Boao, China.<sup>222</sup>

**2.11.9.** The US\$1 million and US\$10 million tranches were received by Mr. Reyes while the US\$30 million tranche was coursed through Hong Kong to the company of Mr. Reyes.<sup>223</sup>

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<sup>218</sup>TSN: Jmbaisa XII-3, February 26, 2008, 5:39 p.m., p. 6.

<sup>219</sup>TSN: Jmbaisa XII-3, February 26, 2008, 5:39 p.m., p. 8.

<sup>220</sup>TSN: Jmbaisa XII-3, February 26, 2008, 5:39 p.m., p. 11; HSGayapa I-4, February 26, 2008, 5:49 p.m., p. 1.

<sup>221</sup>TSN: Jmbaisa XII-3, February 26, 2008, 5:39 p.m., p. 7.

<sup>222</sup>TSN: HSGayapa I-4, February 26, 2008, 5:49 p.m., p. 1.

<sup>223</sup>TSN: TJmbaisa XII-3, February 26, 2008, 5:39 p.m., p.9; HSGayapa I-4, February 26, 2008, 5:49 p.m., p. 1.

2.11.10. Mr. Reyes left the country for the United States on October 2007.<sup>224</sup>

2.11.11. The distribution or division of the advances from ZTE were as follows:

- The US\$1 million was divided only between Mr. Reyes and Chairman Abalos while General De La Torre and Mr. San Miguel did not receive any portion of this tranche.<sup>225</sup>
- As regards the US\$10 million tranche, half of that amount was intended for the first couple while the other half was intended for various government officers, particularly the Secretaries. As Madriaga said: *"Malaki yung kay Chairman Abalos at saka kay Ruben Reyes at saka yung kalahati paghahatian ni Leo at saka ni ano."*<sup>226</sup>
- The entire US\$30 million amount was allocated for the 2007 senatorial and local election.<sup>227</sup>

2.11.12. When asked if Fan Yang of ZTE confirmed to him the remittance or the delivery of the US\$30 million after President Arroyo went to Boao, China, Mr. Madriaga said: *"After the President went to Boao, about two weeks later bumalik siya, she confirmed at saka nalaman ko rin na...Kagaya nung mga ano namin, lunch. She said hopefully everything will be smooth now because it's all done."*<sup>228</sup>

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<sup>224</sup>TSN: HSGayapa I-4, February 26, 2008, 5:49 p.m., p. 2.

<sup>225</sup>TSN: HSGayapa I-4, February 26, 2008, 5:49 p.m., p. 4.

<sup>226</sup>TSN: HSGayapa I-4, February 26, 2008, 5:49 p.m., p. 5.

<sup>227</sup>TSN: HSGayapa I-4, February 26, 2008, 5:49 p.m., p. 5.

<sup>228</sup>TSN: HSGayapa I-4, February 26, 2008, 5:49 p.m., p. 7.

**2.11.13.** The reason for Mr. Madriaga's testimony was, as follows:  
*"Actually, matagal na akong gustong mag-testify kaya lang I'm hindered by the fact na wala naman akong kilalang mga senador eh. Isang senador lang na kakilala ko rito na kaibigan ko hindi pa member dito...Oo, I'm not afraid na magsabi ng totoo or to face the senator. I have seven children."*<sup>229</sup>

**2.11.14.** A person named Steven Li offered the NBN contract to ZTE. ZTE then looked for a powerful backer in the government so the project could move on. Mr. Madriaga said: *"Ang nangyari, they contacted the daughter of Chairman Abalos. Tapos si Chairman Abalos ang kinontak nila. Si Chairman Abalos – kasi kapitbahay niya si Ruben Reyes – sila ang ano, sila ang nag-contact kay General dela Torre who was a friend of Leo San Miguel."*<sup>230</sup>

**2.11.15.** The NBN contract was first offered to the CICT. The Chinese government came much later. In fact, ZTE made a representation that their concession loan was 3 percent, 15 years to pay, 10 years grace period.<sup>231</sup>

**2.11.16.** Unlike in Japan where the loan agreement first has to be signed, to be then followed by the supply contract, it was the reverse in China. Mr. Madriaga explained that in China, an approved project or supply contract must first be secured to be followed by a negotiation or signing of the loan agreement.<sup>232</sup>

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<sup>229</sup>TSN: HSGayapa I-4, February 26, 2008, 5:49 p.m., p. 9.

<sup>230</sup>TSN: LDGalapon II-4, February 26, 2008, 5:59 p.m., p. 1.

<sup>231</sup>TSN: LDGalapon II-4, February 26, 2008, 5:59 p.m., pp. 2-3.

<sup>232</sup>TSN: LDGalapon II-4, February 26, 2008, 5:59 p.m., p. 2.

2.11.17. Regarding the Wack Wack Golf and Country Club incident where Mr. de Venecia III was told by First Gentleman Mike Arroyo to “back off”: *“Doon lang ako sa malayong lugar. Pero hindi ko nakita sila Joey dahil nasa private room sila. I am sure he can back it up. Narinig ko lang nuong nang umalis na ‘yan si FG, nagmumura. Marami kasing babae rito so I invoke the...Blank, blank na blank na bata ito, hirap na pakiusapan.”*<sup>233</sup> Mr. Madriaga insisted that he saw First Gentleman Mike Arroyo, who was wearing a barong tagalog, storming out of the room while uttering the words *“P\_\_\_\_\_ I\_\_\_\_\_”*.<sup>234</sup>

## 2.12. President GLORIA MACAPAGAL ARROYO

The picture will never be complete without examining the participation of the highest ranking official of the Republic, President Gloria Macapagal-Arroyo.

Mr. de Venecia III testified that President Arroyo had no involvement with the NBN-ZTE transaction as it was Chairman Abalos who was negotiating with him. He reiterated that although Secretary Mendoza is the alter ego of the President, the President was still not there during the negotiations or when First Gentleman Mike Arroyo uttered the words “back-off” and that the President may not even have known of that situation. He likewise testified that the President wanted the contract reviewed and evaluated.<sup>235</sup>

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<sup>233</sup>TSN: LDGalapon II-4, February 26, 2008, 5:59 p.m., pp. 4-5.

<sup>234</sup>TSN: LDGalapon II-4, February 26, 2008, 5:59 p.m., pp. 5-6.

<sup>235</sup> TSN: Solidum II-3 September 18, 2007, 11:23 AM, pp. 4-6.

When Senator Madrigal asked Mr. De Venecia III if he was aware of the Shenzhen, China golfing holiday taken by President Arroyo, First Gentleman Mike Arroyo and Chairman Abalos together with ZTE officials, Mr. de Venecia III answered that he was aware of that trip though he pointed out that President Arroyo only attended because she was invited there by ZTE officials and that President Arroyo even advised Chairman Abalos to consider instead the proposal of AHI because it had no guarantee, no debt, and no risk to the government (as described by Speaker de Venecia, Jr. when he came back to Manila).<sup>236</sup>

Secretary Mendoza testified that the supply contract was signed in Boao, China on April 21, 2007 and was witnessed by President Arroyo.<sup>237</sup>

Chairman Neri also mentioned that in one of his conversations with President Arroyo, he mentioned the alleged bribe money of ₱200 million and that President Arroyo told him not to accept the money. (However, as regards his further conversations with President Arroyo in relation to the NBN-ZTE deal, executive privilege was invoked.)

Former Speaker de Venecia Jr. also mentioned the extent of President Arroyo's participation in the NBN-ZTE deal. In the House of Representatives impeachment proceedings, he said that:

Having said that, let me say that during the last two days, the newspapers, radio and television have made reference to why we were in Shenzhen across the border from Hong Kong last All Saints Day, two years ago I was in Hong Kong with my wife Gina and the President had just arrived in Hong Kong coming from a visit to many provinces in China. And she phoned me and she said, "Joe, can I invite you to play golf tomorrow early in the morning?" I said, "Yes, I'll be honored, Madam President." She said, "We will be playing with the First Gentleman". I said, "I will be honored, Madam President". So I went to their hotel at about 7:00 or 7:30 in the morning. I didn't have any golfing attire because I

<sup>236</sup> TSN: Lpamorca, I-5, September 18, 2007, 12:33 PM, p. 6.

<sup>237</sup> TSN, MHBalagne, VI-2, September 20, 2007, 5:33 PM, p. 4.

didn't know that we would be playing golf. I went to Hong Kong on a small vacation. And when I reached the hotel we boarded a coaster and I thought we will be playing golf in one of the golf course in Hong Kong then all of a sudden we were at the border between Hong Kong and Shenzhen in South China. And we gave our passports. It's a good thing my aide had my passport with him and we were finally given clearance to proceed. I was with the President and the First Gentleman and the security assistant in the coaster going to Shenzhen. And President Arroyo mentioned...<sup>238</sup>

...started the conversation because I was reading the newspaper. And she said, "You know, Joe", she said, "this ZTE project, let us consider it and approve it on the basis of a Build-Operate-Transfer formula so that the Philippine government will have no risk, will have no expense, will have no cost, and there will be no government guaranty. And it will be purely a 100% private sector investment." And then she started to praise my son who made the proposal to undertake the ZTE project on a Build-Operate-Transfer basis as a 100% private sector investment without any cost to the government, without any guaranty from the Philippine government, without the Filipino people having to repay a massive loan.

And then there is a second point there, that if the government takes over this project, the government will still have to manage and operate this project at another large cost way beyond the ordinary or way beyond the proposed contract at 300 and 30 million dollars. So I said, "Madam President, I think, as the original proponent of the Build-Operate-Transfer Law which has become a model for the Third World – I filed this bill together with Tong Payumo and Victor Ortega, and it has now become a model for the Third World – I said, "This is the way to do it, without any expense on the part of the Philippine government, without any expense on the part of the Filipino people." And then, finally, we arrived in Shenzhen and the coaster proceeded to the golf course in Shenzhen and, lo and behold!, my biggest surprise was that Chairman Abalos was waiting for us at the golf course. I did not expect..."<sup>239</sup>

...expecting the Chairman of the Commission on Elections, who is supposed to be managing the elections of the nation and in a few months the election shall be held, waiting for us there at Shenzhen. And so he was there with some ZTE executives. We changed to golfing attire, and then after breakfast we proceeded to play golf. And after one hour we joined by Chairman Abalos because the first threesome was the President, Mike Arroyo and myself, then we were joined by Chairman Abalos who said "Madam President, Mr. Speaker, please join us because we will have lunch at the headquarters of ZTE and they are preparing a grand luncheon for us with Shanghai crabs which are in season at the board room of ZTE". And this is very clear in my book, the picture of this meeting in this book which was written by Brett Becker of the Wall Street Journal, former editor of the Wall Street Journal, published in Washington D. C., shows the picture of President Arroyo, Mike Arroyo, Chairman

<sup>238</sup> TSN of the House of Representatives Committee on Justice, 24 November 2008, EAT, III-2

<sup>239</sup> TSN of the House of Representatives Committee on Justice, 24 November 2008, EAT, III-3.



**Abalos, myself and a Chinese official there at the golf course in Shenzhen.**

Now, pray tell me, Mr. Chairman, Members of the House, **what is the President of the Philippines doing there at the ZTE headquarters?** Pray, tell me, what is the husband of the President of the Philippines doing there at the ZTE headquarters, a company that is bidding for a massive project in the Philippines? Pray, tell me, why the Chairman of the Commission on Elections would be there at the ZTE headquarters? Why the Speaker of the House of Representatives, to my surprise why I am there – on advise and on invitation of the President of the Philippines? Very clear.<sup>240</sup> (emphasis supplied)

Thus, there are at least five things that are definite as to the extent of knowledge and involvement of President Arroyo:

- First, she was in Shenzhen, China on November 2, 2006 for a golfing holiday upon the invitation of ZTE officers. With her were First Gentleman Mike Arroyo, former Speaker de Venecia, Jr. and former Comelec Chairman Abalos.
- Second, she was aware of the P200 million alleged bribe offered by Chairman Abalos to Chairman Neri.
- Third, she went all the way to Boao, China on April 21, 2007 in spite of a family crisis just to witness the signing of the Supply Contract between the GRP and ZTE.
- Fourth, President Arroyo admitted in a DZRH interview on February 23, 2008 that she first learned of irregularities in the US\$329.48 million ZTE broadband contract on the eve of the signing of the Supply Contract on April 21, 2007.
- Fifth, she invoked executive privilege on all communications she had with Chairman Neri regarding the NBN-ZTE project. In other words, it would seem that she did not want the public to know how much importance she placed on

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<sup>240</sup> TSN of the House of Representatives Committee on Justice, 24 November 2008, WBC, IV-1.

having the project with ZTE approved as well as how much she knew about the anomalies surrounding its negotiations.

### **3. THE ALLEGED KIDNAPPING OF JUN LOZADA**

The alleged kidnapping of NBN-ZTE witness Engineer Lozada on February 5, 2008 presented a new twist to the NBN-ZTE deal investigations.

On February 5, 2007 at approximately 4:40 p.m., Engineer Lozada deplaned from Cathay Pacific Flight CX919 at the NAIA Terminal Gate 7. What transpired next has been a matter that has been debated in the halls of the Senate and the courts of justice.

The following general facts are not disputed: Upon the arrival of Engineer Lozada at Gate 7 of the NAIA, he was immediately met by Rodolfo Valeroso (PNP-Aviation Security Group), Gen. Angel G. Atutubo (Assistant General Manager for Security and Emergency Services of the Manila International Airport Authority) and Octavio Lina (Terminal Manager, Terminal I of Ninoy Aquino International Airport). All four then proceeded to take the stairs going up to the 3<sup>rd</sup> floor – departure area of the building and took the elevator from the 3<sup>rd</sup> floor, going down to the VIP parking area of the terminal. Mr. Valeroso and Engineer Lozada then boarded a waiting vehicle.

The vehicle then exited Gate 2 of the NAIA terminal, proceeded to Fort Bonifacio and exited at C5 going northbound. Upon reaching Kalayaan Avenue/C5, the vehicle took a U-turn and proceeded southbound reaching the South Luzon Expressway. They then proceeded to Sta. Rosa all the way to Susana Heights before they turned back and proceeded northbound once more towards Libis in Quezon City. By this time, it was

already approximately 9:30 p.m. Engineer Lozada and Mr. Valeroso proceeded to the Outback Restaurant where they met up with Atty. Antonio Bautista and PNP-PSPO Sr. Supt. Mascarinas (Deputy Director, PNP-PSPO). At 10:30 p.m., Engineer Lozada was brought to De La Salle Greenhills Dormitory where he was finally reunited with his wife Violeta Lozada.

At 10:00 a.m. of February 6, 2008, Engineer Lozada was then accompanied by PNP-PSPO Sr. Supt. Mascarinas to the office of Atty. Bautista. By 3:30 p.m., Lozada returned to the De La Salle Greenhills Dormitory, having stayed at the office of Atty. Bautista the entire time.

On the same day, Violeta Lozada, the spouse of Engineer Lozada filed a *writ of habeas corpus* before the Supreme Court. Shortly thereafter, Arturo Lozada, the brother of Engineer Lozada filed a *writ of amparo* before the same court.

On February 7, 2008 at 2:00 a.m., Engineer Lozada held a press conference at the De La Salle Greenhills Dormitory. Immediately thereafter, he proceeded to the Senate under the control of the Senate Sergeant At Arms.

While the above enumerated general facts are uncontroverted, the details of what actually happened "behind the scenes," remain an issue.

In his testimony before the Blue Ribbon Committee, Engineer Lozada alleges that from the time he set foot on the tube of Gate 7 of the NAIA, he was already accosted and kidnapped by people who were at that time unknown to him (subsequently identified as Valeroso, Atutubo and Lina). These men, according to

Engineer Lozada, did not identify themselves but merely said: "eto na, eto na subject"<sup>358</sup> and took hold of him by the arm, grabbed his bag and took his passport.

From this point on, he alleged that he was no longer in control of his actions. While still at the airport, he was supposed to proceed to the Immigration Area as instructed by Secretary Atienza. He was instead led up the stairs to the 3<sup>rd</sup> floor departure area. When he previously protested and said: "Teka, teka, teka. May mga sasalubong saken dito", one of the men merely said: "Hindi, hinde. Pinakukuha ka sa amin."<sup>359</sup>

Thereafter, they led him up the stairs. When they stepped off the elevator at the VIP parking area, he was ordered to board a car with Mr. Valeroso and an unidentified driver. When he asked where they were bringing him, all they said was: "Sir, relax lang, relax lang. Wala kami gagawin sa iyo."<sup>360</sup> All this time the people who were with him never identified themselves and ignored all his requests for them to bring him home to Pasig.

Up until the time he was finally brought to the De La Salle Greenhills Dormitory to meet up with his wife at 10:30 p.m., Engineer Lozada was allegedly taken to Quezon City – C5 Kalayaan Ave.; driven back south all the way to Los Banos, Laguna;

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<sup>358</sup> Tapos pag apak na pag apak ko, they grabbed me by the arms, they said "Eto na, eto na subject." (LDGalapon III-1 Feb. 8,2008 10:33am p.5)

<sup>359</sup> Kinuha ho ako. Nilabas ako dun sa tube. Sabi ko "Teka, teka, teka. May mga sasalubong sa akin ditto. Atsaka sabi sa akin ni Secretary, I have to go to Immigration." "Hindi, hindi, hindi. Pinakukuha ka sa amin." (LDGalapon III-1 Feb. 8,2008 10:33am p.5)

<sup>360</sup> So nilihis ho nila ako, inakyat ako sa departure; tapos sinakay ako ulit sa elevator, binaba na ako ulit pa baba sa tarmac. Sinakay ho nila ako sa sasakyan. Nagtanong ako kung saan ako dadalhin, saan ako dadalhin. "Hindi, basta may ... Sir, relax lang, relax lang. Wala kami gagawin sa iyo." (LDGalapon III-1 Feb. 8,2008 10:33am p.6)

reprimanded for sending out text messages<sup>361</sup> to his worried wife and brother; ordered to cease said activity and turn off his cellular phone<sup>362</sup>; ordered to write a letter addressed to the PNP allegedly asking for protection<sup>363</sup>; driven back again to Libis, Quezon City where he was made to meet up with Atty. Bautista and PNP-PSPO Sr. Supt. Mascarinas.<sup>364</sup> Afterwards, he was allegedly made to board a van with 6 or 7 armed men and was subsequently taken to De La Salle Greenhills as he requested. At the De La Salle Greenhills Dormitory, he was finally reunited with his family. He however was still under the custody of PNP-PSPO Sr. Supt. Mascariñas and his men.

The following day, PNP-PSPO Sr. Supt. Mascariñas allegedly ordered him to sign a typewritten letter addressed to PNP Chief Avelino Razon allegedly asking for protection. He was also allegedly ordered by PNP-PSPO Sr. Supt. Mascariñas to have his sister sign another letter which had a similar content.<sup>365</sup> Thereafter, PNP-PSPO Sr. Supt. Mascariñas allegedly ordered Engineer Lozada to accompany him to meet up with Atty. Bautista again. While there, he was presented with an affidavit that he never asked to be made. When he raised his concern over certain statements contained in the

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<sup>361</sup> Tapos sinabihan ho nila ako, "Sir, tumigil na kayo ng ka tetext, na kukuha lang naman naming e." (LDGalapon III-1 Feb. 8, 2008 10:33am p.7)

<sup>362</sup> X x x a man who introduced himself to him as Jorge who told him "ang hirap naman sa iyo, kung anu-ano pa pinag tetext mo." Jorge also said, "pwede ba tigilan mo na yan!" x x x after that conversation with Jorge, they asked him to turn off the phone. (CA G.R. SP Nos. 00017 and 102251 Decision p. 44)

<sup>363</sup> "Sir gumawa ka na ng sulat na nag rerequest ka ng security sa amin." (meINOVERO IV-1 February 8, 2008 10:43am p.1)

<sup>364</sup> So dinala po ako sa outback sa Libis. Nandun na si Atty. Bautista x x x Atty. Bautista was asking me kung ano – obviously he knows me already – certain questions because he will prepare my affidavit. (meINOVERO IV-1 February 8, 2008 10:43am p.2-3)

<sup>365</sup> Col. Mascarinas brought a printed letter already and he said, "Pirmahan mo to. Pa pirmahan mo rin yun isa sa ate mo." (CA G.R. SP Nos. 00017 and 102251 Decision p. 48)

affidavit, Atty. Bautista allegedly said: "pirmahan mo na yan, para sa comfort ng Malacanang yan."<sup>366</sup>

While the Blue Ribbon Committee does not take lightly the facts as alleged by Engineer Lozada in his testimony, the Blue Ribbon Committee feels that to get a proper perspective of the whole incident, the antecedent facts which led to his flight to Hong Kong and even the facts surrounding his stay there, should also be taken into consideration.

