

# The National Situation

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## At the Manila Polo Club

Good evening. Thank you for inviting me to speak at this very interesting gathering. I am happy to share this podium with former Sen. Gregorio Honasan.

I am quite certain that we were all brought here tonight by more or less the same circumstances and the same concerns. We have the money to buy newspapers and watch the evening news, and we have the time to reflect on the information they report. It is almost natural for us to worry about the direction our country is taking. We worry for our families, and we worry especially for the future of our children.

Unfortunately, the rest of our people, trapped in the rigors of daily survival, are usually unable to think beyond the next meal. They are the thousands that line up every day, rain or shine, outside TV stations, for the rare chance to be chosen as contestants for the “Pera o Bayong” portion of noontime game shows. They were the faces of the hungry and the desperate at the Ultra stampede last Saturday morning. They too often gripe about the callousness of the leadership of our country. But they do not have the luxury of worrying about politics. And even when they do, they feel powerless to influence the course of events. They wait for elections, and for the largesse it brings, and that about sums up their political involvement.

Those who have the time to worry about politics — like many of us here tonight — are basically of two types: (a) those who ask in exasperation when all this political bickering would end; and (b) those who ask in exasperation when this presidency would end.

All over the country, forums like this are being organized by thoughtful citizens. They ask more or less the same questions: How will this stalemate end? Whom can we trust? If she goes, who will replace her? How do we solve our most basic problems? How much time do we need to reform our political system? Is there hope for the country? These are important questions: they belong to the realm of politics. But I will also hasten to say that politics is not the only attitude we can take towards the world.

Be that as it may, the forum tonight deals with politics. I want to begin by defining the function of politics in society. Politics is society’s way of producing collectively-binding decisions. The important phrase here is “collectively-binding decisions” - decisions made in the name of all of us, and therefore bind all of us. Such decisions can be as innocuous as changing the name of a provincial hospital or as momentous as declaring war against another country. They can be as high-profile as signing a peace accord with local insurgents, or as low-profile as floating new dollar-denominated bonds in the international bond market to cover maturing obligations and budget deficits. They are of different levels of importance, but, when made by government, they all equally bind us.

Politics is, in the first instance, the process by which a nation or a community determines who shall be entrusted with the making of such decisions. There are at least two ways of ensuring that decisions made in the name of the whole nation are honored by every citizen of a country.

The first is by making sure that such decisions are made only by persons or agencies that have a clear mandate or the authority to make them. The second is by making sure that such decisions are made in accordance with law.

Authority means legitimate power. Obviously, not all power is legitimate. Usurpers may exercise power, but their power is not legitimate, and so it is resisted. Tyrants assume power on the basis of force, and while they may, for a while, coerce people into submission, their power will always remain unstable. Public officials elected fraudulently may exercise power, but their power will eventually be challenged. Legitimacy is crucial to the operation of a system because it is precisely what assures compliance with collective decisions.

Systems, of course, operate on the basis of a presumption of legitimacy and regularity. That is why, when there is a challenge to legitimacy and regularity, the system has to act to dispel all doubts. Illegitimate power has a corrosive effect on the system, and no matter how much it may try to buy support, or fortify the throne of bayonets on which it sits, it will always be opposed.

The point I want to stress is that whatever the form of politics may be in a society, its main objective is the same - how to ensure that decisions made by the rulers are collectively-binding.

When rulers are perceived to have mandates enveloped in doubt, the political system heats up. Time that should be spent in governance — in defining collective goals, in implementing these goals and mobilizing public participation towards their attainment - is instead squandered in endless political communication. Unable to legitimize their rule by established means, tyrants find themselves resorting to other means to secure their hold on power. They may do this by acts of selective remuneration, or by acts of calibrated coercion. They may survive in the short-term but only at great cost to the existing institutional order.

Keeping these thoughts in mind, I want to examine the roots of the present political crisis. I will argue that at the center of the current crisis is the whole question of presidential legitimacy that our institutional order has failed to resolve up to this time.

