

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF JUSTICE
OFFICE OF THE CITY PROSECUTOR
MANILA

FERDINAND S. TOPACIO
Complainant,

-versus -

I.S. No. _____
For: Perjury

AQUILINO L. PIMENTEL III,
Respondent.

x-----x

COMPLAINT-AFFIDAVIT

I, **FERDINAND S. TOPACIO**, Filipino, of legal age, married and with office address at Topacio Law Office, Suite 107 Skyway Twin Towers, Captain Henry P. Javier Street, Barangay Oranbo, Pasig City, after having been duly sworn to an oath in accordance with law, depose and state that:

1. I have the honor to file a criminal complaint for *Perjury*, as the same is defined and penalized under Article 183 of the Revised Penal Code against

AQUILINO L. PIMENTEL III
Filipino, of legal age, married, and with office address at
Room 512 5th Floor GSIS Building,
Jose Diokno Boulevard, Financial Center,
Metro Manila, Pasay, 1300
(hereinafter "Respondent")

under the following facts and circumstances:

2. After the 14 May 2007 National and Local Elections ("2007 Elections" for brevity), Respondent appeared to have lost, not being those within the (12) senatorial candidates who garnered the twelve (12) highest number of votes and who were subsequently proclaimed by the Commission on Elections ("COMELEC").

3. Thereafter, Respondent alleged massive electoral fraud to favor the twelfth winning candidate, **Juan Miguel Zubiri** ("Zubiri"), especially in the provinces of Maguindanao, Lanao del Norte, Lanao del Sur, Shariff Kabunsuan, Basilan, Sultan Kudarat and Sulu.

4. On 30 July 2007, Respondent filed a protest before the Senate Electoral Tribunal (SET). After due proceedings, on 11 August 2011, the SET ruled in favor of Respondent and proclaimed him as the twelfth winning Senator in the 2010 elections. The next day (12 August 2011), Respondent took his oath as Senator and served out his term, which ended on 30 June 2013.

5. Meanwhile, on 15 August 2011, the Commission on Elections (COMELEC) and the Department of Justice (DOJ) issued Joint Order No. 001-2011 creating and constituting a Joint Committee and Fact-Finding Team (referred to as Joint Panel) on the supposed electoral fraud during the 2004 and 2007 National Elections. The Joint Committee was mandated to conduct the necessary preliminary investigation on the basis of the evidence gathered and the charges recommended by the Fact-Finding Team. The Fact-Finding Team, on the other hand, was created for the purpose of gathering real, documentary, and testimonial evidence which can be utilized in the preliminary investigation to be conducted by the Joint Committee.

6. On 17 October 2011, Respondent executed a Complaint-Affidavit for the offense of Electoral Sabotage against former President Gloria Macapagal-Arroyo ("FPGMA"), former First Gentleman Atty. Jose Miguel Arroyo ("FG"), former COMELEC Chairman Benjamin Abalos ("Abalos") and twelve (12) others, including several John and Jane Does, subscribed and sworn to before Assistant City Prosecutor Agripino C. Baybay III. A copy of the said Complaint-Affidavit is hereto attached as **Annex "A" and is the subject of this Perjury complaint**. The original of the said document forms part of the records of the Prosecution Office of Pasay City in Criminal Case No. R-PSY-11-04432-CR. Said Annex "A" forms part and parcel of this Complaint-Affidavit, as is the case for all subsequent annexes.

7. Respondent claimed in his Complaint-Affidavit that, *inter alia*, the results of the 2007 Elections as canvassed by the Commission on Elections-National Board of Canvassers were manufactured and bore falsified, manipulated, fraudulent and padded votes for Zubiri, and that based on the SET findings and with the results unfolding in the proceedings in the DOJ-COMELEC Fact Finding Team, his allegations of fraud perpetrated during the 2007 Elections have been confirmed. According to Respondent, "(i)t now seems clear that there was a grand plan committed by powerful individuals in the executive branch of the government, in the Commission on Elections, and private individuals who conspired with one another conceived and carried-out a well-orchestrated electoral fraud and manipulation of electoral results against complainant (Pimentel) that resulted to the fraudulent, illegal and immoral proclamation of Zubiri as the 12th winning senatorial candidate during the 2007 National and Local Elections."¹

¹ Par. 20, Annex "A"

8. Respondent further identified the so-called "powerful individuals" in his Complaint-Affidavit to be FPGMA and her "cabal" (therein respondents), who supposedly perpetrated and perpetuated the commission of illegal acts in confederation of one another to ensure a 12-0 victory for the administration candidates for Senators known as "Team Unity." In elaboration, Respondent alleged that FPGMA et. al., are all responsible in illegally increasing the votes of Senatorial candidates of "Team Unity" to his prejudice, and to the prejudice as well as of other senatorial candidates.

