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February 19, 2025

HON. FRANCIS "CHIZ" ESCUDERO
President
Senate of the Philippines
Roxas Blvd., Pasay City

Dear Senate President Escudero,

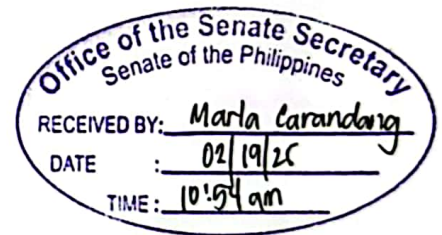
Greetings!

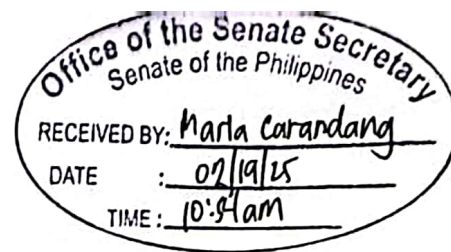
We would like to provide you with a copy of the statement of Bayan Muna as to its position on the impeachment issue. We hope the Senate will also consider the opinion herein in deciding whether to hold the impeachment trial now or later.

Thank you.

Truly yours,


NERI J. COLMENARES
National Chairman





**The Legal and Constitutional Issues on the Impeachment:
Impeachment as the only accountability mechanism
to remove corrupt impeachable officials
By Neri Javier Colmenares
Bayan Muna Chairperson
February 12, 2025**

There have been contending messages on impeachment legal issues from the Senate and the House. Bayan Muna wishes to explain the legal and constitutional basis for its position on the need for the impeachment trial to immediately proceed despite the reelection campaigns of some senators.

I. The Senate should forthwith proceed with the impeachment trial as commanded by the Constitution—not on June 2, 2025 or in the next Congress.

Article XI Section 3 (4) of the Constitution provides that “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**”. While there may be debates on the length of time required for an act to be “forthwith,” it cannot be absurdly interpreted as more than four months later on “June 2, 2025” or in the “next Congress”.

The proposal, therefore, that the impeachment court convenes on June 2, 2025 or worse, in the next Congress is without constitutional or legal basis. No matter the debate on what “forthwith” means, more than four months is surely not reasonably within the Constitution’s contemplation of “forthwith”—especially since impeachment is the only accountability mechanism left for impeachable officials.

Impeachable officials are like gods in the Philippine justice system. Even if they commit corruption, serious misconduct or other illegal acts they cannot be removed from office unless convicted in an impeachment trial. While ordinary mortals and lowly government employees can be administratively charged and removed from office any time, even for mere improper acts or misdemeanors, **impeachable officials are immune from these suits**. This is the reason why many impeachable officials in the past have been encouraged in committing corruption or abusing their powers—they can always claim that they cannot be removed unless convicted in an impeachment trial. Delays in impeachment trials therefore, only embolden the corrupt and denies justice to the injured party—the Filipino people.

The impeachment mechanism is the last resort of the people in removing corrupt impeachable officials and therefore must be pursued if only to force VP Sarah Duterte to answer the million-dollar question—where and how did she actually spend at least Php 125 million of public funds in 11 days in 2022. It does not matter if one is a Marcos supporter, or a Duterte supporter or a Leni supporter or a Bayan Muna supporter—the

and therefore we have the right to demand accountability and insist that the Senate hold the impeachment trial soon.

To delay the impeachment trial by belaboring the definition of “forthwith” has no place in the accountability mechanism for public officials. In fact, even the three previous impeachment complaints against high impeachable officials do not define “forthwith” to contemplate a delay in the holding of an impeachment trial beyond a month or two.

President Joseph Estrada was impeached on November 13, 2000, and the Articles of Impeachment was transmitted to the Senate forthwith on the same day. The impeachment court was convened on November 20, 2000, and trial started on December 7, 2000, until it was terminated on January 16, 2001, when the prosecution walked out of the trial. The EDSA II uprising took place on January 17-20, 2001.

Ombudsman Merceditas Gutierrez was impeached by the House of Representatives on March 22, 2011 and the articles of impeachment was immediately transmitted¹ to the Senate on March 23, 2011. The Impeachment Court was scheduled to convene on May 9, 2011, but Gutierrez resigned on April 29, 2011.

