

JUAN PONCE ENRILE, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, HON. AMPARO M. CABOTAJE-TANG, HON. SAMUEL R. MARTIRES, AND HON. ALEX L. QUIROZ OF THE THIRD DIVISION OF THE SANDIGA...

G.R. No. 213455. August 11, 2015

Ponente: BRION, J.

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BRION, J.:

We resolve the “petition for certiorari with prayers (a) for the Court En Banc to act on the petition; (b) to expedite the proceedings and to set the case for oral arguments; and (c) to issue a temporary restraining order to the respondents from holding a pre-trial and further proceedings in Criminal Case No. SB-14-CRM-0238”[1] filed by petitioner Juan Ponce Enrile (Enrile) challenging the July 11, 2014 resolutions[2] of the Sandiganbayan.

I.

THE ANTECEDENTS

On June 5, 2014, the Office of the Ombudsman filed an Information[3] for plunder against Enrile, Jessica Lucila Reyes, Janet Lim Napoles, Ronald John Lim, and John Raymund de Asis before the Sandiganbayan.

The Information reads:

x x x x

In 2004 to 2010 or thereabout, in the Philippines, and within this Honorable Court’s jurisdiction, above-named accused JUAN PONCE ENRILE, then a Philippine Senator, JESSICA LUCILA G. REYES, then Chief of Staff of Senator Enrile’s Office, both public officers, committing the offense in relation to their respective offices, conspiring with one another and with JANET LIM NAPOLES, RONALD JOHN LIM, and JOHN RAYMUND DE ASIS, did then and there willfully, unlawfully, and criminally amass, accumulate, and/or acquire ill-gotten wealth amounting to at least ONE HUNDRED SEVENTY TWO MILLION EIGHT HUNDRED THIRTY FOUR THOUSAND FIVE HUNDRED PESOS (Php172,834,500.00) through a combination or series of overt criminal acts, as follows:

(a)

by repeatedly receiving from NAPOLES and/or her representatives LIM, DE ASIS, and others, kickbacks or commissions under the following circumstances: before, during and/or after the project identification, NAPOLES gave, and ENRILE and/or REYES received, a percentage of the cost of a project to be funded from ENRILE’S Priority Development Assistance Fund (PDAF), in consideration of ENRILE’S endorsement, directly or through REYES, to the appropriate government agencies, of NAPOLES’ non-government organizations which became the recipients and/or target implementors of ENRILE’S PDAF projects, which

duly-funded projects turned out to be ghosts or fictitious, thus enabling NAPOLES to misappropriate the PDAF proceeds for her personal gain;

(b)

by taking undue advantage, on several occasions, of their official positions, authority, relationships, connections, and influence to unjustly enrich themselves at the expense and to the damage and prejudice, of the Filipino people and the Republic of the Philippines.

CONTRARY TO LAW.

Enrile responded by filing before the Sandiganbayan (1) an urgent omnibus motion (motion to dismiss for lack of evidence on record to establish probable cause and ad cautelam motion for bail),[4] and (2) a supplemental opposition to issuance of warrant of arrest and for dismissal of Information,[5] on June 10, 2014, and June 16, 2014, respectively. The Sandiganbayan heard both motions on June 20, 2014.

On June 24, 2014, the prosecution filed a consolidated opposition to both motions.

On July 3, 2014, the Sandiganbayan denied Enrile's motions and ordered the issuance of warrants of arrest on the plunder case against the accused.[6]

On July 8, 2014, Enrile received a notice of hearing[7] informing him that his arraignment would be held before the Sandiganbayan's Third Division on July 11, 2014.

On July 10, 2014, Enrile filed a motion for bill of particulars[8] before the Sandiganbayan. On the same date, he filed a motion for deferment of arraignment[9] since he was to undergo medical examination at the Philippine General Hospital (PGH).

