

Philippines, China, the NBN deal and corruption

Saturday 12 July 2008, by [CERVANTES Ding](#), [DIAZ Jess](#), [VILLANUEVA Marichu](#) (Date first published: 26 June 2008).

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‘Huge bribes’ delayed \$503-M Northrail project, says lawyer

By Jess Diaz

Friday, July 4, 2008

The Chinese contractor of the \$503-million North Rail project wants out because of the “huge bribe” paid to Filipino officials, causing a five-year delay in the project, according to a lawyer familiar with the case.

Speaking at the Serye Café news forum in Quezon City, lawyer Harry Roque said China National Machinery and Equipment Group (CNMEG), a state-owned corporation, spent most of the \$150 million advanced by the government under its contract paying bribes.

“The contractor is backing out of the project because of the huge cost of corruption,” he said.

“They have paid big bribes to Philippine officials, and they want to recover those big amounts first before they proceed.”

Roque said one official involved in the project had at least P500 million in his bank account.

“The Chinese contractor reported the bribes to President Arroyo last Monday when she met with them in Clark,” he said.

Chinese embassy officials know about the bribe or “tongpats,” but they “are not speaking about it, at least not publicly,” he added.

Roque said CNMEG wants the government to advance an additional \$200 million to recover the cost of alleged corruption, but that Malacañang has refused.

“This is the story that Palace officials are not telling the public,” he said.

Roque, who challenged the legality of the Northrail contract, said the Makati Regional Trial Court has ruled that since the contract is not a treaty, it is covered by the Procurement Law and should be subjected to public bidding.

"The court declared it as a commercial contract because it did not involve the exercise of sovereign functions," he said.

Roque said CNMEG has questioned the decision before the Court of Appeals, where the case is pending.

"They are claiming that it is a treaty and should not go through the requirement of public bidding, and that they are immune from suit because they are a Chinese state corporation," he said.

Roque said administration officials are speaking "with discordant voices to hide the corruption involved in Northrail and the fact that the \$150 million advanced by the government is already gone without an inch of railway being built."

"One official claimed the project has been terminated, while another asserted that it's still on," he said.

Edgardo Pamintuan, whom Mrs. Arroyo has reportedly named to head North Luzon Railways Corp., said CNMEG has "demobilized" from the project, leaving it in limbo.

However, Executive Secretary Eduardo Ermita said the railways project will continue despite issues involving its contractor.

A similar Chinese-funded project, the plan to build a national broadband network (NBN) for the government, has been derailed by allegations of corruption.

The awarding of the NBN contract to Chinese firm ZTE Corp. was witnessed by Mrs. Arroyo herself on April 21, 2007, just days after her husband went through life-threatening heart surgery.

The First Gentleman was still recuperating when Mrs. Arroyo left his bedside for China for the signing ceremonies between ZTE officials and Transportation and Communications Secretary Leandro Mendoza.

There were claims that at least \$130 million in commissions and kickbacks were to be made from the \$329-million ZTE contract. There were even allegations of advances amounting to \$41 million.

** From Philstar.com:*

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GMA scraps China deal on Northrail

By Ding Cervantes

Wednesday, July 2, 2008

CLARK FREEPORT - President Arroyo has cancelled all contracts with China connected to the Northrail project, according to the government.

Edgardo Pamintuan, North Luzon Railways Corp. (Northrail) chairman and chief executive officer, said China has withdrawn its financial backing for the project and President Arroyo now wants him to look for new financiers.

“Three weeks ago, the technical staff of the Chinese contractor for the project left... they demobilized as early as last March,” he told reporters the other day after attending a meeting of the regional disaster coordinating council presided over by Mrs. Arroyo.

The President has removed Northrail from the Bases Conversion and Development Authority (BCDA) and placed it under the Subic-Clark Alliance Development Council (SCAD), which he also heads, Pamintuan said.

However, China belied yesterday claims that the Philippines has abandoned the Northrail project funded by the Chinese government.

Sources at the Chinese embassy in Manila said Chinese Ambassador Song Tao was surprised about reports that Mrs. Arroyo has cancelled the Northrail project of state-owned China National Machinery and Equipment Group (CNMEG).

“It’s not true,” a diplomat told The STAR. “It’s completely not true.”

Another source said CNMEG is still working on the Northrail project.

“They’re still there,” the source said.

On the other hand, Transportation and Communications Undersecretary for Rail Transport Guiling Mamondiong said the the Northrail project was

still being funded by the China Export-Import Bank, and that CNMEG was still its contractor.

“As far as we’re concerned, the Northrail project is still a go,” he told The STAR.

“We have not received any communication that the China Eximbank is not funding the project anymore. We have an agreement with them on this.”

Mamondiong said the government is still talking to CNMEG as the contractor for the project.

“We’re now discussing with them on how to best implement the project,” he said.

Mamondiong said Northrail is working with CNMEG on the design of the railway as the clearing of the railway’s right-of-way was already done.