Let's go back a bit and review what happened.

The doubts began to surface as early as May or June 2004, as the legislators from the administration and the opposition parties went through the rituals of a national canvassing process. The opposition repeatedly questioned the authenticity of the certificates of canvass or CoCs from some disputed provinces. In at least 15 provinces they demanded that the boxes containing the supporting statements of votes or SoVs be opened to determine if the figures matched those on the CoCs. The objections were duly "noted", but not one ballot box was allowed to be opened. The administration side argued that canvassing was a ministerial task, and that the proper venue for electoral protests involving the presidency and the vice presidency was the Supreme Court acting as Presidential Electoral Tribunal.

If this scene has a déjà vu ring to it, it is because the use of a controlled majority to override objections is very much reminiscent of the railroaded canvassing process at the Batasang Pambansa in the 1986 snap election. Like Cory's supporters in 1986, FPJ's followers in 2004 saw the futility of getting a reasonable hearing inside Congress and demanded that the protest be brought before the parliament of the streets. The tide of mass protests led directly to Edsa. That was how Cory Aquino became president 20 years ago. To his credit, the late FPJ dissuaded his followers from protesting in the streets. He brought his complaint to the Supreme Court, and paid the amount needed to re-open the ballot boxes. Unfortunately he died before even the first election return could be counted. The justices promptly dismissed the protest upon his death. There was only a symbolic legal closure, but

the political question of who really won in the 2004 election remained unanswered.

By nature, political issues have a shelf life of only a few months. After the Supreme Court denied Susan Roces's petition to continue FPJ's protest, the issue was buried and almost forgotten. But five months later, in June 2005, the issue of legitimacy returned with vengeance following the public circulation of the Hello Garci conversations - if only as cell phone ringtones at first. Malacanang was caught totally unprepared. This showed in Press Secretary and Presidential Spokesman Ignacio Bunye's initial attempt at a cover-up that was so clumsy and full of contradictions it was instantly disowned by the Palace.

The Garci Tapes contained more than a hundred conversations between a Comelec official who sounded very much like Commissioner Virgilio Garcillano and an assortment of politicians and political brokers. About 10 of these conversations were between Garcillano and someone with the inimitable voice of Gloria Macapagal-Arroyo. These conversations are revealing and damning. They indicate the existence of a conspiracy to manipulate the results of the election in the vote-rich provinces of Southern Mindanao. They strongly suggest that Mrs. Arroyo herself seemed to have full knowledge of the elaborate scheme to pad her votes and shave those of her closest rival, Fernando Poe Jr. Resourceful journalists have scrutinized the content of these conversations, marking out the names, places, and events mentioned in the tapes, and establishing their factual basis. The conclusion, as one Newsbreak article so cogently put it, was: The shoe fits.

The first reaction from Malacanang was to dismiss these conversations as clever fabrications. Various agencies of government tried to stop the spread of the tapes by threatening people with charges for violation of the Anti-Wiretapping Law. Yet on June 27, 2005, bowing to public pressure, Mrs. Arroyo came out on national television to apologize for what she called a "lapse in judgment" - for calling a Comelec official while the canvassing was going on. Her intention, she claimed, was not to cheat but only to protect her votes. She said nothing more about the tapes. In subsequent interviews she evaded all questions about these wiretapped, saying she was ready to face any impeachment charge that would be filed against her.

The story of these tapes remains open. The man who initially confessed to having taken them out of the ISAFP, T. Sgt Vidal Doble, returned to the custody of his unit in the ISAFP, and has since denied having anything to do with the tapes. While ISAFP is widely believed to have performed the wiretap, no one has come out to tell the full story. To this day, the ISAFP insists it has no capability to wiretap cell phone conversations.

