EN BANC

G.R. No. 199082 – JOSE MIGUEL T. ARROYO, *Petitioner,* **v. DEPARTMENT OF JUSTICE, *et al.*,** *Respondents*; **G.R. No. 199085 – BENJAMIN S. ABALOS, SR.,** *Petitioner,* **v. LEILA M. DE LIMA, *et al.*,** *Respondents*; **G.R. No. 199118 - GLORIA MACAPAGAL-ARROYO,** *Petitioner,* **v. COMMISSION ON ELECTIONS, *et al.*,** *Respondents.*

Promulgated:

SEPTEMBER 18, 2012

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SEPARATE CONCURRING AND DISSENTING OPINION

CARPIO, *J.*:

I concur with the *ponencia* in its conclusion that (1) there is no violation of the Due Process and Equal Protection Clause in the creation, composition, and proceedings of the Joint Department of Justice (DOJ) – Commission on Elections (COMELEC) Preliminary Investigation Committee (Committee) and the Fact-Finding Team; (2) petitioner Gloria Macapagal-Arroyo (Macapagal-Arroyo) in G.R. No. 199118 was not denied opportunity to be heard in the course of the Committee's preliminary investigation proceedings; and (3) the preliminary investigation against petitioners, which followed Rule 112 of the Rules on Criminal Procedure and Rule 34 of the COMELEC Rules of Procedure, is valid.

Petitioners' attack against the impartiality of the Committee and the Fact-Finding Team because of their composition and source of funding is negated by (1) the express statutory authority for the DOJ and the COMELEC to conduct *concurrently* preliminary investigations on election-related offenses, (2) the separate funding for the Committee and Fact-Finding Team's personnel, and (3) the failure of petitioners to rebut the

presumption of regularity in the performance of official functions. Similarly, the equal protection attack against Joint Order 001-2011 for its alleged underinclusivity fails as jurisprudence is clear that underinclusivity of classification, by itself, does not offend the Equal Protection Clause.[1]

Nor is there merit in petitioner Macapagal-Arroyo's claim that the Committee's denial of her request for time to file her counter-affidavit and for copies of documents relating to the complaint of Aquilino Pimentel III (Pimentel) and the Fact-Finding's partial investigation report robbed her of opportunity to be heard. Petitioner Macapagal-Arroyo was furnished with all the documents the Committee had in its possession. Further, the documents relating to Pimentel's complaint,[2] all based on an election protest he filed with the Senate Electoral Tribunal,[3] are not indispensable for petitioner Macapagal-Arroyo to prepare her counter-affidavit to answer the charge that she acted as principal by conspiracy, not by direct participation, to commit electoral sabotage in Maguindanao in the 2007 elections.

I am, however, unable to join the *ponencia* in its conclusion that the rules of procedure adopted by the Committee (Committee Rules) must be published.

Section 7 of the Joint Order provides that the "Committee shall meet and craft its rules of procedure ***as may be complementary to the respective rules of DOJ and COMELEC*** x x x." Section 2 of the Committee Rules provides that the "preliminary investigation shall be conducted in the following manner ***as may be complementary*** to Rule 112 of the Rules on Criminal Procedure and Rule 34 of the COMELEC Rules of Procedure." This means that the Committee Rules will apply ***only if they complement*** Rule 112 or Rule 34. If the Committee Rules do not complement Rule 112

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1 See *e.g. Quinto v. Commission on Elections*, G.R. No. 189698, 22 February 2010, 613 SCRA 385 (reversing the earlier ruling of the Court striking down a law for its underinclusivity).

2 Numerous election forms and 201,855 ballots from 1,078 precincts in Maguindanao.

3 SET Case No. 001-07 (*Aquilino Pimentel III v. Juan Miguel F. Zubiri*).

or Rule 34 because the Committee Rules conflict with Rule 112 or Rule 34, the Committee Rules will not apply and what will apply will either be Rule 112 or Rule 34. Clearly, the Committee Rules do not amend or revoke Rule 112 or Rule 34, but ***only complement*** Rule 112 or Rule 34 if possible. "Complementary" means an addition so as to complete or perfect.[4] The Committee Rules apply only to the extent that they "may be complementary to" Rule 112 or Rule 34. In short, despite the adoption of the Committee Rules, Rule 112 of the Rules on Criminal Procedure and Rule 34 of the COMELEC Rules of Procedure indisputably remain **in full force and effect**.

Assuming, for the sake of argument, that the Committee Rules amend Rule 112 and Rule 34, the lack of publication of the Committee Rules renders them void, as correctly claimed by petitioners. In such a case, Rule 112 and Rule 34 remain in full force and effect unaffected by the void Committee Rules. The preliminary investigation in the present case was conducted in accordance with Rule 112 and Rule 34. Petitioners do not claim that any of their rights under Rule 112 or Rule 34 was violated because of the adoption of the Committee Rules. In short, petitioners cannot impugn the validity of the preliminary investigation because of the adoption of the Committee Rules, ***whether the adoption was void or not***.