In his testimony before the committee, Engineer Lozada admitted that he sought the guidance of Secretary Atienza<sup>367</sup> when he was being summoned to testify before the Blue Ribbon Committee. By his own admission he said that he told Secretary Atienza that he did not want to appear and testify before the Blue Ribbon Committee.<sup>368</sup> He further admitted that he then met with Deputy Executive Secretary Gaité in Malacañang to seek his advice and help in trying to evade the Blue Ribbon Committee's invitation.<sup>369</sup> Because of this, he was then issued an ante-dated travel order for him to attend a

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<sup>366</sup> At after nun, sabi niya pirmahan ko nay un affidavit ko. Sabi k okay Atty. Bautista, "Atty. Bautista, I have some reservations about this affidavit, dun sa ano ..." sabi niya "ok lang yan Jun. You just sign it. Para sa comfort na rin ng Malacanang yan." (melNOVERO IV-1 February 8, 2008 10:43am p.4)

<sup>367</sup> Nuong pumunta po ako roon sa Office ni Sec. Atienza x x x tinanong po niya ako x x x "Jun, ano ba ang kinalaman mo rito?" sabi ko, "Sec. ano ba ang gusto niyong kwento? Yung salient points lang o from the top?" Sabi niya, "From the top. I kwento mo lahat." Kinwento ko ho sa kanya lahat. At nung na laman niya lahat, sabi niya, "Pag kinwento mo sa public ito, magagalit sila. I bibigay mo itong gobyernong ito sa oposisyon." (LDGalapon III-1 February 8, 2008 10:33am p.1)

<sup>368</sup> . x x x Sabi niya "O sige, tignan natin ma gagawa natin. Huwag ka – na di ka makarating duon. Ano ba ang gusto mo?" Sabi ko, "Ito lang ho ang gusto ko mangyari sana, huwag niyo na akong paratingin sa Senado." (LDGalapon III-1 February 8, 2008 10:33am p.2)

<sup>369</sup> Nuong martes pumunta ako kay Dep. Exec. Sec. Manny Gaité because nobody knew my role. X x x So pinaliwanag pa rin ako ulit nina – mga tao ni Manny Gaité at nuong nandun na siya, tapos sabi nila, ganon ulit "Anong gusto mo?" x x x So ganun na rin, inulit ko na naman sa kanila, "Huwag niyo na ho ako paratingin sa Senado. x x x" (LDGalapon III-1 February 8, 2008 10:33am p.2)

meeting in the United Kingdom.<sup>370</sup> In truth however, it was agreed that he will only go as far as Hong Kong where he would await further instructions.

Engineer Lozada further testified that while in Hong Kong, he used his credit card to pay for his food, hotel accommodations and even shopping. When he maxed out his credit limit, he then called Secretary Atienza and Chairman Neri to explain his predicament. Engineer Lozada further testified that he texted Deputy Executive Secretary Gaité to tell him that he was running out of money. Deputy Executive Secretary Gaité, in turn, texted Engineer Lozada back and told him to have somebody pick up the money he had promised him.

While in Hong Kong, he even received a phone call from Chairman Neri who advised him to write a letter to Senator Enrile to ask his help to lift the order of arrest issued by the Senate against him.<sup>371</sup> All this time, Engineer Lozada testified that he was in constant communication with Secretary Atienza and that he continuously received instructions from him.

Secretary Atienza called him in Hong Kong and told him to stay put since the issue was still hot. Eventually, Secretary Atienza instructed him to come home on February 5 instead of the 7<sup>th</sup> (or earlier than planned) to avoid media and the Senate.<sup>372</sup> He further narrated that before that fateful day he was to return home, he asked

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<sup>370</sup> So they decided right then and there x x x "Kailangan lumabas si Jun." So inayos ho nila yong mga travel documents ko, pinagawa ako ng mga travel requests, pina ante-date at pina alis ho ako papuntang Hong Kong. (LDGalapon III-1 February 8, 2008 10:33am p.2)

<sup>371</sup> Tinawagan ho ako ni Sec. Neri, kausap raw ho niya si Medy at gumawa raw po ako ng sulat para kay senador Enrile para raw ma withdraw yata yung motion na arestuhin ako dahil pinapa aresto na raw ako. X x x E ayaw ko pong ano, kasi hindi ko naman kilala si Sen. Enrile, baka mag taka ho yon at hindi rin niya ako kilala. (LDGalapon III-1 February 8, 2008 10:33am p.4)

<sup>372</sup> So last week ho tinawagan ako ni Sec. Atienza. Sabi niya "kalian ka ba dapat umuwi, Feb. 7? Sige, umuwi ka na ng Feb. 5. Don't take yong ano, yung maraming tao. Yung alanganing oras ka umuwi." (LDGalapon III-1 February 8, 2008 10:33am p.5)

Secretary Atienza "Sec. papaano yong arrest warrant sa akin?" To which Secretary Atienza answered: "Nakausap na namin si Libanan, okay ka na sa Immigration. Basta dumeri-derecho ka lang, hindi ka I hohold ng Immigration, tapos pa salubong ka na lang, okay ka na."<sup>373</sup>

By his own testimony, Rodolfo Noel "Engineer" Lozada Jr. admitted that it was his intention not to testify before the Blue Ribbon Committee.<sup>374</sup> With this in mind, he actively sought the help of his superior DENR Secretary Lito Atienza<sup>375</sup> and even Deputy Executive Secretary Gaité.<sup>376</sup> They hatched a plan<sup>377</sup>, and they executed it with success. Engineer Lozada was able to evade the invitation sent by the Senate and subsequently, the order for his arrest.

Up and until the time Engineer Lozada decided to come back to the country, he was still trying to evade the Blue Ribbon Committee summons. Again he and Secretary

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<sup>373</sup> Sabi ko "Sec. papaano yong arrest warrant sa akin?" Sabi niya, "Nakausap na naming si Libanan, okay ka na sa Immigration. Basta dumire-derecho ka lang, hindi ka I ho-hold ng Immigration, tapos pa salubong ka na lang, okay ka na." (LDGalapon III-1 February 8, 2008 10:33am p.5)

<sup>374</sup> Atienza: x x x Sabi niya "O sige, tignan natin ma gagawa natin. Huwag ka – na di ka makarating duon. Ano ba ang gusto mo?" Sabi ko, "Ito lang ho ang gusto ko mangyari sana, huwag niyo na akong paratingin sa Senado." (LDGalapon III-1 February 8, 2008 10:33am p.2)

Nuong martes pumunta ako kay Dep. Exec. Sec. Manny Gaité because nobody knew my role X x x So pinaliwanag pa rin ako ulit nina – mga tao ni Manny Gaité at nuong nandun na siya, tapos sabi nila, ganon ulit. "Anong gusto mo?" x x x So ganun na rin, inulit ko na naman sa kanila, "Huwag niyo na ho ako paratingin sa Senado. x x x" (LDGalapon III-1 February 8, 2008 10:33am p.2)

<sup>375</sup> Atienza: x x x Sabi niya "O sige, tignan natin ma gagawa natin. Huwag ka – na di ka makarating duon " (LDGalapon III-1 February 8, 2008 10:33am p.2)

<sup>376</sup> So they decided right then and there x x x "Kailangan lumabas si Jun." (LDGalapon III-1 February 8, 2008 10:33am p.2)

<sup>377</sup> So inayos ho nila yong mga travel documents ko, pinagawa ako ng mga travel requests, pina ante-date at pina alis ho ako papuntang Hong Kong. (LDGalapon III-1 February 8, 2008 10:33am p.2)



Atienza devised a plan on how he could sneak back inside the country without being detected by the media, and ultimately the Senate.<sup>378</sup>

Lozada: "Sec. papaano yong arrest warrant sa akin?"

Atienza: "Nakausap na naming si Libanan, okay ka na sa Immigration. Basta dumeri-derecho ka lang, hindi ka l hohold ng Immigration, tapos pa salubong ka na lang, okay ka na."<sup>379</sup>

This testimony as given by Engineer Lozada before the Blue Ribbon Committee on Feb. 8, 2008, is foretelling of what really happened.

Secretary Atienza in his testimony before the Blue Ribbon Committee admitted that he personally sought the assistance PNP Chief Avelino Razon<sup>380</sup> to secure Engineer Lozada upon his arrival from Hong Kong. Granting for the sake of argument that Lozada neither personally requested police protection nor knew that Secretary Atienza requested one for him, his being "secured" by these men do not constitute kidnapping, illegal detention nor arbitrary detention.

It should be kept in mind that this was still part of a grand scheme; a scheme in which Engineer Lozada himself was an active participant. A plan he and Secretary

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<sup>378</sup> So last week ho tinawagan ako ni Sec. Atienza. Sabi niya "kalian ka ba dapat umuwi, Feb. 7? Sige, umuwi ka na ng Feb. 5. Don't take yong ano, yung maraming tao. Yung alanganing oras ka umuwi." (LDGalapon III-1 February 8, 2008 10:33am p.5)

<sup>379</sup> Sabi ko "Sec. papaano yong arrest warrant sa akin?" Sabi niya, "Nakausap na naming si Libanan, okay ka na sa Immigration. Basta dumire-derecho ka lang, hindi ka l ho-hold ng Immigration, tapos pa salubong ka na lang, okay ka na." (LDGalapon III-1 February 8, 2008 10:33am p.5)

<sup>380</sup> Sen. Blazon: x x xMr. Secretary humingi kayo ng formally sa Philippine National Police para ma bigyan ng security?

Mr. Atienza: Opo.

x x x

Mr. Atienza: Opo. Ang akin lamang po e hindi ko naman po mapapatawad ang sarili ko kung hindi ko siya binigyan ng seguridad at may nangyari sa kanya. (MHBALAGNE VIII-1 Feb. 11, 2008 12pm p.5-6)



Atienza agreed to, for him to be able to sneak inside the country without being detected and evade being arrested by the Senate Sergeant at Arms.

In a testimony given by Engineer Lozada at the Court of Appeals, he said that when he was being driven around Metro Manila from the airport, Secretary Atienza spoke to him over the phone and allegedly said “sumama ka lang dyan, mag uusap pa kami ni ES at ni ma’am.”<sup>381</sup> and that from that point on, he understood that those men were under Secretary Atienza’s control and supervision.<sup>382</sup>

All these testimonies coupled by photographs and video shown before the Blue Ribbon Committee<sup>383</sup> do not support the assertion of Engineer Lozada that force was imposed upon him during the time he was under the “custody” of the PNP-PSPO Sr. Supt. Mascariñas and his men. At no point during the entire incident did Engineer Lozada shout for help from anybody – not when he was allegedly “taken” at the airport, not when they stopped at a Jollibee Fastfood outlet at Sta. Rosa, Laguna and not even when he was already inside and under the protection of the Brothers of De La Salle Greenhills. Neither was his cellular phone taken from him. For this after all was not a case of kidnapping or arbitrary detention, but merely a grand plan of deceit gone wrong; evasion gone awry.

Perhaps some sectors would argue that if Engineer Lozada was not kidnapped, why then would his relatives file petitions for a *writ of habeas corpus* and *writ of*

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<sup>381</sup> x x x when he spoke with Sec. Atienza, he was told over the phone that, “sumama ka lang diyan. Mag uusap pa kami ni ES at ni Ma’am.” Referring to the Executive Secretary and President Gloria Macapagal-Arroyo. (CA G.R. SP Nos. 00017 and 102251 Decision p. 43)

<sup>382</sup> The talk with Sec. Atienza happened when they were at C5 near Market Market at or before 5:00 o’clock, he understood that those men were under Sec. Atienza’s control and supervision. . (CA G.R. SP Nos. 00017 and 102251 Decision p. 44)

<sup>383</sup> Annex B

*amparo*? To our mind, the answer is clear: there was already a brewing distrust with the administration on the part of the Lozadas. They were not sure if indeed the administration would protect Engineer Lozada from the Senate and so as a safety net, they had to make sure that they had something to fall back on. They were anticipating a possible double-cross.

Engineer Lozada never really wanted to go to the Senate. Up until two hours before his press conference, he was still trying to avoid telling the truth.

Transcripts of Engineer Lozada's February 8, 2008 testimony about what transpired on the eve on February 6, 2008 reveal:

Nung gabi pong yon, binisita rin ako ni Mike, ni Mike Defensor. Makaibigan po kami non. Binisita po ako ni Mike. At—meron po 'ata akong nakalimutan—nung nandon ho pala si Col. Mascariñas, tinawagan din po pala nya ako-- gusto ho akong makausap ni Gen. Razon. Nakikita kong hirap na hirap si Gen. Razon kaya sabi ko sa kanya, "Gen, pasensiya na po kayo, pati kayo nadadamay pa sa akin." Kasi nakikita ko na nag-aano sila sa media, eh. He was forced to say a lie, 'no. So naawa ako sa kanya, actually. I know he is a good man. But napipilitan pa siyang magsinungaling.

So nung pumunta ho si Mike nung gabi na yon, ang sabi ni Mike, "Pare, these thing has grown out of way, way out of proportion na 'to." Sabi ko, "Oo nga eh, hirap na hirap na ako rito. I thought, sinabi ko naman sa inyo mulat-sapul, 'Ayaw kong ma-involve-involve dyan, eh.'" So sabi nya, "Di bale, di bale, gagawan natin ng paraan yan. Puwede bang tumawag ka na ngayon sa media either si Mike Enriquez o si--", sino pa ba yung babaeng broadcaster, di ko matandaan—"Tumawag ka na. Just make a statement na hindi ka naman kinidnap at wala ka naman talagang alam dito." Sabi ko, "Mike, ayaw ko nang gumawa ng mga—dadagdag pa 'ko 'ka ko sa gulo, eh. Puwede bang 'di na ko magsasalita?" And he was so gracious, sabi niya, "Eto, pang-gastos-gastos."

So kaibigan ko po yun si Mike. Sabi nya, "Puwede bang bukas mag-press conference ka na?" Kaya yung press conference na yan idea po ni Mike yun, eh. Kasi po-- sabi ko nga kay Mike, "Mike, lahat naman ng inuutos nyo sa akin...<sup>384</sup>sinusunod ko kaya lang sabog nang sabog eh. Sabi n'yo sa akin dati umalis ako, pumuntang Hong Kong, dahil tapos na ito, closure report na. Hindi, pinaaresto ako. Kaysa maayos, mas lalong lumala. Pinaaresto ako. Sabi 'ka ko ni Secretary Atienza umuwi na ako, 'yun pang hapon, sinunod ko, umuwi naman ako, nagkagulo pa rin. Sabi ko nga, wala naman ako sa inyong ano. O ganito na lang, Jun... Sabi ko, wala kayong timon, 'ka ko. So...

<sup>384</sup> TSN: melNOVERO IV-1, February 8, 2008, 10:43a.m., pp. 5-6.

But, sabi n'ya, mag-press conference ka na lang bukas, sabihin mo na hindi ka kinidnap, wala kang kinuhang ano. So pagpasok ko, sabi ko, Mike, ang hirap-hirap na nito 'no. Nagmama-- So pagbalik ko po sa kuwarto ko, kinuwento ko sa asawa ko 'yung ano, sinabi ko nga. Tumawag pa rin ho si Secretary Neri, sabi n'ya, Jun... Sabi ko, Rom, hirap na hirap na ako sa kalagayan ko. Sabi ko mayroon na akong ano sa labas, mayroon na akong maraming problema sa labas, on the domestic front nagkakaproblema na ako. Kasi 'yung asawa ko is a wreck already; mawala lang ako natatakot na kasi hindi alam kung saan ako dadalhin. Sabi ko nga sa kanya, hirap na hirap na-- sa domestic front, 'ka ko, mas mahirap because I'm the only one who has to work on her. Sa external front, marami tayo.

Nu'ng gabi pong 'yun, pagbalik ko roon, kinuwento ko sa asawa ko 'yung plano na mag-aano na ako, na magpi-press conference ako. Sabi ko nga kay Mike, Mike kayo na ang mag-ayos nu'ng statement. My wife then, sabi niya, puwede bang tawagin na natin sina sister, hindi ko na kaya itong pinaggagagawa mo? Tinawag ho namin sina sister, mga kaibigan naming madre, sinabi nga ng asawa ko 'yung predicament namin. Tapos kinuwento ko rin doon sa mga brothers at saka doon kina Bishop 'yung kinalalagayan na namin, na tuluy-tuloy na ito.

Sabi ko, if I'll do this, I'll get suck into this already. Tuluy-tuloy na; kasali na ako rito.

Sabi po nu'ng mga madreng kausap namin at nu'ng mga pari, sabi n'ya, Jun wala nang katapusan 'yan, let's pray over it, and after prayer, magdesisyon ka kung sasama ka na diyan, irerespeto natin 'yan, o you will stick with the light. Medyo tumagos sa puso ko 'yung sinabi nu'ng pari.

We prayed over it; mga alas-dose na po 'yun. Nagdesisyon po ako, which really made my wife freak out, na I will just go to the Senate na lang. I will submit myself to the Senate, 'ka ko, enough of this, sabi ko. Hindi na ako makikisali roon sa mga pinapipirmahan sa akin, ganoon. So noong gabing 'yun, noong after nu'ng prayer, natatakot ang asawa kung anong mangyayari. Nagdesisyon na po 'yung mga madre at mga pari na para sa ikabubuti ng buhay mo, proteksiyon ng buhay mo, mag-press conference na tayo. Sabi ko po, Susmaryosep! Alas-dose y media na po 'ata 'yun o alana na, magpi-press con... Sabi ko, may tao bang pupunta sa atin? Sabi n'ya, hayaan mo na, basta may-- on record lang na sinabi mo na 'yung gusto mo. Kasi baka doon sa baba, 'yung mga pulis, nandoon pa eh. So 'yun po, kaya ako nag-press conference kahapon, na nadesisyunan na that I will stick to the truth and I will come, submit myself to the Senate, kaya po ako nandito.<sup>385</sup> (emphasis supplied)

Thus, Engineer Lozada only decided to come out with the truth after he prayed with the religious for discernment and guidance. It is undoubted that Engineer Lozada had a change of heart that is why he found the courage and the strength to come before the Senate.


<sup>385</sup> TSN: Aliccantimbang V-1, February 8, 2008, 10:53a.m., pp. 1-3.

It is safe therefore to say that up until two hours before Engineer Lozada's press conference, he was a conflicted man. He was dealing with an internal conflict whether or not to evade testifying before the Senate; whether or not to tell the truth and implicate many of his friends; whether or not to risk his career and family life; and whether or not to subject himself to the scrutiny of the Filipino nation.

**Kidnapping and Serious Illegal Detention** as provided in Article 267 of the Revised Penal Code is a very serious charge that we are not prepared to rule on given the present set of facts. The Court of Appeals' denial of Engineer Lozada's writ of amparo casts serious doubts as to the veracity of his claims.

However, should Engineer Jun Lozada have other more convincing evidence to substantiate his claims, it would be best that he should present it before the Department of Justice where he currently has a pending case of Kidnapping and Attempted Murder charges that he filed against Environment and Natural Resources Secretary Lito Atienza, former Philippine National Police (PNP) Chief Avelino Razon and three others, on February 22, 2008.

Moreover, it is also very telling that the whole government machinery was mobilized just to prevent Engineer Lozada from testifying before the Senate. This only means one thing: Engineer Lozada knows too much and he will have difficulty in lying before the Senate; and his testimony is something that has to be prevented at all costs.



#### 4. FINDINGS OF THE BLUE RIBBON COMMITTEE

In the midst of conflicting testimonies, the Blue Ribbon Committee has arrived at the following findings:

- 4.1 **President Gloria Macapagal-Arroyo allowed ZTE to win the NBN project, even if at the initial stages she spoke as if she wanted a private Build Operate and Transfer (BOT), no sovereign guaranty, “pay as you use” broadband.**

It must be borne in mind that the acts of all of President Arroyo's alter egos: Former Presidential Chief of Staff Michael Defensor, Chairman Neri and Secretaries Favila and Mendoza are within her complete control and supervision. Moreover, the direction that NEDA took in approving the NBN-ZTE contract was also under her control as Chairperson of NEDA.

In spite of the fact that she knew about the P200 million bribe offer related to her by Secretary Neri and in spite of the fact that she knew that there were anomalies in the contract the night before the signing with ZTE, she proceeded to China to witness the signing of the contract. It is worth noting however that the contract was not government to government but was merely a contract with a private company. Why did she have to go? What compelled her to go?

Moreover, she claimed executive privilege with regard to the details of her instructions to Chairman Neri regarding the approval of the contract. The mere act of claiming executive privilege meant that she had a presidential communication with Chairman Neri regarding ZTE; otherwise, there would be nothing to invoke. This shows that she had a hand in its approval. She knew what was going on. And she invoked

executive privilege because there was something that she wanted to hide from the Filipino people.

Also, it seems that the whole executive department was mobilized to prevent Engineer Lozada from testifying. While most of her Cabinet officials claimed that they were acting on their own, it boggles the mind why all the President's men were falling over each other to prevent a mere bureaucrat from testifying before the Senate. The operations to help stop Engineer Lozada from testifying did not only involve the DENR and the Office of the President; it even had the indispensable cooperation of the PNP, NAIA and the Bureau of Immigration. It even resurrected the services of a former Presidential Chief of Staff, Michael Defensor. If the whole operation did not have the blessings of the President, then whose hand would have the power to make all these government operatives do what they did? What can make Deputy Executive Secretary Gaité issue ante-dated travel documents to Engineer Lozada? What kind of compelling force can make him give P500,000 to someone he hardly knew because the latter was merely feeling cold in Hong Kong?