The central character in the wiretapped conversations - Commissioner Garcillano - went missing shortly after the scandal broke out. Five months later, he reappeared, accompanied by armed men who later turned out to be local policemen. The police offered him sanctuary while he waited to face the House committees that were investigating him. The account he gave in the House was one of studied evasiveness. He admitted talking to GMA once. This was not unusual, he said, because other politicians, including those from the opposition, also talked to him. But he could not recall if the conversations caught in the Garci tapes actually took place. He wasn't even sure if that was his voice. He emphatically maintained that he did not cheat for anyone, least of all for the president. He went into hiding, he said, because he felt that his life was in danger. The investigation could squeeze nothing from this foxy operator, who seemed to feel at home in the company of the nation's politicians.

This is the first issue. It was so powerful it brought out the first massive demonstrations against Mrs. Arroyo. It triggered the resignation of key members of her Cabinet, as well as the withdrawal of support from key allies like former president Aquino and Senate President Franklin Drilon, as well as a section of the influential Makati Business Club.

The start of the impeachment proceedings in September brought the issue back to the legal arena, where Mrs. Arroyo maintained a firm grip on the loyalty of her congressional allies. The impeachment complaints, as we all know, were killed at the committee level, using technicalities and parliamentary maneuvers that relied on the power of the majority vote. The substantive charges against Mrs. Arroyo were never taken up. Again, only a symbolic closure was achieved, and so the issue remains politically alive.

The second issue revolves around the partisan involvement of key officials of the military in the 2004 election. This is being investigated by the committee of Sen. Rodolfo Biazon. The purpose is clear-cut: To get to the bottom of the wiretapping and the involvement of some generals in the election in Mindanao. The investigation opened with the revealing testimonies of Gen. Gudane and Col. Balutan, both of whom were sanctioned by the AFP for appearing before the Senate without authority from their superiors. The committee has hit a blank wall. Military officials, citing EO 464 which bars top government officials from appearing in any congressional investigation without prior permission from the president, have declined to appear before any legislative hearing.

The third issue is the use of public funds to finance the presidential campaign of Mrs. Arroyo. Even during the campaign, the funding for the PhilHealth cards that Mrs. Arroyo was distributing in the course of her provincial sorties had come under question. So too the improper utilization of the Road Users Tax for the emergency employment of street sweepers in every barangay of the country just before the 2004 election. But the one investigation that has yielded the most scandalous findings on the misuse of public money for the presidential campaign of Mrs. Arroyo is the hearing on the so-called Fertilizer Fund being conducted by the committee of Senator Jun Magsaysay. The P728 million fund is part of the almost P3 billion fund of the so-called GMA - Ginintuang Masaganang Ani — program. A significant portion of this money appears to have been sourced from the confiscated Marcos Swiss bank deposits. The seized Marcos assets had been previously earmarked by law for the agrarian reform program. Except for the portion of 8 billion pesos set aside for victims of human rights violations, the rest of the Marcos money amounting to about P27 billion appears to have vanished into thin air sometime between 2004 and 2005. The admission made by Budget Secretary Neri and officials from the Commission on Audit so angered former Senator Jovito Salonga that last January 30, he felt compelled to write Mrs. Arroyo a letter. In that letter, Sen. Salonga told Mrs. Arroyo: “We who do not seek any favor from you are constrained to conclude that to remain in power, you (1) prejudiced the welfare of our poor, landless farmers and (2) ignored the sacrifices of many persons who devoted all their God-given resources in terms of time, energy, effort and the little knowledge and talent so they might help recover the more than 680 million dollars from the Swiss Marcos deposits.”

The one person who is expected to shed light on the nature of the Fertilizer Fund, its sources and its mode of disbursement, is former Agriculture Usec. Jocelyn “Joc-joc” Bolante, a known friend and associate of First Gentleman Mike Arroyo. But, taking his cue from Commissioner Garcillano, Bolante has also made himself scarce.

These three issues lie at the center of the current political crisis.