On July 11, 2014, Enrile was brought to the Sandiganbayan pursuant to the Sandiganbayan's order and his motion for bill of particulars was called for hearing. Atty. Estelito Mendoza (Atty. Mendoza), Enrile's counsel, argued the motion orally. Thereafter, Sandiganbayan Presiding Justice (PJ) Amparo Cabotaje-Tang (Cabotaje-Tang), declared a "10-minute recess" to deliberate on the motion.

When the court session resumed, PJ Cabotaje-Tang announced the Court's denial of Enrile's motion for bill of particulars essentially on the following grounds:

(1)

the details that Enrile desires are "substantial reiterations" of the arguments he raised in his supplemental opposition to the issuance of warrant of arrest and for dismissal of information; and

(2)

the details sought are evidentiary in nature and are best ventilated during trial.

Atty. Mendoza asked for time to file a motion for reconsideration, stating that he would orally move to reconsider the Sandiganbayan's denial if he would not be given time to seek a reconsideration. The Sandiganbayan then directed Atty. Mendoza to immediately proceed with his motion for reconsideration.

Atty. Mendoza thus orally presented his arguments for the reconsideration of the denial of Enrile's motion for bill of particulars. The Sandiganbayan again declared a recess to deliberate on the motion. After five (5) minutes, PJ Cabotaje-Tang announced the Sandiganbayan's denial of the motion for reconsideration.[10]

The Sandiganbayan reduced its rulings into writing on Enrile's written and oral motions. The pertinent portion of this ruling reads:

x x x x

In today's consideration of accused Juan Ponce Enrile's Motion for Bill of Particulars, the Court heard the parties on oral arguments in relation thereto. Thereafter, it declared a ten-minute recess to deliberate thereon. After deliberating on the said motion as well as the arguments of the parties, the Court resolves to DENY as it hereby DENIES the same motion for bill of particulars for the following reasons: (1) the details desired in paragraphs 2 to 5 of the said motion are substantially reiterations of the arguments raised by accused Enrile in his Supplemental Opposition to Issuance of Warrant of Arrest and for Dismissal of Information dated June 16, 2014 x x x.

The Court already upheld the sufficiency of the allegations in the Information charging accused Enrile, among other persons, with the crime of plunder in its Resolution dated July 3, 2014. It finds no cogent reasons to reconsider the said ruling.

Moreover, the "desired details" that accused Enrile would like the prosecution to provide are evidentiary in nature, which need not be alleged in the Information. They are best ventilated during the trial of the case.

Counsel for accused Juan Ponce Enrile orally sought a reconsideration of the denial of his motion for bill of particulars which was opposed by the prosecution. The Court then declared another ten-minute recess to deliberate on the said motion for reconsideration. After deliberation thereon, the Court likewise resolved to DENY as it hereby DENIES accused Juan Ponce Enrile's motion for reconsideration there being no new or substantial grounds raised to warrant the grant thereof.

ACCORDINGLY, the scheduled arraignment of accused Juan Ponce Enrile shall now proceed as previously scheduled.

SO ORDERED.[11]

Atty. Mendoza subsequently moved for the deferment of Enrile's arraignment. The Sandiganbayan responded by directing the doctors present to determine whether he was physically fit to be arraigned. After he was declared fit, the Sandiganbayan proceeded with Enrile's arraignment. Enrile entered a "no plea," prompting the Sandiganbayan to enter a "not guilty" plea on his behalf.

II.

THE PETITION FOR CERTIORARI

Enrile claims in this petition that the Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it denied his motion for bill of particulars despite the ambiguity and insufficiency of the Information filed against him. Enrile maintains that the denial was a serious violation of his constitutional right to be informed of the nature and cause of the accusation against him.