It was also not proper for the President to be playing golf in the ZTE Shenzhen headquarters when she knew that ZTE was lobbying for a contract with her government. Clearly, this act is another lapse in judgment- at the very least.

She definitely condoned the corruption. If not for the public uproar brought about by the NBN-ZTE investigations, she would not have cancelled that contract.

As the chief administrative officer of the government, President Arroyo should explain why:



- She did not do anything actively after Chairman Neri told her of the alleged P200 Million bribe offer by Chairman Abalos;
- She still went to China to witness the signing of the Supply Contract with ZTE when the night before, she knew that there were anomalies surrounding the contract; and
- She went to play golf in Shenzhen, China upon the invitation of ZTE in spite of the fact that she knew that ZTE was lobbying for a contract with her government. The President should have been more careful and circumspect in her actuations.

**4.2 Former Comelec Chairman Benjamin Abalos shamelessly brokered the approval of the ZTE contract. His lobbying efforts were confirmed by Chairman Neri, Mr. de Venecia III, Engineer Lozada, Secretary Teves, Secretary Mendoza, and Mr. Leo San Miguel.**

While Chairman Abalos's alleged attempt to bribe Chairman Neri may be, for some, a case of one's word against the other, it is an established fact that Chairman Abalos was pulling all the strings in government for ZTE to secure the NBN contract.

Chairman Abalos was hosting meals and golf games at the Wack-Wack Golf and Country Club and even meeting with Chairman Neri, Engineer Lozada and ZTE officials at the Makati Shangri-la Hotel. He also orchestrated meetings with the First Gentleman in connection with the ZTE contract at least twice. First, in Wack Wack Golf and Country Club and second, in Shangri-la.

But more than what he did, the more pertinent issue is why he did it. What was Chairman Abalos' business with broadband technology? Why did he brazenly pull strings in government in favor of ZTE? Why did he risk getting into a fight with Mr. de Venecia III, the son of the 4<sup>th</sup> highest official in the country at that time, just for ZTE to





get the deal? He could not have been so presumptuous to make the demand at Shenzhen, in front of De Venecia III- the Speaker's son- if he was not so sure of himself and his connections. What was a COMELEC chairman doing, delving in matters of telecommunications- while there was a very important election that he had to prepare for?

It is also worth noting that the filing of the certificates of candidacy in the May 14, 2007 midterm elections started as early as January 2007. The filing of certificate for candidacy for Senators in the 2007 elections was from January 15 – February 12, 2007<sup>395</sup> and the campaign period for national elective positions was from February 13 – May 12, 2007.<sup>396</sup> Therefore, then COMELEC Chairman Abalos was so busy during that period not because of the elections but because of his acting as a broker for ZTE.

Clearly, Chairman Abalos had a big stake in the NBN deal and it could only have been financial or pecuniary in nature. The fact that he was the head of an independent constitutional body which was supposed to be preparing for the holding of an upcoming election, but was instead prioritizing peddling his influence in government to intervene in a government contract can lead to no other conclusion. He was more interested in getting the contract than in doing his COMELEC duties. This is a pure case of graft and corruption.

Chairman Abalos was unabashedly influence-peddling in violation of Sections 3 (a) and (h) of RA 3019. It was found that he really offered a bribe of P200 Million to

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<sup>395</sup> Section 5, Comelec Resolution No. 7799, Guidelines on the Filing of Certificates of Candidacy and Nomination of Official Candidates of Registered Political Parties in Connection with the May 14, 2007 Synchronized National and Local Elections, 5 January 2007.

<sup>396</sup> Section 3, Comelec Resolution No. 7767, Rules and Regulations Implementing Republic Act No. 9006 otherwise known as the "Fair Election, Act," in Relation to the May 14, 2007 Synchronized National and Local Elections, 30 November 2006.

Chairman Neri, then he should also be charged with violation of Article 212 of the Revised Penal Code on Corruption of Public Officials.

**4.3 Mr. Jose de Venecia III is bound by the prohibition in Section 5 of Republic Act No. 3019 prohibiting a relative of the Speaker of the House up to the 3<sup>rd</sup> civil degree from intervening directly or indirectly in any business, transaction, contract or application with the Government.**

Admittedly, the law provides an exception for those relatives who have been dealing with the government along the same line of business prior to the official's assumption of office and Mr. de Venecia III claimed that he had already been dealing in telecommunications matters with the government even before the assumption by his father of the Speakership in 1992. But apart from his bare and naked assertion, he failed to substantiate this claim and cite specific instances to convince the Blue Ribbon Committee that he was dealing in telecommunications matters with the government before 1992.

He even asked his general manager at AHI, Ernesto Garcia, to draft a letter of endorsement for Secretary Mendoza to sign- so that AHI could secure the contract. Mr. de Venecia III was a rent-seeker clearly using with impunity, the influence of his father's office as leverage in order to win a lucrative government contract.

Mr. de Venecia III spilled the beans regarding the NBN-ZTE scam, Chairman Abalos' influence peddling, and First Gentleman Arroyo's improper intervention not because he was a patriot but because he was vengeful. He even admitted that there could have been a partnership between AHI and ZTE. It only fizzled out because of the alleged US \$ 130 Million over price.

Moreover, Mr. Jose de Venecia III's non-reaction or lack of righteous indignation when then Comelec Abalos' demanded the balance of his commission, and the commission supposedly for the Speaker and for the President, in Kempinski Hotel in China, is quite suspect, if not revealing. If indeed his father was not part of the transaction- or had no part in it at all- the natural reaction of a son would be to dispute or object to the assertion in front of those upon whom commissions were being demanded. That would have been the most normal thing to do in the face of an allegation of corruption being thrown at one's father. He, after that incident, could have told his father about it, and he could have instituted impeachment proceedings against Mr. Abalos. He could have asked his father to report the incident to the President. Why didn't he? What was he afraid of, considering his father was the Speaker of the House?

His testimony at the last hearing of the Senate Blue Ribbon Committee is very telling:

**THE CHAIRMAN.** So dalawa lang kayong nagpunta?

**MR. DE VENECIA.** Hindi po--dalawa po. Kaya lang I took my own flight and I paid for my own airfare, and I met him in Shenzhen at the Kempinski Hotel. He, apparently, came from Hong Kong and went to the Kempinski Hotel to meet the ZTE officials. So that's where the meeting happened at the Kempinski Hotel.

**THE CHAIRMAN.** So, dalawa kayo doon, dalawa lang kayo?

**MR. DE VENECIA.** Dalawa lang po kami doon.

**THE CHAIRMAN.** Doon humingi siya ng pera allegedly, sabi mo, for the President, for Speaker de Venecia?

**MR. DE VENECIA.** Yes, yes.

**THE CHAIRMAN.** The balance of his commission and that of the President GMA and Speaker de Venecia?

**MR. DE VENECIA.** Ang sabi niya po exactly is that iyong komisyon niya, at sabi niya, hinihintay din daw ito ng Presidente at ni Speaker de Venecia. Iyon po ang sinabi niya. Kaya po, I—

(At this juncture, Senator Lacson joined the panel.)

**MR. DE VENECIA.** ... If I can continue, sir, ang sabi niya hinila ko ngayon si Chairman Abalos sa labas ng business center. At sinabi ko sa kanya, "Sir, I mean, you cannot – firstly, you cannot be demanding these commissions from the Chinese." And then...

**THE CHAIRMAN.** In front of the Chinese sinabi mo 'yon?

**MR. DE VENECIA.** Yeah – hindi, Sa labas po. sa labas po nag-usap po kami ni Chairman Abalos at sinabi ko sa kanya, "And please do not use the name of the President and Speaker de Venecia saying that they are waiting for this money. Kasi they are both well-respected in China." So, I – you know, kaya ako nagalit ng kaunti kay Chairman Abalos kasi ginagamit niya 'yong pangalan ni GMA at ni JDV para doon sa commission na hinihingi niya at – so bumalik po kami doon sa kuwarto uli at doon po, inulit niya uli po, sabi niya, "Where is the – where can we get the commissions?" Because by January 15 po magiging very busy na siya. So tumayo po 'yong government sales nila, si Ms. Fan Yang, saying, "But what about the advances, Mr. Chairman?" Tapos si Chairman Abalos ay tumahimik na lang and at the same time ZTE was also pressuring Chairman Abalos to stop this meeting because their Chairman Wu was waiting at the restaurant in the hotel. So, 'yon po ang nangyari doon.

**THE CHAIRMAN.** So, doon lang nanghingi? Wala nang iba? Doon sa lounge, hindi na nanghingi?

**MR. DE VENECIA.** Doon po siya nanghingi. Hindi. There was a dinner. That was before dinner. The meeting started at about 4 o'clock and the dinner was at 6 o'clock. So mayroon ho akong meeting between 4 to 6. At doon po niya hinihintay 'yong commission. Sinabi niya na kallangan nag komisyonan ito kasi I will be very busy and I will be the most powerful man. Sir, I already said this in the last hearings.

**THE CHAIRMAN.** You know, I just – Yes, I know that.

**MR. DE VENECIA.** Yes, but I can conveniently say that that's when he asked for his commission kasi he will be very busy by January 15 and the President and the Speaker are waiting for these commissions.<sup>397</sup>

And, after the supposed unpleasant meeting in China, why would he still meet with Abalos? They met at least two more times after the Kempinski Hotel incident. The first time was on January 2007 at the Diamond Hotel when then Comelec Chairman Abalos allegedly insisted that Mr. Jose De Venecia III meet again with ZTE.<sup>398</sup> The second time was sometime on February 2007 at Wack wack Country Club where he

<sup>397</sup> Jmbaisa VI-1 September 1, 2009 11:39 a.m. 7-8; and SNTUPAZ VII-1 SEPTEMBER 1, 2009 11:49 A.M. 1-2

<sup>398</sup> Paragraph 23, Affidavit of Jose De Venecia III dated September 10, 2007, submitted on September 19, 2007.

and then Comelec Chairman Abalos met with DOTC Assistant Secretary Elmer Soneja to talk about the NBN project.<sup>399</sup>

Was the business proposition or profit motivation weightier than honor and pride? The only plausible answer to all these is either that he was also out to get a commission himself, or corner the contract by himself, or that he knew that his father was part of the whole scheme.

Mr. Jose De Venecia III had so many chances to blow the whistle but did not. He could have blown the whistle after then Chairman Abalos offered him US \$10 Million. He could have blown the whistle after the Kempinski Hotel incident. He could have blown the whistle after his alleged encounter with the First Gentleman in Wack Wack. Why did it have to take him more than six months to come to the Senate and spill the beans on his cohorts in the NBN deal? Why? The only reasonable answer is that he was part of the stinking deal. He only spoke out because he was not happy with his share or that he had lost his share.

Mr. de Venecia III did not come to the Senate with clean hands.

#### **4.4 First Gentleman Arroyo intervened- improperly- when he allegedly told Mr. de Venecia III to back off from the NBN project.**

First Gentleman Mike Arroyo, as the President's spouse, is prohibited by Section 5 of Republic Act No. 3019 from intervening directly or indirectly in any business, transaction, contract or application with the Government. By attending that meeting at

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<sup>399</sup> Paragraph 26, Affidavit of Jose De Venecia III dated September 10, 2007, submitted on September 19, 2007.

the Wack Wack Golf and Country Club and telling Mr. de Venecia III to back off, he actively intervened in a government contract in violation of this prohibition.

It was also alleged by Mr. de Venecia III and Engineer Lozada that the First Gentleman was to receive a kickback from ZTE in the amount of US\$70 million. If true, First Gentleman Mike Arroyo, as well peddled influence and violated Section 4 of Republic Act No. 3019, which penalizes any person having family or close personal relation with any public official who takes advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift or material or pecuniary advantage from any other person having some business, transaction, application, request or contract with the government, in which such public official has to intervene.

And what was Mr. Arroyo doing in Wack Wack, in the middle of a supposed reconciliatory meeting? He says that when he was introduced to Jose de Venecia III, he merely advised him of a probable violation of RA 3019? What was his business in doing so, to a person whom he has supposedly met for the first time?

A question pops in one's mind: Why would these people converge in Mr. Arroyo's presence, and why would he be in a meeting where the ZTE contract was being discussed? Why was he the "watering hole," why was he the converging point? Was the meeting a compromise convention?

More than these violations of law, First Gentleman Mike Arroyo would do well to remember that Caesar's wife must be above suspicion. Alas, he was not and thus did not pass the test.



**4.5 There are badges of irregularity in the acts of Secretary Mendoza as well as in the acts of his two Assistant Secretaries, Soneja and Formoso.**

DOTC Secretary Mendoza's signature can be found in a document that endorsed the project to NEDA. This signature in that same document pre-dates the receipt of his office of the memo being quoted and adverted to.

Worth repeating is what we have earlier written on the indisputable facts of the controversy. We earlier said:

On **March 1, 2007**, ZTE submits its revised proposal to DOTC.

On the very same day, on **March 1, 2007**, The Bids and Awards Committee (BAC) reviewed and evaluated the revised proposal and presented the conditions to ZTE.

Also, on **March 1, 2007**, DOTC Secretary Mendoza and CICT Ramon Sales wrote a joint letter to NEDA Secretary Romulo Neri recommending the establishment of a single Broadband Network.

DOTC & CICT said in the letter that the Bids and Awards Committee (BAC) came up with the following conditions:

- The project should satisfy the network requirements of the various government agencies for VOIP, e-Government and e-Education;
- The system should be designed and implemented considering the demands in areas not covered by existing services. Corollarily, the system should take

into account and utilize and integrate, if possible, existing private and public telecommunications infrastructure; and

- The funding should fully cover all requirements of the project including those for its initial operation and maintenance.

The fact is: this letter of DOTC Secretary Mendoza and CICT Secretary Sales of **March 1, 2007** addressed to NEDA Chairman Neri comes **five days in advance** of the BAC Resolution No. ICT 07-0002 dated **March 6, 2007**. Resolution No. 07-0002 of the BAC-ICT of the DOTC is the document which formally adopted the findings of the Technical Working Group (TWG) and recommend that the findings are forwarded to the National Economic and Development Authority (NEDA).

How can it be possible to attach the said BAC Resolution to their **March 1, 2007** letter to NEDA Secretary Neri when the BAC for ICT only came out with its findings on **March 6, 2007**?

Furthermore, Assistant Secretary Soneja's Memo as the Chairman of the BAC of **March 1, 2007** was stamped received by the Office of the DOTC Secretary only on **March 7, 2007**. How then can there be now an attachment of a **March 1, 2007** letter to NEDA?

Secretary Mendoza also talked with Mr. Jose de Venecia III in the Speaker's house about the NBN project. This is at the very least improper considering he knows his department is primarily responsible for the NBN. However, it also indicates that he was in it too. Finally, he was in the reconciliatory meeting at Wack Wack showing that he has an interest in the contract. It suggests that he was acting as a mediator which





should not really be his job. It seemed like all the most important characters in this controversy were in Wack Wack at that time.

All these individuals were in Wack Wack to converge in Mr. Arroyo's presence, to converge in their "watering hole".

Assistant Secretary Soneja as head of the BAC bears responsibility too. He was in many meetings; he endorsed the Memo and was part of the overzealous process of the BAC.

Finally, Assistant Secretary Formoso seems to have a very prominent hand in the controversy. He can be seen in the COMELEC office with then Chairman Abalos.<sup>400</sup>

Moreover, the September 1 testimony of Engineer Jun Lozada is quite revealing:

**THE CHAIRMAN.** Mr. Lozada, kanina sinabi mo meron talagang October 28. You agreed with the opinion of Mr. Neri?

**MR. LOZADA.** Ang ano ho kasi – maybe si Mr. Sales hindi niya naanong lahat kasi ... Actually, si Amboy Formoso ang kausap ng – nina Chairman Abalos diyan eh. So, I may understand Mr. Sales not being able to remember all.

**THE CHAIRMAN.** Asec, Asec. Amboy Formoso?

**MR. LOZADA.** Yes. Siya po iyong ano – siya ang talagang kumakausap doon sa grupo ni Chairman Abalos through kay Leo San Miguel. Sila ho iyong naghandle kay Formoso. So anything that this group needs from CICT, all they have to do is tell Formoso and Formoso delivers it. So I may understand because as Mr. Sales said, we never actually met. The only person na naano diyan sa CICT is si Asec. Formoso. So, siya ho lahat ang ano – ang lahat ng kailangan document-wise or para ano siya ho iyong ...

**THE CHAIRMAN.** DOTC siya, si Formoso, di ba?

**MR. LOZADA.** Sa CICT ho siya.

**THE CHAIRMAN.** Hindi niyo ba kilala itong si Amboy Formoso po?

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<sup>400</sup> TSN: Amador X-2, September 26, 2007, 2:23 p.m., pp. 6-7.

**MR. SALES.** Well, he was the head of TELOF and he was... As a commissioner, he was reporting to the Chairman of CICT.

**THE CHAIRMAN.** So he was reporting to you.

**MR. SALES.** Yes. And then he was transferred to DOTC.

**THE CHAIRMAN.** Later?

**MR. SALES.** Later, yes.

**THE CHAIRMAN.** So, what are we saying here then that...?Jun, ano iyong sinasabi mo ngayon?

**MR. LOZADA.** Ang sinasabi ko ho na hindi si – wala ho talagang masyadong visibility iyong project na ito kay Chairman Sales dahil nga hindi ho nila tantiyado raw si Chairman Sales, kung baga, they felt that...

**THE CHAIRMAN.** Is that your opinion or is that...?

**MR. LOZADA.** No, no, sa usapan. Kaya nga inalis ako.

**THE CHAIRMAN.** Sino ang nagsabi?

**MR. LOZADA.** Iyong grupo ho nila.

**THE CHAIRMAN.** Because you just cannot say that. You have to quote somebody.

**MR. LOZADA.** I'm sorry. Kaya nga ho that's the very reason why there was an EO na inalis itong implementation ng project from CICT to DOTC because they are not sure, sina Chairman Abalos, if Chairman Sales would play ball with them.<sup>401</sup>

Thus, Formoso should therefore answer the charges of Engineer Lozada in the proper forum.

#### **4.6 The averments of Engineer Lozada.**

Engineer Lozada made the statements of Mr. de Venecia III and Chairman Neri; in fact, Engineer Lozada said things that that Chairman Neri was not willing to say.

<sup>401</sup> TSN: Solidum I-2 September 1, 2009, 12:49, pp. 6-8.

However, the Committee refuses to rule on his allegations of kidnapping. We encourage him instead to present more substantive evidence before the Department of Justice (DOJ) which is investigating his kidnapping case so that they may rule on whether or not there is probable cause to file a kidnapping case against Secretary Atienza and his alleged cohorts.

Yet, it should be noted that Engineer Lozada knew a lot regarding the transaction of the NBN-ZTE contract because from the start, he was part of the grand scheme to defraud the government. He is not innocent; in fact, he was conspiring with Secretary Neri and the group of Mr. Jose de Venecia III and then Comelec Chairman Benjamin Abalos on how to protect their "tong-pats". Therefore, he should be investigated and or charged together with then Chairman Romulo Neri as principal by indispensable cooperation with whatever charges that then Chairman Neri are charged with.

It should be remembered that Engineer Lozada said that his involvement in the NBN-ZTE deal started when Secretary Neri introduced him to Chairman Abalos at the Wack Wack Golf and Country Club where they met with Ruben Reyes, Leo San Miguel and ZTE representatives Fan Yang and Yu Yong.<sup>402</sup> However, prior to his involvement in NBN-ZTE deal, he admitted that he was also working with Secretary Neri in the Department of Budget and Management (DBM). In fact, he drafted a Memorandum for Secretary Neri directing all government agencies to submit their telecom expenses.<sup>403</sup> Therefore, Engineer Lozada is no saint. He was a co-conspirator from the start who chose to confess and tell what he knows when things got to hot to handle.

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<sup>402</sup> TSN: Aliccatimbang V-1, February 8, 2008, 10:53a.m., p.5.

<sup>403</sup> TSN, Aliccamtimbang, V-I, February 8, 2008, 10:53, pp 6-7.

However, due to his cooperation in the hearings and as evidence provides that he seems to be not the most guilty, it will be up to the Ombudsman if it sees it fit to give Engineer Lozada immunity. He may also apply as a State Witness.