9. Respondent further added that FPGMA's and FG's participation in the supposed commission of illegal acts are as follows: that FPGMA allegedly gave instructions to then Governor Datu Andal Ampatuan to ensure a 12-0 victory for the Team Unity even if it means altering the election results in Maguindanao and even providing mobilization funds for the purpose; and that, with respect to FG, he likewise gave instructions to Gov. Datu Andal Ampatuan to ensure a 12-0 victory for the Team Unity and to ensure zero votes for senatorial winner Alan Peter Cayetano and providing mobilization funds for such purpose as well;

10. Based on the alleged illegal acts, Respondent thereafter concluded that FPGMA *et al.* were all part of a "conspiracy" and thus, are equally guilty of the special offense of Electoral Sabotage as defined in Sec. 42 (b)(3) of R.A. No. 9369 amending Sec. 27 (b) of R.A. No. 6466, among other election offenses.

11. In its Initial Report dated 20 October 2011, the Fact-Finding Team concluded that manipulation of the results in the 14 May 2007 senatorial elections in the provinces of North and South Cotabato, and Maguindanao was indeed perpetrated. The Fact-Finding Team recommended, among others, that Abalos be subjected to preliminary investigation for electoral sabotage for conspiring to manipulate the election results in North and South Cotabato; that FPGMA and Abalos be subjected to another preliminary investigation for manipulating the election results in Maguindanao; and that FG be subjected to further investigation. The case was docketed as DOJ-COMELEC Case No. 001-2011.

12. On 16 November 2011, the Joint Committee promulgated a Joint Resolution which was later indorsed to the COMELEC. On 18 November 2011, the COMELEC En Banc issued a Resolution approving and adopting the Joint Resolution subject to modifications. The COMELEC resolved, among others, that based on Respondent's Complaint-Affidavit, *etc.*, an information for "Electoral Sabotage" be filed against FPGMA and Abalos, **while the charges against FG be dismissed for "insufficiency of evidence to establish**

probable cause". A copy of the said Resolution is hereto attached as **Annex "B"**.

13. Thus, pursuant to the said Resolution, the COMELEC's Law Department filed with the Regional Trial Court (RTC), Pasay City, an Information against FPGMA, Andal Ampatuan, Sr., and Atty. Lintang Bedol, for violation of Section 42(b)(3) of Republic Act (RA) No. 9369, amending Section 27 (b) of RA 6646, docketed as Criminal Case No. RPSY-11-04432-CR. A copy of the Information therein is hereto attached as **Annex "C"**.

14. Consequently, an application for admission to bail was filed by FPGMA in the aforementioned case and, after due hearing, in an Order dated 25 June 2012, she was allowed by the RTC to post bail in the amount of P1,000,000.00 for her provisional liberty, on the ground that evidence of her guilt was not strong. A copy of the said Order is attached as **Annex "D"**.

15. Trial thereafter ensued and, after the prosecution has rested its case, the RTC allowed FPGMA to file a Demurrer to Evidence, which she did.

16. FPGMA would later on be vindicated when the said Demurrer was granted by the RTC in an Order dated 17 December 2018, a copy of which is attached hereto as **Annex "E"**, the dispositive portion of which reads as follows:

"WHEREFORE, for failure of the prosecution to prove the guilt of the accused beyond reasonable doubt and moral certainty despite ample opportunity and even without evidence in favor of the said accused, the Demurrer to Evidence is GRANTED and the charge of "Electoral Sabotage" against accused Arroyo is hereby ordered DISMISSED.

"The bond of Pi,000,000.00 posted for her provisional liberty is hereby ordered RELEASED to the said accused.

"SO ORDERED."

17. The RTC, in granting FPGMA's demurrer to evidence, gave the following justifications, to wit:

"Judiciously examining the evidence, both documentary and testimonial, presented by the prosecution during the more or less seven (7) years that the present case has been undergoing trial, this court finds that

the prosecution has failed to discharge its duty to prove the guilt of the accused Arroyo beyond reasonable doubt, even in the absence of controverting evidence on the part of the accused.