Enrile further alleges that he was left to speculate on what his specific participation in the crime of plunder had been. He posits that the Information should have stated the details of the particular acts that allegedly constituted the imputed series or combination of overt acts that led to the charge of plunder. Enrile essentially reiterates the "details desired" that he sought in his motion for bill of particulars, as follows:

Allegations of Information

Details Desired

“x x x accused JUAN PONCE ENRILE, then a Philippine Senator, JESSICA LUCILA G. REYES, then Chief of Staff of Senator Enrile’s Office, both public officers, committing the offense in relation to their respective offices, conspiring with one another and with JANET LIM NAPOLES, RONALD JOHN LIM, and JOHN RAYMUND DE ASIS, did then and there willfully, unlawfully, and criminally amass, accumulate, and/or acquire ill-gotten wealth amounting to at least ONE HUNDRED SEVENTY TWO MILLION EIGHT HUNDRED THIRTY FOUR THOUSAND FIVE HUNDRED PESOS (Php172,834,500.00) through a combination or series of overt acts, x x x.”

a. Who among the accused acquired the alleged “ill-gotten wealth amounting to at least ONE HUNDRED SEVENTY TWO MILLION EIGHT HUNDRED THIRTY FOUR THOUSAND FIVE HUNDRED PESOS (Php172,834,500.00)” One of them, two of them or all of them? Kindly specify.

b. The allegation “through a combination or series of overt criminal acts” is a conclusion of fact or of law. What are the particular overt acts which constitute the “combination”? What are the particular overt acts which constitute the “series”? Who committed those acts?

x x x by repeatedly receiving from NAPOLES and/or her representatives LIM, DE ASIS, and others, kickbacks or commissions under the following circumstances: before, during and/or after the project identification, NAPOLES gave, and ENRILE and/or REYES received, a percentage of the cost of a project to be funded from ENRILE’S Priority Development Assistance Fund (PDAF), in consideration of ENRILE’S endorsement, directly or through REYES, to the appropriate government agencies, of NAPOLES’ non-government organizations which became the recipients and/or target implementers of ENRILE’S PDAF projects, which duly-funded projects turned out to be ghosts or fictitious, thus enabling NAPOLES to misappropriate the PDAF proceeds for her personal gain;

a. What was “repeatedly” received? If sums of money, the particular amount. If on several occasions and in different amounts, specify the amount on each occasion and the corresponding date of receipt.

b. Name the specific person(s) who delivered the amount of Php172,834,500.00 and the specific person(s) who received the amount; or if not in lump sum, the various amounts totaling Php172,834,500.00. x x x Specify particularly the person who delivered the amount, Napoles or Lim or De Asis, and who particularly are “the others.”

c. To whom was the money given? To Enrile or Reyes? State the amount given on each occasion, the date when and the place where the amount was given.

d. x x x Describe each project allegedly identified, how, and by whom was the project identified, the nature of each project, where it is located and the cost of each project.

e. For each of the years 2004-2010, under what law or official document is a portion of the “Priority Development Assistance Fund” identified as that of a member of Congress, in this instance, as ENRILE’s, to be found? In what amount for each year is ENRILE’s Priority Development Assistance Fund? When, and to whom, did Enrile endorse the projects in favor of “Napoles non-government organizations which became the recipients and/or target implementers of ENRILE’s PDAF projects?” Name Napoles non-government organizations which became the recipients and/or target implementers of ENRILE’s PDAF projects. Who paid Napoles, from whom did Napoles collect the fund for the projects which turned out to be ghosts or fictitious? Who authorized the payments for each project?

f. x x x what COA audits or field investigations were conducted which validated the findings that each of Enrile’s

PDAF projects in the years 2004-2010 were ghosts or spurious projects?

x x x by taking undue advantage, on several occasions of their official positions, authority, relationships, connections, and influence to unjustly enrich themselves at the expense and to the damage and prejudice, of the Filipino people and the Republic of the Philippines.

a. Provide the details of how Enrile took undue advantage, on several occasions, of his official positions, authority, relationships, connections, and influence to unjustly enrich himself at the expense and to the damage and prejudice, of the Filipino people and the Republic of the Philippines. Was this because he received any money from the government? From whom and for what reason did he receive any money or property from the government through which he “unjustly enriched himself”? State the details from whom each amount was received, the place and the time.

