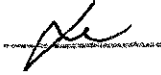


THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Third Regular Session)

7 FEB 16 10:55

SENATE

RECEIVED BY: 

COMMITTEE REPORT NO. 258

Submitted jointly by the Committees on Public Order and Illegal Drugs; and Local Government on **FEB 06 2007**.

Re: Privilege Speech of Senator Franklin M. Drilon and the interpellations thereon, delivered on January 22, 2007, entitled "A Season of Shame"; Privilege Speech of Senator Alfredo S. Lim delivered on January 22, 2007, entitled "What Are We in Power For?" and P. S. Res. No. 609

Recommending the adoption of the recommendations and their immediate implementation.

Sponsors: Senators Drilon, Lim and the Members of the Committees on Public Order and Illegal Drugs; and Local Government.

MR. PRESIDENT:

The Committees on Public Order and Illegal Drugs; and Local Government to which were referred the Privilege Speech of Senator Franklin M. Drilon and the interpellations thereon, delivered on January 22, 2007, entitled:

"A SEASON OF SHAME";

Privilege Speech of Senator Alfredo S. Lim, delivered on January 22, 2007, entitled:

"WHAT ARE WE IN POWER FOR";

and Proposed Senate Resolution No. 609, introduced by Senator Franklin M. Drilon, entitled:

"RESOLUTION

DIRECTING THE SENATE COMMITTEES ON PUBLIC ORDER AND ILLEGAL DRUGS AND LOCAL GOVERNMENT TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE LAWS, LEGAL PROCESSES, AND SYSTEM FOR THE ENFORCEMENT OF ORDERS FROM THE OMBUDSMAN AFFECTING ELECTED LOCAL GOVERNMENT OFFICIALS IN LIGHT OF THE VIOLENT ENFORCEMENT BY THE PHILIPPINE NATIONAL POLICE, UPON ORDERS OF THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, OF THE DISMISSAL OF ILOILO PROVINCIAL GOVERNOR NIEL D. TUPAS, SR.";



have considered the same and have the honor to submit the report on their inquiry, in aid of legislation, back to the Senate recommending the adoption of the recommendations as contained in this report and their immediate implementation.

I. PREFATORY STATEMENT

On Thursday, January 25, 2007 at 9:30 in the morning, the Committee on Public Order and Illegal Drugs and the Committee on Local Government had conducted an inquiry, in aid of legislation, on the circumstances surrounding the incident in the Iloilo Provincial Capitol concerning the dismissal of Governor Niel D. Tupas, Sr.

The Joint Committees invited the following resource persons: 1) Ombudsman Merceditas N. Gutierrez, Office of the Ombudsman; 2) Acting Secretary Raul M. Gonzalez, Department of Justice (DOJ); 3) Acting Secretary Ronaldo V. Puno, Department of the Interior and Local Government (DILG); 4) Undersecretary Wencilito T. Andanar, DILG; 5) Director Evelyn A. Trompeta, Officer in Charge, Region 6, DILG; 6) Atty. Elizabeth Doronila, Provincial Director, Commission on Elections (COMELEC); 7) Police Director General Oscar Calderon, Chief, Philippine National Police (PNP); 8) Police Director Wilfredo V. Garcia, Director for Operations, PNP; 9) Police Chief Supt. Wilfredo D. Dulay Sr., Regional Director for Police Regional Office 6, PNP; 10) Police Senior Supt. Pedro Merced, Commander, Regional Mobile Group 6, PNP; 11) Governor Niel Tupas Sr., Province of Iloilo; 12) Board Member Niel Tupas Jr., Province of Iloilo; 13) Board Member Domingo Oso, Province of Iloilo; 14) Board Member Cecilia Capadosa, Province of Iloilo; 15) Mr. Manuel Mejorada, Provincial Administrator, Province of Iloilo; 16) Atty. Salvador Cabaluna, Provincial Legal Officer, Province of Iloilo; 17) Ms. Nielette Tupas-Balleza, Executive Assistant, Office of the Governor, Province of Iloilo; and 18) Mayor Raul Tupas, Municipality of Barotac Viejo, Province of Iloilo.

II. STATEMENT OF FACTS AND CHRONOLOGY OF EVENTS

Administrative Complaints Against Governor Niel Tupas Sr.

In separate occasions in 2005, Attys. Heptie Correa and Virgilio Sindico along with Msgr. Meliton Oso and Nicolas Monteblanco filed their administrative

complaints against Iloilo Governor Niel Tupas Sr. together with Board Members Cecilia Capadosa and Domingo Oso Jr. and Provincial Budget Officer Elena Lim. The cases filed for grave misconduct were about the releases of P20,000 and P60,000 for financial assistance to the Provincial Board Members League of the Philippines as requested then by Board Member Henry Anotado for their training.

The P20,000.00 was released on January 15,2004, and the case OMB-V-A-05-0138-D was filed on April 4, 2005.

The other amount of P65,000.00 was released on August 18, 2004, and the case OMB-V-A-05-0101-C was filed on March, 2005.

Parenthetically, the releases of the said amounts were processed by the provincial budget officer and the checks were signed by the provincial treasurer, which was a delegated authority given by the provincial governor. Governor Tupas had no direct participation in the processing and issuance of the said checks.

Governor Tupas testified before the Joint Committees' public hearing that he answered the said complaints filed against him through sworn affidavits when he was asked in 2004 by the Office of the Ombudsman to submit his counter affidavits. He indicated therein that Atty. Sindico has an axe to grind against him because he did not approve the lawyer's application for a quarry permit in the construction of an international airport in Iloilo. (TSN, HSGayapa, V-2, January 25, 2007, 11:20 a.m. pp. 4-5)

Moreover, even if it is not the mandate of the Department of Justice (DOJ) to conduct administrative investigations on elected local officials, Acting Secretary Raul Gonzalez ordered Governor Tupas and Board Members Oso and Capadosa to file their "verified comment" on the administrative complaint filed against them by Atty. Sindico and Correa. As a matter of fact, Acting Secretary Gonzalez even created a special panel of prosecutors to conduct an investigation since the original members of the panel have inhibited themselves from it. The Acting Secretary of Justice then handpicked the members of the said panel.

Decisions of the Office of the Ombudsman

Since the time Governor Tupas and the two board members submitted their counter-affidavits and evidence to refute the trumped-up charges against

them, nothing has been heard about the case. After the counter affidavits were filed, no hearing was ever conducted.

However, under date of December 4, 2006, the Office of the Ombudsman suddenly issued the decisions with orders for the dismissal of Governor Tupas with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification to hold public office. The decisions further directed the Acting DILG Secretary to implement the decision "upon receipt" by the Secretary.

Announcement of the Dismissal Orders of Governor Tupas

On Saturday morning, January 13, 2007, news circulated that there was a dismissal order for Governor Tupas. The confirmation came in the evening of the same day with Acting Secretary Gonzalez announcing on air over the radio via Bombo Radyo and Aksyon that the Iloilo governor has been dismissed. (TSN, CTSotto, II-1, January 25, 2007, 9:50 a.m. pp. 3)

Subsequently, Acting Secretary Ronaldo Puno of the Department of the Interior and Local Government (DILG) confirmed that the dismissal order against Governor Tupas would be executed by the DILG and that he was sending Undersecretary Wencilito Andanar to Iloilo.