It must be stressed that even after being given the opportunity to present additional witnesses and documentary evidence after the bail hearings, the prosecution still failed to prove that the conspiracy exists on the part of accused Arroyo in relation to the crime of "electoral sabotage". Out of all the witnesses who testified in open court, not one except Engr. Norie Unas mentioned the name of accused Arroyo. When the prosecution rested its case, such testimony on the part of Unas remained uncorroborated by any other witness, nor has it been proven by independent documentary evidence.

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In the case of accused Arroyo, there is no showing that she committed any overt acts towards the commission of electoral sabotage, nor did she directly participated (sic) therein, or even exerted moral ascendancy over her co-accused to commit the crime. The testimony of the sole witness (Unas) who alleged to have heard accused Arroyo say that words "dapat 12-0 sa Maguindanao, kahit ayusin o palitan pa ang resulta", remains not only uncorroborated but not believable. As pointed out by accused Arroyo during the bail hearings, aside from its obvious improbability, the testimony of witness Unas was a condition to the granting of immunity in his favour. This is why in the Order of July 25, 2012 granting bail to accused Arroyo, the Court noted that the same was "tainted with doubt". Without any new or additional evidence, there is no reason for this Court to change that observation now."

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Finally, the information charges that "accused Gloria Macapagal Arroyo, personally instructed accused Andal Ampatuan, Sr., who was then Governor of Maguindanao, to ensure a '12-0' victory for the senatorial candidates of the "Team Unity". However, as correctly pointed out by the accused Arroyo, that fact, of personally instructing accused

Ampatuan to ensure a '12-0' victory, by itself, cannot constitute the crime of "electoral sabotage".

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As argued by accused Arroyo, the averment in the Information is that the accused gave personal instructions for accused Ampatuan to "ensure a 12-0 victory" for "Team Unity". Such instruction, however, does not constitute a crime. As noted by the Court, the Information is silent as to how accused Arroyo wanted accused Ampatuan to "ensure" such victory. There is no allegation in the Information that the accused Arroyo ordered, or even suggested, that election documents be tampered with, or that votes for any candidate be increased or decreased. This defect cannot be remedied by any testimonial evidence without violating the Constitutional rights of the accused. The rule is that a variance between the allegation in the information and proof adduced during the trial shall be fatal to the criminal case if it is material and prejudicial to the accused so much so that it affects his substantial rights. (*Andaya v. People*, G.R. No. 168486, June 27, 2006, 493 SCRA 539). In a prosecution for electoral sabotage, the allegation of the act or acts that allegedly constitute such crime is material since it forms an integral part thereof. More so since electoral sabotage carries with it the penalty of life imprisonment." (Emphases supplied)

18. Respondent, in filing the Electoral Sabotage case against FPGMA and FG, among others, made certain **deliberate, willful and malicious statements under oath** wherein he **declared and expressed with certainty** the commission by FPGMA and FG, among other persons, of acts constitutive of Electoral Sabotage, by alleging that:

"20. xxx It now seems clear that there was a grand plan committed by powerful individuals in the executive branch of the government, in the Commission on Elections, and private individuals who conspired with one another conceived and carried-out the massive well-orchestrated electoral fraud and manipulation of electoral results against the complainant that resulted to the fraudulent, illegal and immoral proclamation of Zubiri as the 12th winning senatorial candidate during the 2007 National and Local Elections.

"21. Complainant Pimentel will be utilizing the following individuals as his witnesses to establish probable cause:

a. Atty. Lintang H. Bedol, the Provincial Election Supervisor of the Commission on Elections Maguindanao during the May 14, 2007 National and Local Elections;

b. Engr. Norie K. Unas, the Provincial Administrator under Gov. Datu Andal S. Ampatuan, Sr., during the May 14, 2007 National and Local Elections;

c. Zaldy U. Ampatuan, the ARMM Governor during the May 14, 2007 National and Local Elections;

d. Atty. Lilian S. Suan-Radam, the Provincial Election Supervisor of the Commission on Elections in South Cotabato during the May 14, 2007 National and Local Elections; and

e. Atty. Yogie G. Martirizar, the Provincial Election Supervisor of the Commission on Elections in North Cotabato during the May 14, 2007 National and Local Elections;

