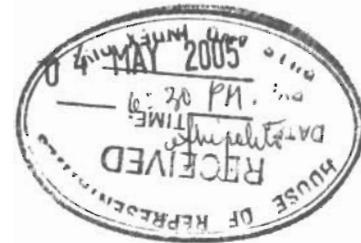


Republic of the Philippines
HOUSE OF REPRESENTATIVES
THIRTEENTH CONGRESS
First Regular Session



HOUSE BILL NO. **4263**

Introduced by Reps. SATUR C. OCAMPO, TEODORO A. CASIÑO, JOEL G. VIRADOR, CRISPIN B. BELTRAN, RAFAEL V. MARIANO, LIZA L. MAZA, EDUARDO C. ZIALCITA

Explanatory Note

The construction of the Bataan Nuclear Power Plant (BNPP) was rife with deceit, fraud, bribery, overpricing, coercion, abuse of power, and violations and circumventions of proper procedures and legal requirements, not to mention violations of the Constitution. The project pushed through amidst evidence that the plants of Westinghouse (the nuclear plant system supplier) in the US in the late 70s were "breaking down with alarming regularity" and evidence from Philippine Atomic Energy Commission (PAEC) that the construction area was inadequate for a nuclear plant, since the site lay on an earthquake fault and was surrounded by a number of active volcanoes.

Originally pegged at US\$1.109 billion dollars in 1976 through a loan grant extended to the National Power Corporation (NPC) by a number of foreign public and private commercial banks, the nuclear plant loans went up to US\$2.67 billion by December 1988. In September 1974, Westinghouse's original \$500 million estimate for two nuclear reactors had gone up to US\$695 million. By May 1975, the cost had risen again to US\$1.2 billion. According to the Philippine National Computer Center, this amount was US\$75 million higher than similar Westinghouse plants in Yugoslavia, South Korea, and Taiwan. As if to further underscore the discrepancy, Westinghouse, during this period, constructed a nuclear plant with a greater electrical generating capacity for Spain at US\$687 million, almost one-half of the pegged BNPP price. The NPC negotiating team was never allowed to review the contract in its final form.

The plant never operated and yet the country has been paying BNPP loans as much as US\$357,000 dollars a day. Meanwhile, the Philippine government, other than paying for the loans, is also shelling out in excess of P50 million pesos annually for the plant's maintenance, even as it has yet to produce a kilowatt of electricity. The Philippines still owes P8 billion in BNPP loans to bilateral/multilateral institutions.

In October 1986, Pres. Corazon Aquino issued Executive Order (EO) Number 55 which transferred BNPP assets and foreign loan obligations from the NPC to the national government. In August 1989, the Central Bank of the Philippines embarked on an ambitious debt buy-back scheme to retire a considerable portion of the country's US\$28 billion debt, which included BNPP loans.

To call for the cancellation of the BNPP payments is valid, as supported by our very own Civil Code and by international law, which render voidable contracts involving fraud. Moreover, the right against the impairment of contracts is not absolute. It yields to police power and general welfare of the people. In the words of the 1987 Constitution: "The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands."

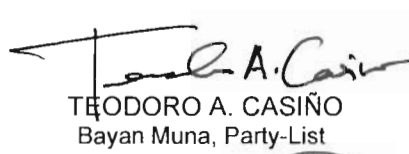
The BNPP debts were contracted through questionable, fraudulent and illegal means, by fraudulent parties, with fraudulent terms, for fraudulent purposes.

For the redress of this injustice, this bill requires the cancellation of unjust and fraudulent past debt payments, the refund of the loans and interest payments already serviced, and the refund of their

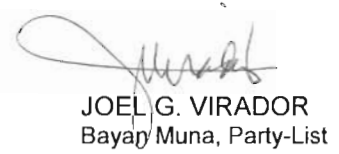
equivalent in past maintenance expenses plus interest thereon, net of all settlements and negotiations previously made.