Implementation of the Dismissal Orders by the DILG

On Monday afternoon, January 15, 2007, photocopies of the unofficial decisions of the Ombudsman and the implementation orders of the DILG acting Secretary for the dismissal of Governor Tupas were furnished by DILG Regional Director Evelyn Trompeta accompanied by Atty. Ferdinand Panes and another legal officer of the DILG main office to Board Member Niel Tupas Jr. and Governor Tupas' team of lawyers headed by Provincial Legal Officer Salvador Cabaluna III.

Per Board Member Tupas' testimony before the Joint Committees' public hearing, Director Trompeta and company went to the provincial capitol building to serve an unofficial advance photocopy of the Ombudsman decisions dated December 4, 2006 dismissing the governor. Board Member Tupas asked Director Trompeta whether the DILG is officially serving notice to the governor to

which the regional director replied in the negative and said that it is just an advance and unofficial copy of the Ombudsman orders. As such, the office of the Iloilo governor did not accept the said photocopy of the decision. (TSN, CTSotto, II-1, January 25, 2007, 9:50 a.m. pp. 4)

However, while at the time that the team of Director Trompeta was trying to serve the photocopies of the Ombudsman decisions to the office of Governor Tupas, Vice Governor Roberto Armada was being sworn in by Undersecretary Andanar who just flew in from Manila in the afternoon of that day.

In a memorandum dated January 16, 2007, Acting DILG Secretary and National Police Commission (NAPOLCOM) Chairman Puno directed Police Director General Oscar Calderon, chief of the Philippine National Police (PNP), to direct his police field officers to maintain peace and order in the transition of leadership in the local government units affected.

Verification by the COMELEC of Reports of the Alleged Presence of Armed Men in Civilian Clothes in the Iloilo Provincial Capitol

On Tuesday, January 16, 2007 at around 1:00 in the afternoon, Atty. Elizabeth Doronila, Iloilo Provincial Election Supervisor and concurrently Acting Iloilo City Election Officer of the Commission on Elections (COMELEC), received a facsimile message from COMELEC Regional Election Director Renato Magbutay, which was a memorandum coming from COMELEC Executive Director Pio Jose Josen directing them to verify reports in coordination with the PNP of the presence of armed men in civilian clothes that were allegedly posted around the Iloilo provincial capitol compound. The directive intended to further ascertain whether such armed men are members of the PNP and covered by the gun ban exemption in order to prevent the outburst of violence in the vicinity and strictly maintain peace and order in the area.

In her sworn affidavit and testimony before the Joint Committees' public hearing, Atty. Doronila testified that upon receipt of the message, she immediately issued two separate memoranda to Police Senior Supt. Wesley Barayuga, Iloilo City police office director, and Police Senior Supt. Joel Napoleon Coronel, Iloilo provincial police director, to assist her in verifying the said report. She did not, however, receive any response from the office of the two police



officers as they were allegedly having a meeting with Police Chief Supt. Wilfredo Dulay, police regional director for Region 6, at that time.

At around 2:00 in the afternoon of the same day, even in the absence of police personnel to assist her in the verification of said report, Atty. Doronila proceeded to the provincial capitol together with one election officer and another employee of the provincial COMELEC office. She stated that they went inside the provincial capitol building and then talked to Governor Tupas telling him of her purpose in going there. She testified that she stayed there for almost an hour and went around the compound. She saw no armed men in civilian clothes, and therefore the reported presence of armed men in civilian clothes in the Iloilo provincial capitol is false.

Hence, Atty. Doronila went back to her office at around 3 o'clock in that same afternoon and submitted her report to the COMELEC main office in Manila stating therein that no such armed men in civilian clothes were seen after her conduct of an ocular inspection in the vicinity of the provincial capitol. She indicated though that she observed the presence of five provincial guards in full uniform, security guards of Illustrous Security Agency posted at the entrance and exit of the provincial capitol building, four PNP personnel in front of the new capitol building, and another two PNP personnel posted at the old façade of the provincial capitol. (TSN, HSGayapa, V-1, January 25, 2007, 10:20 a.m. pp. 4-5; TSN, Guinhawa, VI-1, January 25, 2007, 10:30 a.m. pp. 1-2; Sworn Affidavit of Atty. Elizabeth Doronila dated January 25, 2007 with attached annexes)

Carrying Out of the DILG Directive by the PNP

In a memorandum dated on the next day, January 17, 2007, the PNP leadership through Police Director Wilfredo Garcia, Director for Operations at the police national headquarters in Camp Crame, directed the police field officers to implement the DILG directive issued a day before.

The memorandum, which was furnished to the Office of Police Chief Supt. Dulay, indicated that the concerned police field officers shall immediately perform all the acts necessary to restore the normal operations of local government units affected by the decision of the Office of the Ombudsman and to clear the vicinity of the seat of local governments of illegal assemblies, and to clear the area of



any obstructions/barricades so as to provide ingress and egress for the transacting public.

Moreover, the same memorandum directed that the concerned police field officers be guided by the Police Operational Procedures and the Public Assembly Act in dealing with clearing operations during illegal assemblies.

Assault of the PNP Regional Mobile Group in the Provincial Capitol

At around 2:45 in the afternoon of January 17, 2007, Board Member Tupas testified that he saw already a couple of hundreds of PNP personnel surrounding the provincial capitol by the time he got there after arriving shortly from Cebu where he had filed a petition for certiorari the day before.

At this point in time, Board Member Tupas requested Police Chief Supt. Dulay for one hour because the temporary restraining order (TRO) from the Court of Appeals is now forthcoming. But Police Chief Supt. Dulay refused, saying that **"I cannot wait anymore. That's too long for me. *May order na sa Malacañang.*"** And Dulay further said **"*May order na kami galing sa Crame, at under pressure na ako sa itaas.*"** (TSN, Jmbaisa, III-1, January 25, 2007, 10:00 a.m. p. 1-2)

Hence, at around 3:30 in the afternoon of the same day, some 200 battle-equipped policemen of the 6th Regional Mobile Group of the PNP in Western Visayas entered the front gate of the provincial capitol of Iloilo and thereafter made an assault inside the building in order to forcibly remove Governor Tupas from his office wherein they went on breaking the doors, smashing the glass panels and even pointing their guns to Board Member Tupas, his sister Nielette Tupas-Balleza and their companions, who were on the floor, all unarmed.

Issuance of a TRO by the Court of Appeals

At around 5:00 in the afternoon of the same day of January 17, 2007, a TRO in the implementation of the Ombudsman decision was received by the Office of the Governor from the Court of Appeals.

It was at this instance that the regional mobile group policemen ended their assault against the people in the provincial capitol although they stayed yet

for one hour inside the building after the TRO was communicated to the Office of the Governor.

III. FINDINGS

A. The Ombudsman has no power to remove public officials from office, hence the Dismissal Orders against Governor Niel Tupas and company are illegal.

At the outset we must examine the powers of the Ombudsman over local elective officials.

The 1987 Constitution is clear in describing the powers and functions of the Ombudsman, to wit;

Article XI, Section 13, paragraphs 1 and 3 provides:

"Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) 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.

XXX XXX XXX

(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and **recommend** his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

The nature of the Ombudsman's functions is further amplified in the case of *Madriaga vs Nuque* (CA-G.R. SP No.66306, May 28, 2004), citing the transcripts of proceedings before the Constitutional Commission of 1986, the pertinent portion of the ruling of are as follows:

"It is doctrinaire that the primary source from which to ascertain constitutional intent or purpose is the language of the Constitution itself. The presumption is that the words in which the constitutional provisions are couched express the objective sought to be attained.