against the following individuals, herein named as respondents, who perpetrated and perpetuated the commission of illegal acts, in confederation with one another:

a. **Gloria Macapagal-Arroyo**, of legal age, Filipino with address at Room MB-2, House of Representatives, Quezon City where she may be served processes of this Honorable Office;

b. **Jose Miguel Arroyo**, of legal age, Filipino with address at LT.A. Bldg. 118 Perea St., Makati City where he may be served processes of this Honorable Office;

c. **Bong Serrano** of legal age, Filipino with address at Office of the City Mayor, Pasay City where he may be served processes of this Honorable Office;

d. **Gabby Claudio** of legal age, Filipino who may be served with processes of this Honorable Office thru the Office of the Executive Secretary, Malacanang Palace, Manila, which should know his current whereabouts since

said respondent served in said office for a number of years;

e. **Benjamin S. Abalos, Sr.**, of legal age, Filipino with address at c/o Wack Wack Golf and Country Club, Mandaluyong City where he may be served processes of this Honorable Office;

f. **Nicodemo T. Ferrer** of legal age, Filipino who may be served with processes of this Honorable Office thru the COMELEC, Palacio del Gobernador, Intramuros, Manila, which should know his current whereabouts since said respondent served in said office for a number of years;

g. **Michael C. Ahas** of legal age, Filipino with address at c/o COMELEC, Palacio del Gobernador, Intramuros, Manila where he may be served processes of this Honorable Office;

h. **Ben Basiao** of legal age, Filipino with address at c/o Intelligence Service, Armed Forces (ISAFP), Camp Gen. Emilio Aguinaldo, Quezon City where he may be served processes of this Honorable Office;

i. **John Oliver Leaban** of legal age, Filipino with address at c/o Intelligence Service, Armed Forces (ISAFP), Camp Gen. Emilio Aguinaldo, Quezon City where he may be served processes of this Honorable Office. (There are unconfirmed reports that Navy Lt. Lea ban is now deceased);

j. **Peter Reyes** of legal age, Filipino with address at c/o Intelligence Service, Armed Forces (ISAFP) , Camp Gen. Emilio Aguinaldo, Quezon City where he may be served processes of this Honorable Office;

g. (*sic*) **Jaime Paz** of legal age, Filipino who may be served with processes of this Honorable Office thru the Office of the Chairman, COMELEC, Palacio del Gobernador, Intramuros, Manila, which should know his current whereabouts since said respondent served in said office for a number of years;

k. **Alberto Agra** of legal age, Filipino with address at 12 Fordham, St. Ignatius Village, Q.C. where he may be served processes of this Honorable Office;

l. **Andrei Bon Tagum** of legal age, Filipino with address at 12-C Malamig St., Teacher's Village West, Quezon City where he may be served processes of this Honorable Office;

m. **Romy Dayday** of legal age, Filipino with address at c/o Intelligence Service, Armed Forces (ISAFP), Camp Gen. Emilio Aguinaldo, Quezon City where he may be served processes of this Honorable Office;

n. **Jeremy Javier** of legal age, Filipino with address at c/o Intelligence Service, Armed Forces (ISAFP), Camp Gen. Emilio Aguinaldo, Quezon City where he may be served processes of this Honorable Office;

"22. The respondents, based on the witnesses and the records of the COMELEC-DOJ, are all responsible in illegally increasing the votes of senatorial candidates in the Team Unity to the prejudice of the complainant and other senatorial candidates, which is a crime defined and punished under the Omnibus Election Code, Republic Act 9369 and other election laws.

"23. The main purpose of the criminal cabal composed of the herein respondents was to ensure a "12-0" victory for the administration candidates for senators also commonly known as "Team Unity". The respondents' participation as stated in the various Affidavits are allegedly as follows:

a. **Respondent Gloria Macapagal- Arroyo** gave instructions to Gov. Datu Andal Ampatuan to ensure a 12-0 victory for the Team Unity even it means altering the election results in Maguindanao and even providing mobilization funds for such purpose. (Please see Affidavit of Zaldy U. Ampatuan dated July 20, 2011, that of Engr. Norie K. Unas dated Oct. 3, 2011 and Atty. Lintang Bedol dated July 19, 2011);

b. **Respondent Jose Miguel Arroyo** gave instructions to Gov. Datu Andal Ampatuan to ensure a 12-0 victory for the Team Unity and to ensure zero votes for eventual senatorial winner Alan Peter Cayetano and even providing mobilization funds for such purpose. (Please see Affidavit of Zaldy U. Ampatuan dated July 20, 2011 and that of Engr. Norie K. Unas dated Oct. 3, 2011);

