

SC Ruling on the Truth Commission: A Dead-end?

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Just as the world was about to mark anti-corruption day on Dec. 9 a leaked Supreme Court (SC) decision found the Truth Commission “unconstitutional.” The commission was formed in July by President Benigno S. Aquino III under Executive Order 1 with the task of investigating corruption cases against the previous administration.

The SC voted 10-5 against EO 1, with Chief Justice Renato Corona siding with the majority. The decision, which was formally released later, noted that the presidential directive violated the “equal protection clause” of the Constitution by singling out for investigation the Arroyo administration as the subject for investigation. The petition which challenged the constitutionality of the commission was filed by Arroyo allies, led by Rep. Edcel Lagman.

Those who had pinned all hopes on the Truth Commission saw the high court decision as a setback to holding Mrs. Arroyo and other officials answerable to the corruption charges committed during her nine-year watch. Others believed that with all the justices except one having been appointed by the previous president the SC's independence had been “compromised and manipulated” by coming out with decisions favorable to the former president. Options are narrowing, Leftist groups said, in making Mrs. Arroyo accountable for her crimes with the high tribunal upholding in another case the former president's “midnight appointments” and issuing a status quo order on the impeachment of Ombudsman Merceditas Gutierrez, another Arroyo appointee.

It is widely believed that Mrs. Arroyo did not leave the presidency without making sure that she would be shielded from any attempts by the next administration to have her prosecuted for alleged public crimes ranging from corruption to command responsibility in human rights abuses. Political allies from what used to be the dominant political party remain in Congress. Gutierrez, a trusted ally, stays as Ombudsman until 2012 while

the SC is perceived to be packed with Arroyo appointees. Wily as ever, Mrs. Arroyo occupies a seat in Congress from where she can issue marching orders to her allies and supporters.

The real truth

Much fury has been generated by the high court decision on the Truth Commission. The real truth, however, is that the body is powerless and even if it had been declared legitimate it would have no teeth anyway with respect to prosecuting the former president. Its investigation will end by end-2012 – probably when a new Ombudsman more accommodating to the Arroyo corruption cases would be appointed by the sitting President. Realistically, the commission will be unable to finish the job as the process of investigation, including inviting witnesses and the accused herself would be stymied by legal obstacles – and by the fact it would be tied down with probing into more corruption cases other than those linking the former president and her alleged accomplices in corruption.

In the first place, Mr. Aquino started with the wrong foot in his effort to fulfill an election promise to make the former president accountable for corruption. Instead of forming the truth body, it would have been more prudent for the new president to exercise a strong political will by using the piles of evidence that had been gathered from various congressional hearings and other investigations and have Arroyo prosecuted immediately.

By taking the slower tack of forming a truth body, the pursuit of accountability with respect to the crimes of graft and corruption linking the previous regime has been entrusted to the constraints and weaknesses of the country's justice system. The wheels of the country's justice system have been crippled chiefly, among other reasons, by its politicization turning its major investigative, prosecution, and adjudication arms vulnerable to the powers that be most especially in relation to corruption cases. The anti-graft bodies have not been insulated from presidential

patronage thus threatening their own independence.

Minor convictions

Whether in the Ombudsman, Sandiganbayan, or regular courts no plundering president and other high officials have been made to account for public crimes. A CenPEG report revealed that in the first 27 years of both the Ombudsman and Sandiganbayan (anti-graft court), not one “big fish” in the 60,000 graft cases filed was punished. In fact, only 27 middle- and low-level public officials were convicted; and it remains unclear whether these crooks served their sentences at all. Despite having one of the most number of laws and anti-graft agencies the Philippines has earned the notoriety of being one of the most corrupt countries in the world. The system of accountability in public office is written but it simply does not work.

On a related note, the Hong Kong-based Asian Human Rights Center recently described the Philippines' system of justice as “deeply politicized and subject to political control.”

At this point, the presidential office has now a reason to throw the blame on the SC for derailing the administration's bid to hold Arroyo and other former high officials accountable for corruption. That can be said but meantime, the question is - Where is the president's program that will translate his election promise to fight corruption into a vision?

Mr. Aquino has been sending the wrong signals that show inconsistency with his election pledge – marketed as it was to win votes. First, appointments to the Cabinet and other top administration posts have been based on friendship, family loyalty, and regional ties. He increased the graft-ridden pork barrel for Congress, apportioned a colossal PhP68-bn – unprogrammed and audit-free - for the office of the president, and similar amounts to favored departments and allied political groups in the guise of development projects. The controversial PhP22-bn conditional cash transfer (CCT) which is claimed to be for the poorest of the poor is vulnerable to graft and corruption as it was under Arroyo.

Backtracking from another campaign commitment, Aquino III will not give priority to the freedom of information act which is vital to making governance transparent and accountable and, hence, in curbing corruption. He earmarked only PhP14.3 billion for the judiciary (which had asked for PhP27.1 billion) but gave an amount almost double that to one single department.

Aggravating

Clearly, the fight against corruption which robs the national treasury of billions of pesos every year and aggravates poverty cannot be managed this way. The culture of friendship and political support over and above competence that govern presidential appointments and the misappropriation of funds will only aggravate corruption. It will also further weaken the institutional mechanisms of public service, transparency, and accountability thus making the whole bureaucracy and other state institutions more vulnerable to graft and corruption.

Corruption in the Philippines has become systemic and deeply embedded in traditional politics and dynasty-controlled government. No act of a sitting president, no matter how determined it projects for public perception, can stop corruption. “Not in our lifetime,” one Aquino cabinet official already admitted. The earlier the whole nation will realize this the better it will be for other options to be explored.

Interestingly, the only time when sitting presidents accused of large-scale corruption and plunder were removed from office was when the people staged a peaceful uprising – in 1986 against Ferdinand E. Marcos, and again in 2001 against Joseph E. Estrada.

The new justice secretary, Leila de Lima, crossed the line with a solution. Referring to corruption, de Lima said in 2009 as chair of the Commission on Human Rights: “What we need now is not just another revolution. We need a revolution that upstages all previous revolutions, one that not only changes the configuration of political power, but one that changes the Filipino psyche.” (Manila Times, January 8, 2009)

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