And their intention is to create an institution of the Ombudsman patterned after that in Scandinavian countries, wherein the authority of the one who holds the position lies in his moral suasion, the prestige of his office and the compulsion of public opinion, rather than coercion through the use of state power.

A brief disquisition on the history of the Office of the Ombudsman is in order.

A body known as the Ombudsman had existed in Sweden since 1809. At that time, Sweden was ruled by the King and therefore the Riksdag, or the then parliament, thought that an institution that was independent of the King was needed to ensure that laws were faithfully obeyed. For this reason, it elected a Parliamentary Ombudsman.

The said office received complaints from the general public, or he may initiate cases himself. In practice, the most frequently used sanction, if it may be called that, is the right of the Ombudsman to express an opinion whether an action taken by a government office or official is in conflict with the law or erroneous or improper in some other respect. This is not really a sanction *in strictissime legis*, and the official concerned is not even obliged to comply with the Ombudsman's opinion. But as these admonitions are made public, they have very potent persuasive force, and often take effect. He may also cite faulty procedures, and measures may be proposed to eliminate shortcomings. The opinion of the Ombudsman may also include an advisory statement that will help to ensure that laws are applied uniformly and appropriately, and includes the power to invoke the possibility of suspension or dismissal. In all these instances, the Ombudsman relies on the strength of his moral ascendancy to effectuate his recommendations.

This is the genre of institution that the framers wanted to create, rather than a prosecutory body."

The record of the Constitutional Commission Volume 2, page 270 is enlightening, thus:

MR. RODRIGO. So, the Ombudsman does not have a prosecutory function nor punitive powers.

MR. COLAYCO. None.

MR. RODRIGO. All that he relies upon is his persuasive power.

MR. COLAYCO. Yes. Persuasive power plus the ability to require that the proper legal steps be taken to compel the officer to comply."



And also, on page 276, the discussion of Commissioner Maambong regarding the nature of the function of the Ombudsman, to wit:

"MR. MAAMBONG. When we go down the line to the Ombudsman, what is under the present configuration of the proposal / its power is only recommendatory; it directs the people to do something, nothing more."

We can safely conclude from the afore-quoted decision that **as envisioned in the olden times and adopted by the framers of our Constitution, the office of the Ombudsman is vested only with advisory and recommendatory function.**

And in relation to paragraph 3, Section 13, Article XI of the Constitution, the Ombudsman Act (R.A. No.6770) also provides a similar provision to wit:

"Section 15. Powers, Functions and Duties. - The Office of the Ombudsman shall have the following powers, functions and duties:

xxx xxx xxx

(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law, and **recommend** his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: Provided, That the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer."

As further discussed in the case of Madriaga vs Nuque in relation to Section 15, paragraph 3, of the Ombudsman Act:

"Manifest it is that the sanction imposed by the statute pertains to any government officer who refuses without just cause to heed the recommendation of the Ombudsman to either suspend or remove or otherwise discipline an official of subordinate rank. **As to the officer against whom the sanction is directed, the Ombudsman's adjudication against him remains recommendatory.** Even then, the Ombudsman cannot, *ex proprio vigore*, impose the sanction by himself against the disciplining

authority but must seek the intervention of the appropriate administrative agency.

Thus, even Republic Act No. 6770 recognizes that the power of the Ombudsman to adjudicate penalty after investigation is merely recommendatory or suggestive, for otherwise, the law would not have to provide for the Ombudsman to first go to the disciplining authority and direct the latter to take appropriate action against the erring government functionary. This is as it should be. For to give it a contrary construction would be productive of nothing but mischief, such being at war with the explicit language of the Fundamental Law. As the spring cannot rise higher than its source, neither can a statute be at variance with the Constitution."

Moreover, on 22 January 2007 during the interpellation of Senator Franklin Drilon by Senator Angara, the latter asserted that:

"I happened to be the principal author of the Ombudsman Law. In fact, this is the first bill that I sponsored on the Senate Floor and the record will show how extensively this was debated. And I do not really recall that we have vested the Ombudsman with more than investigatory power. The only disciplinary power we have vested in his position is the automatic preventive suspension so it will not impede the objective and proper investigation."

However, upon a careful examination of the Ombudsman Act, it can be shown that Section 21 of the said law is directly in conflict with Section 15, paragraph 3 of the Ombudsman Act and the Constitution:

"Section 21. Officials Subject to Disciplinary Authority; Exceptions. - The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary."

While Section 15, paragraph 3 of the Ombudsman Act conforms with paragraph 3, Section 13, Article XI of the Constitution, however, Section 21 of the Ombudsman Act is so worded that it runs counter to the intent of Section 15, paragraph 3 of the Ombudsman Act and as well to the provision of the Constitution, because now the Ombudsman is asserting that it has "disciplinary authority over officials, whether appointive or elective." And the mistake in the insertion of Sec. 21 was further aggravated by the Ombudsman's promulgation of its Rules of Procedure in Administrative Cases which expressly states under Section 10 thereof xxx "the Office of

the Ombudsman may impose the penalty of reprimand, suspension without pay for a minimum period of one (1) month up to a maximum period of one (1) year, demotion, dismissal from the service xxx. The penalty of dismissal from the service shall carry with it that of cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for re-employment in the government service, unless otherwise provided in the decision."

Justice Magdangal B. Elma, in his treatise "The Aquino Presidency and The Constitution", 1993 Edition, made the following observations regarding Section 21 of R.A. No.6770:

"When the enrolled bill on the office of the Ombudsman now Republic Act No.6770 was submitted to President Aquino, we examined its provisions and found some of them constitutionally objectionable, particularly Section 21 thereof granting disciplinary authority to the Ombudsman over elective and appointive officials, including cabinet members.

This section amends, by legislation, Section 13, Article XI Accountability of Public Officers, 1987 Constitution.

The powers, functions and duties of Ombudsman enumerated in Sec. 13, Article XI, 1987 Constitution are merely *investigatory and recommendatory in nature. As envisioned in the Constitution, the Ombudsman cannot directly discipline an erring public officer or employee His authority is to direct the proper disciplining authority to take appropriate disciplinary action against the erring officer or employee and to recommend his dismissal or suspension or prosecution, etc.*

This is because the Ombudsman being the lawyer of the complainant cannot be the judge at the same time. The Ombudsman, by virtue of aforesaid Section 21, will become the complainant's counsel (lawyer), the prosecutor (the Special Prosecutor being his subordinate) and the judge (disciplinary authority) **rolled into one**. Such a situation is abhorred in a democratic society like ours."

Finally, with the passage of the Local Government Code (R.A. No.7160) on October 10, 1991, it is now mandated that local elective officials may be removed from office only through the proper courts under Section 60 which provides:

"Section 60. Grounds for Disciplinary Actions. – An elective local official may be disciplined, suspended, or removed from office on any of the following grounds:



An elective local official may be removed from office on the grounds enumerated above by order of the proper court.
(Emphasis supplied)

It is clear from the aforecited provision that the penalty of dismissal from service upon an erring elective local official may be decreed only by a court of law. Thus, in Salalima v. Guingona, (257 SCRA 55, 100 [1996]) we held that the Office of the President is without any power to remove elected officials, since such power is exclusively vested in the proper courts as expressly provided for in the last paragraph of the aforequoted Section 60." (Pablico vs Villapando, G.R. No. 147870, July 31, 2002)

B. Assuming arguendo that the Ombudsman has authority to dismiss local government elected officials, can the Ombudsman impose the penalty of perpetual disqualification?