A State Witness is defined by Section 10 of RA 6981 or the Witness Protection Act as:

**Section 10. State Witness.** - Any person who has participated in the commission of a crime and desires to be a witness for the State, can apply, and if qualified as determined in this Act and by the Department, shall be admitted into the Program whenever the following circumstances are present:

- (a) the offense in which his testimony will be used is a grave felony as defined under the Revised Penal Code or its equivalent under special laws;
- (b) there is absolute necessity for his testimony;
- (c) there is no other direct evidence available for the proper prosecution of the offense committed;
- (d) his testimony can be substantially corroborated on its material points;
- (e) **he does not appear to be most guilty;** and
- (f) he has not at any time been convicted of any crime involving moral turpitude. (emphasis supplied)

#### **4.7 Secretary Neri was lobbying for the BOT of Mr. Jose de Venecia III**

Former CICT Chairman Sales said that Secretary Neri made calls to him, asking him to endorse one, then two projects. The testimony of Mr. Sales is very revealing in spite of the repeated denials of Secretary Neri that he had nothing to do with the agencies involved:

**Mr. SALES.** The December 8 letter is a response to Secretary's verbal request that we endorse AHI. This was what I was referring to earlier.

**THE CHAIRMAN.** So the NEDA requested na your endorse AHI.

MR. SALES. AHI.

THE CHAIRMAN. Si Secretary Neri may verbal request so inyo na i-endorse iyong AHI?

MR. SALES. Yes. So, this was written when we again enumerated what AHI was going to do. So that's page 1 up to 3.

And then, we gave our comments, and one of the comments is at 3.3, we said, "We cannot opine on the capability of the proponent to undertake the project financially and technically as due diligence on the proponent Amsterdam Holdings, Inc. has not been undertaken, neither has proponent identified its strategic partners, if any. Thus, similarly, no due diligence on them can be undertaken."

And then in page 3, 3.4, we said, "We further note that while the project may be reasonably sound, we nevertheless hereby reserve the right to provide a detailed engineering analysis on the project subject to the submission by the proponent of final technical specifications."

THE CHAIRMAN. Okay. I just wanted to be sure I understood you correctly. I'm trying to be fair here to everyone.

MR. SALES. Yes.

THE CHAIRMAN. Ang sabi ninyo, you were requested ...

MR. SALES. Verbally.

THE CHAIRMAN. ...verbally by Neri to endorse the AHI proposal.

MR. SALES. Yes. That was by phone.

THE CHAIRMAN. By phone. Kailan ho nangyari iyon?

MR. SALES. This was probably a day or two before December 8.

THE CHAIRMAN. All right. Hindi kayo nagtaka bakit niya pinapap-endorse?

MR. SALES. I was confused because there was a prior request for endorsement on ZTE, but then what I was thinking of was probably they thought our endorsement was negative, which it was because –

THE CHAIRMAN. Who is "they"?

MR. SALES. NEDA

THE CHAIRMAN. Pero ang sinabi ninyo ZTE, bakit naging NEDA?

MR. SALES. In the October 20, it was again a response to Secretary Neri's phone call asking for the endorsement of ZTE. This was October 20 as a letter.

**THE CHAIRMAN.** So, ang sinasabi ninyo tumatawag palagi si Secretary Neri sa inyo na i-endorse iyong ZTE proposal at saka ngayon tumawag naman na i-endorse naman iyong AHI proposal favorably?

**MR. SALES.** It is only two calls.

**THE CHAIRMAN.** Two calls?

**MR. SALES.** Yes, I think.

**THE CHAIRMAN.** The first one was about ZTE.

**MR. SALES.** ZTE. Well, I was new in government, and I was wondering whether he was preparing his documentation or his justification and that's why it was changing from one to the other. But we made sure that our opinion was stated at the end. And in the case of ZTE, we said we were not sure of the price because it appeared to us as sole source.<sup>404</sup>

Moreover, instead of stopping the project as a responsible public officer would have done, Secretary Neri instructed Engineer Jun Lozada to "moderate the greed" or "alagaan mo yang mga yan kasi may political sponsors."

#### **4.8 Secretary Atienza and then Deputy Executive Secretary Gaité conspired with Engineer Jun Lozada to prevent the latter from testifying in the Senate.**

Both Secretary Atienza and then Deputy Executive Secretary Gaité conspired with Jun Lozada to prevent the latter from testifying in the Senate.

Deputy Executive Secretary Gaité even generously gave P500, 000 of his alleged "personal" money so that Mr. Lozada will have something to spend in Hong Kong.

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<sup>404</sup> Jmbalsa VI-1 September 1, 2009, 11:39 a.m. pp. 3-5.

**4.9 RA 9184 is regularly circumvented in cases of foreign loans. In this particular instance, not only did the Philippine government allow the Chinese government indicate a single supplier, this supplier also dictated a price that was overpriced by US\$130 Million compared to the unsolicited proposals of other suppliers.**

The Official Development Assistance (ODA) Act of 1996 expressly states that the President of the Philippines may, when necessary, agree to waive or modify the application of any provision of law granting preferences in connection with, or imposing restrictions on, the procurement of goods or services. Thus, it can make anything that deals with foreign loans beyond the ambit of RA 9184.

The NBN-ZTE investigations revealed that the root of the problem was not only the procurement of supplies and services but the contract as well. As a result of the present ODA Act, lending countries earn twice from us: First, through the interest of the loan for a particular project; second, through supplies and services rendered for such project, which they exclusively supply.

In this case, the Chinese government did not only specify that the supplier is from China but it names the supplier. The Philippine government, even if forced with this situation should have suggested that different suppliers be mentioned so there is a choice. It should not have just accepted the designation lock, stock, and barrel.

Moreover, as shown by the NBN-ZTE scandal, even foreign funded projects are not free from corruption. Some high ranking officials are able to manipulate government contracts and make a fortune, if not a golden parachute out of it.

**4.10 The NBN Project is not exempt from competitive bidding required by Section 4 of RA 9184 even if the Supply Contract is classified as an Executive Agreement.**

We fully agree with the Dissenting Opinion of Justice Carpio in the case of **Suplico vs. NEDA, et al**, G.R. No. 178830, July 14, 2008.

The Government Procurement Reform Act requires public bidding in **all procurement** of infrastructure, goods and services. Section 10, Article IV of the Government Procurement Reform Act provides: "Section 10. Competitive Bidding - **All procurement shall be done through Competitive Bidding**, except as provided for in Article XVI of this Act." (Emphasis supplied)

In addition, Section 4 of the Government Procurement Reform Act provides that the Act applies to government procurement "regardless of source of funds, whether local or foreign." Hence, the requirement of public bidding applies to foreign-funded contracts like the ZTE Supply Contract.

The Executive Department admits that there was no public bidding for the ZTE Supply Contract. They claim that the ZTE Supply Contract, **being part of an executive agreement**, is exempt from public bidding under the last sentence of Section 4 of the Government Procurement Reform Act. Quoting Justice Carpio:

This argument will hold water if an executive agreement can amend the mandatory statutory requirement of public bidding in the Government Procurement Reform Act. **In short, the issue turns on the novel question of whether an executive agreement can amend or repeal a prior law. The obvious answer is that an executive agreement cannot amend or repeal a prior law.**

Admittedly, an executive agreement has the force and effect of law, just like implementing rules of executive agencies. However, just like implementing rules of executive agencies, **executive agreements cannot amend or repeal prior laws but must comply with the laws they implement. Only a treaty, upon ratification by the Senate, acquires the status of a municipal law.** Thus, a



treaty may amend or repeal a prior law and *vice-versa*. Hence, a treaty may change state policy embodied in a prior law.

In sharp contrast, an executive agreement, being an exclusive act of the Executive branch, does not have the status of a municipal law. Acting alone, the Executive has no law-making power. While the Executive does possess rule-making power, such power must be exercised consistent with the law it seeks to implement.

Consequently, an executive agreement cannot amend or repeal a prior law. An executive agreement must comply with state policy embodied in existing municipal law. This Court has declared: International agreements involving political issues or changes of national policy and those involving international arrangements of a permanent character usually take the form of treaties. **But international agreements embodying adjustments of detail carrying out well-established national policies and traditions and those involving arrangements of a more or less temporary nature usually take the form of executive agreements.**

The Department of Justice in its DOJ Opinion No. 46 further argues that the ZTE Supply Contract is part of the executive agreement between China and the Philippines. This is erroneous. An executive agreement is an agreement **between governments**. The Executive branch has defined an "international agreement," which includes an executive agreement, **to refer to a contract or an understanding "entered into between the Philippines and another government."**

That the Chinese Government "designated" the ZTE Corporation to supply the goods and services to the Philippine Government does not make the ZTE Supply Contract an executive agreement. ZTE Corporation is not a government or even a government agency performing governmental or developmental functions like the Export-Import Bank of China or the Japan Bank for International Cooperation, or a multilateral lending agency organized by governments like the World Bank. ZTE Corporation is a business enterprise performing purely commercial functions. ZTE Corporation is publicly listed in the Hong Kong and Shenzhen stock exchanges, with individual and juridical stockholders that receive dividends from the corporation.

Moreover, an executive agreement is governed by international law. However, the ZTE Supply Contract expressly provides that it shall be governed by Philippine law. Thus, the ZTE Supply Contract is not an executive agreement but simply a commercial contract, which must comply with public bidding as mandated by the governing law, which is Philippine law.

Finally, as aptly stated in Justice Carpio's dissent:

An executive agreement, being an exclusive act of the Executive branch, cannot amend or repeal a mandatory provision of law requiring public bidding in government procurement contracts. To construe otherwise the second sentence of Section 4 would constitute an undue delegation of legislative powers to the President, making such sentence unconstitutional. There are no standards prescribed in the Government Procurement Reform Act that would guide the President in exercising such alleged delegated legislative power. Thus, the second sentence of Section 4 cannot be construed to delegate to the President the legislative power to amend or repeal mandatory requirements in the Government Procurement Reform Act.

Second, under Section 10 of the Government Procurement Reform Act, the only exceptions to mandatory public bidding are those specified in Article XVI of the Act. These specified exceptions do not include purchases from foreign suppliers handpicked by foreign governments, or from suppliers owned or controlled by foreign governments. Moreover, Section 4 of the Government Procurement Reform Act mandates that the "Act shall apply to the Procurement of Infrastructure Projects, Goods and Consulting Services, regardless of source of funds, whether local or foreign x x x."

#### **4.11 The NEDA served as a mere rubber stamp to the wishes of the President.**

Since the NEDA is chaired by the President and its board members are the President's men, the NEDA's economic planning functions can easily be manipulated and subverted to serve other, oftentimes corrupt, considerations – as the NBN-ZTE deal demonstrated.

Section 9 Article XII of the Constitution provides that: "The Congress may establish an independent economic and planning agency headed by the President, which shall, after consultations with the appropriate public agencies, various private sectors, and local government units, recommend to Congress, and implement continuing integrated and coordinated programs and policies for national development."

Executive Order 230 promulgated on July 22, 1987 otherwise known as the Reorganization Act of the National Economic and Development Authority has limited the membership of NEDA Board to the President, the NEDA Director-General, the Executive Secretary, and to some members of the Cabinet. However, the President may revise the membership of the NEDA Board whenever the same is deemed necessary to discharge its responsibilities as called for the President.<sup>405</sup>

Thus, it is necessary to change or create a law changing the composition of the NEDA to ensure plurality in opinion by infusing private sector participation in the economic development board.

The President would be better served and protected if she does not use the NEDA as her rubber stamp. As it is, the NEDA appeared to have acted as a rubber stamp. It failed to protect the integrity of the process.

## **5. RECOMMENDATIONS**

**5.1** In view of the above-mentioned conclusion and findings, we recommend that the following be further investigated for possible violations of hereafter stated provisions, where warranted; or, be asked to explain satisfactorily to the public their lack of participation:

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<sup>405</sup> Section 4, Executive Order 230, July 22, 1987.

### 5.1.1 H.E. Gloria Macapagal- Arroyo

- **The Ombudsman erred in its hasty dismissal of the complaint against the President.**

The Ombudsman is wrong in merely dismissing the case against the President on the mere pretext of presidential immunity from suit.

Section 22 of Republic Act 6770 (Ombudsman Act of 1989) provides:

The Office of the Ombudsman shall have the power to investigate any serious misconduct in office allegedly committed by officials removable by impeachment, for the purpose of filing a verified complaint for impeachment, if warranted.

In all cases of conspiracy between an officer or employee of the government and a private person, the Ombudsman and his Deputies shall have jurisdiction to include such private person in the investigation and proceed against such private person as the evidence may warrant. The officer or employee and the private person shall be tried jointly and shall be subject to the same penalties and liabilities.

It is the duty of the Ombudsman to investigate “impeachable” officers. No exemption is provided in Section 22. What the Office should have done was to investigate and make findings for transmittal to the House, if an impeachment would have been warranted, rather than a blanket statement or exculpation because of supposed immunity. It is not for the Ombudsman to make a ruling as to immunity, but for the House to decide what to do once it receives the transmittal. Neither was it for the Ombudsman to say that there is no more impeachment process to be had because of the one-year bar. It is for the House to make that ruling. Private persons such as the First Gentleman could have been covered in this provision, as well.

Further, the Constitution in Article VII, Section 5 provides that the President “preserve and defend its Constitution, execute its laws, do justice to every man.”

Also, Article VII, Section 17 of the Constitution provides that: "The President shall have control of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed."

Her acts in this case reveal that her performance of presidential duty has been wanting.

#### 5.1.2 FORMER COMELEC CHAIRMAN BENJAMIN S. ABALOS

- **Violation of Section 3 (a) and (h) of Republic Act 3019 otherwise known as ANTI-GRAFT AND CORRUPT PRACTICES ACT**

**Section 3. Corrupt Practices of Public Officers.** – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

xxx

(h) Directly or indirectly having financial or pecuniary interest in any business contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any.

- **Violation of Article 212 of the Revised Penal Code otherwise known as Corruption of Public Officials.**

**Article 212. Corruption of Public Officials.** – *The same penalties imposed upon the officer corrupted, except those of disqualification and suspension, shall be imposed upon any person, who shall have made the offers or promises or given the gifts or presents as described in the preceding articles.* (emphasis supplied)

### 5.1.3 MR. JOSE “JOEY” DE VENECIA III

- Violation of Section 5 of Republic Act No. 3019, otherwise known as the **ANTI-GRAFT AND CORRUPT PRACTICES ACT.** The law specifically provides:

**Section 5. Prohibition on certain relatives.** – *It shall be unlawful for the spouse or for any relative, by consanguinity or affinity, within the third civil degree, of the President of the Philippines, the Vice-President of the Philippines, the President of the Senate, or the Speaker of the House of Representatives, to intervene, directly or indirectly, in any business, transaction, contract or application with the Government; Provided, That this section shall not apply to any person who, prior to the assumption of office of any of the above officials to whom he is related, has been already dealing with the Government along the same line of business, nor to any transaction, contract or application already existing or pending at the time of such assumption of public office .... xxx (emphasis supplied)*

### 5.1.4 FIRST GENTLEMAN JOSE MIGUEL ARROYO

- Violation of Sections 4 (a) and 5 of Republic Act No. 3019, otherwise known as the **ANTI-GRAFT AND CORRUPT PRACTICES ACT.** The law specifically provides:

**Section 4. Prohibition on private individuals.** – *(a) It shall be unlawful for any person having family or close*

personal relation with any public official to capitalize or exploit or take advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift or material or pecuniary advantage from any other person having some business, transaction, application, request or contract with the government, in which such public official has to intervene. Family relation shall include the spouse or relatives by consanguinity or affinity in the third civil degree. The word "close personal relation" shall include close personal friendship, social and fraternal connections, and professional employment all giving rise to intimacy which assures free access to such public officer.

(b) It shall be unlawful for any person knowingly to induce or cause any public official to commit any of the offenses defined in Section 3 hereof.

**Section 5. Prohibition on certain relatives.** – It shall be unlawful for the spouse or for any relative, by consanguinity or affinity, within the third civil degree, of the President of the Philippines, the Vice-President of the Philippines, the President of the Senate, or the Speaker of the House of Representatives, to intervene, directly or indirectly, in any business, transaction, contract or application with the Government: Provided, That this section shall not apply to any person who, prior to the assumption of office of any of the above officials to whom he is related, has been already dealing with the Government along the same line of business, nor to any transaction, contract or application already existing or pending at the time of such assumption of public office ....  
xxx (emphasis supplied)

#### 5.1.5. FORMER NEDA SECRETARY ROMULO NERI

- Violation of Section 3 (a) and (h) of Republic Act 3019 otherwise known as the ANTI-GRAFT AND CORRUPT PRACTICES ACT. The law specifically provides:

**Section 3. Corrupt Practices of Public Officers.** – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

xxx

(h) Directly or indirectly having financial or pecuniary interest in any business contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any.

#### 5.1.6 FORMER SPEAKER JOSE DE VENECIA, JR.

- Violation of Section 5 of Republic Act 3019 otherwise known as ANTI-GRAFT AND CORRUPT PRACTICES ACT

**Section 5. Prohibition on certain relatives.** – It shall be unlawful for the spouse or for any relative, by consanguinity or affinity, within the third civil degree, of the President of the Philippines, the Vice-President of the Philippines, the President of the Senate, or the Speaker of the House of Representatives, to intervene, directly or indirectly, in any business, transaction, contract or application with the Government: Provided, That this section shall not apply to any person who, prior to the assumption of office of any of the above officials to whom he is related, has been already dealing with the Government along the same line of business, nor to any transaction, contract or application already existing or pending at the time of such assumption of public office ....  
xxx (emphasis supplied)

- Violation of Republic Act No. 6713 otherwise known as Code of Conduct and Ethical Standards for Public Officials and Employees

**Section 7. Prohibited Acts and Transactions.** – In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and



transactions of any public official and employee and are hereby declared to be unlawful:

xxx

**(d) Solicitation or acceptance of gifts.** - Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

**5.1.7 SECRETARY LEANDRO MENDOZA, ASSISTANT SECRETARY LORENZO FORMOSO AND ASSISTANT SECRETARY ELMER SONEJA**

- **Violation of Section 3 (h) of RA 3019 otherwise known as the ANTI-GRAFT AND CORRUPT PRACTICES ACT.** The law specifically provides:

**Section 3. Corrupt Practices of Public Officers.** - *In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:*

xxx

*(h) Directly or indirectly having financial or pecuniary interest in any business contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any.*

**5.1.8 SECRETARY JOSE "LITO" ATIENZA, JR. AND FORMER DEPUTY EXECUTIVE SECRETARY MANUEL HUBERTO GAITE**

- **Violation Article 150 of the Revised Penal Code**

**Article 150. Disobedience to summons issued by the National Assembly, its committees or subcommittees, by the Constitutional Commissions, its committees,**

**subcommittees or divisions.** - The penalty of arresto mayor or a fine ranging from two hundred to one thousand pesos, or both such fine and imprisonment, shall be imposed upon any person who, having been duly summoned to attend as a witness before the National Assembly, (Congress), its special or standing committees and subcommittees, the Constitutional Commissions and its committees, subcommittees, or divisions or before any commission or committee chairman or member authorized to summon witnesses, refuses, without legal excuse, to obey such summons, or being present before any such legislative or constitutional body or official, refuses to be sworn or placed under affirmation or to answer any legal inquiry or to produce any books, papers, documents, or records in his possession, when required by them to do so in the exercise of their functions. The same penalty shall be imposed upon any person who shall restrain another from attending as a witness, or who shall induce disobedience to a summon or refusal to be sworn by any such body or official. (highlighting ours)

#### 5.1.9 ENGINEER RODOLFO NOEL LOZADA

- **Violation of Sections 3 (a) and (h) of RA 3019** otherwise known as the **ANTI-GRAFT AND CORRUPT PRACTICES ACT.** The law specifically provides:

**Section 3. Corrupt Practices of Public Officers.** - *In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:*

*(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.*

xxx

*(h) Directly or indirectly having financial or pecuniary interest in any business contract or transaction in connection with which he intervenes or takes part in his*

*official capacity, or in which he is prohibited by the Constitution or by any law from having any.*

- Violation of Civil Service Law, Book V, Executive Order No. 292, Administrative Code of 1987

## Chapter 7

### PROHIBITIONS

SEC. 54. **Limitation on Appointment.** – (1) No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.

(2) No candidate who has lost in any election shall, within one year after election, be appointed to any office in the Government or any government-owned or controlled corporations or in any of its subsidiaries.

**(3) Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.** (emphasis supplied)

#### 5.1.10 ZTE Corporation

An investigation must be done on the ZTE Corporation, as well, in order to determine its role in the whole mess. While we must, the government must, encourage the influx of foreign investors and corporations in order to contribute to employment, and wealth creation in the country, these corporations must be warned not to participate in illegal transactions. These companies must not contribute or encourage the corruption of public officers.

**5.2 . The following law reform are also proposed:**

**5.2.1 An Amendment to the NEDA Law. Copy of the proposed law is attached as Annex B.**

The amendatory law is entitled **AN ACT AMENDING EXECUTIVE ORDER NO. 230 ALSO KNOWN AS THE REORGANIZATION ACT OF THE NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY. Copy of the proposed law is attached as Annex C.**

Section 9 Article XII of the Constitution provides that: "The Congress may establish an independent economic and planning agency headed by the President, which shall, after consultations with the appropriate public agencies, various private sectors, and local government units, recommend to Congress, and implement continuing integrated and coordinated programs and policies for national development"

This bill proposes an amendment to Section 4 of Executive Order 230 of July 22, 1987 by including representatives from the private sectors to the composition of the National Economic and Development Authority (NEDA) Board. This amendment will ensure that the interest of the private sector and major key players of the economy will be considered.