Chief Justice Renato Corona was impeached by the House of Representatives on December 12, 2011, and the Articles of Impeachment was transmitted to the Senate on December 13, 2011. The Senate convened the impeachment court on January 16, 2012. Eight acts were charged in the Articles of Impeachment using four grounds for impeachment under the Constitution. The Public Prosecutors later withdrew the other acts and grounds, and the Senate only tried three acts charged against Corona. He was convicted for betrayal of public trust on May 29, 2012, for failure to disclose his assets and net worth. The Impeachment Court no longer found the need to decide on the other two grounds as a conviction on one ground was found sufficient.

Clearly, therefore, the impeachment trial must be held immediately rather than on June 2, 2025, or in the next Congress. While it may be argued that the next Congress continues to have jurisdiction of the impeachment trial started in the previous Congress because the Senate is a continuing body, and akin to court’s continuing jurisdiction over cases even if the justices and judges hearing a case are replaced, such is not a relevant issue now, since the impeachment court can finish the trial before the term of Congress ends on June 30, 2025.

The Prosecution can, in fact, just tackle 1 or 2 acts to constitute the ground of Betrayal of Public Trust thereby shortening the time needed by the trial court to arrive

¹ Justice Committee Members Representatives Niel Tupas, Lorenzo Tanada III, Teddy Casino, Rodolfo Farinas, and Neri Colmenares personally delivered the Articles of Impeachment to Senate President Juan Ponce Enrile on March 23, 2011. See <https://www.gmanetwork.com/news/topstories/nation/215977/house-transmits-impeachment-articles-to-senate/story/>.

at a decision. This was done during the Corona impeachment in which the impeachment court only tackled three acts instead of eight acts and four grounds but convicted Corona in just one ground.

It is not true that there is no time for an impeachment trial. Unlike the Corona impeachment trial where each document must be meticulously prepared, the Sara Duterte impeachment case will mainly deal with official documents from COA or the DBM, and other official and authenticated evidence already submitted during the congressional hearings, thereby, making it easier for the impeachment court to sift through the evidence submitted.

Additionally, the impeachment court is not the exercise of a legislative function of the Senate—it is in the exercise of its constituent function. The court, therefore, is not bound by legislative calendars and could therefore convene even if Congress is in recess.

The impeachment trial if commenced immediately can finish long before June 30, 2025. The impeachment court will find it difficult to complete the trial if only convened on June 2, 2025.

II. The President has the power to call for a special session and should convene a special session of Congress immediately.

Art. VI Sec. 15 of the Constitution provides that **“The President may call a special session at any time”**. Pres. Ferdinand Marcos Jr. is therefore empowered to convene a special session of Congress, without need of a request from the Senate. The Constitution does not require the permission of or request from the Senate to trigger this power.

Pres. Marcos can use as the basis for such call that he is only fulfilling the constitutional demand for the impeachment trial to proceed **“forthwith”**. Additionally, he has the constitutional duty to uphold² the Constitution which commanded under Article XI Section 3 (4) that upon the transmittal of the articles of impeachment, the impeachment trial shall proceed forthwith. He also took his oath to **“Preserve and defend its Constitution, execute its laws, do justice to every man, and consecrate (himself) to the service of the Nation”**.

The claim that a special session can only be called for **“important legislative matter”** is misplaced. The basis of such interpretation is Article XIV Section 42 of the Rules of the Senate which states that **“xxx the President of the Senate, in consultation with the Majority and Minority Leaders and upon agreement with the Speaker of the House of Representatives, may reconvene the Senate in session without need of a call by the President of the Philippines, at any time during a recess, to consider urgent legislative matters; or in case of a vacancy in the Office of the Vice President, to confirm the nominee of the President for the position in accordance with**

² See Article XI Section 4 of the 1987 Constitution.

Section 9, Article VII of the Constitution, or to determine the inability of the President of the Philippines to discharge the powers and duties of his office upon the written declaration of a majority of all the members of the Cabinet in accordance with Section 11, Article VII of the Constitution xxx”

Firstly, indeed the Senate and the House may agree to convene a special session under Art. XIV Sec. 42 on “important legislative matters” but such rule does not foreclose both houses from convening on other matters as the rule itself provides.

In fact, both Houses of Congress convened a special session on November 4, 2023, just to welcome Japanese Prime Minister Kishida Fumio. If the Senate can convene a special session just to welcome a foreign dignitary, there is no reason why it cannot convene a special session to heed the call for accountability by the Constitution and the people. There is nothing legislative about welcoming a foreign dignitary, nor can it be said, that it is more important than convening an impeachment court to exact accountability from public officials.