The Ombudsman cannot. The penalty of perpetual disqualification is punitive in nature and therefore can be imposed only in criminal cases such as violations of the Anti-Graft and Corrupt Practices Act. While the Ombudsman may have the power to recommend the removal of a public official pursuant to RA 6770, the said law does not provide him the power to perpetually disqualify a public official to hold public office. Also, the penalty of perpetual disqualification is an accessory penalty. There should first be a conviction by the proper court and the imposition of a principal penalty carrying with it a perpetual disqualification to hold public office. It necessarily follows that before the accessory penalty of perpetual disqualification may be properly imposed the accused should first be found guilty of a crime committed in relation to public office.

C. Assuming arguendo that the Ombudsman has the authority to dismiss local officials and assuming that he has the authority to disqualify and impose the penalty of perpetual disqualification, was there a valid and proper service of the decisions/orders of the Ombudsman to Governor Tupas, Domingo Oso and Cecilia Capadosa?

In the said case it is clear that there was no valid and proper service of the decisions of the Ombudsman upon them. Provincial Board Member Junjun Tupas testified that on January 15, 2007 at around 4:00 p.m. DILG Regional Director Evelyn Trompeta with personnel from the DILG Regional Office and



other DILG lawyers from Manila arrived at the Iloilo provincial capitol. He (Tupas, Jr.) with some lawyers, met Director Trompeta. When asked whether they will serve official copies of the decisions, the DILG Director replied in the negative, and stated that they were merely to deliver unofficial advance photocopies of the decisions of the Ombudsman and the implementing order of the DILG Secretary dismissing Tupas as Governor. Director Trompeta even assured them that she has no plan to implement the dismissal order but merely to give Governor Tupas advance copies for the latter to read. As such, the office of the Governor did not accept the said photocopies. And this statement of Director Trompeta was picked up and covered by the radio and TV stations present in the premises. Therefore, clearly, there was no valid and proper service of the decisions of the Ombudsman and the order of the DILG Secretary on January 15, 2007. And in fact as testified to by Governor Tupas, he received the official copy of the Ombudsman decision by registered mail only on January 24, 2007 at 10:00 am, exactly a week after the January 17, 2007 assault in the Iloilo provincial capitol.

D. Assuming that there was proper service, were the decisions immediately executory?

Again the answer is in the negative. Under the Ombudsman Rules of Procedure In Administrative Cases, in sections 7 and 8 thereof, the respondent upon receipt of the decision of the Ombudsman is given ten (10) days to file a motion for reconsideration or fifteen (15) days within which to appeal the questioned decision. In the present case Governor Tupas and company were never given a chance to file a motion for reconsideration or an appeal which is a gross violation of their right to substantive and procedural due process.

Section 27 of the Ombudsman Act provides that any order, directive or decision of the Office of the Ombudsman imposing a penalty of public censure or reprimand, or suspension of not more than one month's salary shall be final and unappealable. In all other cases, the respondent therein has the right to appeal to the Court of Appeals within then (10) days from receipt of the written notice of the order, directive or decision. In all these other cases therefore, the judgment imposed therein will become final after the lapse of the reglementary period of appeal if no appeal is perfected or, an appeal therefrom having been taken, the judgment in the appellate tribunal becomes final. It is this final judgment which is then correctly categorized as a "final and executory judgment" in respect to which execution shall issue as a matter of right. **In other words, the fact that the Ombudsman Act gives parties the right to appeal from its decisions should generally carry with it the stay of these decisions pending appeal. Otherwise, the**

essential nature of these judgments as being appealable would be nugatory. (Lapid vs CA et al, G. R. No. 142261, June 29, 2000).

Furthermore, what is most galling and reprehensible is that the last paragraph of the questioned decisions directed Acting DILG Secretary Puno to implement the decision "upon receipt" – which is a clear violation of the constitutional right of Governor Tupas and company to appeal or file a motion for reconsideration. Clearly, therefore, the effect of the said directive "upon receipt" was to prevent them from availing their right to appeal or to file a motion for reconsideration.

The Ombudsman in her letter to the Senate relied on the Tel-Equen vs Datumanong (G.R. No. 150274, August 4, 2006) case. In the said letter she insisted that the case "affirmed the power of the Office of the Ombudsman, under Administrative Order no. 17, to have its decisions executed immediately, even pending appeal. However the issue in the Datumanong case is whether he could be cited for contempt when he implemented the decision of the Ombudsman dismissing Tel-Equen from Service. The statement in the said case regarding the amendment of Sec. 7, Rule III of the Rules of Procedure of the Office of the Ombudsman by Administrative Order no. 17, wherein the provision on the execution of decisions pending appeal as similar to sec 47 of the Uniform rules on administrative cases in the Civil Service is merely an "obiter dictum" and has not overturned the prevailing doctrine in the Laja (GR no. 169241, May 2, 2006) and Lapid (GR no. 142261, June 29, 2000) cases, where the Supreme Court ruled that the decision of the Ombudsman is not immediately executory pending an appeal. It should be noted also that Tel-Equen is an appointive public official, thus PD 807 or the Civil Service Law where it specifies that an appeal will not stop the implementation of the decision applies. Governor Tupas and Board Members Oso and Capadosa, are elective public officials hence the law applicable is the Local Government Code which provides that the power to dismiss elected local officials is exclusively lodged with the proper courts.

E. Use of Excessive Force by the PNP in Carrying Out the Dismissal Orders

Under Rule 21 on Civil Disturbance Management (CDM) Operations of the PNP Operational Procedures, Section 6, paragraph 2 on CDM Operational Approaches provides that "in selecting an operational approach to a civil disturbance situation, the Commander and his staff must adhere scrupulously to

the 'minimum necessary force' principle, for example, crowd control formations or riot control agents should not be used if saturation of area with manpower would suffice."

Moreover, under the PNP Rules of Engagement, the Rules on Civil Disturbance Control (CDC) Operations accordingly provide that "law enforcement agents shall at all times, exercise **maximum tolerance**. No excessive or unreasonable force shall be employed on such occasions as to maim or wound individuals. Only such force as may be necessary and reasonable to prevent or repel an egression may be used, and only as a last resort."

However, inspite of the above-cited guidelines, the PNP clearly did not adhere to such rules and operational procedures during the incident that transpired on January 17, 2007. This was even bolstered by the admission of Police Chief Supt. Dulay of the excesses of the policemen during the incident as shown by the following excerpts from the transcript of the Joint Committees' public hearing on January 25, 2007:

"THE CHAIRMAN (SEN. DRILON). Gen. Dulay, I am showing to you an Inquirer issue of January 20, 2007. The headline is "PNP Admits Iloilo Excesses". All right, before you say anything, *let me read just about three paragraphs of this.* It says, "Faced with public outrage, the police director of Western Visayas yesterday admitted that there were excesses in the Wednesday police assault on the Iloilo provincial capitol." And then it quoted you: "*The television footage and pictures in the newspapers undeniably showed that there were excesses*", Chief Supt. Wilfredo Dulay told Inquirer Visayas in a phone interview. Dulay said the breaking of glass doors and pointing of guns at civilians were not part of the orders to the assault team. "*They were ordered to immediately secure the civilians to spare them from harm in case a firefights occurs but they instead pointed their firearms at the civilians*", he said. In Camp Crame Dulay considered who lapses in procedure when police armed with M16 rifles stormed the capitol on Wednesday in an effort to serve a dismissal order on Governor Niel Tupas, Sr. issued by the office of Ombudsman." Do you confirm that you have made these statements since you are quoted extensively by the Inquirer?