In stable societies, political questions like these - that challenge the basic legitimacy of the sitting president - are ultimately resolved by election, or by acts of Congress or Parliament, or they are referred back to the legal and judicial system for further investigation, prosecution, and adjudication. But in young societies like ours - where the institutional spheres are not yet fully differentiated - legal institutions and government agencies tend to be heavily contaminated by partisan politics. This compromises their independence. Instead of being able to put an orderly closure to unresolved political questions, these institutions are dragged into the political arena and lose their credibility. Consequently, legal issues are re-politicized, and the whole process repeats

itself, leaving in its wake the debris of institutional wreckage.

Take a look at some of the major institutional casualties in this unending political crisis since Mrs. Arroyo succeeded to the presidency in 2001:

1. First there is the Supreme Court. Members of the Court came to the Edsa Shrine at noontime of Jan. 20, 2001 to administer the oath of office to GMA, even before there was any clear determination that a vacancy had occurred in the office of the president. Without signing a formal letter of resignation, Erap left Malacanang at around 2:30 p.m. He later claimed that he had not resigned but only taken a leave of absence. A few weeks later, the same SC had to adjudicate a case challenging the legality of Mrs. Arroyo's assumption of the presidency. The justices unanimously upheld the legality of Mrs. Arroyo's accession to the presidency, but they could not agree on the reasons. Many of the justices were severely skeptical and critical of the use of people power to effect a change in government. The majority decision ruled that Erap had resigned "constructively" - a novel concept that could not be easily explained to a perplexed public.

If it was quick to state its position on what was clearly a very dynamic situation in January 2001, the Supreme Court seemed extremely hesitant to intervene in 2005 when members of the House committee investigating the impeachment charges could not agree on the correct interpretation of the phrase "impeachment proceeding" as found in the 1987 Constitution. What constitutes an impeachment proceeding? When is it deemed initiated? If three impeachment complaints are filed against the same public official for more or less the same reasons within hours of one another, would taking them up on the same day be construed as initiating three separate impeachment proceedings, and is therefore prohibited? Twice, a lawyer asked the Supreme Court to disallow the ruling coalition's absurd interpretation of the constitutional provision barring the initiation of impeachment proceedings against the same public official more than once a year. The Court said the question was premature. Then it said nothing more on the issue after the defective Lozano impeachment complaint was thrown out.

By the same token, the SC has so far failed to rule on the constitutionality of the so-called Calibrated Preventive Response policy (CPR) of dealing with protest demonstrations, and of the gag order contained in Executive Order 464.

2. Second, there is, of course, the Comelec itself - the one legal institution that the Cory Aquino government in the post-Marcos years tried very hard to rebuild so that its neutral and professional character may be preserved. A credible Comelec is the linchpin of a representative democracy. Mrs. Arroyo has done much to erode the Comelec's credibility by appointing to it individuals of unsavory reputation, not the least of whom is Atty Virgilio Garcillano himself. The man had worked his way up the Comelec bureaucracy, and gained a reputation as somebody who has mastered the electoral terrain of Mindanao. But another image consistently stuck to him - that of architect of "dagdag-bawas." Thus, when he was appointed to the Comelec as one of the commissioners barely 3 months before the 2004 election, no less than former Comelec Chairman Christian Monsod appealed to the president to withdraw his appointment. The same plea was made by a victim of dagdag-bawas - Senator Nene Pimentel. But Mrs. Arroyo would not be dissuaded. She was such a firm believer in Garcillano's capabilities.

3. The third is the Armed Forces of the Philippines. Outside of Marcos, no other president perhaps has so brazenly enlisted the services of key officials of the AFP for partisan purposes than Mrs. Arroyo. Again, the Garci Tapes are very incriminating. In one conversation, Garci was complaining that the cheating operations in some towns were very crudely done because the ones who were assigned to perform these tasks were inexperienced soldiers. Several names of high-ranking officers were mentioned in the tapes. By a strange coincidence, except for Gudane who retired, almost all of

them were subsequently appointed to cushy positions in the AFP.