Secondly, the Constitution is supreme over the Senate Rules. When the Constitution grants the president the power to call for a special session, mere senate rules cannot limit it to “important legislative matters” especially if the Constitution did not put such limitation. Nor is there a constitutional requirement that Pres. Marcos needs a request from the Senate to call for a special session.

Pres. Marcos, therefore, not only has the power to call for a special session, but also the duty to the Filipino people and the constitutional mandate for accountability, to call for a special session of Congress.

III. There is no need for the Senate to draft a new set of impeachment rules, as there is a standing set of Senate Rules on Impeachment in the 19th Congress.

Found in the Senate website is the “Senate Rules” of the 19th Congress which states that *“This latest and updated edition of the Rules was published by the Legislative Publications Service (LPS) Senate of the Philippines March 2023”*. Said Rules also contain the Rules of Procedure Governing Inquiries in Aid of Legislation and Resolution Adopting the Rules of Procedure in Impeachment Cases.

Clearly therefore the Senate has rules effectively governing impeachment cases which was duly approved and published and has been the rules used by the Senate under the 19th Congress. Drafting a new set of rules, have it approved by all the members, and publish the same will only unduly delay the impeachment trial—again in violation of the constitutional requirement that impeachment trial shall proceed forthwith.

Additionally, these impeachment rules have been effectively used in the Corona impeachment trial and was not invalidated by any court. It must be stressed that the approved rules remain effective unless “amended or repealed” as provided under RULE LII SEC. 137 on *Date of Taking Effect* which states that “These Rules shall

take effect on the date of their adoption and **shall remain in force until they are amended or repealed**". Since the Senate, under the 19th Congress has not amended or repealed these rules but in fact employed these, then such rules are deemed effective without need of further action by the Senate.

IV. Can the Senate President issue preliminary orders pending the convening of the impeachment court? Yes, the Senate President can start the preparatory procedures to ensure a smooth and speedy conduct of the impeachment proceedings once the impeachment court is convened.

The current Senate rules provide under Rule I on Rules of Procedure on Impeachment Trials that "When the Senate receives articles of impeachment pursuant to Article XI, Sections 2 and 3 of the Constitution, **the President of the Senate shall inform the House of Representatives that the Senate shall take proper order on the subject of impeachment** and shall be ready to receive the prosecutors on such time and date as the Senate may specify."

Clearly, therefore, the Senate President has the power to issue preliminary orders such as informing the House of the Senate's readiness to receive the prosecutors, specify the time for the same, as well as make "proper orders" on the impeachment.

Preparatory procedures such as preliminary conferences, (as done in the Supreme Court by the Justice in Charge during oral arguments) or even steps to inform VP Duterte of the charges against her and requiring her to answer does not require the decision of the impeachment court especially since these preparatory steps are already written in the rules.

The Senate President may therefore make such orders, in the interest of the facilitating the smooth and speedy trial once the impeachment court is convened, especially since the Senate President is also the Presiding Officer in the impeachment trial and controls the flow and processes of the same under Rule IV which states that "The Presiding Officer shall have the power to make and issue, by himself or by the Secretary of the Senate, all orders, mandates, and writ authorized by these Rules or by the Senate, and to make and enforce such other regulations and orders in the premises as the Senate may authorize or provide".

The Senate President may also conduct the preliminaries such as formally informing VP Duterte of the impeachment complaint, attaching therein the Articles of Impeachment and requiring her to submit her answer within ten (10) days from receipt as provided by the rules provided that the Senate President will just receive her answer without any further action thereon.

The prosecutors may then submit a Reply within five (5) days, which could also be received by the Senate President. All these preparatory steps are within the powers of the Senate President and may be undertaken by him under the current rules especially since impeachment is a mere administrative proceeding.

It must be stressed that impeachment is a mere administrative proceeding no different than the proceedings before the Civil Service Commission deciding whether a public officer or employee should be suspended or removed from office for misconduct and other breaches. The only difference is that, unlike these ordinary public employees, the respondent in this case is the Vice-President of the Philippines, an impeachable officer. This does not, however, take away the nature of an impeachment proceedings as a mere administrative proceeding.

The fact that an impeachment case is an administrative proceeding has been heavily discussed by the public prosecutors³ in the Corona impeachment trial. In this trial we insisted that the impeachment is not a criminal proceeding as no one goes to prison in an impeachment trial, and therefore, the quantum of evidence required is not proof beyond reasonable doubt. It is not even a civil case where damages will be awarded against the respondent, and therefore, the quantum of evidence required is not even preponderance of evidence.