Furthermore, the *Blue Ribbon Committee* came up with this bill for two reasons: (1) to prevent another NBN-ZTE project that has not been thoroughly studied and scrutinized; and (2) to prevent collusion among members of the board in approving a project.

**5.2.2 An Amendment to Section 5 of RA 3019. Copy of the proposed law is attached as Annex C.**

The bill is entitled as AN ACT AMENDING SECTION 5 OF RA 3019 ALSO KNOWN AS THE ANTI-GRAFT AND CORRUPT PRACTICES ACT.

Section 27, Article II of the Constitution provides that "The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption."

As an effective measure against graft and corruption, this bill seeks to amend Section 5 of Republic Act No. 3019 (The Anti-Graft and Corrupt Practices Act) by imposing an absolute prohibition on certain relatives of the President of the Philippines, the Vice-President of the Philippines, the President of the Senate or the Speaker of the House of Representatives to intervene, directly or indirectly, in any business, transaction, contract or application with the Government.

This bill aims to ensure that said public officials and their relatives always act in the best interest of the country and must not be motivated by personal considerations and relationships which could interfere with their independent judgment.



**5.2.3 WHISTLEBLOWER PROPOSED STATUTE. Copy of the proposed law is attached as Annex D.**

Section 27, article II of the 1987 Constitution provides that as a State Policy, "The State shall maintain honesty and integrity in public service and take positive and effective measure against graft and corruption."

Furthermore, Section 1, Article XI of the 1987 Constitution provides that, "Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."

It is the intent of this bill to encourage citizens to stand up and report alleged violations of law, improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer or employee, and private entity. Furthermore by protecting citizens who disclose wrongdoing from retaliatory acts, we hereby strengthen accountability and reduce corruption in the public and private sectors.

**5.3 The Ombudsman should not shirk from its responsibility in investigating the possible violations of the President of the Philippines.**

Section 22 of the Ombudsman Act provides:

The Office of the Ombudsman shall have the power to investigate any serious misconduct in office allegedly committed by officials removable by impeachment, for the purpose of filing a verified complaint for impeachment, if warranted.

In all cases of conspiracy between an officer or employee of the government and a private person, the Ombudsman and his Deputies shall have jurisdiction to include such private person in the investigation and



proceed against such private person as the evidence may warrant. The officer or employee and the private person shall be tried jointly and shall be subject to the same penalties and liabilities. (emphasis supplied)

In the case of *Estrada v Desierto* and *Estrada v Macapagal-Arroyo*<sup>406</sup> the Supreme Court properly discusses the issue of executive immunity. It elucidates:

Indeed a critical reading of current literature on executive immunity will reveal a judicial disinclination to expand the privilege especially when it impedes the search for truth or impairs the vindication of a right... The US Supreme Court... concluded that "when the ground for asserting privilege as to subpoenaed materials sought for use in a criminal trial is based only on the generalized interest in confidentiality, it cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice." In the 1982 case of *Nixon v Fitzgerald*, the US Supreme Court further held that the immunity of the President from civil damages covers only "official acts." Recently the US Supreme Court had the occasion to reiterate this doctrine in the case of *Clinton v Jones*, where it held that the US President's immunity from suits for money damages arising out of their official acts is inapplicable to unofficial conduct.

There are more reasons not to be sympathetic to appeals to stretch the scope of executive immunity in our jurisdiction. One of the great themes of the 1987 Constitution is that a public office is a public trust. It declared as a state policy that "the State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption." It ordained that "public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives." It set the rule that "the right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppel." It maintained the Sandiganbayan as an anti-graft court. It created the office of the Ombudsman and endowed it with enormous powers, among which is to "investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient."

It is therefore the duty of the Ombudsman to investigate impeachable officers. No exemption is provided in Section 22. What the office should have done was to investigate and make findings for transmittal to the House if an impeachment would have been warranted, rather than a blanket statement or exculpation because of supposed immunity. It is not for the Ombudsman to make a ruling as to immunity, but

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<sup>406</sup> *Estrada v Desierto* and *Estrada v Macapagal-Arroyo*, 353 SCRA 452 (2001)



for the House to decide what to do once it receives the transmittal. Neither was it for the Ombudsman to say that there is no more impeachment process to be had because of the one-year bar, it is for the House .

## **6. CONCLUSION**

This has been a long, agonizing, and arduous task. The Committee had to deal with thousands of pages of transcripts, documents and other submissions. We are glad we have seen the termination of the task at hand.

The NBN-ZTE scandal has shown to us the coarseness of our political culture. Even if our laws are in place, it has shown how the most powerful public officers and their families took advantage of their influence to try to cash in from government. It is a pure case of naked abuse of power.

Philippine laws have always upheld the dignity and importance of public office. No less than Article XI of the Constitution on the Accountability of Public Officers; the Anti-Graft and Corrupt Practices Act (RA 3019); and Code of Conduct and Ethical Standards for Public Officials and Employees (RA 1379) have set clear cut guidelines on how public officers and even their families and relatives should behave in order to protect the interest of the nation.



We find in this scam former Comelec Chairman Abalos who had to add to his long line of sins this hubris. Not being satisfied with his abuse of power and grave abuse of discretion in the Mega Pacific deal,<sup>407</sup> he has to add to his wall of shame the rescinded NBN-ZTE contract.

Alas, it is indeed true that we cannot legislate morality; neither can we legislate love of country. The problem therefore is not in the laws but those individuals who should be following the laws.

It is also very interesting how this present Administration rewards loyalty. What did Gaité and Defensor get from their generosity to Lozada? Both have been promoted. Gaité has just replaced recently embattled- and now deceased- SEC Commissioner Martínez; Defensor is now Chairman of Philippine National Railways. Perhaps that is how this administration rewards blind loyalty.

As one columnist properly puts it: The moral of the story is an immoral one: "If you must lie, lie to protect the administration. If you must steal, make certain some of it goes to the administration. If you must cheat, cheat in favour of the administration. You will be assured of protection and you may not see the inside of a courtroom. Like Gaité, you might even be rewarded."<sup>408</sup>

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<sup>407</sup>In *Information Technology Foundation vs. COMELEC, et al.*, G.R. No. 159139, June 15, 2005 also known as the Mega Pacific case, the Supreme Court held that: "Recall that our Decision declared Comelec to have acted with grave abuse of discretion when, by way of its Resolution No. 6074, it awarded the Contract for the supply of automated counting machines (ACMs) to private respondents. It did so, not only in clear violation of law and jurisprudence, but also with inexplicable haste and reckless disregard of its own bidding rules and procedures; particularly the mandatory financial, technical and legal requirements. It further manifested such grave abuse of discretion when it accepted the subject computer hardware and software even though, at the time of the award, these had patently failed to pass eight critical requirements designed to safeguard the integrity of the elections."

<sup>408</sup> Editorial, *Inquirer*, citing the March 17, 2008 column of Ramon Farolan, March 18, 2008, A14.

It is also worth mentioning that ZTE should be warned in the manner that it conducts its business in the Philippines. While we welcome foreign investment, we only welcome investors who are willing to abide with the laws of the Philippines and will not foment graft and corruption in government. ZTE should be mindful of its dealings with government officials and must act above suspicion that it is involved in any form of bribery.

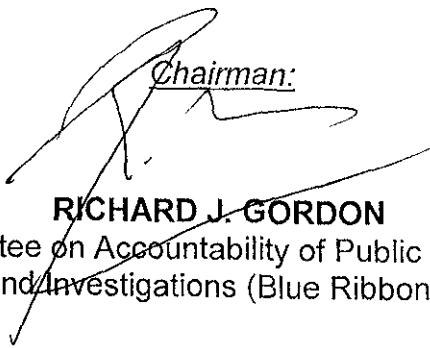
At the end of the day, there are two words that could be used to all the characters in this scandal: **BACK OFF!** Back off from government contracts if you are a relative up to the 3<sup>rd</sup> degree of affinity or consanguinity of the President or the Speaker of the House! Back off from government contracts if you enjoy a close personal relationship with any government officer who has something to do with that contract! Back off from doing anything that taints the integrity of public office!

Perhaps some people have grown cynical to Senate investigations for nothing is changing and nothing is happening. We beg to disagree. Truth seeking and truth telling will always amount to something; if not today, perhaps through the power of the ballot; if not the ballot, through the people.

History has a way of judging people and events. This Committee Report is the Senate's contribution to history.

**Respectfully Submitted:**

*Chairman:*

  
**RICHARD J. GORDON**  
Committee on Accountability of Public Officers  
and Investigations (Blue Ribbon)

Members:

GREGORIO B. HONASAN II

RAMON "BONG" REVILLA JR.

*Ed J*  
EDGARDO J. ANGARA

*but not to include  
Lozada and de Venecia  
in the charges*  
PANFILO M. LACSON

*but to exclude Lozada  
& de Venecia from  
Madrugal being  
charged*  
M.A. MADRIGAL

*Concurring and dissenting in part*  
MIRIAM DEFENSOR SANTIAGO

*with Reservations,  
particularly to exclude  
Lozada & de Venecia 3<sup>a</sup> from  
MAR ROXAS being charged*

ANTONIO "SONNY" F. TRILLANES IV

LOREN B. LEGARDA

MANUEL "LITO" M. LAPID

*with reservations & objections  
to inclusion of Lozada  
& de Venecia III*  
FRANCIS "CHIZ" G. ESCUDERO

*with amendment  
and interpellation*  
FRANCIS N. PANGILINAN

*concerning in mind, that of  
Profr. Campesino partial reservation*  
COMPAÑERA PIA S. CAYETANO

RODOLFO G. BIAZON

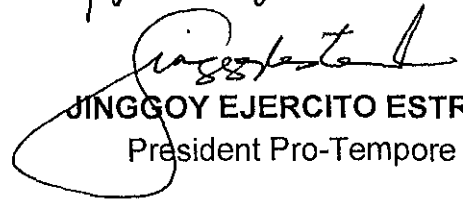
*J.P. Arroyo*  
JOKER P. ARROYO

ALAN PETER "COMPAÑERO" S. CAYETANO

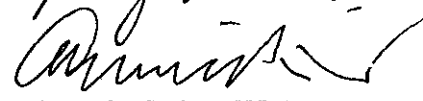
*SA  
SA  
SA*  
→ Please see attached  
Separate concurring  
& dissenting opinion

*w/ strong reservations  
as to the prosecution  
of SDV 3 & Jun Lozada*

Ex-Officio Members:

  
**JINGGOY EJERCITO ESTRADA**  
President Pro-Tempore

**JUAN MIGUEL F. ZUBIRI**  
Majority Floor Leader

*May amend.*  
  
**AQUILINO Q. PIMENTEL JR.**  
Minority Floor Leader

**HON. JUAN PONCE ENRILE**  
President  
Senate of the Philippines  
Pasay City



Republic of the Philippines

**Senate**

Dasay

**JOKER P. ARROYO**

SENATOR

## **Capsulized Separate Concurring and Dissenting Opinion\***

### **PROLOGUE**

This hearing is unprecedented – possibly the longest inquiry, two years, that a Senate committee or a tri-committee have ever undertaken.

The transcript alone of the stenographic notes on the hearing is 1 ½ feet high.

The exhibits presented consist of 18 folders.

41 witnesses testified in 13 sessions.

On and off, the hearings started on September 18, 2007 and was terminated on September 1, 2009.

While the investigation was going on, incidental matters were elevated to the Supreme Court when the executive and the Senate were deadlocked on the extent and limit of each other's reach and power.

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\* Pursuant to section 22 of the Rules of Procedure

To complicate matters, there was a change in leadership in the Senate and consequently, the chairmanship of the lead committee, the Blue Ribbon, likewise changed.

Hearing is the easy part of an inquiry. The committee members ask questions. If the answer of the resource person does not please the interpellator, he scolds the witness and in extreme instances, threatens him with contempt if he does not reshape his answer that would suit the interpellator.

Sen. Richard Gordon, who chaired the lead committee only at the tail-end of the investigation, should be commended for going over the supervoluminous transcripts and evidence in order to come-up with a belated committee report, the most difficult and laborious aspect of an investigation.

## PRECIS

The broadband project, subject of the investigation, was doomed to fail at its inception.

### Original Sin

Before the imposition of martial law, the government implemented a communication project involving a telephone system, the Government Telephone System, which was intended to connect the government offices in the entire country. It was a colossal failure and the government maintained it for years even after losing so much money.

Despite that monumental blunder, Congress, as if it had not learned any lesson, enacted in 1989 the Municipal Telephone Act of 1989, RA 6849, again to connect, as the bill stated, the Municipal to International, Municipal to Metro Manila, Municipal to Provincial Capital, Municipal to Municipal. It was later expanded to connect to the barangays. That is why it was labelled as the Telepono sa Barangay later on.

That folly, like the failed one before it, cost the government billions before the government abandoned it. This too was referred for investigation under P. S. Resolution No. 528 in the 13<sup>th</sup> Congress.

These two telephone projects, the Government Telephone System and Telepono sa Barangay constituted the original sin.

#### Subsequent Sin

Despite the empirical history of the government's dismal failure in its two simple telephone systems in the past, the DOTC foolhardedly embarked on the sophisticated, complicated, very expensive and constantly changing technology of the broadband network, subject of this inquiry.

This was the subsequent sin, which was followed by a string of ancillary sins in the attempt to make it take-off.

For a project of this size and proportion, its nature, its technology, and more importantly, the financing aspect, had to be pre-screened and approved by the NEDA and its cabinet-level screening committee.

### What did NEDA do?

NEDA just glossed over it, gave a perfunctory review and allowed the DOTC to run the show.

Questions arose as to the nature of the funding: whether loan or BOT, executive agreement or treaty. NEDA and DOJ said it was a loan.

The contract was awarded to ZTE, a big company by international standards, wholly owned by a Chinese government subsidiary.

The newly-minted Government Procurement Act, R.A. 9184 was enacted on Jan. 10, 2003 or only six years ago precisely to prevent irregularities in awards and bidding. It was not applied to the ZTE contract.

The President no less went to China to witness the signing of the loan agreement, not with the Peoples Republic of China, but with ZTE, a Chinese government corporation. The President's presence triggered questions of propriety because the contract was not between the Republic of the Philippines and the People's Republic of China, but a commercial transaction.

US Ambassador Kristie Kenney, forgetting protocol channels joined the fray, by writing directly NEDA Secretary Romulo Neri and DOTC Secretary Leandro Mendoza that ARESCOM, an American company and an interested bidder, was prejudiced by the awarding process adopted. Ms. Kenney's complaint helped provoke this investigation.

Joey de Venecia, president of Amsterdam Holdings which also lost, complained thru media.



While Amsterdam Holdings participated from the beginning to the end in the investigation, ARESCOM, intriguingly, neither appeared nor participated in any hearing.

ARESCOM helped stoke the fire, and after igniting it, left it.

ZTE, which bagged the contract, has a Metro Manila office. It was summoned but they did not appear at all.

The tri-committee did not press the presence of these two foreign firms, ZTE and ARESCOM, while it bullied Filipino witnesses summoned to appear.

Joey de Venecia, because he happens to be the son of the Speaker of the House of Representatives, got entangled in some ethical question because it was a government contract involved. But he kept the investigation alive with his commendable presence in every session

The President, because of the outcry caused by the investigation, cancelled the ZTE contract to the serious consternation of the officialdom of the People's Republic of China. ZTE, after all, for all corporate intents and purposes, is a wholly-owned government subsidiary, not unlike our NDC, Napocor or the like.

The Supreme Court likewise dismissed the petition to void the ZTE contract after the President's action because there was nothing more to void.

That left the *Filipinos to quarrel among themselves* in the marathon hearings. The First Gentleman Mike T. Arroyo, Esq., was sideswiped during the hearings for being involved in the irregularities of the transaction.

From then on, the thrust and direction of the inquiry concentrated on linking the President to the ZTE scandal. The principal and original issues were sidelined.

I had urged that interim committee reports be prepared and released considering that the hearings had digressed to other issues.

### Mystery of the Broadband Project

Why the government ventured into the broadband project remains a mystery. To begin with, government has a terrible track record of failure in two instances, operationally and financially, in running telecommunications.

What is incontrovertible is that the proponents and the promoters of the project were up to no good. They cast a moist eye on the financing, \$329 million (gargantuan P16 billion), not really on the project itself.

What started as a BOT project ended as a loan. A neat shift. The Government Procurement Act does not apply to loans, insisted the executive department!

What was clear, even during the hearings, was that it would be a lot cheaper for the government were it to just subscribe to broadband connection put up by the private sector instead of installing and operating one itself.

## EPILOGUE

### SCORE SHEET

#### On the plus side

The indefensible ZTE contract was aborted, the consequence of this investigation lead•chaired by Senator Allan Peter Cayetano, who painstakingly heard and dissected the very complex and complicated factors involved.

The government did not lose any money.

After all, a government broadband project is not an indispensable component in the government operation, the private sector could do it.

#### On the minus side

It stabs at the moral fabric of very high officials whose eyes were riveted to the \$329 million (P16 billion) loan package.

The Philippines-China relations, not apparent but very real, was impaired as a consequence of the investigation.

## WHAT NOW?

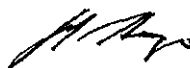
The Committee Report recommends the indictment of top officials and persons for this mess.

Sadly, the eerie fate of this inquiry is that after the Committee Report is adopted by the Senate in plenary, it will again be just another episode that would find its way in the racks of Blue Ribbon Committee archives alongside a plethora of committee reports on the misdeeds in the past of other wrongdoers who were never prosecuted by the executive or the Ombudsman.

This malpractice cannot go on. It must be corrected. Otherwise, the inutility of these investigations will become more and more apparent and the public will lose faith in its usefulness and will look at it only for entertainment value.

However, it is rather late in the day to address this hostility between the current Executive and the Senate. Come July next year, we would have the next President and the incoming Senate. They can agree on the ground rules for future investigations. This will be for the good of all.

Respectfully submitted,



**JOKER P. ARROYO**

NBN-ZTE FACTS

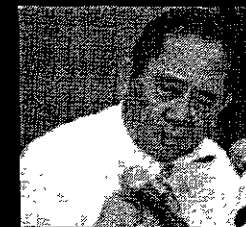
Annex A

TimelineJANUARY 9, 2006 - MEETING**JANUARY 9, 2006 - Meeting**

Ambassador Li Jinjun at the residence of Speaker Jose De Venecia discusses the highlights of a possible framework for economic cooperation backed by indicative projects between the Philippines and the People's Republic of China.



**AMBASSADOR  
LI JIN JUN  
(1x)**



**JOSE DE VENECIA  
(1x)**

*NOTE: "x" means the number of times the name appears*



Timeline

JANUARY 9, 2006 - MEETING  
MARCH 1, 2006 - FRAMEWORK

ENDORSED BY:



**SPEAKER JOSE DE VENECIA (2X)**

ADDRESSED TO:



**LI JINJUN (2X)**

SIGNATORIES:



**SECRETARY FAVILA, DTI (1X)**

MARCH 1, 2006

**-FRAMEWORK OF COOPERATION -**

Letter of DTI Secretary PETER B. FAVILA, NEDA Secretary ROMULO L. NERI, DOF Secretary MARGARITO B. TEVES and DOE Secretary RAPHAEL P.M. LOTILLA (Endorsed by Speaker JOSE C. DE VENECIA) addressed to His Excellency LI JINJUN, Ambassador, People's Republic of China

Thanking Ambassador Li Jinjun for his presence on January 9, 2006 at the residence of Speaker Jose De Venecia to discuss the highlights of a possible framework for economic cooperation backed by indicative projects between the Philippines and the People's Republic of China.

