

## HERE WE GO AGAIN: The arrest of Former President Gloria Macapagal Arroyo

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Philippine media, both mainstream and alternative, is once more in a frenzy. A quick glance of the front page of the major dailies, the homepage of the websites of broadcast station, the tweeter feeds and status updates of friends who observe Philippine politics, would readily reveal that the watch is on, the case of former President Gloria Macapagal Arroyo.

It is not my purpose here to extensively discuss the details of what has been described as the downfall of the longest serving Philippine president after the political transition in 1986.<sup>2</sup> Suffice it to say that among the many sins<sup>3</sup> leveled against former President Arroyo, she has been charged with electoral sabotage by the Commission on Elections (COMELEC) for ordering the manipulation of election results in a province in the Philippines during the 2007 elections. The case was filed by the COMELEC last Friday based on the findings of a Joint Task Force constituted by the COMELEC with the Department of Justice (DOJ).<sup>4</sup> In the 2007 election, former President Arroyo was alleged to have ordered the provincial governor, Andal Ampatuan Sr., to secure that three candidates from the opposition will get zero votes—Benigno S. Aquino III, Panfilo Lacson, and Allan Peter Cayetano. The delayed canvass sheet from the province eventually showed the

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<sup>2</sup> For a fairly recent account of the timeline that led to the filing of charges against Mrs. Arroyo, refer to Raissa Robles' "Gloria Arroyo's downfall actually started in July" at <http://raissarobles.com/2011/11/21/gloria-arroyos-downfall-actually-started-in-july/>

<sup>3</sup> From 2005, when a taped that had then President Arroyo talking with a Commissioner of the Commission on Elections (COMELEC) was leaked, a conversation where Mrs. Arroyo was said to have ordered this official to secure a comfortable margin between her and the primary contender in the 2004 presidential elections, the late movie actor, Fernando Poe, Jr., several "sins" have allegedly been committed by former President Arroyo and her cohorts. This include misusing funds allocated to provide material assistance to farmers (the Fertilizer Fund Scam) for the conduct of her campaign for the 2004 elections; profiteering from a billion dollar broadband contract with the Chinese firm ZTE; the unexplained wealth of her family, specifically a purported bank account with US\$ 200 million under the name of Jose Pidal that was allegedly the pseudonym of her husband, Atty. Jose Miguel Arroyo; and, the surge of involuntary disappearances and human rights violations, among others.

<sup>4</sup> The former President's husband, Atty. Jose Miguel Arroyo, filed a petition before the Supreme Court questioning the constitutionality of the Joint Panel of the COMELEC and the DOJ that conducted the preliminary investigation on the alleged fraud committed by former President Arroyo and other officials in the 2007 elections. In its hearing of November 22, 2011, the Supreme Court decided to hear the arguments on the petition that included an appeal to nullify the arrest order against former President Arroyo.

administration slate sweeping the top 12 slots for the Senatorial race in the province of Mindanao.

From her arrest, the former President's mugshot has circulated in cyberspace. In a slightly different version, the caption that accompanies her mugshot in the Philippine Daily Inquirer November 21, 2011 web issue, tells all about the questions we must venture to answer given all the events that has transpired in the past week and which will occur in the weeks and months ahead—**Vanquished?**

To this question, we add, has the former president really been defeated? In the end, what would incarcerating her mean for Filipinos? Would it result in any dramatic change in the way politics has played out in a country that has been saddled with feeble institutions?

Just a week ago, on the 15<sup>th</sup> of November, the former President, along with her husband and their supporters, hailed a decision of the Supreme Court that restrained the enforcement of a Watchlist Order (WLO) that prevented her from traveling abroad. Soon after the decision was announced, the Arroyo family frantically booked flights to leave the Philippines on the same day and comply with the three conditions<sup>5</sup> set forth by the majority of the Supreme Court. Unfortunately, they were blocked by government authorities, or more precisely offloaded, given that the Executive department stood path on its WLO.

