

# THE “IMPEACHMENT EPIDEMIC”: DEFEATING THE ONE-YEAR BAR RULE\*

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*“[E]xperience has shown that impeachment procedures as they are now stated in the draft would be nothing more [...] than a glorified act of political masturbation.”*

—Commissioner Felicitas  
S. Aquino-Arroyo

## I. INTRODUCTION

Impeachment has become a recurrent episode in the Philippine political narrative. What was intended as a blue moon event has become as commonplace as seeing a Jollibee at every turn of a corner in the Philippines. Prior to the 1987 Constitution, only four impeachment complaints were filed—three against sitting Presidents, and one against a Justice of the Supreme Court.

The impeachment of former President Estrada in 2000 was the first recorded case of the epidemic under the 1987 Constitution. After this, attempts to impeach the highest officials of the land have consistently occurred under each administration. In just a little over a year under the administration of President Rodrigo Roa Duterte, the House of Representatives of the Philippines already received impeachment complaints against five public officials.<sup>2</sup>

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<sup>1</sup> II RECORD CONST. COMM’N 41 (July 28, 1986).

<sup>2</sup> CNN Philippines, *Impeachment rap v. Robredo pending endorsement*, CNN PHILIPPINES, May 3, 2017, available at <http://cnnphilippines.com/news/2017/05/02/VP-Leni-Robredo-impeachment-complaint.html>; Paterno Esmaquel, *Duterte pushes for impeachment of Ombudsman*

The outbreak of impeachment complaints has opened the forum for discussion on the intricacies of the impeachment process in the Philippines. Though undeniably a political device, the process of impeachment was ingrained in the 1987 Constitution as a mechanism of accountability because of the degree of trust bestowed upon public officials.<sup>3</sup>

Although impeachment was crafted as a tool of accountability, it has also been wielded as a weapon for political harassment. Mindful of this, the framers formulated the *one-year bar rule* on the initiation of impeachment proceedings to balance the competing interests of (i) the people, to whom accountability is owed; (ii) the officer, who is susceptible to undue or too frequent harassment; and (iii) the institution, whose principal task is legislation.<sup>4</sup>

The pertinent provision, not found in the earlier versions of the Constitution, reads as follows: “No impeachment proceedings shall be initiated against the same official more than once within a period of one year.”<sup>5</sup>

However, the manner in which the Supreme Court interpreted the application of this rule in the cases of *Francisco v. House of Representatives*,<sup>6</sup> and *Gutierrez v. House Committee on Justice*<sup>7</sup> has actually weakened public accountability without preventing the contemplated political harassment; moreover, it is without effect on the conduct of the legislature’s regular business.

This Note traces the origins and integration of the impeachment system into the Philippine Constitution and reviews the Philippine experience in handling impeachment efforts. It delves into how the inclusion of a “one-year bar rule” in the Constitution opened the proceedings to abuse. Furthermore, this Note argues that the rule is ineffective in attaining its purpose. Finally, having established the ineffectivity of such rule and its

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*Morales*, RAPPLER, Oct. 4, 2017, available at <https://www.rappler.com/nation/184287-duterte-impeachment-ombudsman-conchita-carpio-morales>.

<sup>3</sup> Florin Hilbay, *The Nature and Function of Impeachment: A Practical Theory*, IBP J. 1 (Mar. 2012).

<sup>4</sup> *Francisco v. House of Representatives* [hereinafter “Francisco”], G.R. No. 160261, 425 SCRA 44, 313, Nov. 10, 2003 (Azcuna, J., concurring); II RECORD CONST. COMM’N 40 (July 26, 1986).

<sup>5</sup> CONST. art. XI, § 3(5).

<sup>6</sup> *Francisco*, 425 SCRA 44.

<sup>7</sup> Hereinafter “Gutierrez”, G.R. No. 193459, 643 SCRA 198, Feb. 15, 2011.

hindrance to the purpose of impeachment, it proffers that the proper interpretation of “initiation,” in the context of the one-year bar rule, should be the transmittal of the Articles of Impeachment by the House of Representatives to the Senate.

## II. THE ORIGIN AND PURPOSE OF IMPEACHMENT

The process of impeachment originated in ancient Greece.<sup>8</sup> *Eisanglia eis ton demon* (denunciation to the people in an assembly),<sup>9</sup> was a political public action intended to remove public officials, usually *strategoí* (generals),<sup>10</sup> from the *kyria ecclesia* (principal assembly). Terry Buckley, an author who specializes in ancient history, describes the Greek practice of *eisanglia* in this wise:

[T]he accountability of the public officials, especially the generals, was of paramount importance to the demos with a vote of confidence held ten times a year. However, the opportunity was also provided for any Athenian to bring an ‘eisanglia’ against any politically active citizen, often referred to as ‘rhetores’ (orators). Public officials were always directly accountable for their public actions, both in the votes of confidence in the Ecclesia and at their ‘euthana’, but it was recognized that those politically active citizens, who proposed decrees in the Assembly but held no official post, also needed to be made personally accountable to the Athenian demos for their public actions. Thus one of the methods provided was the right of every Athenian citizen to impeach them in the Ecclesia *for treason, which covered subversion of the democracy, betrayal, and accepting bribes to speak contrary to the best interests of the Athenian people; for misleading the people by not keeping their promises; or (probably) for any other crime that was not specifically covered in the existing law-code.* This mechanism was designed to ensure that there could be no power without responsibility, and so acted as a deterrent to irresponsible ‘demagogic’ behavior in the Ecclesia.<sup>11</sup>

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<sup>8</sup> *Francisco*, 425 SCRA at 216 (Vitug, J., concurring).

<sup>9</sup> Mogens Herman Hansen, *Political Powers of the People’s Court in Fourth-Century Athens*, in *THE GREEK CITY: FROM HOMER TO ALEXANDER 236-37* (Oswyn Murray and Simon Price eds., 1990).

<sup>10</sup> *Id.* at 237. *Eisanglia* was commonly brought against *strategoí* (generals), a significant number of which were found guilty and sentenced to death. A study also showed that more generals died through an *eisanglia* conviction than on the battlefield; see also CRAIG T. BOROWIAK, *ACCOUNTABILITY AND DEMOCRACY: THE PITFALLS AND PROMISE OF POPULAR CONTROL* (2011).

<sup>11</sup> TERRY BUCKLEY, *ASPECTS OF GREEK HISTORY 750-323BC: A SOURCE-BASED APPROACH* 252 (2010). (Citations omitted; emphasis supplied.)

Even in ancient Greece, treason, attempt to overthrow the government, and corruption were already pertinent factors in determining whether a public official should be removed from a position of power.<sup>12</sup> These factors, alongside the frequency of occurrences of *eisanglia*, as well as the gravity of the penalty meted out to those convicted (exile or death),<sup>13</sup> establish the premium that Athens placed on public accountability, empowering its *demoi* in the process with the provision of exceptional control by the people over their political leaders.<sup>14</sup>

Impeachment in its current and more common form was an initiative of the English.<sup>15</sup> “Creation of the device was a means of strengthening the position of Parliament vis-à-vis the Crown and was viewed as both more desirable and more practical than the alternatives of revolution or civil war.”<sup>16</sup> Excerpts from Professor Theodore Plucknett’s “The Origin of Impeachment” would demonstrate their appreciation of the process:

[I]t was one of the most spectacular of parliamentary proceedings, often a decisive weapon in political warfare, and of such proved usefulness that it came to be regarded as an inherent function of any representative legislature, and as such it figures not only in the American constitutions but also in so recent a document as the Weimar constitution of 1919.

[I]t was felt equally strongly that there could be no effective check upon official misconduct unless by a drastic, summary and exceptional procedure which should be sufficiently powerful to reach ministers and others in high places.

[I]mpeachment by the Commons is not only analogous to an indictment by the grand inquest of the nation, but actually originated in that way.<sup>17</sup>

The King (or Queen) is revered and protected by the people, that in fact, “he (she) can do no wrong.”<sup>18</sup> Given this understanding, the people

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<sup>12</sup> Hansen, *supra* note 9, at 237.

<sup>13</sup> Borowiak, *supra* note 10.

<sup>14</sup> Hansen, *supra* note 9.

<sup>15</sup> Mary L. Volcansek, *British Antecedents for U.S. Impeachment Practices: Continuity and Change*, 14 JUST. SYS. J. 40-41 (1990).

<sup>16</sup> *Id.* at 42.

<sup>17</sup> Theodore Plucknett, *The Origin of Impeachment*, in VOL. 24 TRANSACTIONS OF THE ROYAL HISTORICAL SOCIETY 47, 47-49 (1942).

<sup>18</sup> Mark A. Hartman, *Impeachment: The English Experience*, 49 YALE U. LIBR. GAZ. 277, 277 (1975).

sought accountability from the Crown through its political subordinates.<sup>19</sup> The case of Lord William Latimer and Richard Lyons is recognized in British history as the first impeachment by the House of Commons and corresponding trial by the House of Lords.<sup>20</sup> The two were accused “by clamour of the Commons of acting falsely in order to have advantages for their own use.”<sup>21</sup> The Commons, as an institution, served as the prosecutors and presented the case to the Lords in a trial seen to be as a “rotation of speeches between Latimer and his accusers.” Latimer was convicted, and suffered the consequences of removal from office, payment of fine, and imprisonment.<sup>22</sup>

The United States’ system of impeachment loosely adopted the practice of Britain, “[t]he model from which the idea of this institution has been borrowed.”<sup>23</sup> It was during the 1787 Convention in Philadelphia that the importance of its inclusion in the Constitution was brought up as a means of implementing a system of checks and balances against the civil officers of the US.<sup>24</sup> In the adoption of impeachment as a mechanism enshrined in the US Constitution, Michael J. Gerhardt points out that the Founders sought to distinguish its application in their jurisdiction from the British practice:

First, the Founders limited impeachment only to “[t]he President, Vice President and all civil Officers of the United States,” whereas at the time of the founding of the Republic, anyone (except for a member of the royal family) could be impeached in England.

Second, the delegates to the Constitutional Convention narrowed the range of impeachable offenses for public office-holders to “Treason, Bribery, or other high Crimes and Misdemeanors,” although the English Parliament always had refused to constrain its jurisdiction over impeachments by restrictively defining impeachable offenses.

Third, whereas the English House of Lords could convict upon a bare majority, the delegates to the Constitutional Convention agreed that in an impeachment trial held in the

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<sup>19</sup> *Id.*

<sup>20</sup> Volcansek, *supra* note 15, at 42.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 43.

<sup>23</sup> THE FEDERALIST NO. 65 (Alexander Hamilton).

<sup>24</sup> Scott Bomboy, *What the Founders thought about impeachment and the President*, NATIONAL CONSTITUTION CENTER WEBSITE, at <https://constitutioncenter.org/blog/what-the-founders-thought-about-impeachment-and-the-president> (last accessed Jan. 28, 2018).

Senate, “no Person shall be convicted [and removed from office] without the Concurrence of two thirds of the Members present.”

Fourth, the House of Lords could order any punishment upon conviction, but the delegates limited the punishments in the federal impeachment process “to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust, or Profit under the United States.”

Fifth, the king could pardon any person after an impeachment conviction, but the delegates expressly prohibited the President from exercising such power in the Constitution.

Sixth, the Founders provided that the President could be impeached, whereas the King of England could not be impeached.

Seventh, impeachment proceedings in England were considered to be criminal, but the Constitution separates criminal and impeachment proceedings.

Lastly, the British provided for the removal of their judges by several means, whereas the Constitution provides impeachment as the sole political means of judicial removal.<sup>25</sup>

The system of impeachment was inexistent in the Philippines prior to its appearance in the 1935 Constitution. The system as developed by the Founders of the US Constitution was adopted by the framers of the 1935 Constitution.<sup>26</sup> The provisions on impeachment in the 1935 Constitution were basically a copy of those found in the US Charter, differing in three aspects: grounds, impeachable officials, and number of votes required for conviction, following a unicameral legislative system (as opposed to the United States’ bicameral one).<sup>27</sup>

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<sup>25</sup> Michael J. Gerhardt, *Lessons of Impeachment History*, 67 GEO. WASH. L. REV. 603, 605-06 (1999).

<sup>26</sup> ANTONIO R. TUPAZ & EDSSEL C.F. TUPAZ, FUNDAMENTALS ON IMPEACHMENT 4 (2001).

<sup>27</sup> JOSE M. ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION 587 (1936); Fr. Joaquin G. Bernas, *Impeachable offenses*, PHIL. DAILY INQUIRER, Feb. 6, 2012, available at <https://opinion.inquirer.net/22543/impeachable-offenses/amp>.