SIGNATORIES (Cont.):



**SECRETARY TEVES, DOF (1X)**



**SECRETARY NERI, NEDA (1X)**



**SECRETARY LOTILLA, DOE (1X)**



## Timeline

### ENDORSED BY:

**SPEAKER JOSE  
DE VENECIA (2X)**

### ADDRESSED TO:

**LI JINJUN (2X)**

### SIGNATORIES:

**SECRETARY  
FAVILA, DTI  
(1X)**

**SECRETARY  
TEVES, DOF  
(1X)**

**SECRETARY  
NERI, NEDA  
(1X)**

**SECRETARY  
LOTILLA, DOE  
(1X)**

### ***CONT. (March 1, 2006 – Framework of Cooperation)***

Major items discussed and brought forward by both sides during the said meeting:

1. Plan to hold an RP-China Business Economic Forum from May 24-27, 2006. Conference will be hosted by the Philippine Secretary of Trade and Industry, Secretary Peter Favila and his counterpart PROC Minister of Commerce Bo Xilai.
2. Objective is to plan a business program for China to invest, and the Philippines to develop business/economic and tourism opportunities totaling about US\$32-billion.
3. Areas of investment includes – a) Housing needs of the Philippines; b) Northrail Project; c) Investment in Nonoc Nickel Mines and Samar Bauxite Mines; d) Public works and infra projects; e) Energy and Power Projects; f) Industrial Parks/economic zones; g) Tourism Projects; h) Agriculture Projects; i) Fisheries Projects and j) Textile Mill/Garment Factories

***COMMENT:  
NO MENTION  
OF  
BROADBAND***





***CONT. (March 1, 2006 – Framework of Cooperation)***

\* For the lending operations, **THE PHILIPPINE GOVERNMENT PREFERS PROJECT FINANCING MODE WHEREBY, AS MUCH AS POSSIBLE, THE LOAN PAYMENTS WILL COME FROM PROJECT CASH FLOWS.**

**COMMENT:  
NO CASH OUT!  
NO GOVERNMENT GUARANTEE!**



## Timeline



JANUARY 9, 2006 - MEETING  
MARCH 1, 2006 - FRAMEWORK  
JUNE 5, 2006 - MOU

### SIGNATORIES:

SECRETARY  
NERI, NEDA

(2X)



MINISTER OF  
COMMERCE BO  
XILAI

(1X)



SECRETARY  
FAVILA, DTI

(2X)



## JUNE 5, 2006

*(MOU: Philippines-China Economic Partnership)*

MOU between Minister of Commerce Bo Xilai and DTI Secretary Peter Favila establishing the Philippines-China Economic Partnership. The two-sides reached the following consensus on working toward a bilateral economic partnership.

The Ministry of Commerce of the PRC and the DTI of the RP jointly hosted the China-Philippines Economic Partnership Forum on June 5-6, 2006 in Manila. In attendance during the forum were Minister Bo Xilai, Speaker Jose de Venecia Jr., DTI Secretary Peter Favila, DENR Secretary Angelo Reyes and NEDA Secretary Romulo L. Neri.

### PRESENT IN THE FORUM:

MINISTER BO  
XILAI (2x)



SPEAKER JOSE  
DE VENECIA  
(3x)



SEC. FAVILA,  
DTI (3x)



SEC. REYES,  
DENR (1x)

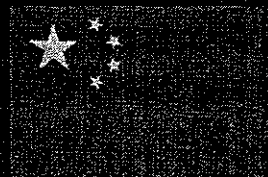


SEC. NERI,  
NEDA (3x)





Timeline



**SIGNATORIES:**

SECRETARY  
NERI, NEDA  
(2X)

MINISTER OF  
COMMERCE BO  
XILAI  
(1X)

SECRETARY  
FAVILA, DTI  
(2X)

**PRESENT IN  
THE FORUM:**

MINISTER BO  
XILAI (2x)

SPEAKER JOSE  
DE VENECIA  
(3x)

SEC. FAVILA,  
DTI (3x)

SEC. REYES,  
DENR (1x)

SEC. NERI,  
NEDA (3x)

***CONT. (June 5, 2006 – MOU: Philippines-China)***

**These are the following consensus reached:**

1. Promote the development of Chinese-Filipino trade and economic relations.
2. Sign the framework agreement to enable the establishment of the Philippines-China economic partnership.
3. The proposed framework will cover the following:
  - (a) Agriculture and fishery, Housing construction, Public works and infrastructure, Tourism, Mining, Energy and power, Industrial parks , Rehabilitation and investments in textile mills/garments factories, Container inspection machines, **ICT-based education**
  - (b) Establishing a functional working mechanism under the Joint Trade Committee (JTC) to substantiate the above-mentioned cooperation.
  - (c) Making mutually acceptable financing arrangements to substantiate the above mentioned cooperation.

**COMMENT:**  
**WHAT WAS  
SIGNED WAS  
ICT-BASED  
EDUCATION.  
NOTHING ON  
BROADBAND.**



## Timeline

JANUARY 9, 2006 - MEETING

MARCH 1, 2006 - FRAMEWORK

JUNE 5, 2006 - MOU

JULY 12, 2006 - MOU

### SIGNATORIES:



(1X)

YU YONG, ZTE PRESIDENT

HOU WEIGUI, ZTE CHAIRMAN



SECRETARY FAVILA, DTI

(4X)



Michael Defensor

PRESIDENTIAL

CHIEF OF STAFF(1X)

## JULY 12, 2006 – (MOU: RP-ZTE)

MOU between Zhong Xing Telecommunications Equipment (ZTE) and the Government of the Republic of the Philippines for the development of various investment activities and the National Government Broadband Project.



## Timeline

9

JANUARY 9, 2006 - MEETING

MARCH 1, 2006 - FRAMEWORK

JUNE 5, 2006 - MOU

JULY 12, 2006 - MOU

### ***CONT. (July 12, 2006 – MOU: RP-ZTE)***

#### **The investment activities include the following :**

1. Nationwide Government Broadband Communication Infrastructure Project;
2. Establishment of Information Technology School and Training Center;
3. Exploration, Development and Operation of Mining Areas in North Davao;
4. Exploration, Development and Operation of Mining Areas in Diwalwal;
5. Establishment of a Special Economic Zone in the Davao area.

**COMMENT:  
BROADBAND  
NOW  
APPEARS!**



Timeline

***CONT. (July 12, 2006 – MOU: RP-ZTE)***

**TERMS OF THE AGREEMENT:** Specific Roles of the Parties –

***Strategic Commitments:***

The capital and operating costs for the development and implementation of the Investment Projects, in the amount of US\$4 Billion, shall be funded and fully provided for by ZTE Int'l.

ZTE Int'l shall provide the technical know-how and specialized technologies for the development and implementation of the Investment Projects.

The GRP, particularly the DOF, DTI, DILG, DENR, DOTC, DBM, NEDA and all other Government Agencies and Offices, shall assist ZTE Int'l in the development and implementation of the Investment Project

**COMMENT:**

*Is this going to be a BOT or a Government Contract by ZTE?*

FUNDING

TRANSFER OF TECHNOLOGY

FULL COOPERATION



## Timeline

MARCH 1, 2006 - FRAMEWORK

JUNE 5, 2006 - MOU

JULY 12, 2006 - MOU

JULY 24, 2006 - SONA



**PRESIDENT  
ARROYO**

(1x)

**COMMENT:**  
PGMA at her  
SONA does not  
mention a  
National  
Broadband  
Network, only  
Cyber Corridor.

## JULY 24, 2006 – SONA

President Gloria Macapagal Arroyo in her State of the Nation Address (SONA) championed the Cyber Corridor Initiative of her government.

“We will enhance the competitive advantage of the natural “super regions” of the Philippines: North Luzon Agribusiness Quadrangle, Metro Luzon Urban Beltway, Central Philippines, Mindanao and the Cyber Corridor.”

“The Cyber Corridor will boost telecommunications, technology and education. The corridor runs the length of all super regions, from Baguio to Cebu to Davao. x x x In this corridor, the English and Information Communication Technology Skills of the Youth give them a competitive edge in call centers and other business process outsourcing.”



**ROMULO NERI**  
(4x)

But Secretary Neri said:

“The NBN project was conceptualized in view of the Cyber Corridor initiative highlighted by the President during her 2006 July State of the Nation Address.”

(September 26, 2007 Hearing)



## Timeline



(2x)



(1x)

**RAMON  
SALES**

### AUGUST 7, 2006

ZTE submitted with the Commission on Information and Communications Technology (CICT) their proposal for the NBN Project.

*"When Secretary Neri was in DBM, I drafted a memo for him directing all government agencies to submit their telecom expenses classified into fixed, mobile and data." (Lozada Testimony on Feb. 8, 2008 hearing)*

Lozada was neither organic to DBM nor to NEDA when he advised Neri.

**ROMULO  
NERI**

**JUN  
LOZADA**



(5x)

(1x)

### SEPTEMBER 2006

Neri asked Lozada (President, PhilForest) to evaluate and assist NEDA (Lozada Testimony, TSN, February 8, 2008)

**JANUARY 9, 2006 -  
MEETING**

**MARCH 1, 2006 -  
FRAMEWORK**

**JUNE 5, 2006 - MOU**

**JULY 12, 2006 - MOU**

**JULY 24, 2006 - SONA**

**AUGUST 7, 2006 - ZTE  
SUBMISSION**

**SEPT. 2006 -  
EVALUATION**





## Timeline



(3x)



**RAMON  
SALES**

(2x)

### SEPTEMBER 4 and 6, 2006

ZTE sent letters to CICT regarding clarification on the project proposal and incorporating the suggestions of CICT.

**The following are the changes suggested by CICT as included in the letters dated September 4 and 6, 2006:**

1. Accommodation for more remote education coverage to include high schools.
2. Optimization from the original video conferencing based real-time interactive remote education solution to an internet-based multimedia remote education solution.
3. Provision for an extended operation and maintenance.

**JANUARY 9, 2006 -  
MEETING**

**MARCH 1, 2006 -  
FRAMEWORK**

**JUNE 5, 2006 - MOU**

**JULY 12, 2006 - MOU**

**JULY 24, 2006 - SONA**

**AUGUST 7, 2006 - ZTE  
SUBMISSION**

**SEPT. 2006 -  
EVALUATION**

**SEPT. 4 and 6, 2006 -  
ZTE LETTERS**



## Timeline



**CHINA EXIM BANK**  
THE EXPORT-IMPORT BANK OF CHINA

(1x)



(4x)

### **SEPTEMBER 8, 2006**

China Eximbank favorably endorses ZTE Corporation for National Broadband Network (NBN) Project and signified its intention to fund the project.

**JANUARY 9, 2006 -  
MEETING**

**MARCH 1, 2006 -  
FRAMEWORK**

**JUNE 5, 2006 - MOU**

**JULY 12, 2006 - MOU**

**JULY 24, 2006 - SONA**

**AUGUST 7, 2006 - ZTE  
SUBMISSION**

**SEPT. 2006 -  
EVALUATION**

**SEPT. 4 and 6, 2006 -  
ZTE LETTERS**

**SEPT. 8, 2006 - CHINA  
EXIMBANK  
ENDORSEMENT**



## Timeline

SEPT. 4 and 6, 2006 - ZTE LETTERS

SEPT. 8, 2006 - CHINA EXIMBANK  
ENDORSEMENT

OCT. 10, 2006 - UNSOLICITED PROPOSAL

### COMMENT:

*The unsolicited Build-Own-Operate (BOO) proposal of AHI was submitted to NEDA first and not to DOTC. At no time was this submitted to the Monetary Board.*

#### Amsterdam Holdings, Inc.

Authorized Capital Stock: P 5 Million

Paid-Up Capital: P 312,800.00

Incorporated: August 5, 2002

#### Bandila Communications Holdings, Inc.

Authorized Capital Stock: P 40 Million

Paid-Up Capital: P 10 Million

Incorporated: July 14, 2006

*(Note: July 12, 2006 was the MOU between ZTE and RP)*

*Jose de Venecia III admits that he is the majority shareholder of AHI. (JDV III Affidavit executed on Sept. 10, 2007)*

*He testified that he is one of the beneficial owners of AHI.*

*(TSN. September 18, 2007. 10:30 am. Page 6)*



**ROMULO  
NERI**  
(6x)



**JOSE DE  
VENECIA III**  
(1x)



**DOTC ASEC.  
SONEJA**  
(1x)

### OCTOBER 10, 2006

The unsolicited Build-Own-Operate (BOO) proposal of AHI was first submitted to National Economic Development Authority (NEDA) by its private proponent Jose de Venecia III as Chairperson of the Bandila Communications Holdings, Inc. in partnership with private Chinese enterprises and institutions.

NEDA transmitted the proposal to DOTC. DOTC Assistant Secretary Soneja told Jose de Venecia III to submit the final version of proposal not later than Feb. 27, 2007.



Timeline

OCT. 10, 2006 - UNSOLICITED PROPOSAL

OCT. 17, 2006 - NERI'S SUPPORT

OCT. 23, 2006 - CICT ENDORSEMENT

OCT. 28, 2006 - NBN AS A GOVT PROJ.

*On October 17, 2006, Secretary Neri of NEDA already expresses his support for AHJ proposal even without DOTC recommendation.*

*This is contrary to statements he made in a memorandum submitted to the Blue Ribbon Committee:*

*"4. The NEDA-ICC in its project review process observes and applies the presumption of regularity in the performance of functions by the implementing agency with respect to those responsibilities vested in it by law.*

*5. Moreover, ICC likewise presumes that the expertise and specialized knowledge with respect to various aspects of the proposed project reside in the implementing agency. Hence, in the review process, the inter-agency ICC does not substitute its judgment for that of the implementing agency except where the responsibility and expertise reside in the ICC or its member agencies."*



(7x)  
NERI



(2x)  
JDV III

**OCTOBER 17, 2006**

**NEDA Secretary Romulo Neri through a letter conveyed his support for AHJ's proposal for the NBN.**



SALES  
(3x)



NERI  
(8x)

**OCTOBER 23, 2006**

**CICT formally endorsed to NEDA for further evaluation and action the NBN Communications Infrastructure Project as proposed by the ZTE Corporation.**



SALES  
(4x)



NERI  
(9x)

**OCTOBER 28, 2006**

**CICT officially endorsed the NBN to NEDA as a government project, not as a Build-Operate-and-Transfer (BOT) project.**



## Timeline

OCT. 23, 2006 - CICT ENDORSEMENT

OCT. 28, 2006 - NBN AS A GOVT PROJ.

OCT. 29-NOV. 1, 2006 - HK-SHENZHEN



**JUN  
LOZADA**

(2x)



**PGMA - (2x)  
FG - (1x)**



**JOSE DE  
VENECIA, JR.**

(4x)



**BENJAMIN  
ABALOS**

(1x)

### From October 29, 2006 to November 1, 2006:

#### **The following went to Hong Kong:**

1. Lozada (Oct. 29 – Nov. 6, 2006)

#### **The following went to Hong Kong and then crossed the border to Shenzhen:**

1. PGMA
2. First Gentleman Mike Arroyo
3. Speaker Jose de Venecia
4. Comelec Chairman Benjamin Abalos (Oct. 30 – Nov. 4, 2006)



## Timeline

OCT. 28, 2006 - NBN AS A GOVT PROJ.

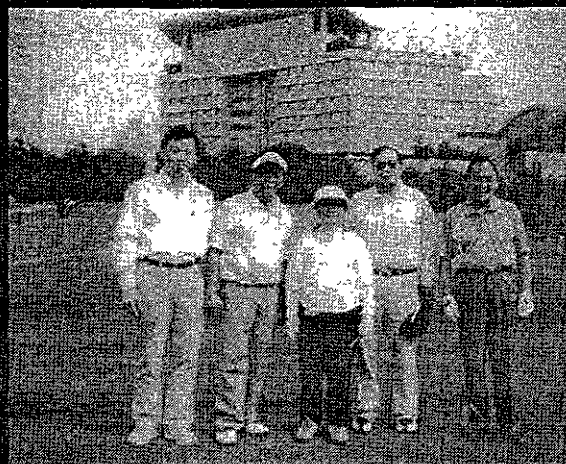
OCT. 29-NOV. 1, 2006 - HK-SHENZHEN

NOV. 2, 2006 - GOLF



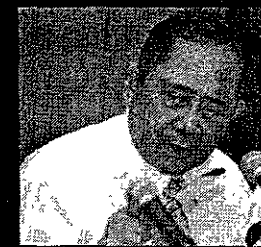
PGMA - (3x)  
FG - (2x)

*President Gloria Arroyo tells Speaker Jose De Venecia that she likes the proposal submitted by son Jose de Venecia III, because it is BOT. (Sen. Madrigal comment citing a blog entry of Ricky Garandang, Sept. 26, 2007)*



## NOVEMBER 2, 2006

President Gloria Macapagal-Arroyo and First Gentleman Jose Miguel Arroyo together with House Speaker Jose De Venecia and former Comelec Chairman Benjamin Abalos played golf and had a lunch with ZTE officials at the ZTE headquarters in Shenzhen, China.



JOSE DE VENECIA, JR. (5x)



BENJAMIN ABALOS (2x)



(5x)



## Timeline

OCT. 28, 2006 - NBN AS A GOVT PROJ.

OCT. 29-NOV. 1, 2006 - HK-SHENZHEN

NOV. 2, 2006 - GOLF

NOVEMBER 21, 2006 - NEDA MEETING

### COMMENT:

*Despite the President's insistence that the Government Broadband Network be undertaken via BOT (November 21, 2006 NEDA Meeting), Presidential Chief of Staff on the same day writes to MINCOM Bo Xilai if they are interested in providing a "financial facility and tech support for NBN project."*

### NOVEMBER 21, 2006

GRP thru Presidential Chief of Staff Michael Defensor inquired from PRC Minister of Commerce Bo Xilai if they are interested in arranging for a "financial facility and tech support for NBN project."

President Gloria Macapagal-Arroyo, in a meeting regarding the Cyber Corridor, with the NEDA Cabinet group in attendance, laid down the following conditions for a government broadband network:

- The same should be undertaken via BOT scheme (or any of its variations);
- The same should be paid for by private funding, and not through government funds;
- There should be no government subsidy or outlay for the project;
- A "pay as you use" instead of a "take or pay" scheme; and
- That the result of the undertaking is a reduction in government telecommunications expenses. (NEDA minutes supplied by Senator Lacson)



**PRESIDENT  
ARROYO**  
(4x)



**MINISTER OF COMMERCE  
BO XILAI**  
(3x)



**Michael Defensor**  
(2x)



Timeline

NOV. 2, 2006 - GOLF

NOVEMBER 21, 2006 - NEDA MEETING

DECEMBER 2, 2006 - FINANCING SUPPORT



**AMBASSADOR  
LI JIN JUN**  
(3x)

**DECEMBER 2, 2006**

PRC Ambassador Li Jinjun sends a letter informing GRP thru Presidential Chief of Staff Defensor that their government will provide Preferential Buyer's Credit financing support through China Eximbank and designating ZTE as prime contractor.



Michael Defensor  
(3x)



**BENJAMIN  
ABALOS**  
(3x)

*ABALOS' Testimony: "It was probably this letter that JDV learned about the situation... This was in response to the letter of Sec. Defensor where there has been an appeal for the Chinese Government to finance the project." (TSN, September 26, 2006 Hearing, 10:39 AM, pg. 3)*





## Timeline



JDV III (3x)



ABALOS (4x)

### DECEMBER 2006

Mr. Jose de Venecia III alleges that then Comelec Chair Abalos offered him a technical partnership with ZTE in exchange for US \$10 Million

**COMMENT:**  
It is only on December 5, 2006 that Jose de Venecia III files his application with DOTC, approximately two months after Neri endorsement.

DECEMBER 2, 2006 - FINANCING SUPPORT  
DECEMBER 2006 - TECHNICAL PARTNERSHIP

DECEMBER 4, 2006 - DRAFT LETTER

DECEMBER 5, 2006 - AHI PROPOSAL

ERNESTO  
GARCIA - (1x)



MENDOZA  
(1x)

### DECEMBER 4, 2006

Ernesto Garcia, Managing Director of AHI, writes a letter, addressed to DOTC Sec. Mendoza: "The Speaker's Office had instructed me to forward the attached material to your office, ASAP."

(The material was a draft of a letter supposedly to be signed by Secretary Mendoza endorsing the AHI project proposal to NEDA.)



JDV III  
(4x)

### DECEMBER 5, 2006

Jose de Venecia III filed his AHI Proposal with the DOTC.



**Timeline**

DECEMBER 5, 2006 - AHI PROPOSAL

22

DECEMBER 8, 2006

DECEMBER 27, 2006

JANUARY 2007

JANUARY 3, 2007

**JDV III**



(5x)

**ABALOS**



(5x)



(6x)

**DECEMBER 27, 2006**

Jose de Venecia III accompanies Abalos to Shenzhen, China where the latter allegedly demands from ZTE officials the balance of his commission and that of the President (GMA) and the Speaker (De Venecia).

**SALES**  
(5x)



**NERI**  
(10x)



**DECEMBER 8, 2006**

CICT informs NEDA of AHI proposal and that it cannot continue with its evaluation because the proposal is incomplete.

**PRESIDENT  
ARROYO**  
(5x)



**ABALOS**  
(6x)



**NERI**  
(10x)

**JANUARY 2007**

Abalos to Neri: "Sec., may 200 ka dito." (TSN, Sept. 26, 2007, 5:00 PM, pg. 7)

Neri said he mentioned said conversation to the President. (TSN, Sept. 26, 2007, 10:29 AM, pg. 2)



Timeline

DECEMBER 5, 2006 - AHI PROPOSAL

23

DECEMBER 8, 2006

DECEMBER 27, 2006

JANUARY 2007

JANUARY 3, 2007



**ROMULO  
NERI**  
(12x)



**NEDA DIR.  
REINOSO JR.**  
(1x)

**JANUARY 3, 2007**

NEDA Director Reinoso, by authority of Secretary Neri, requests DOTC to take the lead in preparation and implementation of the Cyber Corridor Projects.