“As soon the railway’s design is completed, we will start the actual construction,” he said.

Northrail is now headed by officer-in-charge Gina Hota after the resignation of Arsenio Bartolome, Mamondiong said.

Meanwhile, Vice President Noli De Castro, Housing and Urban Development Coordinating Council chairman, said he is not aware that the railway project has been discontinued.

De Castro led the relocation of families affected by the Northrail construction.

The national railway improvement project officially started in Caloocan in October 2007.

On Aug. 20, 2003, a Memorandum of Understanding was signed between the Department of Finance and the Export-Import Bank of China for the use of \$400 million for the construction of the Northrail project Phase 1, stretching 32 kilometers from Caloocan City to Malolos, Bulacan.

On Feb. 26, 2004, the Chinese and Philippine governments signed in Manila the \$400-million loan agreement.

Then Finance Secretary Juanita Amato signed the loan agreement with Yang Zilin, chairman and president of the Export-Import Bank of China.

The administration has identified Northrail as a priority project under its eight-point agenda.

In 2000, thousands of families along the old railways in Caloocan were been relocated, and thousands more were later removed from Malolos.

Pamintuan said with funding from China gone, he is considering a suggestion from Clark International Airport Corp. chairman Nestor Mangio to consider an investor from Kuwait who is reportedly interested in the railway project.

Nueva Ecija Gov. Aureli Umali also brought to his attention the interest of investors from India, he added.

Last November, Senate Minority Leader Aquilino Pimentel Jr. sought a Senate inquiry, in aid of legislation, into the alleged "onerous terms and conditions imposed on the Philippine government in the contract to build the railways project funded by China."

Pimentel cited reports that the amount of \$125.75 million had already been advanced out of the \$400-million funding for the project, which remains delayed. He also reported that the loan was allegedly contracted without the approval of the Monetary Board as required by the Constitution.

"The contract for the project is not only overpriced, but is also ridden with onerous conditions especially in case of default in the payment of the loan," he said.

Pimentel cited a provision of the loan agreement that the Philippine government will waive its immunity from suit over its sovereign and patrimonial assets, placing under China's laws and jurisdiction any suit or judgment that might arise from the contract and granted Eximbank unilateral authority to determine payment schedules and the right to impose penalties for any delay in the project.

Pimentel also questioned the awarding of the project to CNMEG without bidding, contrary to the provisions of Republic Act 9184, the Government Procurement Reform Act.

Last year, the government canceled the \$329-million national broadband network (NBN) project with Chinese telecommunications firm ZTE Corp.

A Filipino diplomat said the action may not damage bilateral ties between China and the Philippines, but the Chinese will be more cautious in dealing with the Philippines in future projects.

"It was merely a structural problem but will not strain the bilateral relations," the diplomat said.

"China has to protect its interests in the Philippines and we see the Philippines as a major strategic partner in Asia."

The diplomat said despite the controversial deal, China is optimistic that its investments in the Philippines will increase.

“But China does not want another ZTE,” the diplomat said.

“And we know the system here is really different. That’s why next time, China will scrutinize all transactions and contracts closely and make sure that they will not encounter the same problem.”

China was disappointed with the stand of the Senate in the NBN deal with ZTE since the attacks by some senators had allegedly gone too far and may be damaging to its international image.

Diplomatic sources said China’s envoy expressed his disappointment during a dinner with a ranking Foreign Affairs official.

The envoy singled out opposition Sen. Jamby Madrigal, who has been hostile towards Chinese diplomats and threatened to declare China’s former ambassador to Manila Li Jinjun “persona non grata.”

Madrigal hinted at collusion between the embassy and First Gentleman Jose Miguel Arroyo on the NBN deal.

The ambassador thanked the Department of Foreign Affairs for making clear its position that summoning foreign diplomats could not be done by the Senate because of their immunity under the Vienna Convention on Diplomatic Relations.

Song also expressed concern over the relations between the Philippines and China because of public opinion created by the investigation and allegations against ZTE officials and Chinese diplomats.

The Chinese embassy in Manila said that the remarks made by Madrigal during a Senate hearing where she hinted at collusion between the First Gentleman and the Chinese Embassy were extremely “irresponsible.”

China might be forced to file a diplomatic protest if the Senate insisted on summoning Chinese diplomats to appear in the Senate hearing on the scrapped ZTE deal, ignoring diplomatic immunity.

DFA officials explained that diplomats are exempted from jurisdiction of the receiving state under the Vienna Convention on Diplomatic Relations.

Diplomatic immunity is a form of legal immunity and a policy held between governments, which ensures that diplomats are given safe passage and are considered not susceptible to lawsuit or prosecution under the host country’s laws. — *With Pia Lee-Brago, Rainer Allan Ronda*

* *From Philstar.com:*

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Beijing clears ZTE in NBN deal

By Marichu Villanueva

Thursday, June 26, 2008

BEIJING - Ranking Chinese officials have cleared telecommunications giant ZTE Corp. of overpricing and kickbacks in the Chinese company's \$329-million national broadband network (NBN) project entered into with the Philippine government.