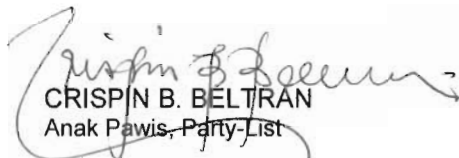
SATUR C. OCAMPO
Bayan Muna, Party-List



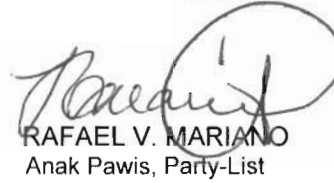
TEODORO A. CASIÑO
Bayan Muna, Party-List



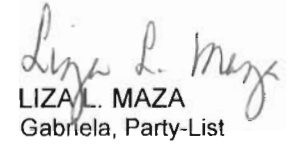
JOEL G. VIRADOR
Bayan Muna, Party-List



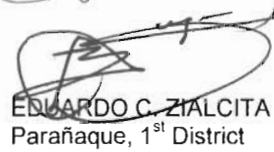
CRISPIN B. BELTRAN
Anak Pawis, Party-List



RAFAEL V. MARIANO
Anak Pawis, Party-List



LIZA L. MAZA
Gabriela, Party-List



EDUARDO C. ZIALCITA
Parañaque, 1st District

Republic of the Philippines
HOUSE OF REPRESENTATIVES
THIRTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 4263

Introduced by Reps. SATUR C. OCAMPO, TEODORO A. CASIÑO, JOEL G. VIRADOR, CRISPIN B. BELTRAN, RAFAEL V. MARIANO, LIZA L. MAZA, EDUARDO C. ZIALCITA

AN ACT
CANCELLING PAYMENTS OF LOANS AND RECOVERING PREVIOUS DEBT PAYMENTS FOR THE
FRAUDULENT BATAAN NUCLEAR POWER PLANT PROJECT

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

SECTION 1. Short Title. This Act shall be known as the "Bataan Nuclear Power Plant Debt Cancellation Act".

SECTION 2. Declaration of Policy.

I. Sovereignty

Article I, Section VII of the 1987 Constitution states: "The State shall pursue an independent foreign policy. In its relations with other states the paramount consideration shall be national sovereignty, territorial integrity, national interest, and the right to self-determination."

II. Social Justice

Article I, Section IX of the 1987 Constitution states: "The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living, and an improved quality of life for all."

III. Obligations Under Philippine Laws

(a) Article 1267, Section Two, Chapter Four, Book Four, of Republic Act 286, otherwise known as the Civil Code

"When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part."

(b) Article 1330, Section One, Chapter Two, Book Four, of Republic Act 286, otherwise known as the Civil Code

"A contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable."

IV. Obligations Under International Law

(a) Article 61, Section Three, Part Five of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations

1
2 *Supervening impossibility of performance*
3

4 (1) A party may invoke the impossibility of performing a treaty as a ground for terminating
5 or withdrawing from it if the impossibility results from the permanent disappearance or
6 destruction of an object indispensable for the execution of the treaty. If the impossibility
7 is temporary, it may be invoked only as a ground for suspending the operation of the
8 treaty.
9

10 (2) XXXX
11

12 (b) Article 49, Section Two, Part Five of the Vienna Convention on the Law of Treaties
13 between States and International Organizations or between International Organizations
14

15 *Fraud*
16

17 "A State or an international organization induced to conclude a treaty by the fraudulent
18 conduct of a negotiating State or a negotiating organization may invoke the fraud as
19 invalidating its consent to be bound by the treaty."
20

21 (c) Article 50, Section Two, Part Five of the Vienna Convention on the Law of Treaties
22 between States and International Organizations or between International Organizations
23

24 *Corruption of a representative of a State or of an international organization*
25