MR. DULAY. Thank you, Mr. Chairman, Your Honor.

It is true that I said that because when we had the briefing before we went to the capitol, we emphasized to the men that we maintain our composure, that we should not do this and do like that. And this was repeatedly given to them and when I saw the footages, I was really angry because despite of all the warnings given to them, so, I told my – I called for the inspector – inspectorate to investigate it immediately because this is not our

order. But, Your Honor, I think that's still judgment call also." (TSN, JADela Cruz, I-2, January 25, 2007, 10:40 a.m. pp. 4-5; TSN, Ctsoito, II-2, January 25, 2007, 10:50 a.m.)

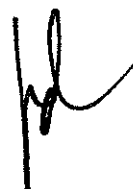
F. Unwarranted Use of Regional Mobile Group for Crowd Control

The PNP claimed that its intelligence operatives had monitored the presence of high-powered firearms particularly from the Iloilo Rehabilitation Center jail guards who were allegedly there to defend dismissed Governor Tupas by all means. In addition, such intelligence report pointed out that the most potent threat was allegedly the show of support of left leaning organizations such as Bayan Panay and Anak Pawis believed to be associated with the CPP-NPA. They were monitored by the PNP operatives to have brought in seven (7) jeeps loaded with their members that might sabotage the situation. (After Operations Report on the Implementation of Dismissal Order of Governor Niel D. Tupas et al at the Iloilo Provincial Capitol dated January 21, 2007)

However, such PNP intelligence reports were rebutted when Iloilo provincial election supervisor Atty. Elizabeth Doronila made a report on the matter wherein she testified before the Joint Committees' public hearing that there were no armed men in civilian clothes found within the vicinity of the provincial capitol after having conducted an ocular inspection. Hence, there was really no valid and compelling need to employ such a large contingent of fully-armed policemen.

As a matter of fact, such action of the PNP to enter the provincial capitol was in violation of the COMELEC rules considering that during this time of the election period all troop movements and actions should be cleared by the COMELEC, for which there was not even a request filed.

As could be seen from the video footage that was shown before the Joint Committees' public hearing, there were war-gearred policemen who were so incensed to carry out their mission. Millions of Filipinos had seen the same video footage as it was shown over television where policemen are smashing glass doors and destroying padlocked doors in an attempt to physically remove Governor Tupas from his office, and intimidate and harass members of his family and supporters who converged in the provincial capitol to support the beleaguered provincial governor.



Undoubtedly, the January 17, 2007 incident in the Iloilo provincial capitol was an excessive use of force by the PNP in broad daylight which was vividly documented by television cameras. Governor Tupas later lamented that nothing can describe the horror shock and disbelief caused by that dastardly action of the PNP, acting upon orders of the DILG and which was strongly influenced by Acting Secretary Gonzalez. (TSN, CTSotto, II-1, January 25, 2007, 9:50 a.m. p. 1)

G. Highly Offensive Conduct of the Assaulting Policemen

Some of the members of the Regional Mobile Group have acted beyond what they should have done in a crowd control situation in this January 17, 2007 incident at the provincial capitol. They went on a rampage breaking doors, smashing glass panels and even pointing their guns to Board Member Tupas and his companions, who were on the floor, all unarmed. These acts were downright unwarranted and uncalled for. These deserve condemnation from the Joint Committees.

In his testimony before the Joint Committees' public hearing, Board Member Tupas identified the policemen who attacked them inside the provincial capitol as shown in the following excerpts from the transcript of the public hearing:

"THE CHAIRMAN (SEN. DRILON). We have secured from ABS-CBN a copy of the footage of that incident in Iloilo.

May I ask the secretariat to show this footage that was taken by ABS-CBN. And may I ask, as the footage is being played, for Board Member Tupas to comment and annotate on the same.

We acknowledge the presence of Senator Enrile. (The footage was being played.)

MR. TUPAS, JR. Yes. This was the time, Your Honor, na nag-agree si General Pflieder na hindi sila manggugulo, pero suddenly two minutes after, pinushed (pushed) na kami, na wala kaming magawa diyan because, nakita mo naman, nasugatan pa nga ako.

Ito na iyong pagpasok nila sa kapitolyo. Ito ang minaso nila, tatlong glass panel ang nabasag. We identified that guy as POI William Nonet.

THE CHAIRMAN (SEN. DRILON). Bago minaso iyon, nakapasok na iyong mga pulis, hindi ba?



MR. TUPAS, JR. Yes, sir.

THE CHAIRMAN (SEN. DRILON). Yes. The policemen have already gained entry and yet minamaso pa nila iyong kuwan.

MR. TUPAS, JR. Yes, sir. Minaso tapos--itong time na ito, iyan nakapasok na sila sa--yes, ito yata iyong dumating na kami, because we came from the entrance. We were defending against the anti-riot policemen. Ito na, we were talking to them. We were talking to them, "Who is your commander?" Wala sila. Nandiyan kami, together with my brother, Dr. Tupas. Sabi nila, "Talk to our commander." Pero walang commander diyan, Your Honor. Walang nagpakilala sa amin kung sino ang commander.

Ang media kasama namin diyan, ang mga kapatid ko. We were still trying to plead to them na sabi namin, "Huwag naman kayong ganyan."

So ito, kinuha ako, nagtutulakan na. Iyan ang mga tao ko.

Yes, sir, kapatid ko iyan, Your Honor, iyon iyong inano nila, si Dr. Tupas iyon. Iyan mga cousins ko iyan, mga kamag-anak ko na mga unarmed.

Ito nasa second floor, I think, Your Honor, second floor of the capitol. Paakyat na sila sa third floor. Ito na, Your Honor, ito na. We identified and nagtutok sa amin dyan PO1 Bernil, Inspector del Rosario, RMG. Iyon and kapatid ko, I was talking to her because high blood din siya kaya sabi ko natakot din ako for her.

SEN. BIAZON. Bakit kayo nakahiga?

MR. TUPAS, JR. Pinadapa kami, Your Honor. We refused. Tinulak nila kami...

THE CHAIRMAN (SEN. DRILON). For the record, Niel Tupas, Jr. was saying "Tinutukan nila ako."

MR. TUPAS, JR. Pinadapa nila ako.

THE CHAIRMAN (SEN. DRILON). "Pinadapa nila ako, and then tinutukan nila ako."

MR. TUPAS, JR. That's the time when we got already the TRO. That was few minutes lang, Your Honor. That was around 5:00 o'clock. They started the assault around 3:30. And they stayed, even nang nakuha na naming ang TRO, they stayed for one hour inside the capitol for the record, Your Honor." (TSN, Jmbaisa, III-1, January 25, 2007, 10:00 a.m. p. 5-7, and Mancol IV-1, January 25, 2007, 10:10 a.m. p.1)

What is ironic and revolting is that Police Chief Supt. Dulay after admitting the excesses of his men, in his After Operations Report, even recommended that

appropriate awards be given to the PNP personnel involved. Forming part of this report is a list of the PNP personnel who participated in the assault.