Enrile posits that his ‘desired details’ are not evidentiary in nature; they are material facts that should be clearly alleged in the Information so that he may be fully informed of the charges against him and be prepared to meet the issues at the trial.

Enrile adds that the grounds raised in his motion for bill of particulars are cited in a context different from his opposition to the issuance of a warrant of arrest. He maintains that the resolution of the probable cause issue was interlocutory and did “not bar the submission of the same issue in subsequent proceedings especially in the context of a different proceeding.”

Enrile thus prays that: “(a) the Court en banc act on the present petition; (b) by way of an interim measure, the Court issue a TRO or writ of preliminary injunction enjoining the Sandiganbayan from holding the pre-trial and subsequent proceedings against him in Criminal Case No. SB-14-CRM-0238 during the pendency of the present petition; (c) the Court expedite the proceedings and set the case for oral arguments; and (d) at the conclusion of the proceedings, the Court annul and set aside the Sandiganbayan’s July 11, 2014 resolution and his arraignment.”

A. The People’s Comment

In its Comment,[12] the People of the Philippines[13] counters that the Sandiganbayan did not exercise its discretionary power in an arbitrary or despotic manner. Even assuming that the Sandiganbayan’s denial of Enrile’s motion for bill of particulars was erroneous, the error did not amount to lack or excess of jurisdiction. It further maintains that the assailed Sandiganbayan rulings were arrived at based on the procedures prescribed under Section 2, Rule VII of the Revised Internal Rules of the Sandiganbayan.

The People also argues that the Information already contained the ultimate facts; matters of evidence do not need to be averred.

B. Enrile’s Reply

In his Reply, Enrile essentially claims that the right to move for a bill of particulars is “ancillary to and in implementation” of an accused’s rights to due process, to be heard, and to be informed of the nature and cause of the accusation against him. He maintains that the Sandiganbayan’s denial of his motion for bill of particulars is not “a mere denial of a procedural right under the Rules of Court, but of rights vested in an accused under the Constitution to ensure fairness in the trial of the offense charged.” Enrile also adds that there could only be a fair trial if he could properly plead to the Information and prepare for trial.

Enrile further argues that the People’s Comment did not dispute the relevance of the details sought in the motion for bill of particulars. He likewise claims that the “desired details” could not be found in the bundle of documents

marked by the prosecution during the preliminary conference. Finally, Enrile maintains that his motion for bill of particulars was not dilatory.

III.

THE COURT'S RULING

After due consideration, we resolve to partially GRANT the petition under the terms outlined below.

A. The constitutional right of the accused to be informed

Under the Constitution, a person who stands charged of a criminal offense has the right to be informed of the nature and cause of the accusation against him.[14] This right has long been established in English law, and is the same right expressly guaranteed in our 1987 Constitution. This right requires that the offense charged be stated with clarity and with certainty to inform the accused of the crime he is facing in sufficient detail to enable him to prepare his defense.[15]

In the 1904 case of *United States v. Karselen*,[16] the Court explained the purpose of informing an accused in writing of the charges against him from the perspective of his right to be informed of the nature and cause of the accusation against him:

The object of this written accusation was – First. To furnish the accused with such a description of the charge against him as will enable him to make his defense; and second, to avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and third, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. (*United States vs. Cruikshank*, 92 U.S. 542.) In order that this requirement may be satisfied, facts must be stated, not conclusions of law. Every crime is made up of certain acts and intent; these must be set forth in the complaint with reasonable particularity of time, place, names (plaintiff and defendant), and circumstances. In short, the complaint must contain a specific allegation of every fact and circumstances necessary to constitute the crime charged. x x x.[17] [Emphasis supplied.]

The objective, in short, is to describe the act with sufficient certainty to fully appraise the accused of the nature of the charge against him and to avoid possible surprises that may lead to injustice. Otherwise, the accused would be left speculating on why he has been charged at all.[18]

In *People v. Hon. Mencias, et al.*,[19] the Court further explained that a person's constitutional right to be informed of the nature and cause of the accusation against him signifies that an accused should be given the necessary data on why he is the subject of a criminal proceeding. The Court added that the act or conduct imputed to a person must be described with sufficient particularity to enable the accused to defend himself properly.