US Constitution	1935 Constitution
<p>The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors. (Article II, Section 4)</p>	<p>The President, the Vice President, the Justices of the Supreme Court, and the Auditor General, shall be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, or other high crimes. (Article IX, Section 1)</p>
<p>The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment. (Article I, Section 2)</p>	<p>The Commission on Impeachment of the National Assembly, by a vote of two-thirds of all its Members, shall have the sole power of impeachment. (Article IX, Section 2)</p>
<p>The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present. (Article I, Section 3)</p>	<p>The National Assembly shall have the sole power to try all impeachments. When sitting for that purpose, the Members shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside. No person shall be convicted without the concurrence of three-fourths of all the Members who do not belong to the Commission on Impeachment. (Article IX, Section 3)</p>
<p>Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law. (Article I, Section 3)</p>	<p>Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the Government of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment, according to law. (Article IX, Section 4)</p>

**TABLE 1.** Comparative Table of Impeachment Under the US Constitution and the 1935 Constitution.

The 1935 Constitution was amended through a plebiscite in 1940, changing the form of legislature from unicameral to bicameral; hence, the appropriate changes were also made in Article IX.<sup>28</sup> The sole power of impeachment was given to the lower house, while the power to try impeachment was given to the upper house.<sup>29</sup>

With regard to the three points of difference between the US Constitution and the 1935 Constitution, the Special Committee formed for the purpose of the impeachment of former President Elpidio Quirino included a discussion on the intent of the Framers in its Committee Report:

The three points of difference between our Constitution and the U.S. Constitution, just pointed out, are of great importance. It is plain and evident that the intention of the framers of our Constitution was to impress upon the members of our Congress the gravity of their responsibility for finding and trying an impeachment and the necessity of proceeding slowly and with the utmost caution in the filing of impeachment charges, considering that the impeachable officials occupy the highest constitutional positions in the land. It is likewise plain and evident that the framers of the constitution wanted to discourage the filing of impeachable charges inspired solely by personal or partisan considerations, considering the two-thirds vote required for the House to impeach and the three-fourths vote of the Senate to convict.<sup>30</sup>

In the 1973 Constitution, the Article on Accountability of Public Officers was expanded. It introduced the provision emphasizing the nature of public office as a public trust, included members of the Constitutional Commission as impeachable officers, and added graft and corruption as a ground for impeachment.<sup>31</sup> The same Article was expanded once more with the drafting of the 1987 Constitution, now laying down a general process to be followed when it comes to the impeachment of public officials. This would be the first time as well that a bar on the initiation of impeachment proceedings would appear in the Constitution.

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<sup>28</sup> Official Gazette, *Constitution Day*, OFFICIAL GAZETTE WEBSITE *available at* <http://www.officialgazette.gov.ph/constitutions/constitution-day/> (last accessed Mar. 15, 2018).

<sup>29</sup> CONST. (1935), art. IX, §§ 2-3, as amended.

<sup>30</sup> H. Record 65, 1<sup>st</sup> Cong., 4<sup>th</sup> Sess., (Apr. 28, 1949), 1552-53.

<sup>31</sup> CONST. (1973), art. XIII.



### III. THE IMPEACHMENT PROCEDURE

#### A. Definition of Terms

For purposes of this Note, the term “filed” is used to refer to instances wherein: (i) a complaint is delivered to the Office of the Secretary General of the House of Representatives with an endorsement from any Member of the House, or (ii) a complaint is signed by at least one-third of all the Members of the House of Representatives, delivered to and verified by the Secretary General.

“The House of Representatives shall have the exclusive power to *initiate* all cases of impeachment.”<sup>32</sup> As it is currently defined in light of *Francisco*, impeachment proceedings are “initiated” upon filing of the complaint and/or resolution and its referral to the Committee on Justice, or upon filing of at least one-third of the Members with the House Secretary General.<sup>33</sup>

The term “impeached” would refer to the status of a public official who has undergone the full procedure of impeachment with the House of Representatives, that is, the approval of the Resolution of Impeachment by at least one-third of the all members of the House of Representatives and the transmittal of the same to the Senate.<sup>34</sup>

#### B. Procedure

The 1987 Constitution provides for two ways to conduct impeachment proceedings: a “fast-track procedure” and a regular procedure.

In the fast-track procedure, if a verified impeachment complaint or resolution is filed by at least one-third of all the Members of the House of Representatives, this verified complaint/resolution shall be endorsed as the Articles of Impeachment<sup>35</sup> and shall be transmitted to the Senate for trial.<sup>36</sup>

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<sup>32</sup> CONST. art. XI, § 3(1). (Emphasis supplied.)

<sup>33</sup> *Francisco*, 415 SCRA at 169-70.

<sup>34</sup> *Id.* at 168.

<sup>35</sup> Pursuant to the Rules of Procedure on Impeachment Proceedings of the House of Representatives, the same rule has been stipulated since the 13<sup>th</sup> Congress up to the present 17<sup>th</sup> Congress; the practice was also employed in the approval of the resolution of impeachment for President Estrada in 2001 and Chief Justice Corona in 2011. H. Journal 36, 12<sup>th</sup> Cong., 3<sup>rd</sup> Sess., (Nov. 13, 2000); H. Journal 30, 15<sup>th</sup> Cong., 2<sup>nd</sup> Sess., (Dec. 12 to 13, 2011).

<sup>36</sup> CONST. art. XI, § 3(4).

<b>Step</b>	<b>Action</b>	<b>Actor</b>
1	Filing of a verified impeachment complaint/resolution (with the Secretary General)	By at least 1/3 of all the members of the House of Representatives
2	Ministerial endorsement of the complaint/resolution as the Articles of Impeachment	By the Speaker, through the Secretary General, in the same manner as an approved bill of the House of Representatives
3	Transmittal of the Articles of Impeachment	By the Secretary General to the Senate

**TABLE 2.** Outline of Impeachment Under the Fast-Track Procedure.

In the regular procedure, the process starts with the filing of a complaint for impeachment: (i) by any Member of the House; or (ii) by any citizen, endorsed by a Member of the House. The table below illustrates the succession of steps as laid down in both the 1987 Constitution and the Rules of Procedure on Impeachment Proceedings of the House of Representatives:<sup>37</sup>

<b>Step</b>	<b>Action</b>	<b>Actor</b>	<b>Time Frame</b>
1	Filing of a verified impeachment complaint	1) By any member of the House of Representatives; or 2) By any citizen upon a resolution of endorsement by any member of the House	None
2*	Forwarding the complaint for action	By the Secretary General to the Speaker of the House	None
3	Inclusion in the Order of Business	By direction of the Speaker of the House to the Majority Leader	Within 10 session days
4	Referral to the proper Committee	By the Majority Leader, as the Chairperson of the	Within 3 session days

<sup>37</sup> CONST. art. XI, § 3; 17<sup>th</sup> Congress Rules, adopted Aug. 23, 2016, published Aug. 26, 2016.

		Committee on Rules, to the Committee on Justice	
5*	Determination of whether or not the complaint is sufficient in: 1) Form 2) Substance (insufficiency in either merits a recommendation of dismissal)	By a majority vote of the members of the Committee on Justice	Within 60 session days from referral of the complaint
6*	Determination of whether sufficient grounds for impeachment were alleged	By a majority vote of the members of the Committee on Justice	
7*	Determination of existence of probable cause based on evidence submitted	By a majority vote of the members of the Committee on Justice	
8	Recommendation in a Committee Report, which includes a: 1) Resolution setting forth the Articles of Impeachment; or 2) Resolution dismissing the complaint	By a majority vote of the members of the Committee on Justice	
9	Calendared for consideration	By the Committee on Rules	Within 10 session days from receipt of report
10	Approval: 1) At least 1/3 to approve the resolution setting forth Articles of Impeachment – otherwise, dismissed 2) At least 1/3 to overturn a resolution of dismissal – Committee to draft Articles of Impeachment	By the plenary body	Within 60 session days from submission of Committee Report
11	Transmittal of the Articles of Impeachment to Senate	By the Secretary General	

**TABLE 3.** Outline of Impeachment Under the Regular Procedure. All steps marked with a “\*” are not constitutionally mandated but are part of the Rules on Impeachment Proceedings promulgated by the House of Representatives.

#### IV. IMPEACHMENT PROCEEDINGS AND ATTEMPTS

##### A. Prior to the 1987 Constitution (1935-1986)

Prior to the 1987 Constitution, three Presidents and a Justice of the Supreme Court underwent impeachment proceedings. None were impeached as all complaints or resolutions were recommended for dismissal by the appropriate committees, and such recommendations were either affirmed or unacted upon by the plenary.

In 1949, the first ever impeachment case in Philippine history was filed against President Elpidio Quirino for culpable violation of the Constitution and other high crimes.<sup>38</sup> The Special Committee created by the House of Representatives to look into the impeachment complaint recommended that the charges be rejected “for lack of factual and legal basis.”<sup>39</sup> This recommendation was approved by the House of Representatives. Thus, the charges were dismissed.<sup>40</sup>

In 1963, a resolution for impeachment was filed by Members of the House against President Diosdado Macapagal for culpable violation of the Constitution and other high crimes.<sup>41</sup> The Committee on Judiciary found that “all the charges embodied [...] are not legally sufficient to constitute valid grounds for impeachment,” thus recommending its dismissal for lack of legal basis.<sup>42</sup> A subsequent resolution for impeachment<sup>43</sup> was filed by Representative Jose B. Laurel, Jr. against President Macapagal, which was again recommended for dismissal by the Committee on Judiciary in 1965.<sup>44</sup>

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<sup>38</sup> The grounds cited by the resolution for impeachment were: (i) wasting and misappropriating public funds; (ii) abuse of power, violation of the law and Constitution, and immoral extravagance; (iii) intervention prejudicial to the public interest in the cement transaction wherein his brother, Antonio Quirino, was in connivance with a Russian businessman; (iv) aiding and abetting graft and corruption in the government; and (v) great official misconduct and acts which deprived the government of substantial revenue. *See* H. Record 65, 1<sup>st</sup> Cong., 4<sup>th</sup> Sess., 1570 (Apr. 28, 1949).

<sup>39</sup> *Id.* at 1558.

<sup>40</sup> *Id.* at 1597-99.

<sup>41</sup> The charges were: (i) illegal rice importation; (ii) awarding reparations to Sultan Shipping Lines which gave it an unwarranted benefit and advantage over existing legitimate inter-island shipping companies; (iii) that the offenses are not only high crimes but also amount to culpable violation of the Constitution. *See* H. Res. 169, 5<sup>th</sup> Cong., 3<sup>rd</sup> Sess. (1964). Resolution to Impeach Diosdado Macapagal, President of the Republic of the Philippines.

<sup>42</sup> C. Rpt. 5482, 5<sup>th</sup> Cong., 3<sup>rd</sup> Sess. (1964). Committee on Judiciary.

<sup>43</sup> H. Res. 216, 5<sup>th</sup> Cong., (1965). Resolution to Impeach President Diosdado Macapagal.

<sup>44</sup> C. Rpt. 6909, 5<sup>th</sup> Cong., 1<sup>st</sup> Special Sess. (1965). Committee on Judiciary.

In 1983, a complaint for impeachment was filed against Associate Justice Hermogenes Concepcion, Jr. on the grounds of culpable violation of the Constitution, and graft and corruption.<sup>45</sup> The complaint was referred to the Committee on Justice, Human Rights and Good Governance, which rejected the charges complained of and recommended its dismissal.<sup>46</sup>

Two impeachment complaints were filed against former President Ferdinand Marcos: one in 1969, and another in 1985. In the 1969 complaint, it was alleged that President Marcos committed high crimes, culpable violation of the Constitution, and bribery.<sup>47</sup> A motion to discharge the Committee on the resolution for impeachment was raised, but lost.<sup>48</sup> In the 1985 complaint, 56 Assemblymen accused President Marcos of “graft and corruption, culpable violation of the Constitution, and gross violation of his oath of office and other high crimes.”<sup>49</sup> The Committee on Justice, Human Rights and Good Government dismissed the impeachment complaint for being insufficient in form and substance.<sup>50</sup>

## **B. Presidential Term of Joseph Estrada (1998-2000)**

### *1. President Joseph Estrada (2000)*

On October 12, 2000, an impeachment complaint was filed against President Joseph Estrada for alleged bribery, graft and corruption, betrayal

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<sup>45</sup> The principal charges centered on Justice Concepcion’s deemed persistence to be the Vice-Chairman of the Board of Directors of BF Homes despite pending cases of BF Homes before the Supreme Court, as well as his active participation in the deliberations deciding cases involving BF Homes’ complaint and charges. *See* C. Rpt. 1060, Batasang Pambansa, 6<sup>th</sup> Sess., (1984). Committee on Justice, Human Rights and Good Government.

<sup>46</sup> *Id.*

<sup>47</sup> The charges included: (i) willful, unlawful, malicious, and felonious commission of numerous crimes any one of which is sufficient ground for impeachment; (ii) willful, unlawful, and malicious usurpation of legislative power in plain and brazen disregard of the Constitution and pertinent laws; (iii) commission of culpable violations of the Constitution by violation his oath of office and his sworn duty to take care that the laws are faithfully executed; (iv) commission of culpable violations of the Constitution by making unwarranted and dictatorial intrusions into the affairs of local governments over which the Constitution grants him only general supervision as provided by law; (v) commission of several other culpable violations of the Constitution by acts forbidden by, or contrary to, other provisions of the fundamental law; and (iv) enrichment of himself in public office. *See* Cong. Rec. No. 71-73, 6<sup>th</sup> Cong., 4<sup>th</sup> Sess. (1969).

<sup>48</sup> *Id.*

<sup>49</sup> The allegations involved the amassed properties in the United States and misuse and misapplication of funds for the construction of the Film Center; *see* Impeachment Complaint against Ferdinand Marcos, House of Representatives Archives.

<sup>50</sup> New World Encyclopedia, *Ferdinand Marcos*, available at [http://newworldencyclopedia.org/entry/Ferdinand\\_Marcos](http://newworldencyclopedia.org/entry/Ferdinand_Marcos) (last accessed Mar. 20, 2018).

of public trust, and culpable violation of the Constitution.<sup>51</sup> The complaint was referred to the Committee on Justice on October 23, 2000.