26 "A State or an international organization the expression of whose consent to be bound by a
27 treaty has been procured through the corruption of its representative directly or indirectly
28 by a negotiating State or a negotiating organization may invoke such corruption as
29 invalidating its consent to be bound by the treaty."
30

31 Consistent with the foregoing, it is hereby the declared policy of the State to take steps to void contracts
32 and corresponding debts incurred fraudulently. The State shall act freely from any foreign influence in its
33 policy formulation processes, especially relating to the economic allocation of its resources geared towards
34 common prosperity and equitable distribution. To this effect, the State shall be independent from the
35 dictates of foreign creditors or other entities imposing any policy, law, or practice ensuring or guaranteeing
36 the allocation of government funds for debt service.
37

38
39 **SECTION 3. *Debt Cancellation and Amendatory Provisions.***
40

- 41 (a) The Debt Service Fund for Interest Payment of Republic Act No. 9336, or Annex A of what is
42 otherwise known as the General Appropriations Act of 2005 shall hereby be amended such that the
43 total value of debt service shall be decreased by the amount appropriated for 2005 interest
44 payments for loans incurred by and related to the BNPP project.
45
46 (b) The Debt Service Fund for Principal Amortization, of Republic Act No. 9336, or Annex B of what is
47 otherwise known as the General Appropriations Act of 2005 shall hereby be amended such that the
48 total value of debt service shall be decreased by the amount appropriated for 2005 principal
49 amortization payments for loans incurred by and related to the BNPP project.
50
51 (c) Interest payments and principal amortization payments for loans incurred by and related to the
52 BNPP project are hereby prohibited from being included in all succeeding General Appropriations
53 Acts and supplementary budgets upon the effectivity of this act.
54
55

56 **SECTION 4. *Negotiations for the Refund of Previous Debt Payments.***
57

(a) The Department of Finance is hereby directed to negotiate for the refund of all previous interest and principal amortization payments for loans incurred by or related to the BNPP with the U.S. Department of Trade and all creditors of loans incurred by or related to the BNPP project.

(b) Terms of Negotiations

(1) Negotiations should be concluded within one year from the formation of the team;

(2) Negotiations shall be transparent and the complete transcript of negotiations shall be made available to the Filipino citizenry through websites and publications.

SECTION 5. Oversight Functions.

The Departments of Finance and Budget and Management shall ensure the strictest compliance with this Act.

SECTION 6. Penalties.

Any violation of Section 3 (b) hereof shall subject the responsible public official/s therefore to imprisonment of eight (8) years with perpetual disqualification from holding elective and appointive office/s.

SECTION 7. Repealing Clause.

(a) Section 31 of Presidential Decree No. 1177 of July 30, 1977 entitled 'Revising The Budget Process In Order To Institutionalize The Budgetary Innovations Of The new Society' is hereby amended to read as follows:

"Section 31. *Automatic Appropriations.* All expenditures for (a) personal retirement premiums, government service insurance, and other similar fixed SOCIAL SERVICE expenditures [, (b) principal and interest on public debt, (c) national government guarantees of obligations which are drawn upon,] are automatically appropriated: provided, that no obligations shall be incurred or payments made from funds thus automatically appropriated except as issued in the form of regular budgetary allotments."

(b) Section 26, Chapter 4, Book VI of Executive Order No. 292, otherwise known as the "Administrative Code of 1987" which reiterates *in toto* Section 31 of Presidential Decree No. 1177 and similar laws, decrees, executive orders, administrative orders, or circulars are likewise hereby amended.

(c) All other laws, decrees, executive orders, rules and regulations, or parts thereof inconsistent with any of the provisions of this Act, are hereby repealed or amended accordingly.

SECTION 8. Separability Clause. – If, for any reason, any section or provision of this Act is declared unconstitutional or invalid, such other sections or provisions not affected thereby shall remain in full force and effect.

SECTION 9. Effectivity. – This Act shall take effect fifteen days after its complete publication in at least two (2) national newspapers of general circulation.

Approved,