H. Power of the DILG Secretary to Direct PNP

In a memorandum dated 16 January 2007 by DILG Acting Secretary Puno and in his capacity as Chairman of the National Police Commission (NAPOLCOM), ordered PNP Director General Oscar Calderon xxx to direct his police field officers to immediately perform all the acts necessary to restore the normal operations of these Local Government Units affected, to clear the vicinity of the seat of local governments of illegal assemblies and to clear the area of any obstructions/barricades so as to provide ingress and egress for the transacting public xxx.

Section 6, Article XVI, of the 1987 Constitution provides:

"Section 6. The State shall establish and maintain one police force, which shall be national in scope and civilian in character, **to be administered and controlled by a national police commission**. The authority of local executives over the police units in their jurisdiction shall be provided by law.

While Sections 4 and 5, of Republic Act No.8551 otherwise known as "Philippine National Police Reform and Reorganization Act of 1998", state:

"Sec. 4. Sec. 13 of Republic Act No. 6975 is hereby amended to read as follows:

Sec. 13. *Creation and composition.* — A National Police Commission, x x x It shall be composed of a Chairperson, four (4) regular Commissioners, and the Chief of PNP as ex-officio member. Three (3) of the regular commissioners shall come from the civilian sector who are neither active nor former members of the police or military, one (1) of whom shall be designated as vice chairperson by the President. The fourth regular commissioner shall come from the law enforcement sector either active or retired: Provided, That an active member of a law enforcement agency shall be considered resigned from said agency once appointed to the Commission: Provided, further, That at least one (1) of the Commissioners shall be a woman. **The Secretary of the Department shall be the ex-officio Chairperson of the Commission**, while the Vice Chairperson shall act as the executive officer of the Commission."



and Section 5 reads as follows:

"Sec. 5. *Powers and functions of the Commission.* — **The Commission shall exercise the following powers and functions:**

(a) Exercise administrative control and operational supervision over the Philippine National Police which shall mean the power to:

xxx xxx xxx

It is clear that under Section 5 of Republic Act 8551, the National Police Commission is a collegial body composed of six (6) members, with the Secretary of the DILG as the Chairperson. The Commission as a body should have deliberated as to what course of legal action they should have taken upon receipt of the decision dismissing Governor Tupas from the Ombudsman. Because in the memorandum above mentioned, it was only signed by Acting Secretary Puno and in his capacity as Chairman of the NAPOLCOM. **There was no showing whatsoever of any participation from the other members of the Commission.** Acting Secretary Puno appears to have acted alone in the issuance of the memorandum as if it is a one-man Commission.

I. Moot and Academic Decision of the Ombudsman on OMB-V-A-05-0138-D

This case filed by Attys. Heptie Correa, et al in March 2005 regarding the issuance of a check in the amount P20,000.00, released on January 15, 2004, as financial assistance to Provincial Board Members League of the Philippines has become moot and academic and should have been dismissed outright by the Ombudsman because of the overwhelming re-election of Governor Tupas in the May 2004 elections. The Ombudsman in this case was reckless that they missed the fact that the alleged violation was in January 2004, and that Gov. Tupas and company were reelected in May 2004. And what was more appalling was that it was filed long after – in April 2005.

As held in the case of GARCIA, vs. MOJICA [G.R. No. 139043, September 10, 1999].

"In a number of cases, we have repeatedly held that a reelected local official may not be held administratively accountable for misconduct committed during his prior term of office. The rationale for this holding is that when the



electorate put him back into office, it is presumed that it did so with full knowledge of his life and character, including his past misconduct. If, armed with such knowledge, it still reelects him, then such reelection is considered a condonation of his past misdeeds."

IV. SUMMARY OF FINDINGS AND CONCLUSION

1. Based on the foregoing findings of the Joint Committees, after having closely examined the powers and functions of the Ombudsman as provided under the 1987 Constitution, it is hereby clearly established that the Office of the Ombudsman has no power to remove public officials from office. And that the Office of the Ombudsman is vested only with an advisory and recommendatory function.

2. Moreover, Republic Act No. 6770 or the Ombudsman Act does not provide the Ombudsman the power to perpetually disqualify a public official to hold public office. Hence, the Ombudsman cannot impose the penalty of perpetual disqualification, more so that this is punitive in nature and therefore can be imposed only in criminal cases such as violations of the *Anti-Graft and Corrupt Practices*.

3. Under Section 60 of Republic Act No. 7160 otherwise known as the "Local Government Code of 1991", *an elective official may be removed from office only by order of the proper court*. As such, the penalty of dismissal from service upon an erring elective local official may be decreed only by a court of law, and even the Office of the President has no power to remove elected officials from office.

4. It is clear that there was no valid and proper service of the decisions of the Ombudsman to Governor Tupas and Board Members Oso and Capadosa. Likewise, the decisions are not immediately executory considering that under the Ombudsman Rules of Procedure in Administrative Cases, a respondent upon receipt of the decision of the Ombudsman is given ten (10) days to file a motion for reconsideration or fifteen (15) days within which to appeal the questioned decision.

5. It is evident that the PNP clearly did not adhere to its own Operational Procedures and Rules of Engagement as there was excessive use of force and

violent enforcement of the dismissal orders for Governor Tupas as graphically captured on video and TV. No doubt, there was an unwarranted use of the Regional Mobile Group for Crowd Control whose members committed highly offensive acts against civilians during their assault of the provincial capitol.

V. RECOMMENDATIONS

1. **The Commission on Human Rights (CHR) to Investigate, Identify and Prosecute Those Responsible for the Violent Assault of the Iloilo Provincial Capitol.**

On 17 January 2007 at 3:30 in the afternoon, some 200 battle-equipped policemen of the 6th Regional Mobile Group of the PNP in Western Visayas entered the front gate of the provincial capitol of Iloilo and thereafter made an assault to forcibly remove Governor Tupas from his office wherein they went on breaking the doors, smashing the glass panels and pointing their guns to Board Member Tupas, Nielette Tupas-Balleza and their companions, who were on the floor, all unarmed.

The above incident was clearly in violation of the Philippine National Police (PNP) Operational Procedures specifically Rule 21, Section 6, paragraph 2, regarding Civil Disturbance Management Operational Approaches, which provides, "In selecting an operational approach to a civil disturbance situation, the Commander and his staff must adhere scrupulously to the **minimum necessary force principle**, for example, crowd control formations or riot control agents should not be used if saturation of area with manpower would suffice".

Moreover, under the PNP Rules of Engagement specifically the Rules on Civil Disturbance Control (CDC) Operations provides, "law enforcement agents shall at all times, exercise **maximum tolerance**. No excessive or unreasonable force shall be employed on such occasions as to maim or wound individuals".

These rules were made for a reason, especially for the protection of the constitutional rights of civilians, and the PNP cannot deviate and/or disregard these rules by simply invoking "Judgment Call" and unverified "Intelligence Reports". Just like in this case where the Provincial Comelec Supervisor Doronila who, after inspection, specifically denied that there were armed civilian personnel loitering the capitol premises and yet the assault was ordered based on raw and unverified reports.



2. Chief Superintendent Dulay and the Personnel of the Regional Mobile Group who Assaulted the Iloilo Provincial Capitol should be Reshuffled.