On November 6, 2000, the Committee on Justice held a hearing to tackle the complaint. Since verified Resolutions of Endorsement of 77 Members of the House accompanied the complaint, the Committee resolved to immediately refer the complaint to the plenary, pursuant to Section 3(4) of Article XI of the Constitution, and Section 13 of the Rules of Procedure on Impeachment Proceedings of the 11<sup>th</sup> Congress, which respectively provide:

In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and trial by the Senate shall forthwith proceed.<sup>52</sup>

Endorsement of the Complaint/Resolution to the Senate. – A verified complaint/resolution of impeachment filed by at least one-third (1/3) of all the members of the House shall constitute the Articles of Impeachment, and in this case the verified complaint/resolution shall be endorsed to the Senate in the same manner as an approved bill of the House.<sup>53</sup>

On November 13, 2000, the Report of the Committee on Justice was forwarded to the Office of the Speaker and was included in the Order of Business of the same day.<sup>54</sup> Then-Speaker of the House Manuel Villar, Jr. manifested on the floor that by virtue of Section 3(4), Article XI of the Constitution, the impeachment complaint having been endorsed by at least one-third of all the Members of the House, the same shall constitute the Articles of Impeachment, and it has become the duty of the House to endorse it to the Senate. He then directed the Secretary General to immediately transmit the Articles of Impeachment to the Senate, resulting in the actual impeachment of President Estrada, the first public official to be impeached in the history of the Philippines.<sup>55</sup>

## 2. *Ombudsman Aniano Desierto (2001)*

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<sup>51</sup> H. Rpt. on the Verified Impeachment Complaint against His Excellency President Joseph Ejercito Estrada, 11<sup>th</sup> Cong., 3<sup>rd</sup> Sess. (2000). Committee on Justice.

<sup>52</sup> CONST. art. XI, § 3(4).

<sup>53</sup> 11<sup>th</sup> Congress Rules of Procedure on Impeachment Proceedings, § 13.

<sup>54</sup> H. Journal 36, 11<sup>th</sup> Cong., 3<sup>rd</sup> Sess., 2 (Nov. 13, 2000).

<sup>55</sup> ANTONIO R. TUPAZ & EDSEL C.F. TUPAZ, FUNDAMENTALS ON IMPEACHMENT 8 (2001); Francisco Tatad, *The Ravages of Impeachment*, THE MANILA TIMES, Oct. 11, 2017, available at <http://www.manilatimes.net/the-ravages-of-impeachment/355789/>.

On November 6, 2001, a verified complaint for impeachment was filed against Ombudsman Aniano Desierto, who was charged with bribery, betrayal of public trust, and culpable violation of the Constitution.<sup>56</sup> The charges stemmed from his alleged acceptance of hundreds of thousands of pesos in cash, as well as Sony shopping bags containing Betacam parts and accessories, from a certain individual who was involved in a corruption scandal, in exchange for holding the investigation against the latter in abeyance.

On December 12, 2001, the complaint was found to be sufficient in form, but was voted to be lacking in substance on December 18, 2001, thus recommended for dismissal by the Committee on Justice.<sup>57</sup> On February 13, 2002, the Committee Report was affirmed by the plenary; consequently, the complaint was dismissed.<sup>58</sup>

### **C. Presidential Term of Gloria Macapagal-Arroyo (2001-2010)**

#### *1. Chief Justice Hilario Davide (2003)*

On June 2, 2003, former President Estrada filed an impeachment complaint against Chief Justice Hilario Davide as well as seven other Associate Justices of the Supreme Court. Chief Justice Davide and the other Justices were charged with culpable violation of the Constitution, betrayal of public trust, and other high crimes. The charges were rooted in how former President Estrada was ousted from his seat as President through the respondents' facilitation of the oath-taking and assumption of the presidency by then-Vice President Gloria Macapagal-Arroyo.<sup>59</sup>

The complaint, along with its attachments, was received by the Committee on Rules on August 4, 2003 and referred to the Committee on Justice the next day.<sup>60</sup> The first hearing was held on September 10, 2003, supposedly to determine the complaint's sufficiency or insufficiency in form, but because the required majority vote was not reached, the determination

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<sup>56</sup> C. Rpt., 150, 12<sup>th</sup> Congress, 1<sup>st</sup> Sess. (2002). Committee on Justice.

<sup>57</sup> *Id.* See also Committee on Justice Fact Sheet, Dismissal of the Verified Impeachment Complaint against Ombudsman Aniano A. Desierto 61, Desierto Impeachment, House of Representatives Archives.

<sup>58</sup> Cong. Rec., p. 294 (Feb. 13, 2002). Desierto Impeachment, House of Representatives Archival Records.

<sup>59</sup> C. Rpt. 2074, 12<sup>th</sup> Cong., 3<sup>rd</sup> Sess. (2004). Committee on Justice.

<sup>60</sup> *Id.*

was deferred.<sup>61</sup> On October 22, 2003, the complaint was found to be sufficient in form but insufficient in substance.<sup>62</sup>

The day after the first complaint was found to be insufficient in substance, a second impeachment complaint was filed solely against Chief Justice Davide, accompanied by a resolution of endorsement/impeachment signed by at least one-third of all the Members of the House of Representatives. The complaint was filed on the grounds of graft and corruption, betrayal of public trust, culpable violation of the Constitution, and failure to maintain good behavior while in office for the alleged anomalies in the disbursements of the Judiciary Development Fund.

From the filing of the subsequent impeachment complaints against Chief Justice Davide arose the petitions filed before the Supreme Court, arguing that “the second impeachment complaint is unconstitutional as it violates the provision of Section 5 of Article XI of the Constitution that ‘[n]o impeachment proceedings shall be initiated against the same official more than once within a period of one year.’”<sup>63</sup>

On October 28, 2003, a motion that the second impeachment complaint be transmitted to the Senate was made but not carried for lack of quorum during the plenary session.<sup>64</sup> On the same day, the Court issued a resolution which called on petitioners and respondent House of Representatives to maintain the *status quo*.<sup>65</sup> On November 10, 2003, the Supreme Court *En Banc* promulgated its landmark ruling in *Francisco*, defining “initiation” of impeachment complaints as commencing from the referral of complaint to the Committee on Justice of the House of Representatives, and consequently declaring the second impeachment complaint barred under Section 3(5) of Article XI of the Constitution.<sup>66</sup>

## 2. President Gloria Macapagal-Arroyo (2005, 2006, 2007, 2008)

### i. 2005

On June 27, 2005, a complaint for impeachment was filed against President Macapagal-Arroyo, grounded on betrayal of public trust because of the “Hello Garci” scandal, a wiretapped conversation that alleged massive

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Francisco*, 425 SCRA 44, 111.

<sup>64</sup> *Id.* at 117.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 169-70.



electoral fraud.<sup>67</sup> The next day, a supplemental complaint was filed, which was endorsed by two Representatives. A separate complaint was filed by another private complainant on July 4, 2005, which was endorsed by one Representative.<sup>68</sup> Between June 29 and July 21 of the same year, the first complainant filed six more supplemental affidavits, but not one of these affidavits was endorsed by a Member of the House.<sup>69</sup> On July 25, 2005, the Speaker directed the Secretary General, through a memorandum, to include the first complaint, as well as the unendorsed supplemental affidavits and the endorsements of two Representatives in the Order of Business.<sup>70</sup> The Speaker also gave the directive to include the second complaint in the Order of Business in a separate memorandum on the same day.<sup>71</sup> All complaints were subsequently referred to the Committee on Justice on July 25, 2005. The complaints were actually transmitted to, and received by, the Committee the next day, July 26, 2005.<sup>72</sup> An “Amended Complaint” filed in the morning of July 25, 2005 by 29 Members of the House, various organizations, and private individuals as complainants was also referred and transmitted to, and received by the Committee, on July 26, 2005. This would be recognized as the third complaint.<sup>73</sup>

The barrage of impeachment complaints had initially confused the Committee on how to proceed. Specifically, it contemplated whether the first complainant’s supplemental filing was to be considered a mere amendment or a new complaint altogether. Moreover, while all three complaints were referred to the Committee on the same day, it confronted the issue of whether or not the earliest complaint barred the consideration of all others.<sup>74</sup> Ultimately, the Committee voted to dismiss all complaints.<sup>75</sup> The Committee’s findings were eventually affirmed by the plenary, leading to the dismissal of all complaints.<sup>76</sup>

## ii. 2006

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<sup>67</sup> Complaint for Impeachment versus Gloria Macapagal-Arroyo by Atty. Oliver O. Lozano, House of Representatives Archives.

<sup>68</sup> 2005 Impeachment of President Gloria Macapagal-Arroyo, House of Representatives Archives.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> See Spot Report, 13<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Aug. 10 2005). House Committee on Justice; and Spot Report, 13<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Aug. 24, 2005). House Committee on Justice.

<sup>75</sup> Spot Report, 13<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Aug. 31, 2005). House Committee on Justice.

<sup>76</sup> See H. Rpt. 1012, 14<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2005). Committee on Justice; and H. Journal No. 14, 13<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Sept. 5 to 6, 2005).

In 2006, eight impeachment complaints were filed against President Macapagal-Arroyo on the grounds of culpable violation of the Constitution, graft and corruption, other high crimes and betrayal of public trust. The meeting for initial consideration of all eight complaints was conducted on August 8, 2006.<sup>77</sup> The Justice Committee Chairman manifested that the complaints were essentially the same in terms of their causes of action, differing only as to complainants and endorsers.<sup>78</sup> A Representative moved that only the eighth complaint be considered as it was the only impeachment complaint that was seasonably filed. A discussion ensued, and in the end, the Committee voted in favor of the motion “to dismiss the first seven impeachment complaints and to choose the eighth complaint as seasonably filed, having been filed on July 27, 2006. The first to the seventh complaints having been filed before July 26, 2006, 4:20pm, which is less than one year from the filing of the Lozano Complaint, which was received by the Committee on Justice on July 26, 2005, 4:20pm.”<sup>79</sup>

The following day, during the subsequent hearing of the Committee on Justice, the eighth impeachment complaint was found to be sufficient in form.<sup>80</sup> After two hearings to deliberate on the substance of the complaint, the Committee found that the remaining impeachment complaint was insufficient in substance and recommended its dismissal.<sup>81</sup> On August 24, 2008, the plenary voted to affirm the resolution dismissing the impeachment complaint against President Macapagal-Arroyo.<sup>82</sup>

### iii. 2007

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<sup>77</sup> Highlights of the Meeting, 13<sup>th</sup> Cong., 3<sup>rd</sup> Sess. (Aug. 8, 2006). House Committee on Justice.

<sup>78</sup> Highlights of the Meeting, 13<sup>th</sup> Cong., 3<sup>rd</sup> Sess. (Aug. 8, 2006). House Committee on Justice. Allegations included in the complaints were: (i) destroying the integrity of the electoral process as evidenced by the “Hello Garci” recordings; (ii) commission of electoral fraud in the 2004 elections; (iii) unlawful use of government personnel and funds to buy votes during the 2004 elections and promote her candidacy; (iv) issuance of patently illegal and unconstitutional issuances to suppress investigations of her criminal acts, in the process subverting press freedom, free expression, free assembly; (v) violation of constitutional duty when she allowed, abetted, and countenanced gross violations of human rights and crimes against humanity under international law; (vi) entering into illegal government contacts and criminally concealed conjugal properties, among others. *See* Summary of the Causes of Action in the 2006 Impeachment Complaints Against President Gloria Macapagal-Arroyo, Committee on Justice, House of Representatives Archives.

<sup>79</sup> Spot Report, 13<sup>th</sup> Cong., 3<sup>rd</sup> Sess. (Aug. 8, 2006). House Committee on Justice.

<sup>80</sup> Spot Report, 13<sup>th</sup> Cong., 3<sup>rd</sup> Sess. (Aug. 9, 2006). House Committee on Justice.

<sup>81</sup> Spot Report, 13<sup>th</sup> Cong., 3<sup>rd</sup> Sess. (Aug. 15 to 16, 2006). House Committee on Justice.

<sup>82</sup> H. Journal No. 8, 13<sup>th</sup> Cong., 3<sup>rd</sup> Sess. (Aug. 23 to 24, 2006).

On October 5, 2007, another impeachment complaint was filed against President Macapagal-Arroyo, charging her with betrayal of public trust for having “connived with COMELEC Chairman Benjamin Abalos and House Speaker Jose De Venecia, Jr. to manipulate the proposals for a national broadband network to pave the way for an overpriced and anomalous contract” and for directing the Department of Transportation and Communication to implement the project.<sup>83</sup> The complaint was referred by the Speaker to the Committee on Justice on October 11, 2007, and was received by the Committee on October 22, 2007.<sup>84</sup>

The initial hearing to discuss the complaint was conducted on November 12, 2007, where the Committee found it to be sufficient in form. During the subsequent hearing on November 14, however, the Committee found the complaint to be insufficient in substance. On November 19, 2007, the Committee Report recommending the dismissal of the complaint was approved by the Committee and reported out for plenary deliberations.<sup>85</sup> On November 26, 2007, the plenary approved the committee report, effectively dismissing the impeachment complaint.<sup>86</sup>

#### iv. 2008

On October 13, 2008, an impeachment complaint against President Macapagal-Arroyo was again filed.<sup>87</sup> The complainants alleged that the President betrayed public trust, culpably violated the Constitution, and committed graft and corruption.<sup>88</sup> It was also alleged that she “authorized the distribution of bribe money to Members of Congress in exchange for the hasty referral of the [2007] impeachment complaint to prevent the filing of a

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<sup>83</sup> Complaint for Impeachment against President Gloria Macapagal-Arroyo (5 Oct. 2007); Resolution of Endorsement by Rep. Edgar S. San Luis, 1<sup>st</sup> District of Laguna (5 Oct. 2007).

<sup>84</sup> C. Rpt. 96, 14<sup>th</sup> Congress, 1<sup>st</sup> Sess. (Nov. 20, 2007). House Committee on Justice.

<sup>85</sup> *Id.* Minutes of the Meeting, 14<sup>th</sup> Cong., 1<sup>st</sup> Sess. (Nov. 19, 2007). House Committee on Justice.

<sup>86</sup> H. Journal No. 39, 14<sup>th</sup> Cong., 1<sup>st</sup> Sess. (Nov. 26, 2007).