The investigation by Filipino senators into the NBN-ZTE scandal that led to the cancellation of the deal late last year has yet to officially close.

Government officials here said this has caused a loss of confidence on the part of Chinese investors, some of whom are reportedly planning to pull out of the Philippines.

The STAR gathered these official statements from Beijing authorities from the Ministry of Foreign Affairs and the Ministry of Commerce in their separate briefings here for the journalists participating in this year's Association of South East Asian Nations (ASEAN)-China Joint Press Delegation.

Speaking in English before ASEAN journalists, Wu Zhengping, deputy director-general of the Department of Asian Affairs of the Ministry of Commerce, disclosed yesterday here that Beijing has discreetly looked into these allegations hurled against ZTE Corp., a privately owned company.

"We have guarantees from ZTE their activities in the Philippines have been appropriate. It did not commit any violation of laws and rules in the Philippines," Wu said.

The allegations of overpriced contract and kickbacks reportedly distributed to Philippine government officials and other personalities involved in the NBN-ZTE project were first revealed in media last year by Filipino businessman Jose "Joey" de Venecia III, namesake and son of former Speaker Jose de Venecia Jr.

The erstwhile speaker himself figured prominently in a much earlier controversy involving the Chinese-funded North Rail project for Luzon.

De Venecia III claimed the alleged anomalies in the NBN-ZTE contract after his own company, Amsterdam Holdings Inc. lost in the bidding of the project of the Department of Transportations and Communications.

Wu lamented that the broadband issue became a "hot topic" in the Philippines, but put a damper to this Chinese investment.

"The position of the Chinese government is to ask Chinese companies doing business in other countries to comply with rules and regulations where they are doing business," Wu pointed out.

Wu cited Beijing central government "blacklist" companies if found engaged in any illegal activity or do not meet international export quality standards of their products.

"The position of the Chinese government is encourage Chinese companies, as long as they earn from their investments to act appropriately and make monies if they can," he said.

"We must admit because of the broadband issue, there has been setback."

Nonetheless, Wu noted from Ministry of Commerce statistics that Chinese investments to the Philippines have reached \$25 million for the past 10 years.

But for the last 10 years, of China's total investments that went to the 10-member ASEAN countries, Singapore got the bulk at \$1.2 billion; \$430 million went to Vietnam; \$317 million to Indonesia; \$311 million to Thailand; and \$205 million to Malaysia.

Wu, who is due to be assigned to the Chinese embassy in Manila later this year, said that ZTE and its rival telecom giant Huawei of China, are the biggest investors in ASEAN.

He explained Chinese investors respond to a country's utilization of foreign direct investments as basis of their decision what country to do business in.

The NBN-ZTE contract was sealed during President Arroyo's visit to Boao, China in April 2006.

The President's husband, First Gentleman Jose Miguel Arroyo, was subsequently linked to the alleged kickbacks in this contract.

Earlier this year, no less than Mrs. Arroyo was being accused of impropriety when she visited the ZTE headquarters in Shanghai during her official visit to China last year.

In his separate press briefing to ASEAN journalists last Tuesday, Assistant Foreign Minister He Yafei admitted the NBN-ZTE scandal had seriously affected efforts by both the Philippine and Chinese governments to increase trade and economic ties between the two countries, especially after Mrs. Arroyo decided to scrap this project due to this scandal while it was still being investigated by the Senate Blue Ribbon committee.

"We have our companies lose interest because they will be afraid to step up their investments but also to continue their presence in the Philippines," He said in English.

"My government is doing all it can to encourage these various companies to stay there and if possible to increase their investments wherever they can.

"Of course, within the confines of Philippine laws. There is no doubt about it. We do not want a situation where Chinese companies are in violation of the laws and regulations in both countries, it's not our policy."

Despite this, He expressed satisfaction that the bilateral relations of China with the Philippines remain stable and friendly.

"There were some difficulties that we're encountering, mainly because of domestic politics in the Philippines," he said.

These are problems. We are hoping, we're crossing our fingers that all of these will be over and we would start with earnest our economic cooperation because there are projects, all of those projects have been delayed, put on hold. It's not good."

The Chinese Foreign Ministry official, though, did not identify these Chinese companies.

But aside from the NBN project, the ZTE Corp. has also a mining project in Diwalwal that has been stalled also due to legal problems pending in a lower court in the Philippines.

The North Rail project, on the other hand, has dragged slowly due to legal problems posed by

Filipino squatter families, who were removed and were being relocated elsewhere to give way to the new rail track system.

“But we certainly want to see a cessation of the unfortunate situation,” He said.

“Nobody is to blame. I believe in the wisdom and courage of the political leaders in the Philippines and the people in the whole Philippines.”

* *From Philstar.com:*

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