Even the local officials led by the Governors of Region VI were so incensed by the illegal dismissal orders and the violent assault of the Iloilo Provincial Capitol that all were in unison in asking for the reshuffle / reassignment of those involved to other regions. We therefore, urge the PNP to effect the said reshuffling soonest so that the trust and confidence of the people to the PNP will be restored.

3. The PNP should Re-orient their Officials and Personnel on the Proper Execution / Implementation of Orders, especially on Crowd Control / Crowd Dispersal.

Chief Superintendent Dulay admitted in the Joint Committee hearing that there were excesses made by the Regional Mobile Group and that his men departed from his instructions:

The Chairman (Sen. Drilon):

xxx

xxx

xxx

General Dulay, I am showing to you an *Inquirer* issue of January 20, 2007. the headline is "PNP Admits Iloilo Excesses". All right, before you say anything, let me read just about three paragraphs of this. It says, "**Faced with public outrage, the police director of Western Visayas yesterday admitted that there were excesses in the Wednesday police assault on the Iloilo Provincial Capitol.**" And then it quoted you: "**The television footage and pictures in the newspapers undeniably showed that there were excesses**", chief Supt. Wilfredo Dulay told *Inquirer Visayas* in a phone interview. Dulay said the breaking of glass doors and pointing of guns at civilians were not part of the orders to the assault team. "**They were ordered to immediately secure the civilians to spare them from harm in case a firefights occurs but they instead pointed their firearms at the civilians,**" he said. "**In Camp Crame Dulay conceded to lapses in procedure when police armed with M16 rifles stormed the capitol on Wednesday in an effort to serve a dismissal order on Governor Niel Tupas, Sr. issued by the office of the Ombudsman.**" Do you confirm that you have made these statements since you are quoted extensively by the *Inquirer*?

Mr. Dulay: Thank you, Mr. Chairman, Your Honor.

It is true that I said that because when we had the briefing before we went to the capitol, we emphasized to the men that we maintain our composure, that we should not do this and do like that. And this was repeatedly given to them and when I saw the footages, I was really angry because despite of all the warnings given to them,



so, I told my – I called for the inspector – inspectorate to investigate it immediately because this is not our order. But, Your Honors, I think that's still judgment call also.

These lapses on the part of the PNP personnel should not happen again. Therefore, this Joint Committee strongly recommends that the PNP must conduct periodic orientations / workshops to all officials and police personnel of the PNP Rules of Engagement and PNP Operational Procedures.

4. The Ombudsman should Re-visit and Revise their Rules on Administrative Cases especially concerning Elective Officials and also be updated on relevant cases decided by the Supreme Court that Decisions / Orders of Ombudsman are not immediately executory pending appeal.

It is clear in our findings that the Office of the Ombudsman is vested only with investigatory and recommendatory function. This has been emphasized by the framers of our Constitution which was earlier cited in this report. And this is bolstered by Justice Magdangal B. Elma, in his treatise "The Aquino Presidency and The Constitution", 1993 Edition, when he stated that, "The powers, functions and duties of Ombudsman enumerated in Sec. 13, Article XI, 1987 Constitution are merely **investigatory and recommendatory** in nature. As envisioned in the Constitution, the Ombudsman cannot directly discipline an erring public officer or employee His authority is to direct the proper disciplining authority to take appropriate disciplinary action against the erring officer or employee and to *recommend* his dismissal or suspension or prosecution, etc".

The inclusion by the Ombudsman in their Rules of Procedure in Administrative Cases of the power to dismiss with the accessory penalty of perpetual disqualification for re-employment in the government service is clearly beyond their power, as it runs counter with the Constitution and Section 15 of the Ombudsman Act. The effect of the inclusion of such powers which has not been granted to it by the Constitution and by the Ombudsman Act is in effect amending the said law by the Ombudsman exercising legislative powers which they do not have. Only Congress is vested with this power.

Therefore, the Joint Committees enjoins the Ombudsman to revisit their existing Rules of Procedure and amend it to ensure that said rules conform and in accord with the Constitution and the Ombudsman Act.

5. Censure Acting Secretary Puno and Undersecretary Wencilito Andanar of the DILG for their participation in prematurely enforcing the Decisions or Orders of the Ombudsman which are clearly subject to appeal.

The DILG Acting Secretary Puno and Undersecretary Andanar are aware of the landmark decisions of Ombudsman vs Pendatun Laja (which was decided most recently on May 2, 2006, which involves directly the petitioner Ombudsman) and the Lapid and Pablico Cases. They cannot pretend in not knowing the same. It would be tantamount to gross ignorance of the law for them not to know these landmarks decisions. They know pretty well that there is still a period to appeal the said decisions and yet with haste they immediately implemented the same. Therefore, they deserve this censure.

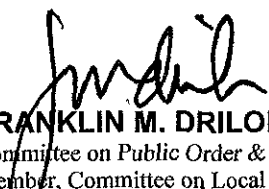
6. Censure Acting Secretary Gonzales of the DOJ for his unwarranted interference in the investigation of the case of Governor Tupas.

As can be shown from the testimonies in the hearing, the DOJ Secretary was shown to have an unwarranted interest in the case of Governor Tupas because he was even the one who announced on air from January 14 to 15, that the dismissal order against Governor Tupas was forthcoming. What is even more revolting is the fact that although it is not his mandate to investigate anti-graft complaints, he assumed the investigation of these cases. And even more repulsive is his vigorous denial of his involvement.

Respectfully submitted:

Chairmen :

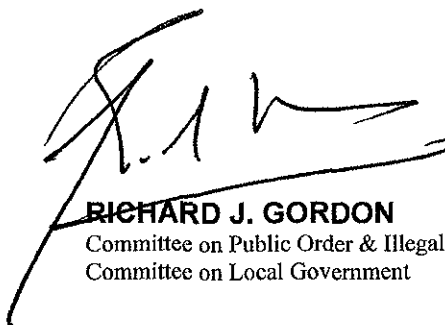
ALFREDO S. LIM
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Member, Committee on Public Order & Illegal Drugs


FRANKLIN M. DRILON
Committee on Public Order & Illegal Drugs
Member, Committee on Local Government

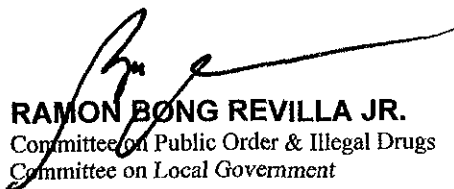
Members:



RALPH G. RECTO
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Committee on Local Government

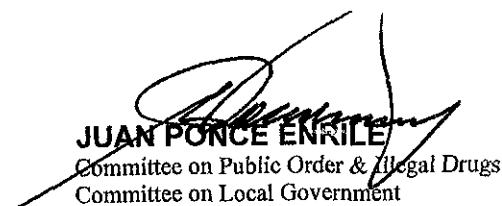


RICHARD J. GORDON
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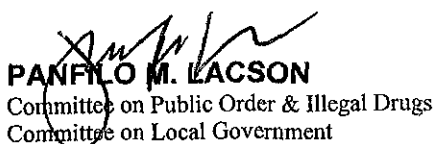
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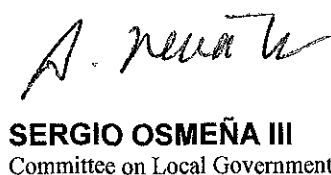