As shown in the matrix drawn by public respondents in their Comment,[5] of the ten paragraphs in Section 2 (Procedure) of the Committee Rules, ***only one*** paragraph is not found in Rule 112 of the Rules on Criminal Procedure and this relates to an **internal procedure on the treatment of referrals by other government agencies or the Fact-Finding Team to the**

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4 Merriam-Webster Dictionary, Version 3 (2003).

5 Consolidated Comment, pp. 78-82.

Committee.[6] In *Honasan II v. Panel of Prosecutors of the DOJ*,[7] the Court quoted and adopted the following argument of the Ombudsman:

> OMB-DOJ Joint Circular No. 95-001 is **merely an internal circular** between the DOJ and the Office of the Ombudsman, outlining authority and responsibilities among prosecutors of the DOJ and of the Office of the Ombudsman in the conduct of preliminary investigation. **OMB-DOJ Joint Circular No. 95-001 DOES NOT regulate the conduct of persons or the public, in general**.
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> Accordingly, there is no merit to petitioner's submission that OMB-DOJ Joint Circular No. 95-001 has to be published. (Emphasis supplied)

In addition, Section 3 of the Committee Rules (Resolution of the Committee) is a substantial reproduction of the first paragraph of Section 4 of Rule 112, save for language replacing "investigating prosecutor" with "Committee." Section 4 of the Committee Rules (Approval of Resolution), while not appearing in Rule 112, is an **internal automatic review mechanism** (for the COMELEC *en banc* to review the Committee's findings) not affecting petitioners' rights.[8] **Thus, save for ancillary internal rules, the Committee Rules merely reiterate the procedure embodied in Rule 112**.

Nevertheless, the *ponencia* finds publication (and filing of the Committee Rules with the U.P. Law Center[9]) "necessary" because three provisions of the Committee Rules "either restrict the rights or provide remedies to the affected parties," namely:

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6 Section 2(a), second paragraph which provides: "The Committee shall treat a referral made by a government agency authorized to enforce the law or the referral, report or recommendation of the Fact-Finding Team for the prosecution of an offense as a complaint to initiate preliminary investigation. In any of these instances, the referral, report or recommendation must be supported by affidavits, documentary, and such other evidence to establish probable cause."

7 G.R. No. 159747, 13 April 2004, 427 SCRA 46.

8 The Committee Rules omit that portion of Section 3(b), Rule 112 which provides that "[I]f the evidence is voluminous, the complainant may be required to specify those which he intends to present against the respondent, and these shall be made available for examination or copying by the respondent at his expense." This, however, does not work prejudice to petitioner Macapagal-Arroyo because she was furnished with all the documents the Committee had in its possession relating to the two cases under investigation.

9 Under Executive Order No. 292, Book VII, Chapter 2, Sections 3-4.

> (1) Section 1 [which] provides that "the Joint Committee will no longer entertain complaints from the public as soon as the Fact-Finding Team submits its final Report, except for such complaints involving offenses mentioned in the Fact-Finding Team's Final Report"; (2) Section 2 [which] states that the "Joint Committee shall not entertain a Motion to Dismiss"; and (3) Section 5 [which] provides that a Motion for Reconsideration may be availed of by the aggrieved parties against the Joint Committee's Resolution.[10]

None of these provisions justify placing the Committee Rules within the ambit of *Tañada v. Tuvera*.[11]

Section 1 of the Committee Rules allows the Committee, after the submission by the Fact-Finding Team of its Final Report, to entertain complaints mentioned in the Final Report and disallows the Committee to entertain complaints unrelated to the offenses mentioned in the Final Report. This is still part of the fact-finding stage and the Committee has the discretion to require the Fact-Finding Team to take into account new complaints relating to offenses mentioned in the Final Report. ***At this stage, there is still no preliminary investigation***. Section 1 refers solely to the fact-finding stage, not the preliminary investigation. Thus, Section 1 cannot in any way amend, revoke or even clarify Rule 112 or Rule 34 which governs the preliminary investigation and not the fact-finding stage. Section 1 is merely an internal rule governing the fact-finding stage. To repeat, Section 1 does not have the force and effect of law that affects and binds the public in relation to the preliminary investigation. In short, there is no need to publish Section 1 because it deals solely with fact-finding, not with the preliminary investigation.

In barring acceptance of new complaints after the submission of the Fact-Finding Team's Final Report to the Committee, save for complaints on offenses covered in the Final Report, Section 1 merely states a commonsensical rule founded on logic. If the Final Report is with the

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[10] Decision, p. 37.

[11] G.R. No. L-63915, 24 April 1985, 136 SCRA 27 (Decision); 29 December 1986, 146 SCRA 446 (Resolution).

Committee, it makes no sense to re-open the investigation for the Fact-Finding Team to investigate offenses ***wholly unrelated to the Final Report***. For such new offenses, the Fact-Finding Team will have to open a new investigation. On the other hand, it makes eminent sense for the Fact-Finding Team to re-open investigation (and thus revise its Final Report) if the new complaints "***involv[e]*** offenses ***mentioned*** in the Fact-Finding Team's Final Report," allowing the Fact-Finding Team to submit as thorough and comprehensive a Report as possible on the offenses subject of the Final Report. Far from "restrict[ing] the rights" of the "affected parties," Section 1 favors the petitioners by letting the Fact-Finding Team parse as much evidence available, some of which may be exculpatory, even after the Final Report has been submitted to the Committee, provided they relate to offenses subject of the Final Report.