c. **Respondent Gabby Claudio** carried out the instruction of Malacanang on the 12-0 victory for the Team Unity and even sent his Executive Secretary Bong Serrano to coordinate with Maguindanao Provincial Administrator Norie Unas for the delivery of the needed funds and of ballots and other election paraphernalia. (Please see Affidavit of Engr. Norie K. Unas dated Oct. 3, 2011);

d. **Respondent Bong Serrano** was sent by respondent Macapagal-Arroyo to Maguindanao after the election and during the canvassing to deliver additional budget and to bring election documents to replace the actual election documents utilized in Maguindanao during the 2007 national and local elections. (Please see Affidavit of Gov. Zaldy U. Ampatuan dated July 30, 2011);

e. **Respondent Nicodemo T. Ferrer** was then one of the Commissioners of the Commission on Elections and the Chairperson of the Task Force Maguindanao who received the MCOCs for the 21 municipalities in Maguindanao at General Santos City. He declared the said documents authentic despite the fact that only copy 2 or copy for the wall were the ones submitted by the election officers/chairpersons of the different MBOCs of Maguindanao. (Kindly refer to the records of the SET with regard to SET Case No. 001-07);

f. **Respondent Benjamin S. Abalos, Sr.** was then the Chairman of the Commission of Elections. Sometime in April 2007, respondent Abalos called all the Provincial Election Supervisors from the four provinces of Region XII and Regional Election Directors from other regions to a meeting in Davao City. In said meeting, respondent Abalos gave the instruction to all the PES and RED to ensure a "12-0" result for Team Unity, and other party-list candidates supported by the administration. Respondent Abalos said that the instructions came "from the top". Respondent Abalos also informed those present in the meeting that they will be provided with certificates of Canvass and other accountable election forms bearing the same serial numbers as those that will be "officially supplied" during the canvassing. (Please see the Affidavits of Atty. Lilian Radam dated Aug. 22, 2011, of Atty. Yogie Martirizar dated Sept. 6, 2011 and of Atty. Lintang H. Bedol dated July 19, 2011);

g. **Respondent Michael C. Abas** was at that time the Comelec Region XII Acting Regional Director. Prior to the meeting with respondent Abalos, the Provincial Election Supervisors of Region XII were already informed by Region XII Director respondent Abas that Chairman Abalos wanted to ensure a "12-0" result in favor of the administration candidates. Respondent Abas reiterated this instruction to Atty. Radam in private and informed her that she will be "contacted" by an official of the ISAFP to whom she should give her full cooperation. Thereafter, from time to time respondent Abas would drop by the office of Radam and reiterate the instruction to ensure the "12-0" victory of administration candidates. (Please refer to the Affidavits of Atty. Lilian Radam dated Aug. 22, 2011 and of Atty. Yogie Martirizar dated Sept. 6, 2011);

h. **Respondent Ben Basiao** was the Regional Director Region XII of the Intelligence Service, AFP (ISAFP). After the meeting, when Atty. Radam arrived in Koronadal City, she was approached by members of the ISAFP led by respondent Col. Ben Basiao. He introduced himself as the official of the ISAFP referred to by respondent Abas. He told Radam that he (Basiao) would be monitoring all her activities regarding the operation to rig the elections to ensure the "12-0" victory of administration candidates. Respondent Basiao said that he will be operating in her area for the Team Unity candidates and that he would supply all the necessary logistics including the accountable forms bearing the same serial numbers with those "officially supplied" to the board of canvassers. (Please refer to the Affidavit of Atty. Lilian Radam dated Aug. 22, 2011);

i. **Respondent John Oliver Leaban** was the Assistant Regional Director, Region XII of the ISAFP. After the meeting with Col. Basiao, respondent Leaban met the Radam and gave her a list of Senatorial candidates with proposed votes that they are supposed to receive in her jurisdiction. The respondent Leaban assured Radam that they would take care of all matters to ensure that the canvassing proceedings would proceed according to their plan. During the actual canvassing during the May 2007 elections, the ISAFP personnel were monitoring the activities and respondents Basiao and Leaban would constantly call Radam to monitor the proceedings and remind her of the instruction (to ensure "12-0" victory for Team Unity). (Please refer to the Affidavit of Atty. Lilian