COMPAÑERA PIA S. CAYETANO
Committee on Local Government

RAMON B. MAGSAYSAY JR.
Committee on Local Government



M.A. MADRIGAL
Committee on Local Government

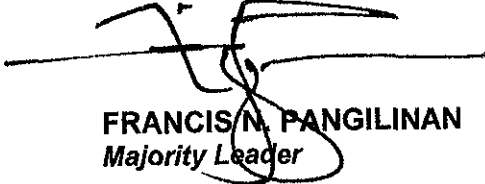


SERGIO OSMEÑA III
Committee on Local Government

Ex - Officio Members :



JUAN M. FLAVIER
President Pro-Tempore



FRANCIS N. PANGILINAN
Majority Leader



AQUILINO Q. PIMENTEL JR.
Minority Leader

Hon. MANNY VILLAR
President
Senate of the Philippines
Pasay City

THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Third Regular Session)

SENATE

P. S. Res. No. 600

Introduced by Senator Franklin M. Drilon

RESOLUTION DIRECTING THE SENATE COMMITTEES ON PUBLIC ORDER AND ILLEGAL DRUGS AND LOCAL GOVERNMENT TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE LAWS, LEGAL PROCESSES AND SYSTEM FOR THE ENFORCEMENT OF ORDERS FROM THE OMBUDSMAN AFFECTING ELECTED LOCAL GOVERNMENT OFFICIALS IN LIGHT OF THE VIOLENT ENFORCEMENT BY THE PHILIPPINE NATIONAL POLICE , UPON ORDERS OF THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, OF THE DISMISSAL OF ILOILO PROVINCIAL GOVERNOR NIEL D. TUPAS, SR.

WHEREAS, on 4 December 2006, the Office of the Ombudsman issued two orders finding Iloilo Governor Niel D. Tupas guilty of two counts of grave misconduct and further issuing the penalty of dismissal with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification to hold public office;

WHEREAS, the Department of Interior and Local Government ordered the dismissal of Gov. Tupas and declared the position of governor vacant and swore into office Iloilo Vice Governor Roberto Armada;

WHEREAS, Iloilo residents peacefully converged on the capitol grounds in Iloilo City to protect the duly-elected governor of Iloilo;

WHEREAS, DILG Sec. Puno was reported to have directed the use of force to disperse the crowds to allow Vice Governor Armada to force his way inside the Provincial Capitol and Vice Governor Armada was quoted to have warned to resort to violence if necessary;

WHEREAS, pending the service of the orders of the Ombudsman, Gov. Tupas filed a timely petition before the Court of Appeals praying for a temporary restraining order;

WHEREAS, on 17 January 2007 at 4:30 pm, the Court of Appeals issued a 60-day temporary restraining order on the enforcement order against Iloilo Gov. Tupas barring the Office of the Ombudsman, the DILG and other government agencies from removing Gov. Tupas from office during the period;

WHEREAS, on the same afternoon while the supporters of Gov. Tupas were praying inside the capitol, hundreds of fully-armed policemen assaulted the

provincial capitol to forcibly remove Gov. Tupas even before the lapse of the 48-hour deadline set for dismissed and suspended local executives to leave their respective offices by DILG Sec. Puno ;

WHEREAS, as reported by the Philippine Daily Inquirer, "*Hundreds of police assaulted the Iloilo Provincial Capitol at around 4 pm, smashing and destroying padlocked doors to physically remove Tupas. The police in antiriot gear and armed with M-16 Armalite rifles dispersed Tupas' supporters gathered at the provincial capitol entrance. The provincial government employees cried and shouted as the assault team took over the five-story building. Tupas' son and Provincial Board Member Niel Jr. suffered bruises. Policemen pushed and kicked him, and pointed their Armalite rifles at him. The governor and his lawyers pleaded with the assault team to wait for a copy of the TRO issued by the Court of Appeals in Cebu*";

WHEREAS, such brazen and violent manner used by the DILG and the Philippine National Police in effecting the dismissal order and physically removing Gov. Tupas from the provincial capitol is condemnable and characteristic of a barbaric and utter disregard for the rule of law;

WHEREAS, five governors in Western Visayas have openly declared their support for Gov. Tupas and denounced the illegal manner by which he is forcibly being removed;

WHEREAS, contrary to the claims of the Ombudsman and the DILG, the dismissal order against Gov. Tupas is not immediately executory as several decisions of the Supreme Court have elucidated that an order imposing the penalty of dismissal from service is not immediately executory, unlike penalties of public censure, reprimand or suspension of not more than 1 month handed down by the Ombudsman;

WHEREAS, "the fact that the Ombudsman Act gives parties the right to appeal from its decisions should generally carry with it the stay of these decisions pending appeal. Otherwise, the essential nature of these judgments as being appealable would be rendered nugatory." (Lapid vs. CA, GR No. 142261, 29 June 2000);

WHEREAS, the option for appeal is still available for Gov. Tupas and yet the Ombudsman and the DILG insisted on enforcing the dismissal order and physically removing Gov. Tupas from his office contrary to Supreme Court rulings;

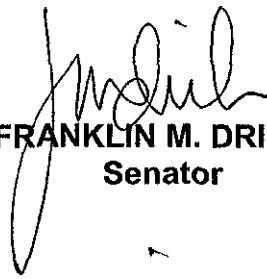
WHEREAS, other local government officials face a similar fate as Gov. Tupas and there appears to be blatant disregard for due process with this unlawful and shameless political bullying of local officials identified with the opposition;


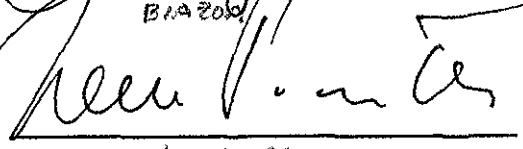
WHEREAS, a review of the pertinent laws on the power and authority of the PNP and the DILG and the legal processes and system in effecting decisions of the Office of the Ombudsman affecting elected local officials is necessary and imperative: Now, therefore, be it

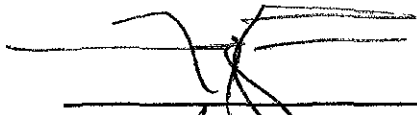
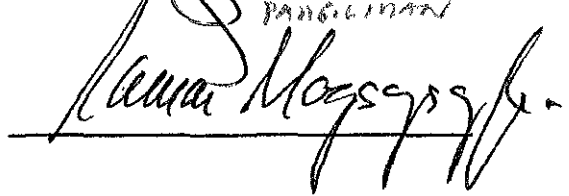
Resolved, to direct, as it hereby directs, the Senate Committees on Public Order and Illegal Drugs and Local Government to conduct an inquiry, in aid of legislation, on the laws, legal processes and system for the enforcement of orders from the Ombudsman affecting elected local government officials in light

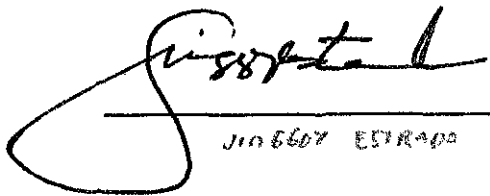
of the violent enforcement by the Philippine National Police , upon orders of the Department of Interior and Local Government, of the dismissal of Iloilo Provincial Governor Niel D. Tupas, Sr.

Adopted,


FRANKLIN M. DRILON
Senator


BIAZON

PIMENTEL


PANGILINAN



JOLIBOY ESTRADA