**LEANDRO  
MENDOZA**  
(2x)



Timeline

JANUARY 3, 2007 - DOTC TO TAKE LEAD

JANUARY 18, 2007 - DOUBLE CROSS

FEBRUARY 2007 - "BACK OFF!"

**JANUARY 18, 2007**

- Abalos allegedly called Lozada cursing him because of an alleged double-cross.
- He claims that he has in his possession a tape containing a phone conversation between Lozada and Jose de Venecia III



**ABALOS**  
(7x)



**LOZADA**  
(3x)



**JDV III**  
(6x)



**FG MIKE ARROYO**  
(3x)



**JDV III**  
(7x)



**ABALOS**  
(8x)



**LEO SAN MIGUEL**  
(1x)

- JIMMY PAZ - 1x
- RUBEN REYES - 1x
- GENERAL DELA TORRE - 1x
- GENERAL MENDOZA - 1x

**FEBRUARY 2007**

At a reconciliatory meeting at Wack Wack, FG Miguel Arroyo shouted at Jose de Venecia III ordering him to "back-off".



## Timeline

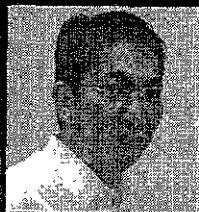
JANUARY 18, 2007 - "DOUBLE CROSS"

FEBRUARY 2007 - "BACK OFF!"

FEBRUARY 13, 2007 - DOTC-TELOF



**ARROYO**  
(6x)



**FORMOSO**  
(1x)

### FEBRUARY 13, 2007

**The Office of the President Issues EO 603 reverting the supervision and control of the Telecommunications Office (TELOF) and the operating units of the DOTC from CICT to DOTC. The significance of which is that the implementing arm of the broadband project would be DOTC-TELOF.**



**SALES**  
(6x)



**MENDOZA**  
(3x)



Timeline

FEBRUARY 2007 - "BACK OFF!"

FEBRUARY 13, 2007 - DOTC TELDF

FEBRUARY 20, 2007 - RECONCILE CEP WITH NBN

FEBRUARY 27, 2007 - REQUESTS TO SUBMIT AGAIN

FEBRUARY 20, 2007

NEDA requests DOTC to reconcile Cyber Educ. Program (CEP) of DepEd with NBN project as financed by PRC and NBN project for Build Operate and Own (BOO) project).

FEBRUARY 27, 2007

NEDA again requests DOTC to submit a reconciled project proposal on CEP-NBN projects.



**ROMULO NERI**  
(13x)



**LEANDRO MENDOZA**  
(4x)



Timeline

FEBRUARY 20, 2007 - RECONCILE CEP WITH NBN  
FEBRUARY 27, 2007 - REQUESTS TO SUBMIT AGAIN  
MARCH 1, 2007 - SERIES OF EVENTS



(7x)



**LEANDRO MENDOZA**  
(5x)

**MARCH 1, 2007**

- ZTE submits its revised proposal to DOTC
- BAC reviewed and evaluated revised proposal and presented conditions to ZTE.
- DOTC Mendoza and CICT Sales writes a joint letter to NEDA recommending the establishment of a single Broadband Network.

*(Continue to next slide)*



**RAMON SALES**  
(7x)



**ROMULO NERI**  
(14x)



## Timeline

FEBRUARY 20, 2007 - RECONCILE CEP WITH NBN

FEBRUARY 27, 2007 - REQUESTS TO SUBMIT AGAIN

MARCH 1, 2007 - SERIES OF EVENTS

### ***Cont. (MARCH 1, 2007)***

• DOTC & CICT sent a letter to Secretary Neri of NEDA saying that the Bids and Awards Committee (BAC) came up with the following conditions:

- The project should satisfy the network requirements of government agencies for VOIP, e-Government and e-Education.
- The system should be designed and implemented considering the demands in areas not covered by existing services. Corollarily, the system shall take into account and utilize and integrate if possible existing private and public telecommunications infrastructure.
- The funding shall fully cover all requirements of the project including those for the initial operation and maintenance.



**LEANDRO  
MENDOZA**  
(6x)



**RAMON SALES**  
(8x)



**ROMULO NERI**  
(15x)





## Timeline

MARCH 1, 2007 - SERIES OF EVENTS

MARCH 29, 2007 - NBN-ZTE APPROVED

APRIL 3, 2007 - NEDA CERTIFICATION



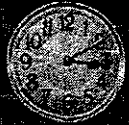
**NEDA DIR.  
REINOSO JR.**  
(2x)



**ROMULO NERI**  
(16x)

### MARCH 29, 2007

- NEDA Director Reinoso Jr. recommends the implementation of the project provided that an EO be issued directing government offices to utilize the NBN project and for DOTC to secure an ECC from DENR.
- NEDA approves NBN-ZTE project.
- NEDA-ICC and NEDA Board approved the NBN project on the basis of its technical and socio-economic merits and with DOTC as the implementing agency.

Timeline

MARCH 29, 2007 - APPROVED NBN-ZTE PROJ.

APRIL 3, 2007 - NEDA CERTIFICATION

APRIL 10, 2007 - BAC RECOMMENDATION



**RAMON SALES**  
(9x)

**APRIL 10, 2007**

BAC for Information and Communications Technology (ICT) recommends that the procurement for the Supply and Equipment of the NBN project be undertaken thru direct contracting.

Timeline

APRIL 3, 2007 - NEDA CERTIFICATION  
APRIL 10, 2007 - BAC RECOMMENDATION  
APRIL 16, 2007 - DOTC TWG



**LEANDRO  
MENDOZA**  
(7x)

**APRIL 16, 2007**

DOTC requests the opinion of the Government Procurement Policy Board (GPPB) in compliance with Sec. 4 of Executive Order 423 dated Apr. 30, 2005 before proceeding with the alternative method of procurement. GPPB opined that since the procurement is premised on Sec. 4 of Republic Act 9184, the favorable opinion of the GPPB is no longer required. It further suggested that in the alternative, a Department of Justice Opinion should be had.

TWG for ICT conducted an evaluation of the ZTE proposal.

TWG recommends signing of contract.

TWG recommends that DOTC legal review the contract.

TWG recommends that a DOJ opinion be sought on the mode of procurement used.

TWG recommends that a Special Authority be granted to the Secretary by the Office of the President allowing the latter to enter into a contract with ZTE Corp.

Timeline

APRIL 3, 2007 - NEDA CERTIFICATION

APRIL 10, 2007 - BAC RECOMMENDATION

APRIL 16, 2007 - DOTC TWG**DOTC TWG MEMBERS (16 April 2007)**

Santiago O. Testor  
*Head*

Artemio P. Anda  
*Assistant Head*

*Members*

Eulogio Aguila  
Jose S. Tanqueco Jr.  
Norberto A. Conti  
Froilan Jamias  
Nilo Colinares  
John Javiñas

Rolando M. Recio  
Romeo T. Lalamunan  
Nemesio Claudio  
Manuel Lazam  
Armin Fabricante



## Timeline

APRIL 10, 2007 - BAC RECOMMENDATION

APRIL 16, 2007 - DOTC TWG

APRIL 20, 2007 - SIGNING OF CONTRACT

### APRIL 20, 2007

*(Eve of the signing of the supply contract in China)*

- Pres. Arroyo grants Sec. Mendoza full powers to sign NBN project contract with ZTE.
- DOTC Legal Service issues a Memo to the Secretary stating that they have reviewed ZTE contract and finds it in order.
- DOTC Legal Service opines that no public bidding is required on the NBN project based on the exchange of notes between the GRP and PROC.
- NEDA sends letter to Minister Bo Xilai and Chair Li Ruogu of China Exim Bank endorsing NBN project for loan financing of the PROC.
- President Gloria Macapagal Arroyo first learned of irregularities in the US\$329.48 million ZTE broadband contract.



**PRESIDENT  
ARROYO**  
(7x)



**LEANDRO  
MENDOZA**  
(8x)



**ROMULO NERI**  
(17x)

**MINISTER BO XILAI**



(4x)



**CHINA EXIM BANK**  
THE EXPORT-IMPORT BANK OF CHINA

(2x)



## Timeline

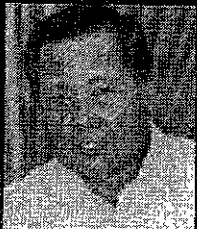
APRIL 16, 2007 - DOTC TWG

APRIL 20, 2007 - SIGNING OF CONTRACT

APRIL 21, 2007 - SUPPLY CONTRACT



**PRESIDENT  
ARROYO**  
(8x)



**LEANDRO  
MENDOZA**  
(9x)



(8x)

### APRIL 21, 2007

The DOTC, through Secretary Leandro R. Mendoza, and Zhing Xing Telecommunications Equipment (ZTE), through its Vice President Yu Yong, executed in Boao, China, a "Contract For the Supply of Equipment and Services for the National Broadband Network Project" worth US\$329,481,290 (approx. Php16 Billion), which signing was witnessed and attended also by President Gloria Macapagal-Arroyo (PGMA), who took time out from her multifarious duties and pressing family crisis, the First Gentleman being hospitalized at that time, just to witness the signing thereof in China. The ZTE contract was to be financed through a loan that would be extended by the PRC, through the Export-Import Bank (EximBank) of China.

The original contract was signed in Boao, China on 21 April 2007 and was thereafter (same day) lost by the Phil. Commercial Attache Mr. Emmanuel T. Ang. Charges have been filed against him.



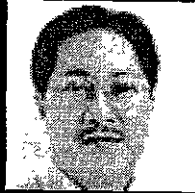
## Timeline

APRIL 21, 2007 - SUPPLY CONTRACT

APRIL 27, 2007 - PHILSTAR COLUMN

MAY 28, 2007 - DOF TO FACILITATE LOAN

JULY 26, 2007 - DOJ OPINION NO. 46



**JARIUS BONDOC**  
(1x)

### APRIL 27, 2007

Philippine Star columnist Jarius Bondoc wrote in his column that an unnamed Comelec official had a hand in the approval of the NBN deal, which was supposedly overpriced.



**LEANDRO MENDOZA**  
(10x)

### MAY 28, 2007

DOTC requests the Department of Finance (DOF) to facilitate the loan from EximBank of China.

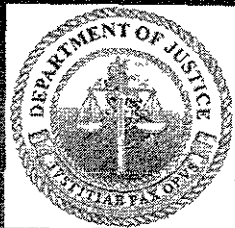
### JULY 26, 2007

DOJ issues Opinion No. 46 stating that the exchange of correspondence between Presidential Chief of Staff Defensor and Chinese Minister of Commerce Bo Xilai and Amb. Li Jinjun is considered an Executive Agreement.

The DOJ Opinion No. 46 classifying the Supply Agreement signed by Secretary Mendoza on 21 April 2007 an Executive Agreement.



**MARGARITO TEVES**  
(2x)



(1x)



Timeline

JULY 26, 2007 - DOJ OPINION NO. 46

AUGUST 1, 2007 - SUPPLICO PETITION

AUGUST 15, 2007 - NERI TO CHED

AUGUST 29, 2007 - PADILLA



(1x)

**ROLEX SUPLICO**

**AUG. 1, 2007**

Vice Gov. Rolex Suplico files a petition with the Supreme Court to stop NEDA, DOTC, CICT and the Information and Communications Technology Committee (ICT) et. al., from entering into the DOTC-ZTE broadband deal without competitive and public bidding.



(18x)

**ROMULO NERI**

**AUG. 15, 2007**

Secretary Neri for reasons only known to him and President Arroyo, was transferred from NEDA to the CHED.



(1x)

**CARLOS PADILLA**

**AUG. 29, 2007**

Rep. Carlos Padilla identifies COMELEC Chairperson Benjamin Abalos as the official who brokered for the project : NBN - ZTE.





Timeline

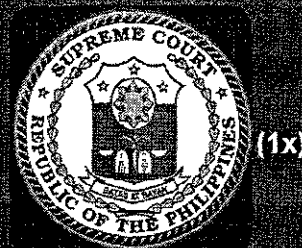
AUGUST 29, 2007 - REP. PADILLA

SEPTEMBER 3, 2007 - ZTE STATEMENT

SEPTEMBER 11, 2007 - SC TRO

**SEPT. 3, 2007**

ZTE Corporation then issued a press statement that there had been "complete transparency in the proposal, evaluation, and approval of ZTE's application for the Philippines NBN contract."



**SEPT. 11, 2007**

Supreme Court issues a Temporary Restraining Order on the Rolex Suplico Petition



Timeline

SEPTEMBER 11, 2007 - SC TRD

SEPTEMBER 18, 2007 - BRC HEARING

SEPTEMBER 22, 2007 - ARROYO SUSPENDS NBN



(1x)

On September 18, 2007, the Senate Blue Ribbon Committee begins its investigation.



PRESIDENT ARROYO

(9x)

SEPT. 22, 2007

President Arroyo suspends the NBN - ZTE Project



Timeline

SEPTEMBER 22, 2007 - ARROYO SUSPENDS NBN

SEPTEMBER 26, 2007 - BRC HEARING

OCTOBER 1, 2007 - ABALOS RESIGNS

OCTOBER 2, 2007 - ARROYO CANCELS NBN-ZTE



(2x)

**SEPT. 26, 2007**

The Senate Blue Ribbon Committee conducts it's 3rd Public Hearing. Chairman Abalos and Secretary Neri testify for the first time.



(9x)

**BENJAMIN ABALOS**

**OCTOBER 1, 2007**

Comelec Chair Benjamin Abalos resigns from COMELEC.



(10x)

**PRESIDENT ARROYO**

**OCTOBER 2, 2007**

Pres. Arroyo, while on a state visit to China, cancels the NBN - ZTE deal.



## Timeline

OCTOBER 2, 2007 - ARROYO CANCELS NBN-ZTE

FEBRUARY 4, 2008 - JOV OUSTED

FEBRUARY 5, 2008 - SC GRANTS TRO, LOZADA ARRIVES

FEBRUARY 7, 2008 - LOZADA RESURFACES

### JANUARY 30, 2008

Lozada leaves the country hours before the Blue Ribbon Committee Hearing.



(5x)

**JUN LOZADA**

### FEBRUARY 5, 2008

Engr. Lozada arrives from Hong Kong.



(19x)

**ROMULO NERI**

### FEBRUARY 5, 2008

The Supreme Court granted Secretary Neri's request for the issuance of a TRO to prevent the implementation of the Senate arrest order



**JOSE DE VENECIA JR.**

(6x)

### FEBRUARY 4, 2008

Speaker Jose De Venecia was ousted as the Speaker of the House



## Timeline

FEBRUARY 4, 2008 - JDV DUSTED

FEBRUARY 5, 2008 - SC GRANTS TRO, LOZADA ARRIVES

FEBRUARY 7, 2008 - LOZADA RESURFACES

FEBRUARY 26, 2008 - MADRIAGA



(6x)

JUN LOZADA

### FEBRUARY 7, 2008

Jun Lozada resurfaces. The Senate takes custody of him.



(1x)

DANTE MADRIAGA

### FEBRUARY 26, 2008

The Senate takes custody of Dante Madriaga.

Testifies that he was consultant to Leo San Miguel.

That he received an email from Leo San Miguel detailing the "tongpats" made in the project.



(2x)

LEO SAN MIGUEL

### MARCH 11, 2008

Leo San Miguel testifies before the Senate Committee that he was just a consultant with ZTE and he did not know of any anomalous transaction.

In previous testimonies, Jose de Venecia III and Dante Madriaga allege that Leo San Miguel was part of the Abalos group.



(7x)

**JUN LOZADA**

(9x)

**JOSE DE VENECIA III**

FEBRUARY 5, 2008 - SC GRANTS TRO, LOZADA ARRIVES

FEBRUARY 7, 2008 - LOZADA RESURFACES

### Notes on Jun Lozada:

Eng. Rodolfo Jun Lozada's name was first mentioned when Sen. Pimentel asked Mr. Jose de Venecia III if he knew Eng. Jun Lozada. This prompted the Committee to issue an invitation to Eng. Lozada to testify before it on Sept. 26, 2007. When Eng. Lozada failed to appear on said day, a subpoena was issued by the Committee for his attendance on January 30, 2008.

On January 30, 2007, on the day of the Committee hearing itself, Eng. Jun Lozada leaves the country to attend a conference in the United Kingdom.

Having failed, for the second time to appear before the Committee, the Committee then cited Eng. Lozada in Contempt of the Senate and a warrant of arrest was thereafter issued against him.

Subsequent testimony made by Eng. Lozada before the Senate Blue Ribbon Committee revealed the following facts:



Timeline

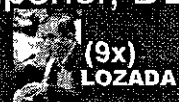
FEBRUARY 5, 2008 - SC GRANTS TR0, LOZADA ARRIVES

FEBRUARY 7, 2008 - LOZADA RESURFACES

1. He never wanted to appear before the Senate Blue Ribbon Committee and testify about what he knows about the National Broadband Project.



2. He actively sought the help of his superior, DENR Secretary Lito Atienza to be able to evade testifying before the Committee.



3. Sec. Atienza recommended that he speak with Dep. Exec. Secretary Manuel Gaité and ask his advise and help on how to "legally" evade testifying.



4. Dep. Exec. Sec. Gaité recommended that Eng. Lozada leave the country on the day of the Committee Hearing purportedly to travel on official mission.



5. Dep Exec. Sec. Gaité helped ante-date his travel documents.



6. That Eng. Lozada never really continued on to the UK to attend the conference, but stayed in Hong Kong.



7. That while in Hong Kong, he was in constant communication with Sec. Neri, Sec. Atienza and Dep. Exec. Sec. Gaité either by phone or by text messaging.





## Timeline

FEBRUARY 5, 2008 - SC GRANTS TRO, LOZADA ARRIVES

FEBRUARY 7, 2008 - LOZADA RESURFACES

8. That he asked Dep. Exec. Sec. Gaité for money when his bills were accumulating

LOZADA (15x)

(5x)  
GAITE

9. Dep. Exec Sec. Gaité gave him P500,000.00 (which was received by his brother here in Manila) to help him out.

(16x)  
LOZADA

(6x)  
GAITE

10. He consulted Sec. Atienza on WHEN he could return to Manila and HOW he will be able to return undetected.

(17x)  
LOZADA

(4x)  
ATIENZA

11. Sec. Atienza advised him when he could return; that he should take a late flight back to Manila to slip in unnoticed; that he has spoken to BID Comm. Libanan already and that he will be allowed to enter the Country without being arrested.

(18x)  
LOZADA

(5x)  
ATIENZA

Eng. Lozada returns to Manila on February 5, 2008. In the same testimony made by Eng. Lozada before the Senate Blue Ribbon Committee, the following facts were revealed:

1. He was met by NAIA and security personnel upon his deplaning on Gate 7 of the airport.

(19x)  
LOZADA

2. From the tube of the airport, they proceeded to WALK to the 3<sup>rd</sup> floor departure area of the NAIA going to the elevator.

(20x)  
LOZADA














## Timeline

FEBRUARY 5, 2008 - SC GRANTS TRO, LOZADA ARRIVES

FEBRUARY 7, 2008 - LOZADA RESURFACES

3. He had to use comfort room of the NAIA when he needed to relieve himself.  (21x)  
LOZADA
4. They then took the elevator down to the tarmac VIP parking area where boarded a waiting car.  (22x)  
LOZADA
5. This elaborate and circuitous route was taken in order to evade the Senate arresting team which was waiting for him outside the arrival area of the NAIA.  (23x)  
LOZADA
6. They drove around Metro Manila and its environs.  (24x)  
LOZADA
7. He received a call from Sec. Atienza telling him that the men accompanying him was there to help him.  (25x)  
LOZADA  (6x)  
ATIENZA
8. They stopped at a Jollibee fastfood in Sta. Rosa, Laguna where they bought food.  (26x)  
LOZADA
9. They went to Outback Restaurant where he met Atty. Antonio Bautista before whom he narrated his story.  (27x)  
LOZADA  (1x)  
BAUTISTA



Timeline

FEBRUARY 5, 2008 - SC GRANTS TRO, LOZADA ARRIVES

FEBRUARY 7, 2008 - LOZADA RESURFACES

10. He was thereafter taken to dormitory compound of the La Salle Brothers.



11. The following day, he went back to see Atty. Bautista who now had a prepared Affidavit to sign.



12. He initially refused to sign the affidavit and proposed some amendments thereto.



Based on the recital of facts of Eng. Lozada, it would appear he was at no time deprived of his freedom of movement and means of communication. He was never handcuffed, blindfolded and neither was his cellular phone confiscated from his person.

On February 7, 2008 Eng. Lozada finally resurfaces and subsequently testifies before the Blue Ribbon Committee.