<sup>87</sup> C. Rpt. No. 1551, 14<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Dec. 2, 2008).

<sup>88</sup> *Id.* Charges included: (i) betrayal of public trust through her involvement in the ZTE-NBN deal and tampering with the results of the 2004 elections; (ii) culpable violation of the Constitution by entering into the Northrail Project without Monetary Board approval, as well as conspiring, directing, and tolerating with impunity, extra judicial killings, forced disappearances, torture, and systematic violations of civil and political rights; and (iii) graft and corruption for her participation in the overpriced Northrail Project, the fertilizer scam, and the “Hello Garci” scandal.

genuine impeachment complaint.”<sup>89</sup> The complaint was referred to the Committee on Justice on November 10, 2008.<sup>90</sup>

On November 11, 2008, a second impeachment complaint was filed, alleging that the President committed culpable violation of the Constitution by approving the overpriced Northrail Project, and graft and corruption for her approval involvement in the “swine scam” for misuse of funds of the Rural Credit Guarantee Corporation.<sup>91</sup> The same was referred to the Committee on Justice on November 18, 2008. Complaints-in-Intervention were also filed before the Office of the Secretary General on November 12, 2008,<sup>92</sup> and another filed directly with the Committee on Justice on November 17, 2008.

On November 18, 2008, the Committee conducted its first hearing on the first complaint and ruled that it was sufficient in form.<sup>93</sup> The next day, the Committee deliberated on the subsequent complaints, including the complaints-in-intervention.<sup>94</sup> A motion for the dismissal of said complaints was made, “on the ground that the same were barred by the rule prohibiting the filing of more than one impeachment complaint against the same official within a one year period.”<sup>95</sup> This motion was met by disagreement from some Members who clamored for a more “liberal” approach, whereby multiple complaints could be consolidated and deliberated upon in one proceeding.<sup>96</sup> Nevertheless, with 35 in favor of the motion and four against, the three other complaints were dismissed.<sup>97</sup>

From November 24 to 26, 2008, the Committee conducted its deliberations to determine the sufficiency or insufficiency in substance of the first complaint. On November 26, the Committee resolved the question and found the complaint to be insufficient in substance.<sup>98</sup> On December 2,

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<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Supra* note 88.

<sup>92</sup> *Id.* The Quezon complaint-in-intervention alleged that the President committed culpable violation of the Constitution “for her involvement in the execution of the Memorandum of Agreement on Ancestral Domain or MOA-AD creating the Bangsamoro Juridical Entity which was declared unconstitutional.”

<sup>93</sup> Minutes of the Meeting, 14<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Nov. 19, 2008). House Committee on Justice.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> Minutes of the Meeting, 14<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Nov. 26, 2008). House Committee on Justice.

2008, a committee report, recommending the dismissal of the impeachment complaints and complaints-in-intervention was approved by the plenary.<sup>99</sup>

### 3. *Ombudsman Merceditas Gutierrez (2009)*

On March 2, 2009, former Senate President Jovito Salonga, together with 31 other civil society leaders, filed an impeachment complaint against Ombudsman Merceditas Gutierrez on the grounds of betrayal of public trust, and culpable violation of the Constitution.<sup>100</sup> Their charges were founded on the “alleged inaction, mishandling, and downright dismissal of clear cases of graft and corruption, some leading to the President herself and that of her closest associates.”<sup>101</sup> These high-profile cases included the Fertilizer Fund scam and the Mega-Pacific equipment purchase.

On September 29, 2009, the Committee on Justice voted to dismiss the complaint for lack of material substance.<sup>102</sup> The Committee Report recommending the dismissal of the complaint was brought to the floor on November 9, 2009, where the plenary proceeded to approve the dismissal of the impeachment complaint.<sup>103</sup>

## D. Presidential Term of Benigno Aquino III (2010-2016)

### 1. *Justice Mariano Del Castillo*

On December 14, 2010, an impeachment complaint was filed by “comfort women”,<sup>104</sup> together with 11 Members of the House of Representatives, against Supreme Court Associate Justice Mariano del

<sup>99</sup> H. Journal No. 35, 14<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Dec. 2, 2008).

<sup>100</sup> Carmela Fonbuena, *Impeachment complaint filed vs Ombudsman*, ABS-CBN NEWS ONLINE, Mar. 2, 2009, available at <http://news.abs-cbn.com/nation/03/02/09/impeachment-complaint-filed-vs-ombudsman>.

<sup>101</sup> Jovito Salonga et al., *Complaint for Impeachment versus Ombudsman Merceditas Gutierrez* (Mar. 2, 2009).

<sup>102</sup> Delon Porcalla, *Impeachment raps vs Ombudsman junked*, THE PHILIPPINE STAR, Nov. 18, 2009, available at <http://old.philstar.com:8080/headlines/524097/impeachment-raps-vs-ombudsman-junked>.

<sup>103</sup> *Id.*

<sup>104</sup> The civilian complainants, Isabelita Vinuya, Pilar Galang, Maria Quilantang, Maxima dela Cruz, Leonor Suma Wang, were all comfort women during World War II. *See* Vinuya v. Executive Secretary, G.R. No. 162230, 732 SCRA 595, Apr. 28, 2010, describes comfort women as women used by the military to “simultaneously appease soldiers’ sexual appetites and contain soldiers’ activities within a regulated environment,” and, “were forced to live, sleep, and have sex with as many as 30 soldiers per day.”

Castillo.<sup>105</sup> The complainants claimed that Justice Del Castillo, as the *ponente*, betrayed public trust when he allegedly plagiarized certain portions of the Supreme Court decision in *Vinuya v. Executive Secretary*.<sup>106</sup>

On May 18, 2011, the Committee on Justice found the complaint to be sufficient in form.<sup>107</sup> On December 7, 2011, the same Committee found the complaint to be sufficient in substance.<sup>108</sup> Two months later, the Committee determined that there was sufficiency of the ground for impeachment, and on February 21, 2012, concluded that probable cause existed to impeach Justice Del Castillo for betrayal of public trust.<sup>109</sup>

The supposed committee report recommending the preparation and filing of the Articles of Impeachment was never tackled during plenary sessions, rendering the case dismissed for inaction because of the failure of the House of Representatives, as mandated by the Constitution, to resolve the action on the complaint within sixty session days.<sup>110</sup> The Del Castillo case remained at the level of the Committee on Justice because of the coinciding filing of complaints against him, Ombudsman Gutierrez, and Chief Justice Corona.

## 2. *Ombudsman Merceditas Gutierrez (2010)*

A complaint for impeachment was filed on July 22, 2010 against Ombudsman Merceditas Gutierrez. A second complaint was filed on August 3, 2010. Both complaints accused Ombudsman Gutierrez of betrayal of public trust and culpable violation of the Constitution, covering the following issues: the “NBN-ZTE Deal,” the “Philip Pestano Murder,” the

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<sup>105</sup> RG Cruz, *Impeachment rap filed vs SC justice in plagiarism case*, ABS-CBN NEWS ONLINE, Dec. 14, 2010, available at <http://news.abs-cbn.com/nation/12/14/10/impeachment-rap-filed-vs-sc-justice-plagiarism-case>.

<sup>106</sup> G.R. No. 162230, 732 SCRA 595, Apr. 28, 2010.

<sup>107</sup> House Committee Daily Bulletin, 15<sup>th</sup> Cong., 1<sup>st</sup> Sess. (May 18, 2011).

<sup>108</sup> House Committee Daily Bulletin, 15<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Dec. 7, 2011).

<sup>109</sup> House Committee Daily Bulletin, 15<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Feb. 7, 2012); House Committee Daily Bulletin, 15<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Feb. 21, 2012).

<sup>110</sup> CONST. art. XI, § 3(2). “A verified complaint for impeachment may be filed by any Member of the House of Representatives or by any citizen upon a resolution of endorsement by any Member thereof, which shall be included in the Order of Business within ten session days, and referred to the proper Committee with three session days thereafter. The Committee, after hearing, and by a majority vote of all its members, shall submit its report to the House within sixty session days from such referral, together with the corresponding resolution. The resolution shall be calendared for consideration by the House within ten session days from receipt thereof.”; RG Cruz, *House to drop del Castillo impeachment*, ABS-CBN NEWS, June 1, 2012, available at <http://news.abs-cbn.com/nation/06/01/12/house-drop-del-castillo-impeachment>.

“Fertilizer Fund Scam,” the “Euro-General” incident, and the Mega Pacific automation contract by the COMELEC.<sup>111</sup>

The first impeachment complaint was forwarded by the Secretary General of the House of Representatives to the Speaker of the House on July 27, 2010, who, in turn, directed the Committee on Rules to include it in the Order of Business on August 2, 2010.<sup>112</sup> The second impeachment complaint was forwarded by the Secretary General to the Speaker of the House on the same day, and the Speaker, directed the Committee on Rules to include it in the Order of Business on August 9, 2010.<sup>113</sup>

On August 10, 2010, the Chairperson of the Committee on Rules gave instructions to include the two complaints in the Order of Business, which was done the following day.<sup>114</sup> On such following day, the two impeachment complaints filed against the Ombudsman were “simultaneously referred” to the Committee on Justice during the plenary session of the House of Representatives.<sup>115</sup>

On September 1, 2010, the first hearing on the two complaints was held, and both were found to be sufficient in form.<sup>116</sup> A week later, both complaints were again declared to be sufficient in substance.<sup>117</sup> From this point, impeachment proceedings were suspended to give way to the determination by the Supreme Court of a petition filed by the Ombudsman, questioning the validity of the simultaneous referral of the two complaints to the Committee on Justice.<sup>118</sup>

The Court’s ruling in *Gutierrez* brought to fore the issues that were consistently entertained by the House Committee on Justice in several

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<sup>111</sup> Minutes of the Meeting, 15<sup>th</sup> Cong., 1<sup>st</sup> Sess. (Mar. 2, 2011). House Committee on Justice.

<sup>112</sup> *Gutierrez*, 643 SCRA at 226.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> H. Journal 9, 15<sup>th</sup> Cong., 1<sup>st</sup> Sess. (Aug. 11, 2010).

<sup>116</sup> Minutes of the Meeting, 15<sup>th</sup> Cong., 1<sup>st</sup> Sess. (Sept. 1, 2010). House Committee on Justice.

<sup>117</sup> Minutes of the Meeting, 15<sup>th</sup> Cong., 1<sup>st</sup> Sess. (Sept. 7, 2010). House Committee on Justice.

<sup>118</sup> *Gutierrez*, 643 SCRA at 200, 233-34. “The unusual act of *simultaneously* referring to public respondent two impeachment complaints presents a novel situation to invoke judicial power. [...] And so the Court proceeds to resolve the substantive issue—whether public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its two assailed Resolutions. Petitioner basically anchors her claim on alleged violation of the due process clause (Art. III, Sec. 1) and of the one-year bar provision (Art. XI, Sec 3, par. 5) of the Constitution.”

deliberations it held to resolve the complaints involving former President Macapagal-Arroyo, and finally laid down an interpretation to guide the Committee in dealing with simultaneous filing of complaints:

The Court, of course, does not downplay the importance of an impeachment complaint, for it is the matchstick that kindles the candle of impeachment proceedings. The filing of an impeachment complaint is like the lighting of a matchstick. Lighting the matchstick alone, however, cannot light up the candle, unless the lighted matchstick reaches or torches the candle wick. *Referring the complaint to the proper committee ignites the impeachment proceeding. With a simultaneous referral of multiple complaints filed, more than one lighted matchsticks light the candle at the same time. What is important is that there should only be ONE CANDLE that is kindled in a year, such that once the candle starts burning, subsequent matchsticks can no longer rekindle the candle.*<sup>119</sup>

Hearings by the Committee on Justice resumed on February 2, 2011, but the Committee only made a determination as to the sufficiency of the grounds for impeachment on March 1, 2011.<sup>120</sup> On March 8, 2011, probable cause was found to impeach Ombudsman Gutierrez for betrayal of public trust in both complaints.<sup>121</sup> Committee Report No. 778 on House Resolution No. 1089 “Impeaching Ombudsman Ma. Merceditas Navarro-Gutierrez for Betrayal of Public Trust” was considered during the plenary session on March 21, 2011.<sup>122</sup> The deliberations on the resolution went on, and by 12:00 a.m. of the next day, nominal voting was called for the approval of the resolution.<sup>123</sup> With 210 affirmative votes, 47 negative votes, and four abstentions, the resolution impeaching Ombudsman Gutierrez was approved.<sup>124</sup> For the first time in Philippine history, an Ombudsman was impeached by the House of Representatives.<sup>125</sup>

On April 29, 2011, Ombudsman Gutierrez submitted her letter of resignation to President Aquino, which he immediately accepted.<sup>126</sup> Her

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<sup>119</sup> *Gutierrez*, 643 SCRA198, 257. (Emphasis supplied.)

<sup>120</sup> Minutes of the Meeting, 15<sup>th</sup> Cong., 1<sup>st</sup> Sess. (Mar. 2, 2011). House Committee on Justice.

<sup>121</sup> Minutes of the Meeting, 15<sup>th</sup> Cong., 1<sup>st</sup> Sess. (Mar. 8, 2011). House Committee on Justice.

<sup>122</sup> H. Journal 65, 15<sup>th</sup> Cong., 1<sup>st</sup> Sess. (Mar. 21 to 23, 2011).

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

<sup>125</sup> *House impeaches Ombudsman Gutierrez*, ABS-CBN NEWS, Mar. 22, 2011, available at <http://news.abs-cbn.com/nation/03/21/11/house-impeaches-ombudsman-gutierrez>.