The general grant and recognition of a protected right emanates from Section 1, Article III of the 1987 Constitution which states that no person shall be deprived of life, liberty, or property without due process of law. The purpose of the guaranty is to prevent governmental encroachment against the life, liberty, and property of individuals; to secure the individual from the arbitrary exercise of the powers of the government, unrestrained by the established principles of private rights and distributive justice x x x; and to secure to all persons equal and impartial justice and the benefit of the general law.[20]

Separately from Section 1, Article III is the specific and direct underlying root of the right to information in criminal proceedings – Section 14(1), Article III – which provides that “No person shall be held to answer for a criminal offense without due process of law.” Thus, no doubt exists that the right to be informed of the cause of the accusation in a criminal case has deep constitutional roots that, rather than being cavalierly disregarded,

should be carefully protected.

In *Republic of the Philippines v. Sandiganbayan* (2nd Division),^[21] the Court, in sustaining the Sandiganbayan's grant of the motion for bill of particulars of Ferdinand Marcos, Jr., held that "the facile verbosity with which the legal counsel for the government flaunted the accusation of excesses against the Marcoses in general terms must be soonest refurbished by a bill of particulars, so that respondent can properly prepare an intelligent responsive pleading and so that trial in this case will proceed as expeditiously as possible."^[22] The Court additionally stated that:

This Court has been liberal in giving the lower courts the widest latitude of discretion in setting aside default orders justified under the right to due process principle. Plain justice demands and the law requires no less that defendants must know what the complaint against them is all about.

x x x In the interest of justice, we need to dispel the impression in the individual respondents' minds that they are being railroaded out of their rights and properties without due process of law.^[23]

B. Procedural Sufficiency of the Information

An Information is an accusation in writing charging a person with an offense, signed by the prosecutor and filed with the court.^[24] The Revised Rules of Criminal Procedure, in implementing the constitutional right of the accused to be informed of the nature and cause of the accusation against him, specifically require certain matters to be stated in the Information for its sufficiency. The requirement aims to enable the accused to properly prepare for his defense since he is presumed to have no independent knowledge of the facts constituting the offense charged.^[25]

To be considered as sufficient and valid, an information must state the name of the accused; the designation of the offense given by the statute; the acts or omissions constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.^[26]

If there is no designation of the offense, reference shall be made to the section or subsection of the statute penalizing it. The acts or omissions constituting the offense and the qualifying and aggravating circumstances alleged must be stated in ordinary and concise language; they do not necessarily need to be in the language of the statute, and should be in terms sufficient to enable a person of common understanding to know what offense is charged and what qualifying and aggravating circumstances are alleged, so that the court can pronounce judgment.^[27] The Rules do not require the Information to exactly allege the date and place of the commission of the offense, unless the date and the place are material ingredients or essential elements of the offense, or are necessary for its identification.

B.1. Ultimate facts versus Evidentiary facts

An Information only needs to state the ultimate facts constituting the offense; the evidentiary and other details (i.e., the facts supporting the ultimate facts) can be provided during the trial.^[28]

Ultimate facts is defined as "those facts which the expected evidence will support. The term does not refer to the details of probative matter or particulars of evidence by which these material elements are to be established." It refers to the facts that the evidence will prove at the trial.^[29]

Ultimate facts has also been defined as the principal, determinative, and constitutive facts on whose existence the cause of action rests;^[30] they are also the essential and determining facts on which the court's conclusion rests and without which the judgment would lack support in essential particulars.^[31]

Evidentiary facts, on the other hand, are the facts necessary to establish the ultimate facts; they are the premises

that lead to the ultimate facts as conclusion.[32] They are facts supporting the existence of some other alleged and unproven fact.[33]

In *Bautista v. Court of Appeals*,^[34] the Court explained these two concepts in relation to a particular criminal case, as follows:

The distinction between the elements of the offense and the evidence of these elements is analogous or akin to the difference between ultimate facts and evidentiary facts in civil cases. Ultimate facts are the essential and substantial facts which either form the basis of the primary right and duty or which directly make up the wrongful acts or omissions of the defendant, while evidentiary facts are those which tend to prove or establish said ultimate facts. x x x.^[35] [Emphasis supplied.]