4. The fourth is the Ombudsman. This is a constitutional office that is invested with the power to initiate investigations and to prosecute erring public officials. When the SC ruled that the Comelec computerization project was illegal and ordered Comelec to recover the money it had paid, it also directed the Ombudsman to investigate the culpability of the Commissioners and to prosecute them. This has not happened, as far as I know. The Ombudsman could also have initiated the investigation of ISAFP's (Intelligence Service of the Armed Forces of the Philippines) involvement in wiretapping. It could have looked as well into the use of public funds like the Road Users Tax and the Fertilizer Fund for the election campaign of the president. We have not seen any such initiative. One wonders if the people at the center of all these controversies know something we don't when they bravely challenge their accusers to sue them in court and file the necessary charges.

Somebody - I think it is Sen. Kiko Pangilinan - recently filed a bill calling for the creation of a powerful office of an American-style Independent Counsel, that would have the authority to mobilize agencies and offices of government to put together a case against accountable public officials. Maybe if we can find enough Kenneth Starrs in our midst who would not be deterred by the powerful, there might be a reason for this bill. But I am not certain if this is the right answer to the dysfunctionality of our institutions.

Let me re-state my basic thesis here. THE CRUX OF THE PRESENT CRISIS consists in the fact that the institutions in the political and the legal systems of our society have failed to arrive at a reasonable closure of the issues thrust upon them. The crisis of legitimacy of Ms Arroyo has led to a questioning of all her decisions and actions. Her stonewalling on a number of important questions - the use of gag orders and of diversionary tactics like charter change - has led to a generalized crisis of credibility. This has spawned more issues than the political system can handle at any given time without overheating. It is interesting that the economy seems to be faring well in comparison. The crisis of the political system may remain isolated for a time, but it may eventually engulf the whole system. It is difficult to say how long the system can bear the pressure from one of its parts.

What seems clear at this point is that:

- More and more people are demanding either an end to all bickering or the outright removal of Mrs. Arroyo.
- More and more people are losing faith in the system's capacity to resolve political questions within the bounds of the Constitution.
- More and more people are disenchanted not only with the present administration but also with the political opposition. They are turning to the Armed Forces and asking them to intervene.

Having gone through two people power upheavals, our people are not unfamiliar with extra-legal solutions involving both military and people power interventions. They see people power as the Filipino way of compensating for the inadequacies of our institutions, even as they are fully aware of the many problems it spawns.

## WHAT IS TO BE DONE?

What is to be done or how we should respond to the crisis is a function of how we look at the situation. The Catholic Bishops Conference of the Philippines (CBCP) explains the crisis as the result of the erosion of our moral values. The bishops are calling for a renewal of our public life. This is a long-term process, and one can understand why our religious leaders have couched the problem in specifically moral terms, even as they are conscious of not overstepping the bounds of their authority. The bishops insist that the solution can come from the relentless pursuit of the truth by

the community as a whole.

My own view is quite different from that of the bishops. Like them, I believe that our public values have changed. But, unlike them, I believe that they have changed not necessarily for the worse. On the contrary, I believe that the crisis in our political life arises precisely from the growing refusal of many ordinary Filipinos from all classes to tolerate patronage, fraud, political bossism, corruption, and misgovernance of our public life. The ruling classes of our country - the ones who are used to cynical wheeling and dealing, to corruption, to intimidation, and the exploitation of mass ignorance and dependence - are beginning to discover that they can no longer rule in the old way. Every election year they find that they have to cheat harder in order to get elected.

Politicians like Ms. Arroyo cannot seem to understand why cheating in elections has become so suddenly wrong, or why taking kickbacks from government contracts and pork barrel projects is suddenly frowned upon. They wake up one morning, and they discover to their dismay that our people are demanding better government. On more than one occasion, Mrs. Arroyo candidly lamented the degeneration of our political system. It has become such, she said, that one cannot embark on a political career and expect to emerge from it with clean hands. "He who is without sin," she says quoting from the Bible, "cast the first stone."