<sup>126</sup> Kimberly Jane Tan, *Ombudsman Merci resigns, 10 days before Senate trial*, GMA NEWS ONLINE, Apr. 29, 2011, available at



letter of resignation stated that it would be effective May 6, 2011, or three days before the supposed start of the Senate trial.<sup>127</sup> Her resignation rendered the impeachment trial moot and academic.<sup>128</sup>

### 3. *Chief Justice Renato Corona (2011)*

On December 12, 2011, a verified complaint for impeachment was filed against Chief Justice Corona by 188 (out of 284) Members of the House of Representatives. The charges included in the complaint were betrayal of public trust, culpable violation of the Constitution, and graft and corruption.<sup>129</sup> The issue that would be put under the spotlight was Corona's alleged failure to make a proper and accurate disclosure of his Statement of Assets, Liabilities, and Net Worth ("SALN").<sup>130</sup> Since more than one third of the Members of the House signed and verified the complaint, the same was adopted as the Articles of Impeachment endorsed to the Senate.<sup>131</sup> On December 14, 2011, the Senate constituted itself into an Impeachment Court,<sup>132</sup> with trial commencing on January 16, 2012.<sup>133</sup>

### 4. *President Benigno Aquino III (2014)*

On July 21, 2014, an impeachment complaint was filed against President Benigno Aquino III. The next day, another impeachment complaint was filed by members of youth organizations. Both complaints charged President Aquino with culpable violation of the Constitution, betrayal of public trust, and graft and corruption, primarily due to President Aquino's involvement in the controversial Disbursement Acceleration Program, which was declared unconstitutional by the Supreme Court.<sup>134</sup> On July 24, 2014, a third impeachment complaint was filed, which alleged that the President committed culpable violation of the Constitution by entering

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<http://www.gmanetwork.com/news/news/nation/219073/ombudsman-merci-resigns-10-days-before-senate-trial/story/>.

<sup>127</sup> *Ombudsman submits resignation to Pnoy*, ABS-CBN NEWS, Apr. 29 2011, available at <http://news.abs-cbn.com/nation/04/29/11/ombudsman-submits-resignation-pnoy-sources>.

<sup>128</sup> *Id.*

<sup>129</sup> *Summary of the impeachment complaint vs CJ Corona*, ABS-CBN NEWS, Dec. 12, 2011), available at <http://news.abs-cbn/-depth/12/12/11/summary-impeachment-complaint-vs-cj-corona>.

<sup>130</sup> Maila Ager, *Corona SALN bared*, PHIL. DAILY INQ., Jan. 18, 2012, available at <http://newsinfo.inquirer.net/130327/corona-saln-bared>.

<sup>131</sup> Rule IV, § 13, Rules on Impeachment Proceedings of the House of Representatives.

<sup>132</sup> S. Journal 43, 15<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Dec. 14, 2011).

<sup>133</sup> S. Record Sitting as an Impeachment Court, 15<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Jan. 16, 2012).

<sup>134</sup> *See Araullo v. Aquino III*, G.R. No. 209287, 728 SCRA 1, July 1, 2014.

into the Enhanced Defense Cooperation Agreement with the United States, which allowed the latter to access Philippine military bases.

On August 26, 2014, during the initial hearing of the Committee on Justice on the complaints against President Aquino, the Committee determined that all three impeachment complaints were sufficient in form.<sup>135</sup> A subsequent hearing to determine sufficiency in substance was held on September 2, 2014, wherein the Committee found all three complaints to be insufficient in substance, thus recommending the dismissal of the cases against the President.<sup>136</sup>

## **E. Presidential Term of Rodrigo Duterte (2016-Present)**

### *1. President Rodrigo Duterte*

On March 16, 2017, the first impeachment complaint against President Rodrigo Duterte was filed. The grounds cited in the complaint included culpable violation of the Constitution, betrayal of public trust, graft and corruption, bribery, and other high crimes. Specific allegations include amassing ill-gotten wealth through the hiring of ghost employees when he was still the mayor of Davao City, failing to protect and assert Philippine sovereignty over the disputed territories with China, and sought to hold the President accountable for the thousands of deaths brought about by the “war on drugs.”

On May 10, 2017, the impeachment complaint was referred to the Committee on Justice. Subsequently, on May 15, 2017, the Committee, in its initial hearing on the complaint, found it to be sufficient in form but insufficient in substance, citing the lack of personal knowledge on the part of the complainant to support the complaint’s narration of facts.<sup>137</sup>

### *2. Vice President Leni Robredo (2017)*

Two impeachment complaints were drafted against Vice President Leni Robredo in the first half of 2017. The first one was grounded on the Vice President’s “strong criticism of the administration’s war on drugs” in a video message sent by the Office of the Vice President to the United

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<sup>135</sup> Committee Daily Bulletin, 16<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Aug. 24, 2014).

<sup>136</sup> Committee Daily Bulletin, 16<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Sep. 2, 2014).

<sup>137</sup> Committee Daily Bulletin, 17<sup>th</sup> Cong., 1<sup>st</sup> Sess. (May 15, 2017).

Nations.<sup>138</sup> A second impeachment complaint was also set to be filed, alleging betrayal of public trust for the same video message cited in the first complaint, graft and corruption for supposedly using housing funds to sponsor a convention in the US unrelated to housing, and culpable violation of the Constitution for not stating in her SALN that she owned shares of stocks of Manila Electric Company.<sup>139</sup>

Both complaints had no endorsers and could not be acted upon by the House Secretary General, being “mere scraps of paper.”<sup>140</sup>

### 3. *Commission on Elections Chairman Juan Andres Bautista (2017)*

On August 23, 2017, an impeachment complaint was filed against Commission on Elections (“COMELEC”) Chairman Juan Andres Bautista, alleging betrayal of public trust in that he neglected his duties as head of the agency, resulting in the data breach or hacking of the COMELEC website; that he failed to disclose his true net worth to the public; and that he received referral fees from SMARTMATIC, the technology provider of COMELEC. The next day, the House Secretary General transmitted the complaint to the Office of the Speaker. On September 5, 2017, the complaint was forwarded to the Committee on Rules. It was included in the Order of Business the next day, and referred to the Committee on Justice the day after. On September 13, 2017, a Motion to Admit Substitute Verification was filed by the complainants through their counsel.

On September 20, 2017, the Committee on Justice dismissed the complaint for insufficiency in form since the complaint lacked the proper verification.<sup>141</sup> The Motion to Admit Substitute Verification was considered, but was objected to by a majority of the Members, manifesting that to admit such motion would be an admission of the “fatal defect” in the verification, and would amount to a violation of the one-year bar rule.<sup>142</sup> On October 5,

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<sup>138</sup> Manuel Mogato, *Philippines VP faces impeachment complaint for criticizing drugs war*, REUTERS NEWS, Mar. 20, 2017, available at <https://www.reuters.com/article/us-philippines-impeachment/philippines-vp-faces-impeachment-complaint-for-criticizing-drugs-war-idUSKBN16R0GU>.

<sup>139</sup> Trishia Billones, *Weeks later, still no congressman endorsing Robredo complaint*, ABS-CBN NEWS, May 17, 2017, available at <http://news.abs-cbn.com/news/05/16/17/weeks-later-still-no-congressman-endorsing-robredo-impeachment-complaint>; Lira Dalangin-Fernandez, *Robredo impeach complaint delivered to House, awaits endorser*, INTERAKSYON, May 2, 2017, available at <http://www.interaksyon.com/robredo-impeachment-is-filed-no-ones-endorsing-it-as-yet/>.

<sup>140</sup> *Id.*

<sup>141</sup> House Committee Daily Bulletin, 17<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Sept. 20, 2017).

<sup>142</sup> *Id.*

2017, the Committee approved the Committee Report with the resolution dismissing the impeachment complaint against Bautista.<sup>143</sup>

The tides changed however, when more than one-third<sup>144</sup> of the Members of the House voted to reject the resolution dismissing the complaint.<sup>145</sup> The plenary vote happened in the afternoon of October 11 2017, the same day that Chairman Bautista announced that he would be resigning from his post effective December 31, 2017.<sup>146</sup>

On October 24, 2017, the Committee on Justice met again supposedly to deliberate on the Articles of Impeachment to be filed against COMELEC Chair Bautista, but because the President accepted Bautista's resignation "effective immediately", the issue had already become moot and academic.<sup>147</sup>

#### 4. *Chief Justice Ma. Lourdes Sereno (2017)*

On August 30, 2017, an impeachment complaint was filed against Chief Justice Ma. Lourdes Sereno, and the same was endorsed by 25 Representatives. It was alleged that the Chief Justice should be impeached on the grounds of culpable violation of the Constitution, corruption, betrayal of public trust, and other high crimes. These grounds were premised on various issues totaling to 27 charges, including the supposed manipulation of the Judicial and Bar Council shortlist by the Chief Justice, manipulation and delay of a resolution transferring Maute cases outside Mindanao, delayed action on petitions for survivorship benefits of deceased Justices, failure to truthfully disclose her net worth in her SALN, use of public funds to purchase a luxury vehicle, stay in opulent hotels, and fly first class, and the hiring of an information technology consultant with an excessive compensation without public bidding.

On September 4, 2017, a second impeachment complaint was filed against the Chief Justice by 16 Representatives. The complaint cited culpable violation of the Constitution and betrayal of public trust as its grounds for impeachment, stemming from the following allegations: issuance of an

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<sup>143</sup> House Committee Daily Bulletin, 17<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Oct. 5, 2017).

<sup>144</sup> *Id.* 137 voted to reject the committee resolution, 75 voted to adopt, and two abstained.

<sup>145</sup> H. Journal 36, 17<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Oct. 11, 2017)

<sup>146</sup> Bea Cupin, *House impeaches COMELEC Chairman Bautista*, RAPPLER, Oct. 11, 2017, available at <http://rappler.com/nation/184940-house-representatives-impeaches-comelec-andres-bautista>.

<sup>147</sup> Committee Daily Bulletin, 17<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Oct. 24, 2017).

administrative order creating and reopening court offices without authority from the Court *en banc*, violation of the Constitution for appointing a government official with another public post as head of her staff, granting travel allowances for foreign travel to her staff which were charged to the Supreme Court funds without *en banc* approval, and inexcusable negligence for sitting on applications for posts in the Supreme Court which had been vacant for more than three years.

On September 7, 2017, both complaints were simultaneously referred to the Committee on Justice. On September 13, 2017, the Committee deliberated on the two impeachment complaints. The second impeachment complaint was found to be insufficient in form for lack of proper verification.<sup>148</sup> The first complaint, on the other hand, was found to be sufficient both in form and substance. Hence, a subsequent hearing to determine sufficiency of grounds was calendared.<sup>149</sup> On October 5, 2017, the Committee found the grounds to be sufficient, and proceeded to determine whether there was probable cause to believe that the alleged offenses were committed. Hearings to determine probable cause began on November 22, 2017, and ended on March 8, 2018, with the Committee finding probable cause to impeach the Chief Justice.<sup>150</sup> On March 19, 2018, the Committee approved its Committee Report, including the Articles of Impeachment against Chief Justice Sereno.<sup>151</sup> The Committee Report had yet to be included in the agenda for plenary discussion when the Chief Justice was ousted from office via a *quo warranto* petition.

##### 5. Ombudsman Conchita Carpio-Morales (2017)

On December 13, 2017, an impeachment complaint against Ombudsman Conchita Carpio-Morales was filed before the House of Representatives.<sup>152</sup> The grounds cited by the complaint centered on betrayal of public trust, and graft and corruption.<sup>153</sup> No Member of the House of Representatives was able to endorse the complaint<sup>154</sup> before Ombudsman

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<sup>148</sup> House Committee Daily Bulletin, 17<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Sept. 13, 2017).

<sup>149</sup> *Id.*

<sup>150</sup> Bea Cupin, *House panel votes on Sereno impeachment*, RAPPLER, Mar. 8, 2018, available at <http://rappler.com/197685-sereno-impeachment-sufficient-probable-cause>.

<sup>151</sup> Keith Calayag, *House panel approves articles of impeachment vs Sereno*, SUNSTAR MANILA Online, 19 March 2018, available at <http://sunstar.com.ph/manila/local-news/2018/03/23/house-panel-approves-articles-impeachment-vs-sereno-594325>.

<sup>152</sup> Lian Buan, *VACC submits Morales impeach complaint, but without an endorsement*, RAPPLER, Dec. 13, 2017, available at <https://www.rappler.com/nation/191214-morales-impeachment-vacc-endorsement>.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

Carpio-Morales retired. As such, the complaint is considered effectively dismissed.

## V. ABUSE OF IMPEACHMENT

The crux of the controversy this Note seeks to address lies in Article XI, Section 3(5) of the 1987 Constitution, which states that “[n]o impeachment proceedings shall be initiated against the same official more than once within a period of one year.” The one-year bar on impeachment proceedings was integrated in the 1987 Constitution for two reasons: (i) to prevent undue or too frequent harassment of public officials of the highest category from the possible slew of impeachment cases against them; and (ii) to allow the legislature to do its principal task, which is legislation.<sup>155</sup>

The purpose of impeachment “is to protect the people from official delinquencies or malfeasances. It is, therefore, primarily intended for the protection of the State, not for the punishment of the offender.”<sup>156</sup> Justice Brion, in his dissent in *Gutierrez*, highlighted the value that both the Constitution and the people place on public accountability and the impeachment process:

The import of what the bar signifies can be gleaned from the importance the Constitution gives public accountability and the impeachment process; *public accountability is a primary constitutional interest that merits no less than one complete and separate Article in the Constitution, while impeachment is one of the defined means of holding the highest government officials accountable.* They are prominent, not only in the Constitution, but in the public mind as well.<sup>157</sup>

Considering the commonalities exposed by the 30-year experience of the country with impeachment proceedings under the 1987 Constitution, the one-year bar rule, instead of attaining a balance between the competing interests of the people, the official, and the legislature as an institution, opened the impeachment system to abuse.