We argued that it is a mere administrative proceeding where a public officer is being tried for whatever breach committed and whether the respondent should be removed from office—therefore only substantial evidence is required.

In the end, the impeachment court as expressed by the Presiding Officer Sen. Juan Ponce Enrile agreed with the submission of the prosecutors that indeed impeachment is an administrative proceeding.

This is bolstered by the discussions of the 1986 Constitutional Commission:

MR. MAAMBONG. Let us go to a bottom-line question then. When the Senate acting as body will now try the impeachment case, will it conduct the proceeding using principles of criminal procedure?

MR. ROMULO. **I do not think so, strictly speaking, that it need be criminal procedures. The important thing, I believe, is that the involved party should know the charges and the proceedings must be, in total, fair and impartial. I do not think we have to go to the minutiae of a criminal proceeding because that is not the intention. This is not a criminal proceeding per se.**

This was reiterated by Comm. Romulo on “treason” as a ground for impeachment when he declared that:

³ The composition of the eleven (11) public prosecutors are Representatives Niel Tupas, Rey Umali, Rudy Farinas, Neri Colmenares, Raul Daza, Elpidio Barzaga, Kaka Bagao, Georgidi Agabao, Marlyn Primicias-Agabas and Sherwin Tugna with Rep. Jun Abaya impeachment manager.

MR. ROMULO. Yes, but we will notice that, strictly speaking for the crime of treason under the Revised Penal Code, he is answerable for that crime somewhere else. So my conclusion is that obviously, **it is in the criminal court where we will apply all the minutiae of evidence and proceedings and all these due processes. But we can be more liberal when it comes to the impeachment proceedings, for instance, in the Senate, because we are after the removal of that fellow, and conviction in that case really amounts to his removal from office. The courts of justice will take care of the criminal and civil aspects.**" (Emphasis and underscoring supplied)

Clearly, therefore, the Senate President may make preliminary orders to facilitate a smooth and speedy trial once the impeachment court is convened.

V. Conclusion

In sum, we reiterate our position for Pres. Ferdinand Marcos to call for a special session without need for a request from the Senate. The Constitution grants him that power without requiring the permission of the Senate. We call for the immediate convening of the Impeachment Court and for the speedy disposition of the impeachment case.

It is not true that there is no time to complete the trial before the 19th Congress ends its term on June 30, 2025. The public prosecutors only need to focus on the strongest ground and employ only 1 or 2 acts that can easily be proved using official documents from COA and the DBM, as well as the evidence officially presented during the congressional hearings.

We urge the Senate to desist from delaying the impeachment trial by drafting a new set of impeachment rules and instead use the already approved and published Rules on Impeachment under the 19th Congress. These rules have been deployed in the Corona impeachment trial and was not voided by any court.

We also argue that the Senate President has the power to issue preparatory orders as a preliminary procedure pending the convening of the impeachment court under the current Senate rules and considering that impeachment is a mere administrative proceeding. The Senate President, who will also act as the Presiding Officer of the impeachment trial, has control of the flow and processes of the impeachment trial as provided under the Senate Rules and the Constitution.

Lastly, we assert that the impeachment should be an election issue. The Duterte's have announced that they will make the impeachment an election issue. Those who genuinely support the impeachment should rise to the challenge and make this impeachment against VP Sara Duterte an election issue. All candidates, especially those running as senatorial and party list candidates should categorically make public their position on the impeachment so that the voters and the Filipino people will know.

This is a very important issue that deserves to be discussed as a crucial basis for the voters to decide who to vote in the 2025 elections.

We urge all forums and debates by the media and various schools to ask all candidates whether they support the impeachment or are against it. We ask all media outfits conducting debates for candidates for senators and the partylist to include in the questions the candidates' position on the impeachment case. It is but proper that candidates wanting to be public officials should be transparent on their stand on accountability and the need to account for public funds that could be entrusted to them should they win in the election. The main issue in the impeachment complaint is for VP Sara Duterte to explain how she spent the hundreds of millions of public funds, and such is a legitimate question for all candidates aspiring for public office.

Lastly, we urge the voters and the Filipino people to ask all candidates campaigning in their communities, their position on the impeachment. Voters should decide whether to vote for these candidates based on their answers. The impeachment case is mainly about the use of public funds, and the public deserve to know whether candidates will tolerate a refusal of the Vice-President to account for these public funds. The Filipino people deserve no less.