On Section 2 and Section 5 of the Committee Rules, these provisions merely reiterate extant rules found in the Rules of Court and relevant administrative rules, duly published and filed with the U.P. Law Center. Thus, Section 2's proscription against the filing of a motion to dismiss is already provided in Section 3(c) of Rule 112 which states that "[t]he respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit."[12] Similarly, the right to seek reconsideration from an adverse Committee Resolution under Section 5, again favoring petitioners, has long been recognized and practiced in the preliminary investigations undertaken by the DOJ.[13] DOJ Order No. 223, dated 1 August 1993, as amended by DOJ Department Circular No. 70, dated 1 September 2000, grants to the aggrieved party the right to file "one motion for

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[12] Section 3(c) provides in full: "Within ten (10) days from receipt of the subpoena with the complaint and supporting affidavits and documents, the respondent shall submit his counter-affidavit and that of his witnesses and other supporting documents relied upon for his defense. The counter-affidavits shall be subscribed and sworn to and certified as provided in paragraph (a) of this section, with copies thereof furnished by him to the complainant. **The respondent shall not be allowed to file a motion to dismiss in lieu of a counter-affidavit**." (Emphasis supplied)

[13] See, *e.g. Adamson v. Court of Appeals*, G.R. No. 120935, 21 May 2009, 588 SCRA 27 (where the DOJ denied reconsideration of its Resolution for probable cause for violation of several provisions of the National Internal Revenue Code); *People v. Potot*, 432 Phil. 1028 (2002) (where a provincial prosecutor denied reconsideration to a finding of probable cause for Homicide.)

reconsideration" and reckons the period for the filing of appeal to the DOJ Secretary from the receipt of the order denying reconsideration.[14]

Tañada v. Tuvera requires publication of administrative rules that have the force and effect of law and the Revised Administrative Code requires the filing of such rules with the U.P. Law Center as facets of the constitutional guarantee of procedural due process, to prevent surprise and prejudice to the public who are legally presumed to know the law.[15] As the Committee Rules merely complement and even reiterate Rule 112 of the Rules on Criminal Procedure, I do not see how their non-publication and non-filing caused surprise or prejudice to petitioners. Petitioners' claim of denial of due process would carry persuasive weight if the Committee Rules ***amended***, ***superseded or revoked*** existing applicable procedural rules or contained original rules found nowhere in the corpus of procedural rules of the COMELEC or in the Rules of Court, rendering publication and filing imperative.[16] Significantly, petitioner Macapagal-Arroyo encountered no trouble in availing of Rule 112 to file a motion with the Committee praying for several reliefs.[17]

Lastly, the complementary nature of the Committee Rules necessarily means that the proceedings of the Committee would have continued and no prejudice would have been caused to petitioners even if the Committee Rules were non-existent. The procedure provided in Rule 112 of the Rules

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14 Section 3 of DOJ Department Circular No. 70 provides in full: "*Period to Appeal*. – The appeal shall be taken within fifteen (15) days from receipt of the resolution or of the denial of the motion for reconsideration/reinvestigation if one has been filed within fifteen (15) days from receipt of the assailed resolution. Only one motion for reconsideration shall be allowed." This amends Section 2 of DOJ Order No. 223 which provides: "*When to appeal*. – The appeal must be filed within a period of fifteen (15) days from receipt of the questioned resolution by the party or his counsel. The period shall be interrupted only by the filing of a motion for reconsideration within ten (10) days from receipt of the resolution and shall continue to run from the time the resolution denying the motion shall have been received by the movant or his counsel."

15 Civil Code, Article 3.

16 See *e.g*. *Republic v. Express Telecommunications, Inc*., G.R. No. 147096, 15 January 2002, 373 SCRA 316; *GMA Network, Inc. v. MTRCB*, G.R. No. 148579, 5 February 2007, 514 SCRA 191.

17 On 8 November 2011, petitioner Macapagal-Arroyo filed an "Omnibus Motion *Ad Cautelam*" requesting copies of documents relating to DOJ-COMELEC Case No. 001-2011 and DOJ-COMELEC Case No. 002-2011. In her motion, petitioner invoked Section 3, Rule 112 of the Rules on Criminal Procedure (Annex "A," Supplemental Petition, G.R. No. 199118).

on Criminal Procedure and Rule 34 of the COMELEC Rules of Procedure would have *ipso facto* applied since the Committee Rules merely reiterate Rule 112 and Rule 34. The *ponencia* concedes as much when it refused to invalidate the Committee's proceedings, observing that "**the preliminary investigation was conducted by the Joint Committee pursuant to the procedures laid down in Rule 112 of the Rules on Criminal Procedure and the 1993 COMELEC Rules of Procedure.**"[18]

Accordingly, I vote to **DISMISS** the petitions.

ANTONIO T. CARPIO
Associate Justice

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[18] Decision, pp. 38-39. Emphasis supplied.