### A. Interest of the People: Undue Limitation on Accountability of Public Officers

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<sup>155</sup> II RECORD CONST. COMM’N 40 (July 26, 1986); *Francisco*, 425 SCRA at 313 (Azcuna, J., *separate opinion*).

<sup>156</sup> HECTOR DE LEON & HECTOR DE LEON, JR., *THE LAW ON PUBLIC OFFICERS* 456 (2014), *citing* VICENTE SINCO, *PHILIPPINE POLITICAL LAW* 374 (11<sup>th</sup> Ed., 1952).

<sup>157</sup> *Gutierrez*, 643 SCRA 198, 325 (Brion, J., *dissenting*). (Emphasis supplied.)

The one-year bar rule is also known as the “Anti-Harassment Provision,” a safeguard from harassment of impeachable public officers through the filing of multiple complaints, and harassment of Congress as recipient of these complaints.<sup>158</sup>

Commissioner Wilfrido Villacorta, a member of the 1986 Constitutional Commission, was the first and only person to question the inclusion of the one-year bar rule:

The intention may be to protect the public official from undue harassment. On the other hand, is this not undue limitation on the accountability of public officers? Anyway, when a person accepts a public trust, does he not consider taking the risk of accounting for his acts or misfeasance in office?<sup>159</sup>

In response to this query, Commissioner Alberto Romulo only addressed the issue of purpose, and did not address the effect of unduly limiting the accountability of public officers:

Yes, the intention here really is to limit. This is not only to protect public officials who, in this case, are of the highest category from harassment but also to allow the legislative body to do its work which is lawmaking. Impeachment proceedings take a lot of time. And if we allow multiple impeachment charges on the same individual to take place, the legislature will do nothing else but that.<sup>160</sup>

Even why one year was deemed a sufficient period of time to inoculate an official from complaints was not discussed by the framers of the Constitution.

As an answer to Commissioner Villacorta, indeed, the inclusion of the bar on impeachment complaints flags down the issue of limiting accountability. This provision was included despite the very high threshold of responsibility and accountability exacted from public officials, intimated in the very first section of the same Article in the 1987 Constitution:

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<sup>158</sup> ADEL A. TAMANO, HANDBOOK ON IMPEACHMENT UNDER THE 1987 CONSTITUTION 19-20 (2004).

<sup>159</sup> II RECORD CONST. COMM’N 40 (July 26, 1986).

<sup>160</sup> *Id.*

*Public office is a public trust.* Public officers and employees *must at all times* be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.<sup>161</sup>

The phrase “must at all times” was not included in the original proposal of the Committee on Accountability of Public Officers.<sup>162</sup> Commissioner Hilario Davide, through the course of the discussions, moved for an amendment to replace the word “shall” (as copied from the 1973 Constitution) with “must at all times,” which was accepted by the body without any objections.<sup>163</sup> This implies the emphasis placed on the degree of accountability expected from both public officers and employees.

As early as the 1900s, the great deal of responsibility shouldered by public officers was already appreciated in the same manner, as expressed by Justice George Malcolm in *Cornejo v. Gabriel*.<sup>164</sup>

The basic idea of government in the Philippine islands [...] is that of a popular representative government, the officers being mere agents and not rulers of the people, one where no one man or set of men has a propriety or contractual right to an office, but where every officer accepts office pursuant to the provisions of the law and holds the office as a trust for the people whom he represents.<sup>165</sup>

A comparison of States which also employ impeachment as a means to remove its high-ranking public officials was sought, but looking into these States, it is inferred that only the Philippines imposes a control mechanism on the initiation of impeachment proceedings against its public officials.<sup>166</sup> Such mechanism is absent even in the US Constitution, the basis of the 1935 Constitution.<sup>167</sup>

Looking at the entirety of provisions under Article XI, the section on the one-year bar is the only rule which serves the interests of the officeholder, when what should be given premium, *at all times*, is the accountability of the public official to the people. It may be that the framers

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<sup>161</sup> CONST. art. XI, § 1. (Emphasis supplied.)

<sup>162</sup> *Supra* note 160.

<sup>163</sup> *Id.*

<sup>164</sup> G.R. No. L-16887, 41 Phil. 188, Nov. 17, 1920.

<sup>165</sup> *Id.* at 194.

<sup>166</sup> *See* SOUTH KOR. CONST., art. 65; ADDITIONAL ARTICLES, CHINA CONST., art. 7, 90, 97-100; *and* PAKISTAN CONST., art. 47.

<sup>167</sup> *See* U.S. CONST. art. I, §§ 2-3; art. II, § 4.



of the 1987 Constitution saw an imperative to protect public officials from having to answer multiple suits, but in limiting the period, in the words of Commissioner Villacorta, it also placed “undue limitation on the accountability of public officers.”

### **B. Interest of the Official: Frivolous Filing in the Wake of *Francisco***

As discussed earlier, it was in 2003 that the Supreme Court was forced to make a determination as to when an impeachment proceeding is deemed “initiated.” The first complaint was filed in June 2003 by former President Estrada, endorsed by several Representatives, against Chief Justice Davide and seven Associate Justices for culpable violation of the Constitution, betrayal of public trust, and other high crimes.<sup>168</sup> This complaint was found to be sufficient in form but insufficient in substance, hence a recommendation for dismissal was determined by the Committee on Justice.<sup>169</sup> On October 23, 2003, a day after the Committee voted to dismiss the first complaint, a second complaint against Chief Justice Davide was filed and endorsed by at least one-third of all the Members of the House of Representatives. The filing of the subsequent impeachment complaint against Chief Justice Davide in the same year prompted the Court, through petitions filed against the House of Representatives, to rule on the proper interpretation of Section 3(5), Article XI of the Constitution.

The issue dealt with the interpretation of when an impeachment proceeding is deemed *initiated*. The Court found that:

From the records of the Constitutional Commission, to the amicus curiae briefs of two former Constitutional Commissioners, it is without a doubt that the term to initiate refers to the impeachment complaint coupled with Congress taking initial action of said complaint.

Having concluded that the *initiation takes place by the act of filing and referral or endorsement of the impeachment complaint to the House Committee on Justice or, by the filing by at least one-third of the members of the House of Representatives with the Secretary General of the House*, the meaning of Section 3 (5) of Article XI becomes clear. Once an impeachment complaint has been initiated, another impeachment

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<sup>168</sup> C. Rpt. 2074, 12<sup>th</sup> Cong., 1<sup>st</sup> Sess. (Nov. 20, 2003). House Committee on Justice.

<sup>169</sup> *Id.*

complaint may not be filed against the same official within a one year period.<sup>170</sup>

With this interpretation, the Court struck down the second complaint, deeming it in violation of Section 3(5), Article XI of the Constitution. From hereon, the House of Representatives includes a reference to the ruling of the Supreme Court in *Francisco* in defining initiation of impeachment proceedings in its Rules of Procedure in Impeachment.<sup>171</sup>

It is in the wake of *Francisco* that the one-year bar rule was actually utilized as a tool to block potential legitimate impeachment cases from materializing against the same official. History would reveal how President Gloria Macapagal-Arroyo effectively dodged the bullet by encouraging “friendly but defective impeachment complaints against her so that after they were thrown out of the Justice Committee for being insufficient in form or in substance, she would have a full year with no worries about a serious complaint.”<sup>172</sup> Former UP Law Dean Raul Pangalangan is of the opinion that President Macapagal-Arroyo became an “unworthy beneficiary” of the after effects of the *Francisco* ruling.<sup>173</sup> Every year from 2005 to 2008, an impeachment complaint was lodged against the former President, and every year, it was dismissed by the House of Representatives through some technicality or by the sheer number of political allies that the President had within the House. This was especially evident in the three-page complaint in 2007, the sole allegation being President Arroyo’s betrayal of public trust for her involvement in the NBN-ZTE Broadband Network controversy. Heavily contested by opposition lawmakers then for being a “fake” complaint, it was junked by the Committee on Justice for being insufficient in substance, its filing and referral to the Committee effectively triggering the application of the one-year bar rule.<sup>174</sup> Notably, it was only in 2007 that a single complaint with a single complainant was filed against the President,

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<sup>170</sup> *Francisco*, 425 SCRA 44, 169-70. (Emphasis supplied.)

<sup>171</sup> Cited as a footnote in the House Rules of Procedure in Impeachment Proceedings: “The Supreme Court decision in *Francisco et al. vs. House of Representatives* (GR No. 160261, 10 November 2003), states that Impeachment proceedings are initiated upon filing of the complaint and/or resolution and its referral to the Committee on Justice.”

<sup>172</sup> Francisco Tatad, *The ravages of impeachment*, THE MANILA TIMES, Oct. 11, 2017, available at <http://www.manilatimes.net/the-ravages-of-impeachment/355789/>.

<sup>173</sup> Raul Pangalangan, *Philippine Constitutional Law: Majoritarian courts and elite politics*, in CONSTITUTIONALISM IN ASIA IN THE EARLY TWENTY-FIRST CENTURY 302 (2014).

<sup>174</sup> Jess Diaz & Jose Rodel Clapano, *Lack of better alternative weakens GMA ouster move*, THE PHILIPPINE STAR, available at <https://www.philstar.com:8080/headlines/24647/lack-better-alternative-weakens-gma-ouster-move>.

the previous years and the succeeding year having multiple complaints lodged against her.

Eight years later, the Court reaffirmed its ruling in *Francisco* as to the definition of “initiate.” The respondents in *Gutierrez*, in seeking for a reexamination of the former case, claimed that the interpretation of Section 3(5), Article XI of the Constitution “has rendered the impeachment mechanism virtually, if not completely, ineffectual since it allows public officials to escape constitutional accountability by simply obtaining the filing of a frivolous impeachment complaint to preempt the filing of a meritorious one.”<sup>175</sup> This situation contemplated by the respondents, as well as the Solicitor General as a respondent-in-intervention, is exactly what is reflected in how the series of impeachment proceedings against President Macapagal-Arroyo panned out to her favor.

The effect of frivolous filing, however, is also reflected in how Representatives aligned with the majority have been creative in the interpretation and application of its own rules on impeachment, so as to welcome the filing of legitimate complaints against sitting Presidents, which triggers the application of the one-year bar rule, only to conclusively dismiss them at some stage in the impeachment process. This is seen in how the complaints against former President Aquino and President Duterte, and even the complaints against former President Arroyo in 2006, were junked at the early stages of impeachment procedure, which, at the time of filing and referral, had already effectively inoculated all three Presidents from impeachment proceedings for a year.

### **C. Interest of the Institution: A “House unhampered by impeachment trial work”<sup>176</sup>**

The House of Representatives’ subsequent actions on filed complaints do not hamper the execution of its primary function. In fact, both Houses of Congress function as usual despite having the responsibility to tackle impeachment complaints.

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<sup>175</sup> *Gutierrez*, 643 SCRA at 312 (Brion, J., *dissenting*), *citing* the Memorandum of respondents Reyes et al. n.44 and Memorandum of the House of Representatives Committee on Justice n.45.

<sup>176</sup> Press and Public Affairs Bureau, *House unhampered by impeachment trial work passes landmark legislation*, HOUSE OF REPRESENTATIVES WEBSITE, June 19, 2012, *available at* <http://www.congress.gov/ph/press/details.php?pressid=6233&key=impeach> (last accessed July 28, 2018).

In 2017 alone, complaints against five impeachable officers have been filed, with the House of Representatives mandatorily taking action on three: the complaints against President Duterte, COMELEC Chairman Bautista, and Chief Justice Sereno.

The complaint against President Duterte took one hearing to be dispensed with, while COMELEC Chairman Bautista's took three hearings.<sup>177</sup> The hearings on the impeachment complaint against Chief Justice Sereno culminated on March 19, 2018, and the Committee on Justice met a total of 19 times since the hearings commenced on September 13, 2017, the most number of meetings to date it has taken the Committee on Justice to tackle an impeachment complaint.<sup>178</sup> On the day the sole hearing on President Duterte's impeachment complaint was conducted, a Bicameral Conference Committee Meeting on House Bill No. 5225 and Senate Bill No. 1277<sup>179</sup> was held, as well as Committee Meetings for the Committee on Basic Education and Culture, Games and Amusements, Labor and Employment, Public Order and Security, Ways and Means,<sup>180</sup> and Welfare of Children.<sup>181</sup> On September 20, 2017, the Committee on Justice held a hearing to determine the sufficiency in form and substance of the Bautista complaint. On the same day, the following committees also met to discuss referred bills and pending matters: Agrarian Reform, Aquaculture and Fisheries Resources, Ecology, Government Enterprises and Privatization, Labor and Employment, Legislative Franchises, and Tourism.<sup>182</sup> A Joint Committee Meeting was also held between the Committee on Good Government and Public Accountability and the Committee on Justice while the hearing on the Bautista complaint was ongoing.<sup>183</sup> As to the proceedings of the Committee on Justice involving the complaint against Chief Justice

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<sup>177</sup> House Committee Daily Bulletin, 17<sup>th</sup> Cong., 1<sup>st</sup> Sess. (May 15, 2017); (Sept. 20, 2017); (Oct. 5, 2017); (Oct. 24, 2017).

<sup>178</sup> House Committee Daily Bulletin, 17<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Sept. 13, 2017); (Oct. 5, 2017); (Nov. 22, 2017); (Nov. 27, 2017); (Nov. 28, 2017); (Nov. 29, 2017); (Dec. 5, 2017); (Dec. 6, 2017); (Dec. 11, 2017); (Jan. 15, 2018); (Jan. 17, 2018); (Jan. 23, 2018); (Jan. 29, 2018); (Feb. 7, 2018); (Feb. 12, 2018); (Feb. 19, 2018); (Feb. 27, 2018); (Mar. 8, 2018); (Mar. 19, 2018).