Radam dated Aug. 22, 2011 and of Atty. Yogie Martirizar dated Sept. 6, 2011);

j. **Respondent Jaime Paz**, who was then the Chief of Staff of respondent Abalos who approached Radam when she arrived at the Philippine International Convention Center (PICC) where the national canvassing was being conducted to submit the election result of South Cotabato. Respondent Paz congratulated Radam for the "12-0" victory of Team Unity. The day before, respondent Paz checked on the results of another PES-Atty. Yogie Martirizar. The latter was only allowed by respondent Paz to enter the PICC once she confirmed that the results contained in the election forms she was submitting favored the Team Unity candidates. (Please refer to the Affidavits of Atty. Lilian Rada dated Aug. 22, 2011 and of Atty. Yogie Martirizar dated Sept. 6, 2011);

k. Radam was informed by Basiao that the false results had been discovered and she was instructed to keep her silence and that she will be "secured" by her escorts who had been her escorts during the elections and even for sometime thereafter. Two (2) of these military personnel allegedly on loan to the ISAFP by the PSG are identified as respondents Romy Dayday and Jeremy Javier. (Please see the Supplemental Affidavit of Atty. Lilian Radam dated Sept. 8, 2011);

l. Radam was escorted to Mindanao under the directive of **respondents Basiao and Leaban** until they reached Davao City. **Respondent Leaban** had been communicating with Radam and had been giving regular financial assistance. (Please see the Supplemental Affidavit of Atty. Lilian Radam dated Sept. 8, 2011);

m. In Davao City, Radam was informed by respondent Leaban that respondent **Alberto Agra** would be handling her legal defense. She was also informed by respondent Leaban that they will give Radam financial assistance and shoulder all her expenses. When the falsified results of North and South Cotabato were discovered, respondent Agra met with Atty. Yogie Martirizar, PES for North Cotabato, to come up with a way to explain the falsified results. Respondent Agra told Yogie Martirizar not to say anything until he (Agra) had come up with a suitable explanation. Thereafter, Agra informed Martirizar that there was no longer any way to resolve the out-and-out out-and-out refer to the Affidavit of Atty.

Lilian Radam dated Aug. 22, 2011 and of Atty. Yogie Martirizar dated Sept. 6, 2011);

n. Having been aware of Pimentel's complaint against Radam and Atty. Yogie Martirizar (PES for North Cotabato), respondent Agra sent his associate-**respondent Andrei Bon Tagum**. Respondent Tagum met with Atty. Radam and Atty. Martirizar at the Marco Polo Hotel on or about July 2007. Respondent Tagum instructed Radam and Martirizar on what their defenses would be and prepared the Counter-Affidavits based on the wishes and instructions of his superior respondent Agra. Radam and Martirizar were informed by respondent Leaban that the legal services of Atty. Tagum had been taken care of by their boss. Respondent Atty. Andrei Bon Tagum also appeared allegedly as counsel for the MBOC Chairpersons during proceedings of the NBC and manifested that his clients were in possession of "certain accountable election documents" in Maguindanao. (Please see the Affidavit of Atty. Lilian Radam dated Aug. 22, 2011 and of Atty. Yogie Martirizar dated Sept. 6, 2011 as well as the records of the Comelec NBC canvass);

o. Respondent **Peter Reyes** of the Intelligence Service, AFP was in-charge of Martirizar's security when he was actually assigned to monitor Martirizar's actions and to make sure that Martirizar will follow the "12-0 instructions". (Please see the Affidavit of Atty. Yogie Martirizar dated Sept. 6, 2011);

"25. It is clear from the acts of the respondents that they are all part of a conspiracy and are thus guilty of the special offense of Electoral Sabotage as defined in Republic Act 9369 and Comelec Resolution 7874."