Four days after the Temporary Restraining Order was issued, the former President was served a warrant of arrest on charges mentioned earlier. The day after, presumably lying on her hospital bed that has been tilted for a photo shoot, the mugshots were taken. If these events alone were a boxing match, the government and the former president are tied at one round apiece and the match continues, the duration of which is unknown, and more importantly, the outcome uncertain.

There are things about Philippine politics that are being tried alongside the former president and this not the first time that these are put to a test.

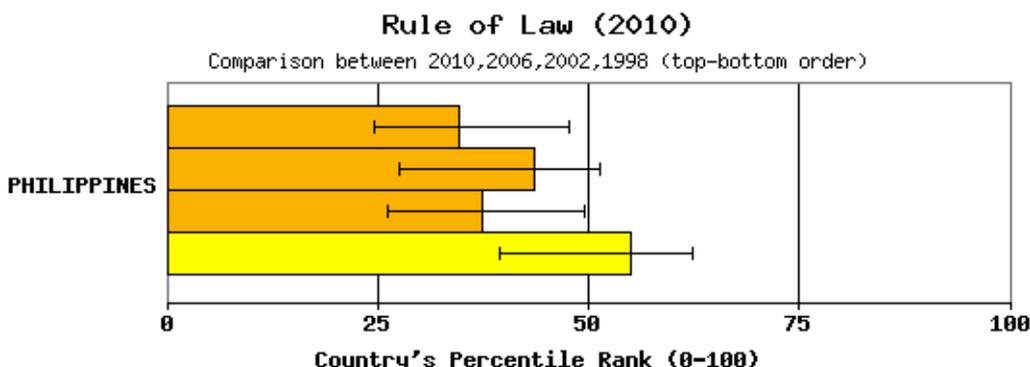
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<sup>5</sup> These conditions were: The petitioners (Gloria and Jose Miguel Arroyo) shall post a cash bond of Two Million Pesos (P2,000,000.00) payable to the Supreme Court ; appoint a legal representative common to both of them who will receive subpoena, orders and other legal processes on their behalf during their absence; and, If there is a Philippine embassy or consulate in the place where they will be traveling, the petitioners shall inform said embassy or consulate by personal appearance or by phone of their whereabouts at all times. See the Supreme Court decision at [http://sc.judiciary.gov.ph/jurisprudence/resolutions/2011/november2011/199034\\_199046\\_TRO.pdf](http://sc.judiciary.gov.ph/jurisprudence/resolutions/2011/november2011/199034_199046_TRO.pdf)

The first test would be on the rule of law measure. Has the rule of law been subverted by the decision of the Supreme Court; in the process that led to the filing of a case of electoral sabotage against the former President; and, finally, in the issuance of the warrant of arrest against her? Was the Department of Justice Secretary not only intransigent but also crossed the line that had the potential of bringing forth a constitutional crisis where the Executive openly defies a legitimate order from a co-equal institution? (See *Box 1. Whose rule of law?*) Have all the processes and decisions that are material to this case been colored by personal judgments, partisanship and carried out in whimsical fashion?

Box. 1. Whose rule of law? There are conflicting views on whether the Supreme Court (SC) majority treaded beyond what is established by law and favored the former president with a TRO given that they were appointees of former President Arroyo. The most salient view is espoused by the dissenters, three Associate Justices whose common argument is that the government has the limited power to abridge the right to travel and recognizing this, the Court should not issue the TRO until after the government had presented its case before the Court. A number of commentators have resurrected their criticism of the court as being highly politicized, favoring the person that appointed them. For her part, Justice Secretary Leila de Lima refused to obey the TRO believing that the decision was not final inasmuch as government had yet to present its arguments before the Supreme Court. Secretary de Lima supported such assertion by citing, though not directly, the views of the minority in the SC decision, neglecting that under the rule of law, a majority decision should be executory. When the government filed its motion to appeal the TRO on November 16, the unanimous decision of the Supreme Court to require the government to explain why they should not be cited for contempt is a clear assertion of the Supreme Court that regardless of the divergent opinion on the TRO, the Executive must be told clearly that the high court would require, at the very least, respect from their co-equal branch.