<sup>179</sup> See House Committee Daily Bulletin, 17<sup>th</sup> Cong., 1<sup>st</sup> Sess. (May 15, 2017). Bill Establishing the Free Internet Access Program in Public Places in the Country and Appropriating Funds Therefor.

<sup>180</sup> *Id.* "The Committee, chaired by Quirino Rep. Dakila Carlo Cua, approved with amendments the Substitute Bill to the 55 bills pertaining to the Tax Reform for Acceleration and Inclusion (TRAIN)."

<sup>181</sup> *Id.*

<sup>182</sup> House Committee Daily Bulletin, 17<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (Sept. 20, 2017).

<sup>183</sup> *Id.*

Sereno, all 19 hearings happened simultaneously with other Committee Meetings, with all hearings proceeding in their usual manner.<sup>184</sup>

Even with the responsibility of tackling impeachment complaints, Congress continues to perform its primary function without affecting its daily business, and its rate of productivity in processing measures for enactment. It is, as it happens, and as the House's own Press and Public Affairs unit puts it, a "House unhampered by impeachment trial work."<sup>185</sup>

## VI. SEEKING LEGAL REFORMS

Impeachment is derived from "the necessity to protect the people or the State from the delinquencies in high offices."<sup>186</sup> Mindful of this, reforms must be taken in order to bring impeachment back to its form and nature as a method of protection for the State and its people.

### A. Strike Out the One-year Bar Rule

In a span of 30 years, Congress wielded and utilized this tool of accountability in more than a handful of complaints. This 30-year experience, however, alongside the application of the existing rules on impeachment procedures, has shown how the one-year bar rule has not only rendered its own purpose useless but also defeated the purpose of impeachment.

As laid down earlier, the discussion of the framers of the Constitution did not provide for an adequate basis to support their claim that in the absence of the one-year bar rule, impeachable officials will be attacked by a deluge of cases, because of which they would be too busy parrying complaints to effectively perform the functions of their offices.<sup>187</sup> This predicament was contemplated by the drafters looking into the future, but without considering the impeachment history prior to the 1987 Constitution, and how impeachable officials did not experience harassment related to impeachment despite the absence of the time bar rule.<sup>188</sup> Other countries which have adopted a system of impeachment are without any ban or limitation on the filing of complaints against their public officials as

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<sup>184</sup> *Supra* note 180.

<sup>185</sup> *Supra* note 177.

<sup>186</sup> Merlin M. Magallona, *An Essay on the Constitutional Regime of Impeachment: Sovereign Power vs. Judicial Authority*, IBP J. 40 (Mar. 2012).

<sup>187</sup> *Supra* notes 160 and 162.

<sup>188</sup> *Supra* notes 38, 41, 45, and 47.

well.<sup>189</sup> It seems that the framers of the Constitution tried to cure a possible outbreak (of impeachment cases) without fully understanding the root cause of such outbreak, and how it would spread. And as in any disease, the formulation of its cure is unique, applicable only to it, and approached from tried and tested methods, or some form of scientific progression. This methodological approach, essential in laying down a procedure for impeachment proceedings, was absent when the framers decided that a “cure” was needed to address the *potential* harassment of impeachable officers. Said cure has also been shown to be without effect on the conduct of the legislature’s regular business.<sup>190</sup>

As to the purpose of impeachment, guidance may be sought from the words of Commissioner Felicitas Aquino:

Impeachment is a method of national inquest to protect the state. It does not intend to prosecute; it is not intended for its retributory or restitutory effects. Rather, it is in the nature of an exemplary act by which the state infuses the highest sense of responsibility to public service.<sup>191</sup>

Clearly, what is given primordial importance is the responsibility of public officials to the people. In seeking to attain a balance between competing interests, the people, to whom accountability is owed, should be given premium.

This, together with the re-examination of the purpose of the one-year bar rule, provides us with a better grasp of how rules on impeachment procedures should be formulated: always in light of the object and purpose of impeachment. Thus, having established the effects of the existence of such rule, its elimination would be in the service of achieving the purpose of impeachment.

## **B. Revisit the Rulings in *Francisco* and *Gutierrez***

Though recognizing the difficulty of amending the Constitution, especially since no amendments have been made nor attempts to amend or revise have been successful since the ratification of the 1987 Constitution, at the very least, when given the opportunity, the Court needs to vacate its disposition in *Francisco* and *Gutierrez*.

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<sup>189</sup> *Supra* note 168.

<sup>190</sup> *Supra* note 177.

<sup>191</sup> II RECORD CONST. COMM’N 41 (July 28, 1986).

The Court had the chance to again determine when an impeachment proceeding is deemed initiated in the case of *Gutierrez*. It however reaffirmed its stand in *Francisco* through the elucidation of Justice Carpio-Morales, the same justice who penned *Francisco*:

The present case involving an impeachment proceeding against the Ombudsman offers no cogent reason for the Court to deviate from what was settled in *Francisco* that dealt with the impeachment proceeding against the then Chief Justice. To change the reckoning point of initiation on no other basis but to accommodate the socio-political considerations of respondents does not sit well in a court of law.

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As pointed out in *Francisco*, the impeachment proceeding is not initiated when the House deliberates on the resolution passed on to it by the Committee, because something prior to that has already been done. The action of the House is already a further step in the proceeding, not its initiation or beginning. Rather, the proceeding is initiated or begins, when a verified complaint is filed *and* referred to the Committee on Justice for action. This is the initiating step which triggers the series of steps that follow.<sup>192</sup>

In *Gutierrez*, parties to the case again submitted their various positions in determining the reckoning point of an “initiated” impeachment proceeding. All the parties submitted views different from that of the general view of the Court. Justice Carpio-Morales expounded on the reason for identifying the referral to the Committee on Justice as the reckoning point of initiation:

Allowing an expansive construction of the term initiate beyond the act of referral allows the unmitigated influx of successive complaints, each having their own respective 60-session-day period of disposition from referral. Worse, the Committee shall conduct overlapping hearings until and unless the disposition of one of the complaints ends with the affirmance of a resolution for impeachment or the overriding of a contrary resolution (as espoused by public respondent), or the House transmits the Articles of Impeachment (as advocated by the Reyes group), or the Committee on Justice concludes its first report to the House plenary regardless of the recommendation (as posited by respondent-intervenor). Each of these scenarios runs roughshod

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<sup>192</sup> *Gutierrez*, 643 SCRA at 262-63.

the very purpose behind the constitutionally imposed one-year bar.<sup>193</sup>

Notably, when the *Gutierrez* case was deliberated upon, the Court affirmed its findings in *Francisco* through a vote of 7-5, a conclusion that would hardly be decisive, given the controversy that clothed the issue and how it continues to elicit varying views. Justice Brion, in his dissenting opinion, captures the problem that both the *Francisco* and *Gutierrez* cases failed to address:

Basic in construing a constitution is the ascertainment of the intent or purpose of the framers in framing the provision under consideration. This should include, aside from the reason which induced the framers to enact the particular provision, the particular purpose/s intended to be accomplished and the evils, if any, sought to be prevented or remedied. Constitutional interpretation must consider the whole instrument and its various parts in a manner that would align the understanding of the words of the Constitution with the identified underlying intents and purposes.

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Without doubt, the silence of *Francisco* (and of the present *ponencia*) on the purposes of Section 3(5), Article XI of the Constitution contributes in no small measure to the clamor for a revisit to *Francisco* since it did not address the intent of the one-year bar rule, yet laid down a doctrine on the provision that this intent produced.

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*The complete interpretation of the Section must consider the point beyond which another impeachment complaint shall constitute undue harassment against the impeachable official, as well as the point that should serve as a cut-off to ensure that the House of Representatives is not unduly taken away from its mandated lawmaking activities.*<sup>194</sup>

Justice Brion gives importance to looking into the purpose of the one-year bar rule in interpreting when “initiate” commences. Having established though, that the rule has been rendered useless in light of the object and purpose of impeachment, as well as the Philippine experience with regard to impeachment cases, a holistic lens must be used, with the

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<sup>193</sup> *Id.* at 263.

<sup>194</sup> *Gutierrez*, 643 SCRA at 319-21 (Brion, J., *dissenting*). (Emphasis in the original.)



interpretation not solely focused on the intended purpose of Section 3(5) of Article XI alone, but on how it should make impeachment an effective tool for public accountability, as a statutory part of the procedure for impeachment.

For the present rule to be in line with the *purpose of impeachment*, the reckoning point of initiated impeachment proceedings should be the completion of the action under Section 3(4) of Article XI of the Constitution: when the House of Representatives transmits the Articles of Impeachment to the Senate.

### 1. Procedural Implications

#### i. Statutory Structure

If one looks into the structure of the paragraphs under Section 3, Article XI, the provisions are laid down in a procedural manner. To assist in the discussion, paragraphs four to six are reproduced below:

(4) In case the verified complaint or resolution of impeachment is filed by at least one-third of all the Members of the House, the same shall constitute the Articles of impeachment, and trial by the Senate shall forthwith proceed.

(5) No impeachment proceedings shall be initiated against the same official more than once within a period of one year.

(6) The Senate shall have the sole power to try and decide all cases of impeachment. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside, but shall not vote. No person shall be convicted without the concurrence of two-thirds of all the Members of the Senate.<sup>195</sup>

In the case of *De Castro v. Judicial and Bar Council*,<sup>196</sup> the Court looked into the extent of the appointing powers of the President, and examined the succession of Sections 14, 15, and 16 of Article VII of the Constitution, to determine the proper interpretation of Section 15. The Court ruled on the said matter, to wit:

Section 14, Section 15, and Section 16 are obviously of the same character, in that they affect the power of the President to

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<sup>195</sup> CONST. art. XI, § 3 (4)-(6).

<sup>196</sup> G.R. No. 191002, 615 SCRA 666, Mar. 17, 2010.

appoint. The fact that Section 14 and Section 16 refer only to appointments within the Executive Department renders conclusive that Section 15 also applies only to the Executive Department. This conclusion is consistent with the rule that every part of the statute must be interpreted with reference to the context, i.e. that every part must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.<sup>197</sup>

The paragraph on the one-year bar is evidently situated between a paragraph, which talks about the constitution of the Articles of Impeachment, and a paragraph which deals with the role of the Senate and the conduct of impeachment trial. Considering that the intent of the framers was to lay down a procedure to guide both Houses of Congress in its facilitation of an impeachment proceeding, Section 3(5) of Article XI should be seen as a step which would link the provisions immediately before and after it. Applying the technique which the Court used in *De Castro*, it would only be logical that the same conclusion be arrived at in this case. Especially since the *entire Section 3 of Article XI* talks about the procedure of impeachment, a consideration that every part be examined with reference to the other parts of the provision is appropriate. More so in the case at hand, when what is involved is the succession of *paragraphs in a single section*, and not several provisions. Using this procedural perspective, Section 3(5) describes a step before the participation of the Senate is introduced, which would make it appropriate to infer that the fifth paragraph qualified itself as the conditional step that must be fulfilled before the proceedings at the level of the Senate may ensue.

#### ii. Reckoning Point: Filing vs. Transmittal

In relation to the statutory structure, it is also evident that both *Francisco* and *Gutierrez* failed to consider a comparison between the two procedures laid down by the Constitution for the filing of impeachment complaints: through the filing of any citizen and endorsement of the same by a Member of the House of Representatives,<sup>198</sup> and the filing of at least one-third of all the Members of the House which automatically constitutes the complaint into the Articles of Impeachment.<sup>199</sup> Employing the latter method, the complaint upon verification by the Secretary General that it is endorsed by at least one-third of the Members does not undergo any Committee referral or discussion, and is automatically included in the Order

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<sup>197</sup> *Id.* at 745.

<sup>198</sup> CONST. art. XI, § 3(2).

<sup>199</sup> § 3(4).

of Business for its endorsement to the Senate “in the same manner as an approved bill of the House.”<sup>200</sup>

Between the two methods, only two points are definite and the same: filing and transmittal. Given this scenario, all the stages which happen between the act of filing and transmittal in the regular method cannot be considered as the point of initiation, as it would inadvertently exclude the fast-track method from the ambit of a single definition of “initiation.” Thus, we are left between two contact points for consideration. If filing is adopted as the reckoning point, a use of the fast-track method would then exclude an appreciation of all the stages under the regular method, since transmittal is an action borne out of the act of filing under the former method. In the fast-track method, filing is just half of the action contemplated, and to complete the act, transmittal must ensue. To be more technical about it, the act of filing the complaint *and* its subsequent transmittal as the Articles of Impeachment, taken together, would produce the action of initiation. The same interpretation is applicable to the regular method, in that the entire process is considered, and would produce an effect equivalent to an execution of the shorter method. Thus, filing of the complaint and its subsequent transmittal as the Articles of Impeachment would initiate an impeachment proceeding.

Having appreciated the procedural structure of Section 3, Article XI, transmittal must be the determinative point of an initiation of an impeachment proceeding. Even in a comparison as to which point would better serve the purpose of impeachment, the transmittal of the Articles of Impeachment to the Senate is the decisive reckoning point, as would be discussed in the succeeding paragraphs.

## *2. Protection of Primary Interests*

The interest of the State and its people should always be the primary concern when there is an apparent conflation of interests. In balancing interests which involve the interest of the people, equal consideration is not the goal, but rather the adequate consideration of each so that ultimately, the people are never left with the short end of the stick. But with how the interpretation of the one-year bar rule currently stands, it is apparent that public accountability has taken a back seat in favor of the official and the institution. Shifting the reckoning point of initiation of impeachment proceedings to mean the transmittal of the Articles of Impeachment to

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<sup>200</sup> 17<sup>th</sup> Cong. House of Representatives Rules of Procedure in Impeachment Proceedings, § 13.