19. Such averments under oath are **UNTRUE AND PATENT FALSITIES MADE WILLINGLY AND DELIBERATELY BY RESPONDENT** because:

19.1. With respect to FG, as stated above, even at the preliminary investigation stage, there was already an outright finding of "insufficiency of evidence to establish probable cause", thus it cannot be true that FG "gave instructions to Gov. Datu Andal Ampatuan to ensure a 12-0 victory for the Team Unity and to ensure zero votes for eventual senatorial winner Alan Peter Cayetano and even producing mobilization funds for such purpose", as stated

under oath in Par. 23(b) of Respondent's Complaint-Affidavit;

19.2. As to FPGMA, contrary to the deliberately untruthful statements of Respondent, "(o)ut of all the witnesses who testified in open court, not one except Engr. Norie Unas mentioned the name of accused Arroyo. When the prosecution rested its case, such testimony on the part of Unas remained uncorroborated by any other witness, nor has it been proven by independent documentary evidence", as found by the RTC. Likewise, the RTC held that "(i)n the case of accused Arroyo, there is no showing that she committed any overt acts towards the commission of electoral sabotage, nor did she directly participated (sic) therein, or even exerted moral ascendancy over her co-accused to commit the crime."

19.3. It thus stands to reason that it cannot be true that FPGMA "conspired with (her co-Respondents therein) and carried out the massive well-orchestrated electoral fraud and manipulation of electoral results against (Respondent herein)", as clearly asseverated in Par. 20 of Respondent's Complaint-Affidavit;

19.4. It is also a deliberate assertion of out-and-out falsehood, as stated in Par. 21 of Respondent's Complaint-Affidavit, that several persons, namely: Atty. Lintang Bedol, Engr. Norie Unas, Gov. Zaldy Ampatuan, Atty. Lilian Suan-Radam and Atty. Yogie Martirizar, were **witnesses** to the claimed electoral sabotage perpetrated by FPGMA, since in truth, only one of them allegedly witnessed the acts supposedly constituting Electoral Sabotage, and the RTC found such testimony to be "not believable" and "uncorroborated" even by "independent evidence";

19.4. By the same token, it is also a lie and intentional fabrication for Respondent to state under oath in Par. 23(a) of his Complaint-Affidavit that FPGMA "gave instructions to Gov. Datu Andal Ampatuan to ensure a 12-0 victory for the Team Unity even it means altering the election results in Maguindanao and even providing mobilization funds for such purpose", as shown by the ruling of the RTC quoted *supra*;

19.5. Moreover, the statement of Respondent in Par. 24 of his Complaint Affidavit that "there are more involved in this vast criminal conspiracy" is also deliberately untrue and baseless in fact, as no other persons have been indicted for the acts complained of by Respondent in his Complaint Affidavit even until the filing of this present Complaint. On the contrary, Abalos has been acquitted of the charge of Electoral Sabotage on 08 October 2014 and 02 February 2015 respectively;

19.6. Furthermore, no subsequent cases relating to the unfounded charges of Electoral Sabotage as untruthfully narrated by the Respondent in his Complaint-Affidavit was ever filed against the vast majority of the personages named in his perjurious Complaint-Affidavit; and

19.7. Finally, the statement in Par. 25 of Respondent's Complaint-Affidavit that "(i)t is clear from the acts of Respondents that they are all part of a conspiracy and thus guilty of the special offense of Electoral Sabotage xxx" is also a willful and premeditated, deliberate assertion of untrue statements, for the reasons stated above.

20. From the foregoing, it is evident that the accusations made by Respondent Pimentel in his Complaint-Affidavit against FPGMA, FG, et al. were mere lies and fabrications, unsubstantiated by any concrete evidence.

21. Article 183 of the Revised Penal Code provides:

False testimony in other cases and perjury in solemn affirmation. *The penalty of arresto mayor in its maximum period to prision correccional in its minimum period shall be imposed upon any person who, knowingly making untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.*

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein. (Emphasis supplied)

22. As enumerated in *Monfort III v. Salvatierra*², the elements of perjury are the following:

(a) That the accused made a statement under oath or executed an affidavit upon a material matter;

(b) That the statement or affidavit was made before a competent officer, authorized to receive and administer oath;

(c) That in the statement or affidavit, the accused made a willful and deliberate assertion of a falsehood; and

(d) That the sworn statement or affidavit containing the falsity is required by law or made for a legal purpose.