Timeline



(1x)

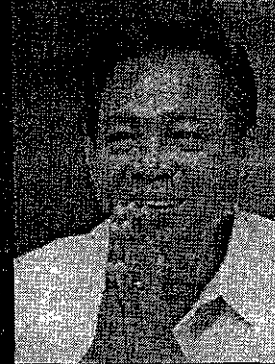
FEBRUARY 5, 2008 - SC GRANTS TRD, LOZADA ARRIVES

FEBRUARY 7, 2008 - LOZADA RESURFACES

AUGUST 27, 2009 - OMBUDSMAN ORDER

## AUGUST 27, 2009

The Office of the Ombudsman ordered the filing of criminal charges against former Comelec Chair Benjamin Abalos and SSS Chair Romulo Neri in connection with the controversial ZTE-NBN Broadband deal.



(10x)



(21x)

**MAKING IT PUNISHABLE FOR  
PUBLIC OFFICIALS AND  
EMPLOYEES TO RECEIVE, AND  
FOR PRIVATE PERSONS TO GIVE,  
GIFTS ON ANY OCCASION,  
INCLUDING CHRISTMAS**

*Presidential Decree No. 46 (1972) provides that it shall be punishable for any public official or private persons to give any gift present or other valuable thing to any occasion by reason of his official position. Included within the prohibition is the throwing of parties or entertainments in honor of the official or employees or his immediate relatives.*

**CODE OF CONDUCT AND  
ETHICAL STANDARDS FOR  
PUBLIC OFFICIALS AND  
EMPLOYEES:**

*Section 7(d) of RA 6713 provides:  
"Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by or any transaction which may be affected by the functions of their office."*

# TIMELINE

- JANUARY 9, 2006 - Meeting
- MARCH 1, 2006 – Framework of Cooperation
- JUNE 5, 2006 – MOU: Phil-China Economic Partnership
- JULY 12, 2006 – MOU: RP-ZTE
- JULY 24, 2006 – SONA
- AUGUST 7, 2006 – ZTE Proposal submitted
- SEPTEMBER 2006 – Neri requested Lozada's assistance
- SEPTEMBER 4 and 6, 2006 – ZTE sent letters to CICT
- SEPTEMBER 8, 2006 – China Eximbank Endorsement
- OCTOBER 10, 2006 – AHI's unsolicited BOO proposal
- OCTOBER 17, 2006 – NEDA conveyed its support to AHI proposal
- OCTOBER 23, 2006 – CICT endorsed the ZTE proposal to NEDA
- OCTOBER 28, 2006 – CICT endorsed NBN to NEDA as a Government Project
- OCTOBER 29-NOVEMBER 1, 2006 – Hong Kong – Shenzhen Trip
- NOVEMBER 2, 2006 – Golf
- NOVEMBER 21, 2006 – GMA meeting with NEDA
- DECEMBER 2, 2006 – China informs RP that it will provide financing support
- DECEMBER, 2006 – JDV III alleges that Abalos offered him a partnership with ZTE for US\$10 M
- DECEMBER 4, 2006 – Garcia of AHI writes a letter to DOTC Mendoza
- DECEMBER 5, 2006 – JDV III filed his AHI proposal to DOTC
- DECEMBER 8, 2006 – CICT informs NEDA re evaluation of AHI proposal
- DECEMBER 27, 2006 – Abalos allegedly demanded commission from ZTE officials
- JANUARY, 2007 – "Sec., may 200 ka dito." Abalos to Neri

# TIMELINE

- JANUARY 3, 2007 – NEDA requests DOTC to take the lead on the Cyber Corridor Projects
- JANUARY 18, 2007 – Abalos allegedly cursed Lozada because of an alleged double-cross
- FEBRUARY, 2007 – Reconciliatory meeting at Wack Wack; “Back-off!”
- FEBRUARY 13, 2007 – EO 603: Reverting the control of Telof from CICT to DOTC
- FEBRUARY 20, 2007 – NEDA requests DOTC to reconcile CEP with NBN
- FEBRUARY 27, 2007 – NEDA again requests DOTC to submit the reconciled project
- MARCH 1, 2007 – Series of events
- MARCH 29, 2007 – NEDA approves the NBN-ZTE project
- APRIL 10, 2007 – BAC (ICT) recommendation
- APRIL 16, 2007 – DOTC TWG
- APRIL 20, 2007 – Eve of the signing of the supply contract in China
- APRIL 21, 2007 – NBN-ZTE Supply Contract signed
- APRIL 27, 2007 – PhilStar columnist Bondoc’s write-up
- MAY 28, 2007 – DOTC requests DOF to facilitate the loan from China Eximbank
- JULY 26, 2007 – DOJ Opinion No. 46
- AUGUST 1, 2007 – Suplico files a petition with the Supreme Court
- AUGUST 15, 2007 – Neri was transferred from NEDA to CHED
- AUGUST 29, 2007 – Rep. Carlos Padilla identifies Abalos as the broker for the NBN-ZTE project
- SEPTEMBER 3, 2007 – ZTE Press Statement
- SEPTEMBER 11, 2007 – SC issues TRO on Suplico’s Petition
- SEPTEMBER 18, 2007 – Initial Joint Public Hearing of the Blue Ribbon Committee
- SEPTEMBER 22, 2007 – PGMA suspends the NBN-ZTE Project



# TIMELINE

- SEPTEMBER 26, 2007 – 3<sup>RD</sup> Joint Public Hearing of the Blue Ribbon Committee
- OCTOBER 1, 2007 – Abalos resigns from Comelec
- OCTOBER 2, 2007 – PGMA cancels the NBN-ZTE Deal
- JANUARY 30, 2008 – Lozada leaves the country
- FEBRUARY 4, 2008 – JDV was ousted Speaker of the House
- FEBRUARY 5, 2008 – SC issues TRO for the Senate arrest order against Neri; Lozada arrives from HK
- FEBRUARY 7, 2008 – Jun Lozada resurfaces
- FEBRUARY 26, 2008 – Madriaga testifies
- MARCH 11, 2008 – Leo San Miguel testifies
- AUGUST 27, 2009 – Ombudsman ordered filing of criminal charges against Abalos and Neri



**FOURTEENTH CONGRESS OF THE REPUBLIC )**  
**OF THE PHILIPPINES )**  
Second Regular Session )

**SENATE**  
**S.B. No. \_\_\_\_\_**

---

Introduced by Senator Richard J. Gordon, Chairman and members of the  
Committee on Accountability of Public Officers and Investigations

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**EXPLANATORY NOTE**

Section 9 Article XII of the Constitution provides that: "The Congress may establish an independent economic and planning agency headed by the President, which shall, after consultations with the appropriate public agencies, various private sectors, and local government units, recommend to Congress, and implement continuing integrated and coordinated programs and policies for national development"

This bill proposes an amendment to Section 4 of Executive Order 230 of July 1987 by including representatives from the private sectors to the composition of the National Economic and Development Authority (NEDA) Board. This amendment will ensure that the interest of the private sector and major key players of the economy will be considered.

Furthermore, the Committee on Accountability of Public Officers and Investigations came up with this bill for two reasons: (1) to prevent another NBN-ZTE project that has not been thoroughly studied and scrutinized, (2) to prevent collusion among members of the board in approving a project.



**RICHARD J. GORDON**  
Chairman



Members:

GREGORIO B. HONASAN II

RAMON "BONG" REVILLA JR.

EDGARDO J. ANGARA

PANFILO M. LACSON

M.A. MADRIGAL

MIRIAM DEFENSOR SANTIAGO

MAR ROXAS

ANTONIO "SONNY" F. TRILLANES IV

LOREN B. LEGARDA

MANUEL "LITO" M. LAPID

FRANCIS "CHIZ" G. ESCUDERO

FRANCIS N. PANGILINAN

COMPAÑERA PIA S. CAYETANO

RODOLFO G. BIAZON

JOKER P. ARROYO

ALAN PETER "COMPAÑERO" S. CAYETANO

Ex-Officio Members:

**JINGGOY EJERCITO ESTRADA**  
President Pro-Tempore

**JUAN MIGUEL F. ZUBIRI**  
Majority Floor Leader

**AQUILINO Q. PIMENTEL JR.**  
Minority Floor Leader

**HON. JUAN PONCE ENRILE**  
President  
Senate of the Philippines  
Pasay City

FOURTEENTH CONGRESS OF THE REPUBLIC )  
OF THE PHILIPPINES )  
Second Regular Session )

SENATE  
S.B. No. \_\_\_\_\_

---

Introduced by Senator Richard J. Gordon, Chairman and members of the  
Committee on Accountability of Public Officers and Investigations

---

**AN ACT**  
**AMENDING EXECUTIVE ORDER NO. 230 ALSO KNOWN AS THE**  
**REORGANIZATION ACT OF THE NATIONAL ECONOMIC AND**  
**DEVELOPMENT AUTHORITY**

*Be it enacted by the Senate and the House of Representatives of the  
Philippines in Congress assembled:*

**SECTION 1.** Section 4 of Executive Order No. 230 of 1987, also known as the Reorganization Act of the National Economic and Development Authority is hereby amended to read as follows:

Section 4. Composition of the NEDA Board shall be composed of the following:

The President – Chairman  
Director-General of the NEDA Secretariat – Vice Chairman  
Secretary of Budget and Management – member  
Secretary of Finance - member  
**Chairman of the Senate Committee on Economic Affairs – member**  
**Chairman of the House Committee on Economic Affairs – member**  
**Four (4) members from the Business/Private Sector – member**

**The four members from the private sector shall each be chosen by the following organization or center itself: (1) Philippine Chamber of Commerce, (2) Employees Confederation of the Philippines, (3) Asian Institute of Management Policy Center, (4) University of the Philippines Economic Center.**

The NEDA Board shall meet at least once a month or as frequently as necessary to discharge its responsibilities as called for by the President. In cases where the President is unable to attend a meeting, the Director General of the Secretariat may preside as Chairman, in the absence of any Presidential preference. The President, however, continues to have the power to designate

from the members of the NEDA Board the Chairman that can appropriately represent the President, to preside over specific meetings.

**SECTION 2.** *Repealing Clause.* - Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, administrative memorandum, rule or regulation contrary to or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.

**SECTION 3.** *Effectivity Clause.* - This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,

Annex 1

FOURTEENTH CONGRESS OF THE REPUBLIC )  
OF THE PHILIPPINES )  
Third Regular Session )

SENATE  
S.B. No. \_\_\_\_\_

---

Introduced by Senator Richard J. Gordon, Chairman and members of the  
Committee on Accountability of Public Officers and Investigations (Blue Ribbon)

---

### EXPLANATORY NOTE

Section 27, Article II of the Constitution provides that “The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.”

As an effective measure against graft and corruption, this bill seeks to amend Section 5 of Republic Act No. 3019 (The Anti-Graft and Corrupt Practices Act) by imposing an absolute prohibition on certain relatives of the President of the Philippines, the Vice-President of the Philippines, the President of the Senate or the Speaker of the House of Representatives to intervene, directly or indirectly, in any business, transaction, contract or application with the Government.

This bill aims to ensure that said public officials and their relatives always act in the best interest of the country and must not be motivated by personal considerations and relationships which could interfere with their independent judgment.

For this reason, passage of this bill is earnestly sought.



**RICHARD J. GORDON**  
Chairman

Members:

**GREGORIO B. HONASAN II**

**RAMON "BONG" REVILLA JR.**

**EDGARDO J. ANGARA**

**PANFILO M. LACSON**

**M.A. MADRIGAL**

**MIRIAM DEFENSOR SANTIAGO**

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**HON. JUAN PONCE ENRILE**

President

Senate of the Philippines

Pasay City

FOURTEENTH CONGRESS OF THE REPUBLIC )  
OF THE PHILIPPINES )  
Third Regular Session )

SENATE  
S.B. No. \_\_\_\_\_

---

---

Introduced by Senator Richard J. Gordon, Chairman and members of the  
Committee on Accountability of Public Officers and Investigations (Blue Ribbon)

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AN ACT  
AMENDING SECTION 5 OF RA 3019  
ALSO KNOWN AS THE ANTI-GRAFT AND CORRUPT PRACTICES ACT

*Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:*

**SECTION 1.** Section 5 of Republic Act No. 3019, also known as the Anti-Graft and Corrupt Practices Act is hereby amended to read as follows:

***Section 5. Prohibition on certain relatives.*** – It shall be unlawful for the spouse or for any relative, by consanguinity or affinity, within the third civil degree, of the President of the Philippines, the Vice-President of the Philippines, the President of the Senate, or the Speaker of the House of Representatives, to intervene, directly or indirectly, in any business, transaction, contract or application with the Government. [*Provided, That this section shall not apply to any person who, prior to the assumption of office of any of the above officials to whom he is related, has been already dealing with the Government along the same line of business, nor to any transaction, contract or application already existing or pending at the time of such assumption of public office, nor to any application filed by him the approval of which is not discretionary on the part of the official or officials concerned but depends upon compliance with requisites provided by law, or rules or regulations issued pursuant to law, nor to any act lawfully performed in an official capacity or in the exercise of a profession.*]

**SECTION 2. Repealing Clause.** – Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, administrative

memorandum, rule or regulation contrary to or inconsistent with the provisions of this Act is hereby repealed, modified or amended accordingly.

**SECTION 3. *Effectivity Clause*** – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspapers of general circulation.

Approved,



FOURTEENTH CONGRESS OF THE REPUBLIC)  
OF THE PHILIPPINES )  
Third Regular Session )

**SENATE**  
**S.B. No. \_\_\_\_\_**

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Introduced by Senator Richard J. Gordon, Chairman and members of the  
Committee on Accountability of Public Officers and Investigations

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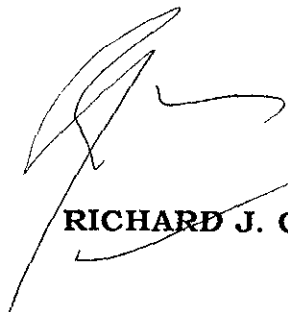
**EXPLANATORY NOTE**

Section 27, article II of the 1987 Constitution provides that as a State Policy, "The State shall maintain honesty and integrity in public service and take positive and effective measure against graft and corruption."

Furthermore, section 1, article XI of the 1987 Constitution provides that, "Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."

It is the intent of this bill to encourage citizens to stand up and report alleged violations of law, improper use of governmental office, gross waste of funds, or any other abuse or gross neglect of duty on the part of an agency, public officer or employee, and private entity. Furthermore by protecting citizens who disclose wrongdoing from retaliatory acts, we hereby strengthen accountability and reduce corruption in the public and private sectors.

Hence, in the best interest of the Republic, the immediate approval of this bill is urgently sought.



**RICHARD J. GORDON**

**SENATE**  
**S.B. No. \_\_\_\_\_**

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Introduced by Senator Richard J. Gordon, Chairman and members of the  
Committee on Accountability of Public Officers and Investigations

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**AN ACT PROVIDING FOR WHISTLEBLOWER BILL OF RIGHTS**

*Be it enacted by the Senate and the House of Representatives of the Philippines  
in Congress assembled:*

**SECTION 1. Short Title.** – This Act shall be known as the “Whistleblower Protection Act of 2009.”

**SECTION 2. Definitions of Terms.** – As used in this act and unless otherwise specified, the following words or terms shall have the meaning indicated:

- (a) A “Whistleblower” is a person who publicly reveals a concealed misconduct or a commission or attempted commission of a crime by a person, employer, employee, or an agency whether of a public or private entity. Provided, however, that said person has not participated or has refused to participate in the misconduct or the violation or attempted violation of law.
- (b) “Whistleblowing” is the disclosure, making public, giving evidence to, an information that a whistleblower reasonably believes constitutes:
  - (i) a violation of law, rule, regulation, policy,
  - (ii) gross mismanagement,
  - (iii) gross waste of funds,
  - (iv) abuse of authority,
  - (v) threat to public interest such as fraud and corruption,
  - (vi) or a substantial and specific danger to public health or safety;
- (c) “Employer” is any individual, partnership, association, corporation, or any person or group of persons who has the power and right to control and direct the employee in the material details of how the work is to be performed, which includes any public or privately owned corporation, branches of government, or any other political subdivision, authority, commission, or board, or any other agency or instrumentality thereof;
- (d) “Superior / Supervisor” is an individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust

their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not a merely routine or clerical nature, but requires the use of independent judgment;

- (e) "Retaliatory Action" is the discharge, suspension, transfer, or demotion of any employee / whistleblower or the withholding of bonuses, reduction in salary or benefits, or any other action that may adversely affect his rights and interests taken by his employer, superior, supervisor or head of agency;
- (f) "Gross Mismanagement" is the continuous pattern of managerial abuses, wrongful or arbitrary and capricious actions, or fraudulent or criminal conduct which may have a substantial adverse economic impact;
- (g) "Gross Waste of Funds" means to spend or use funds or to allow funds to be used without valuable result in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

### **SECTION 3. Actions Prohibited.**

It shall be unlawful for any Employer, Superior, Supervisor or Head of Agency to retaliate or perform such acts which can be deemed as "Retaliatory Acts" as defined in this code against an employee / whistle blower.

### **SECTION 4. Nature of Information Disclosed.** The information disclosed under this section must include:

- (a) Any violation or suspected violation of any law, rule, or regulation committed by an employee or agent of government agency or private entity which creates and presents a substantial and specific danger to the public interest, safety, or welfare.
- (b) Any act or suspected act of gross mismanagement and misconduct, malfeasance, misfeasance, non-feasance or gross neglect of duty, gross waste of public funds committed by an employee or agent and public officials of a government agency.

### **SECTION 5. To Whom Information Disclosed.**

The information disclosed under this section must be made to his superior / supervisor or any other person in authority who has the power to prevent, remedy, correct the wrongdoing or any government agency having the authority to investigate, prosecute the violation or act, including, but not limited to, the Philippine National Police, The National Bureau of Investigation, the Office of the Ombudsman and the Department of Justice.

### **SECTION 6. Whistleblowers and Persons Protected.**

Legal protections accorded under this Act to employees / whistleblowers and their spouse and/or any member of the family within the first (1<sup>st</sup>) civil degree by consanguinity or affinity who:

- (a) disclose information on their own initiative in a written and signed complaint or affidavit; or
- (b) are requested to participate in an investigation, hearing, or other inquiry conducted by any agency or national government agency; and,
- (c) refuse to participate in any retaliatory action prohibited by this section; or who initiate a complaint against or testify regarding an illegal act.

**SECTION 7. Remedies.**

- (a) Any whistleblower or employee of or applicant for employment with any government agency, who is discharged, disciplined, or subjected to other retaliatory action, or denied employment, because he or she engaged in an activity protected by this section may file a complaint without need of exhausting all available contractual or administrative remedies, before a court of competent jurisdiction within one (1) year after the action prohibited by this section is committed.

**SECTION 8. Relief.** – In any action brought under this section, the relief must include the following:

- (a) Reinstatement of the whistleblower or employee to the same position held before the retaliatory action was commenced, or to an equivalent position or reasonable front pay as alternative relief;
- (b) Reinstatement of the whistleblower or employee's full fringe benefits and seniority rights, as appropriate;
- (c) Compensation, if appropriate, for lost wages, benefits, or other lost remuneration caused by the retaliatory action;
- (d) Payment of reasonable costs, including attorney's fees, to a substantially prevailing employee, or to the prevailing employer if the whistleblower or employee filed a frivolous action in bad faith;
- (e) Issuance of an injunction, if appropriate, by a court of competent jurisdiction;
- (f) Temporary reinstatement to the whistleblower or employee's former position or to an equivalent position, pending the final outcome on the complaint, if an employee complains of being discharged in retaliation for a protected disclosure and if a court of competent jurisdiction or the Commission on Human Rights, as applicable, determines that the disclosure was not made in bad faith or for a wrongful purpose or occurred after an agency's initiation of a personnel action against the whistleblower or employee which includes documentation of the employee's violation of a disciplinary standard or performance deficiency.

**SECTION 9. Preemption.** Nothing in this Act shall be deemed to diminish the rights, privileges, or remedies of any whistleblower or employee under any law or regulation or under any collective bargaining agreement or employment contract. No whistleblower or employee may waive through the private contract any right set forth in this Act, except as set forth in Section 7, and no employee may be compelled to adjudicate his or her rights under this Act pursuant to a collective bargaining agreement or any other arbitration agreement.

**SECTION 10. Settlement.** – The rights afforded employees under this Act may not be waived or modified

**SECTION 11. Penal Clause.** – Any person who violates any provision of this Act shall suffer pay a fine of not less than two hundred thousand pesos (P200,000) but not more than five hundred thousand pesos (P500,000) and suffer an imprisonment of not less than two (2) years but not more than six (6) years.

Upon filing of an appropriate complaint, and after due notice and hearing, the proper authorities may also cause the cancellation or revocation of the business permit, permit to operate, franchise and other similar privileges granted to any private entity that fails to abide the provisions of this Act.

**SECTION 12. Separability Clause.** – If any provision, or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected shall remain valid and subsisting.

**SECTION 13. Repealing Clause.** – Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to or inconsistent with, the provisions of this Act is hereby repealed, modified, or amended accordingly.

**SECTION 14. Effectivity Clause.** – This Act shall take effect fifteen (15) days after its publication in at least two (2) newspaper of general circulation.

Approved,