Senate will not affect the rights and obligations inherent in public office; rather, it would shift the lens of protection from the public officer to the public itself.

*First*, frivolous filing would be addressed. Significantly, this issue was already contemplated when the controversy on the definition of initiation pursuant to the bar rule was first tackled in *Francisco*. Atty. Adel Tamano is of the opinion that “initiation” and “filing” should not be regarded as the same act:

Another sound reason why “initiation” of impeachment proceedings should not be synonymous with the filing of an impeachment complaint is the danger of frivolous complaints being filed against an impeachable officer for the purpose of using the “Anti-harassment provision” as a barrier against a valid impeachment complaint. Thus, an impeachable official may cause the filing of a clearly baseless impeachment complaint to forestall the filing of legitimate ones during the one-year period of prohibition under the “Anti-harassment Provision.” Consequently, by the sheer act of filing, an impeachable officer is “inoculated” from being impeached for one whole year and is thus granted effectively an “immunity” from impeachment for a calendar year. Certainly, the “Anti-Harassment Provision,” and the Constitution itself, was not meant to be used as a shield against legitimate impeachment complaints.<sup>201</sup>

Several years later, the fear of frivolous filing came into fruition. As acknowledged by then-Justice Sereno in her concurring opinion in *Gutierrez*:

This country’s experience with impeachment in the past decade has shown that pegging the time bar to the mechanical act of filing has transformed impeachment into a race on who gets to file a complaint the fastest regardless of whether such a first complaint is valid, proper, substantial or supported by evidence. Enterprising yet unscrupulous individuals have filed patently sham, frivolous or defective complaints in the House in order to commence the one-year period and thus bar the subsequent filing of legitimate complaints against the same impeachable officer. In embracing the provisions of the 1987 Constitution, the Filipino people certainly did not countenance a technical loophole that would be misused to negate the only available and effective mechanism against abuse of power by impeachable officers.<sup>202</sup>

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<sup>201</sup> TAMANO, *supra* note 159, at 22.

<sup>202</sup> *Gutierrez*, 643 SCRA at 387 (Sereno, J., *concurring*).

Even Dean Raul Pangalangan made a quip on the Court's erroneous decision in *Francisco* on how the Court used legal arguments in an episodic manner, saying that it had an eye "solely on immediate consequences oblivious to their long-term doctrinal implications":<sup>203</sup>

[I]n *Francisco*, the Supreme Court raised the bar to impeachment to protect a worthy beneficiary, Chief Justice Hilario G. Davide Jr., yet once raised, that bar remained and protected the unworthy President Gloria Macapagal-Arroyo and insulated her from impeachment despite her dubious claim to power.<sup>204</sup>

A shift of the reckoning point of initiation from filing to transmittal would indeed "open the floodgates" as used by Justice Carpio-Morales, given the expansion of the period of time allowable for an impeachment complaint to be entertained by the House without violating the one-year bar rule. However, this should not be a cause for concern considering that again, what the process of impeachment ultimately seeks to protect is the State and its people, and as the highest public officials of the land, more so should diligence and prudence in the handling of their duties be expected from them. It cannot be emphasized enough at this point that public officers *and* employees are constitutionally mandated to "at all times be accountable to the people, serve them with utmost responsibility, integrity loyalty, and efficiency, act with patriotism and justice, and lead modest lives."<sup>205</sup>

Also, the procedural havoc brought by an influx of complaints that Justice Carpio-Morales forewarns us about can actually be addressed by the House of Representatives in its own rules of procedure, given that it is empowered to "promulgate its rules on impeachment to effectively carry out the purpose[.]"<sup>206</sup> Notably, the House of Representatives has had the occasion to entertain multiple complaints against the same official apart from how the situation in *Francisco* panned out, the complaints in that case being filed several months apart. In 2006, eight complaints for impeachment against former President Arroyo were filed on different dates spread across one month. The complaints were filed by various complainants and endorsers, but forwarded the same causes of action. These were all tackled

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<sup>203</sup> Raul Pangalangan, *Impeachment and Popular Constitutionalism: The Surprising Decline of the Judicial Power*, IBPJ. 65 (Mar. 2012).

<sup>204</sup> *Id.*

<sup>205</sup> CONST. art. XI, § 1.

<sup>206</sup> CONST. art. XI, § 3(8).

for initial consideration on August 8, 2006.<sup>207</sup> In 2008, four complaints against the same former President were filed and referred on different dates in a span of two weeks. During the initial Committee hearing, a motion to dismiss the three other complaints which were filed subsequent to the first complaint was raised. This was opposed on the ground that the Committee has the option to consolidate, which was actually part of the plan of Congress to liberalize the rules on impeachment proceedings. The plan, however, did not materialize.<sup>208</sup> The Committee however ruled in favor of the motion of dismissal.<sup>209</sup> The *Gutierrez* case, a product of a judicial query on how simultaneous filing and referrals should be appreciated, would also be instructive in its pronouncement that complaints filed on varying dates, as long as they are simultaneously referred to the Committee on Justice, should be accepted as part of a single act of “initiation.”<sup>210</sup> Thus, both complaints against Ombudsman Gutierrez were tackled by the Committee on Justice, in the manner it saw it most fit and convenient for the speedy resolution of the complaints before it.<sup>211</sup> These situations, as well as the power of the House of Representatives to exclusively initiate all cases of impeachment, would show that it is in a position to and has the capacity and capability to regulate, facilitate, and appropriately schedule deliberations on impeachment complaints against the same person, whether filed simultaneously, successively, or months apart from each other.

*Second*, even if the specific purpose of the rule is considered, previous impeachment cases would demonstrate how the impeachment rules provide for the vetting of complaints before they are filed and when they have already been filed and referred to the Committee on Justice. The first hurdle of assessment is done by the Representatives in their individual capacities. For a complaint to be accepted, it must be filed by a Member of the House, or endorsed by one. Naturally, a complaint will not be drafted or endorsed if the Representative does not see any merit to it, as seen in how the complaints against Vice President Leni Robredo and Ombudsman Conchita Carpio-Morales did not gain any endorsers because no Representative deemed them meritorious for further consideration of the House. It is inherent upon Members of the House of Representatives to be cautious in their endorsement or drafting of impeachment complaints, so as to ensure that these actions would not reflect poorly on their stature.

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<sup>207</sup> Highlights of the Meeting, 13<sup>th</sup> Cong., 3rd Sess. (Aug. 8, 2006). House Committee on Justice.

<sup>208</sup> *Supra* note 86.

<sup>209</sup> *Supra* note 88.

<sup>210</sup> *Gutierrez*, 643 SCRA at 257.

<sup>211</sup> *Supra* notes 122-123.

The second hurdle of assessment refers to the compliance of the complaint with the standards for form and substance. At this stage, the complaints are scrutinized by Members of the House, who after a determination that it is sufficient in form and substance still have to jump over two more hurdles of assessment: whether there are sufficient grounds alleged, and if there is probable cause to believe that impeachable acts were committed. Four successful leaps over each of these four hurdles must be made before the Committee on Justice can come to a decision as to its recommendation. And even when the Committee reports out its recommendation, another hurdle is set up, in that at least one-third of the Members of the House must vote to affirm (or reverse) the Committee recommendation. The vetting of the complaint requires that it make a clean pass over each hurdle to be able to proceed to the Senate.

This set up alone would be enough to establish that the fear of the drafters of a “continuous and undue harassment of impeachable officers”<sup>212</sup> is an exaggeration of a possible, but improbable outcome had the one-year bar rule *not* been included in the impeachment procedure. It must be stressed that the Members of the House are the ones who make a determination as to whether or not a complaint is meritorious from the time of endorsement to every hurdle discussed above. The moment a complaint is read from the Order of Business, there would be presumptive knowledge on the part of the Congressmen that an impeachment complaint has been filed and will be tackled soon. Having this knowledge would likewise entail how they are to determine whether or not they themselves should file a complaint, or endorse a complaint against the same official. It would be absurd to think that in this day and age, Members of the House of Representatives would be caught unaware that impeachment complaints are being entertained in their own backyard, notwithstanding the fact that impeachment-related reports take up a significant part of the news cycle of any media platform.<sup>213</sup>

### *3. Actual Disruption of Legislative Work*

Finally, the contemplated disruption of legislative work only starts when the Articles of Impeachment are transferred to the Senate: when both Houses are directed to perform entirely different functions as separate institutions. Once the Articles of Impeachment have been received by the Senate and referred to its Committee on Rules, it constitutes itself into an

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<sup>212</sup> *Gutiérrez*, 643 SCRA at 404 (Serenó, J., *concurring*).

<sup>213</sup> *Supra* notes 101, 106, 139-140, and 153.

Impeachment Court where the said Articles are to be referred.<sup>214</sup> The House of Representatives “shall act as the sole prosecutor” during the trial,<sup>215</sup> which shall be facilitated by the Senate, sitting as Senator-Judges, having the “sole power to try and decide all cases of impeachment.”<sup>216</sup> The legislative business of Congress is not suspended when an impeachment trial is ongoing, in that on the part of the House of Representatives, only the 11 pre-selected panel of prosecutors handle the case before the impeachment court, and on the end of the Senate, legislative affairs continue during hours of the day when the impeachment court is not in session.<sup>217</sup> Rule X and XI of the latest Senate Rules of Procedure on Impeachment Trials provides for the call to session of an impeachment court as follows:

X. At 2 o'clock in the afternoon, or at such other hour as the Senate may order, of the day appointed for the trial of an impeachment, the legislative business of the Senate, if there be any, shall be suspended, and the Secretary of the Senate shall give notice to the House of Representatives that the Senate is ready to proceed upon the impeachment trial of \_\_\_\_\_, in the Senate Chamber.

XI. Unless otherwise fixed by the Senate, the hour of the day at which the Senate shall sit upon the trial of an impeachment shall be 2 o'clock in the afternoon; and when the hour shall arrive, the Presiding Officer upon such trial shall cause proclamation to be made, and the business of the trial shall proceed. The adjournment of the Senate sitting in said trial shall not operate as an adjournment of the Senate as a legislative body.<sup>218</sup>

The time as indicated above would be the only occasion each session day that there would be an actual interruption in the usual business of Congress, the upper house in particular, to give way to the conduct of impeachment proceedings. Though it is admitted that the disruption is essential in order for the Senate to function under a different hat, past experience would establish that both the House of Representatives and the Senate are capable of, and have actually conducted their business in the usual manner despite having to attend to the Constitutional duty to

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<sup>214</sup> S. Journal 43, 15<sup>th</sup> Cong., 2<sup>nd</sup> Regular Sess. (Dec. 14, 2011).

<sup>215</sup> See CARMELO V. SISON & FLORIN T. HILBAY, IMPEACHMENT Q & A (2000).

<sup>216</sup> CONST. art. XI, § 3(6).

<sup>217</sup> Kaka J. Bag-ao, *Simplifying the Senate Rules on Impeachment Trials*, ABS-CBN NEWS, Jan. 21, 2012), available at <http://news.abs-cbn.com/-depth/01/21/12/simplifying-senate-rules-impeachment-trials>.

<sup>218</sup> S. Res. No. 39, 15<sup>th</sup> Congress, 1<sup>st</sup> Sess. (Mar. 23, 2011). Senate Rules of Procedure on Impeachment Trials.



prosecute and try an impeachment case. While the impeachment trial of Chief Justice Corona was well underway, Congress was able to enact several significant laws, such as the decriminalization of vagrancy,<sup>219</sup> the act conferring Civil Service Eligibility to members of *Sanggunians*,<sup>220</sup> and the institution of kindergarten education.<sup>221</sup> No other than former Senate President Juan Ponce Enrile, in his *sine die* adjournment speech for the 2<sup>nd</sup> Regular Session of the 15<sup>th</sup> Congress, recognized that Congress was undeterred from its work despite the ongoing impeachment hearings:

It is also with pride that I wish to report that despite the very taxing impeachment hearings, the Senate, through its various committees and in Plenary, continued to work on its legislative duties.<sup>222</sup>

## VII. CONCLUSION

Impeachment in how it is currently employed has become an epidemic that has attacked the nation's political institutions. The country's experience has shown how impeachment proceedings have been abused to serve the interests of those who wield political power.

Impeachment, as founded and implemented by the Greeks, is a promising tool for accountability in a democracy. But in order to make it an effective one, the rules and processes behind its implementation must be reviewed. Given the current political climate, all the more should accountability and transparency be sought from the highest officials of the land.

Having been proven ineffective in aiding the achievement of the purpose of impeachment, the one-year bar rule should be stricken out of the Constitution should an opportunity to amend the Constitution arise. But given the difficulty of amending the Constitution, at the very least, the Court should look into its interpretation of "initiation" and give paramount

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<sup>219</sup> Rep. Act. No. 10158 (2012). An Act Decriminalizing Vagrancy, Amending for this Purpose Article 202 of Act No. 3815, as amended, otherwise known as the Revised Penal Code.

<sup>220</sup> Rep. Act. No. 10156 (2012). An Act Conferring Upon Members of the Sangguniang Bayan, Sangguniang Panlungsod and Sangguniang Panlalawigan, the Appropriate Civil Service Eligibility Under Certain Circumstances, and for other Purposes.

<sup>221</sup> Rep. Act. No. 10157 (2012). An Act Institutionalizing the Kindergarten Education into the Basic Education System and Appropriating Funds Therefor.

<sup>222</sup> Performance of the Senate, 15<sup>th</sup> Cong., 3<sup>rd</sup> Sess. (June 2013).

importance to the protection of the interest of the public over the interests of impeachable public officials and the institutions they serve in. In the presence of competing interests, the interest of the *demos* should always prevail and never be shortchanged.

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