Though it is sweeping to judge whether the rule of law had been violated as the so called “wheels of justice” continue to grind, one could not draw confidence from the perception that the Philippines has slid on this dimension of governance across the last 12 years, based on the indicators consolidated annually by the World Bank. Employed as a criterion that captures “perceptions of the extent **to which agents have confidence in and abide by the rules of society**, and in particular the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence.” (**emphasis mine**)



Source: <http://info.worldbank.org/governance/wgi>. Chart produced November 22, 2011.

Related to a rule of law is the subsequent end of justice. Already, the opponents of Arroyo have hailed the issuance of the warrant of arrest as a triumph of justice. This is partially true, specifically if we acknowledge that it has been six years since Arroyo was alleged to have orchestrated the first “electoral sabotage” in the 2004 elections and it has been 17 months since the Aquino administration has been in the position before a formal case has been filed against former President Arroyo. But what is being celebrated is but a procedural dimension of justice, indicating how shallow some people’s happiness (in Filipino *mababaw ng kaligayahan*) is, a superficiality that may also mirror the belief that nothing else might come out of this new episode—a **prosecution without a conviction**.

The Arroyo case would also be a critical test of the capacity of President Aquino to fulfill a promise, to secure the accountability of those who have robbed the country of its wealth and weakened its political institutions. In his last State of the Nation Address, President Aquino was clear about his resolve when he said that, “some of my critics say that I take this campaign against corruption personally. It’s true: doing what’s right is personal. Making people more accountable—whoever they may be—is personal. It should be personal for all of us, because we have all been victimized by corruption.” While I take my hat off to the President for the continuous declaration of this resolve, he should learn from our history and be much more discerning of the politics that lies ahead and beneath in securing a conviction.

As I write this article, the Supreme Court will start to hear the oral arguments on the consolidated cases filed by the Arroyos against the WLO of the Department of Justice. Given the warrant of arrest issued against the former president, the case may have been rendered partially moot. What is even more startling is that the

Department of Justice decided to omit from the WLO the name of the former First Gentleman Jose Miguel Arroyo. With this decision, however, it is still necessary for the Supreme Court to rule on the substantive issues that the Arroyo petitions surfaced, directly and consequentially, the power of the government to maintain order by way of the exercise of its limited power to abridge the right to travel and whether the Executive has defied a legitimate, albeit controversial, order from the High Court. The latter should be decided after the High Court receives the explanation from the Justice Secretary as to why she should not be held in contempt. Will the High Court assert its authority or will it straddle gingerly as it has done in the past to stave off another escalating clash with the incumbent Chief Executive?

For all that it is worth, we have seen this drama before. Of presidents that were deposed in conditions that were much more humiliating. Former President Arroyo should be thankful rather than depressed. Unlike many Filipinos, she has the resources to defend herself and secure her physical and psychological welfare. In the legal front, she is ably represented by her lawyers, with a couple having been lawyers of the predecessor that she prosecuted. She may have been offloaded the night that they tried to dash away, but she remains in an exclusive hospital. The trial court for her electoral sabotage case has agreed to keep her in the confines of her expensive hospital suite.

She should even be more grateful that she was accorded the respect that is supposed to befit a former president by her successor. Interestingly, the “respectful” treatment was not bestowed by her successor on the dead deposed dictator, Ferdinand Marcos, when President Aquino rejected renewed calls to bury Marcos at the cemetery for heroes. Even when she was not being allowed to leave the country earlier, President Aquino offered to her that the government would bring in a specialist to examine her condition at the people’s expense.

With several witnesses arrayed against her in an electoral sabotage case that has already prompted the resignation of a Senator that benefited from the manipulated outcomes, former President Arroyo should really be thankful. She is getting a taste of President Aquino’s personal touch in the campaign against corruption. She may feel persecuted and is bound to be prosecuted but she could take comfort in the fact that conviction, for the high and mighty, is undeniably far more difficult to ascertain in the Philippines.

Here we go again.