23. All the above-enumerated elements are present in the instant case:

23.1. *First*, Respondent executed an affidavit upon a material matter, i.e., the above-mentioned personalities' alleged participation in the commission of illegal acts in the 2007 Elections. The allegations in his Complaint-Affidavit are material matters because they are among the very facts in issue or the main facts which are the subject of inquiry and are the bases for the determination of the said individuals' alleged culpability in the Electoral Sabotage case filed against them;

23.2. *Second*, Pimentel's Complaint-Affidavit was subscribed and sworn to before Assistant City Prosecutor Agripino C. Baybay III, a competent officer authorized by law to receive and administer oaths;

23.3. *Third*, to support the allegations in his Complaint-Affidavit, he made it appear that he had personal knowledge thereof but in truth he did not, and he knew, him being a lawyer and a bar topnotcher, that evidence was unsubstantiated rumors, hearsay and based on third-party statements that were patently unbelievable, remained uncorroborated by any other witness, nor that the same has been proven by independent documentary evidence. Thus, by doing so, he willfully and deliberately made false statements against the persons mentioned

² G.R. No. 168301, March 5, 2007, 517 SCRA 447, 461.

above when he accused them of having participated in the commission of illegal acts in the 2007 Elections by allegedly confederating with the other named respondents, gave instructions to Gov. Datu Andal Ampatuan to ensure a 12-0 victory for the Team Unity and providing mobilization funds for the purpose.

23.4. *Fourth*, his Complaint-Affidavit containing the falsity is required by law to be under oath.

24. Moreover, in **Sy Tiong Shiou v. Sy**³, the crime of Perjury committed through the making of a false affidavit under Article 183 of the RPC is committed at the time the affiant subscribes and swears to his or her affidavit since it is at that time that all the elements of the crime of perjury are executed.

25. Under paragraph 3 of Article 90 of the Revised Penal Code, "Those crimes, punishable by a correctional penalty shall prescribe in ten years; with the exception of those punishable by *arresto mayor*, which shall prescribe in five years." While the penalty fixed by law is a compound one, the highest penalty shall, according to the last paragraph of the same article, be made the basis of the application of the rules contained therein. The penalty for the crime of perjury being a compound one, the highest of which is correctional, we hold that said crime prescribes in ten years.⁴

26. Respondent's herein subject Complaint-Affidavit was subscribed and sworn to before Assistant City Prosecutor Agripino C. Baybay III on 17 October 2011, hence, Respondent committed the Perjury on the said date. Thus, following the rule mentioned in the immediately preceding paragraph, the crime of Perjury against Pimentel has not yet prescribed as this complaint is being filed within the ten-year period.

27. In **People vs. Cainglet**⁵, this Court emphatically stressed that "every interest of public policy demands that perjury be not shielded by artificial refinements and narrow technicalities. For perjury strikes at the administration of the laws. It is the policy of the law that judicial proceedings and judgments be fair and free from fraud, and that litigants and parties be encouraged to tell the truth, and that they be punished if they do not."

28. In view of the foregoing, it is undeniable that Respondent Pimentel should be held liable for Perjury under Article 183 of the

³ G.R. Nos. 174168 & 179438, March 30, 2009.

⁴ **People vs. Rufo B. Cruz**, G.R. No. L-15132, May 25, 1960.

⁵ 123 Phil. 568 (1966).

Revised Penal Code punishable by the following penalties and accessory penalties:

"Art. 43. *Prision correccional*; Its accessory penalties. — The penalty of *prision correccional* shall carry with it that of suspension from public office, from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage, if the duration of said imprisonment shall exceed eighteen months. The offender shall suffer the disqualification provided in the article although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

Art. 44. *Arresto*; Its accessory penalties. — The penalty of *arresto* shall carry with it that of suspension of the right to hold office and the right of suffrage during the term of the sentence."

29. I am executing this Complaint-Affidavit to attest to the truth of the foregoing and for purposes of filing a criminal complaint against respondent **AQUILINO L. PIMENTEL III** for *Perjury*, as penalized under Article 183 of the Revised Penal Code.

IN WITNESS WHEREOF, I hereunto set my hand this ____ day of _____ 2019, in Manila.



FERDINAND S. TOPACIO
Complaint-Affiant

SUBSCRIBED AND SWORN TO BEFORE ME this ____ day of _____ in Manila, affiant personally appearing and, after examining him so declared and stated under oath that the foregoing statements and allegations are true and correct of his own personal knowledge and authentic records.

I hereby further certify that I have examined the affiant and I am satisfied that he voluntarily executed and understood his herein Complaint-Affidavit. **CERTIFICATION**

I HEREBY CERTIFY that I have personally examined the affiant and that he voluntarily executed and understood his herein Complaint-Affidavit.

ASSISTANT CITY PROSECUTOR


MA. JOSEFINA D. CONCEPCION
Senior Assistant City Prosecutor