Mrs. Arroyo must have been so blinded by ambition that she failed to read what the placards of the young people who trooped to Edsa in January 2001 were saying: Good government. Accountable government. Competent government. They did not go to Edsa because they loved GMA; they went to Edsa because they thought they deserved a president they could admire, one who could properly discharge the responsibilities of a young aspiring modern nation in a complex world.

In their attempt to appease the public, the old dying class led by GMA, FVR, and Jose de Venecia are offering to change the form of government, little realizing that the people have moved one notch higher. They now demand a replacement of the whole political class itself. Only now, I think, are the politicians beginning to realize that the public is not just seeking to change the form of government, or just to overthrow Gloria Macapagal Arroyo and replace her with the Opposition. Filipinos want a whole new set of leaders, imbued with a whole new set of values and capabilities. They want a new nation equipped for survival in a globalized world they are just starting to discover.

Am I painting a fictional image of Filipino consciousness? I do not think so. If our political values had not improved, we would not have this crisis. We would allow the politicians to talk it over among themselves, to strike a *modus vivendi* (what trapos call a "win-win" solution) that would benefit every individual politician in the country. The rest of us, ordinary citizens, would all retreat into our homes and perhaps amuse ourselves by their antics. But no, more and more of us are staunchly refusing to let our country to be run by the same breed of cynical politicians.

Our people are better educated today. They are more connected to the outside world. They know how other societies work. They have seen more of the world than the generation of their parents. And, let us not forget, you cannot send out more than 10% of your mature population to live and work in other societies, and expect them to remain unchanged in the way they think of the responsibilities of government. What they bring home from abroad are not just remittances; they usually bring back with them a new consciousness of what societies can be like when they are better run.

Politics is basically an arena of communication. Our political system today is more complex: it is no longer dominated by traditional political parties. There are new voices that are making themselves heard - from the social movements, the non-government organizations, people's organization, etc. Edsa I and Edsa II are symptomatic of the emergence of an educated population that no longer feels

bound by traditional political rules. If we look closely, we may see Edsa I and II as manifestations of a middle class political impatience never seen before in our country. These events are guided by a vision of modernity that however needs to be enriched by social justice.

How to bring this vision about is the big question. I believe that as a long-range vision, it is not necessarily hitched to any political project.

All over the country, people are meeting and talking in forums like this. The vision of a new nation is taking shape in these meetings. We are already living in a post-Gloria era. Gloria is history. The reign of the trapos is coming to an end.

How Mrs. Arroyo will eventually go and when, is probably only a small footnote now in these discussions. Whether it is by a snap election, or by people power in combination with a military mutiny - is perhaps no longer the important question. The question that people are asking is: Who will replace her? But, I do not take that to mean a simple search for alternative faces. I take that to mean: What kind of agenda for national renewal will bring us forward? What are our basic and urgent tasks as a people? If we take care of the agenda, I believe the right faces will come forward.

I would like to end by advancing four basic tasks that I have heard repeatedly in various fora:

First, to end the scourge of absolute poverty once and for all, no matter what it takes. The stampede of the poor in Ultra is only a grim reminder of this unjust reality we must all help to end.

Second, to educate everyone of our people, especially the young, in order to equip them for living in a highly competitive world.

Third, to rebuild the physical infrastructure of our country, and to protect its environment from long-term damage.

And lastly, to create stable institutions appropriate to a complex and modern society — in a climate of freedom, tolerance, and openness.

If we remain focused and committed to such an agenda of necessary transformation, I have every reason to believe that the search for new leaders will take care of itself. The quest for change will spawn new political formations and new political parties.

Having said that, I will hasten to add that it would be a mistake to think that one needs to be a politician to be able to contribute to the realization of these urgent tasks.

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**P.S.**

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