While it is fundamental that every element of the offense must be alleged in the Information, matters of evidence – as distinguished from the facts essential to the nature of the offense – do not need to be alleged. Whatever facts and circumstances must necessarily be alleged are to be determined based on the definition and the essential elements of the specific crimes.^[36]

C. Arraignment

The procedural due process mandate of the Constitution requires that the accused be arraigned so that he may be fully informed as to why he was charged and what penal offense he has to face, to be convicted only on showing that his guilt is shown beyond reasonable doubt with full opportunity to disprove the evidence against him.^[37] During arraignment, the accused is granted the opportunity to fully know the precise charge that confronts him and made fully aware of possible loss of freedom, even of his life, depending on the nature of the crime imputed to him.^[38]

An arraignment thus ensures that an accused be fully acquainted with the nature of the crime imputed to him in the Information and the circumstances under which it is allegedly committed.^[39] It is likewise at this stage of the proceedings when the accused enters his plea,^[40] or enters a plea of not guilty to a lesser offense which is necessarily included in the offense charged.^[41]

A concomitant component of this stage of the proceedings is that the Information should provide the accused with fair notice of the accusations made against him, so that he will be able to make an intelligent plea and prepare a defense.^[42] Moreover, the Information must provide some means of ensuring that the crime for which the accused is brought to trial is in fact one for which he was charged, rather than some alternative crime seized upon by the prosecution in light of subsequently discovered evidence.^[43] Likewise, it must indicate just what crime or crimes an accused is being tried for, in order to avoid subsequent attempts to retry him for the same crime or crimes.^[44] In other words, the Information must permit the accused to prepare his defense, ensure that he is prosecuted only on the basis of facts presented, enable him to plead jeopardy against a later prosecution, and inform the court of the facts alleged so that it can determine the sufficiency of the charge.

Oftentimes, this is achieved when the Information alleges the material elements of the crime charged. If the Information fails to comply with this basic standard, it would be quashed on the ground that it fails to charge an offense.^[45] Of course, an Information may be sufficient to withstand a motion to quash, and yet insufficiently inform the accused of the specific details of the alleged offenses. In such instances, the Rules of Court allow the accused to move for a bill of particulars to enable him properly to plead and to prepare for trial.^[46]

C.1. Bill of Particulars

In general, a bill of particulars is the further specification of the charges or claims in an action, which an accused may avail of by motion before arraignment, to enable him to properly plead and prepare for trial. In civil

proceedings, a bill of particulars has been defined as a complementary procedural document consisting of an amplification or more particularized outline of a pleading, and is in the nature of a more specific allegation of the facts recited in the pleading.[47] The purpose of a motion for bill of particulars in civil cases is to enable a party to prepare his responsive pleading properly.

In criminal cases, a bill of particulars details items or specific conduct not recited in the Information but nonetheless pertain to or are included in the crime charged. Its purpose is to enable an accused: to know the theory of the government's case;[48] to prepare his defense and to avoid surprise at the trial; to plead his acquittal or conviction in bar of another prosecution for the same offense; and to compel the prosecution to observe certain limitations in offering evidence.[49]

In criminal proceedings, the motion for a bill of particulars is governed by Section 9 of Rule 116 of the Revised Rules of Criminal Procedure which provides:

Section 9. Bill of particulars. - The accused may, before arraignment, move for a bill of particulars to enable him properly to plead and prepare for trial. The motion shall specify the alleged defects of the complaint or information and the details desired.

The rule requires the information to describe the offense with sufficient particularity to apprise the accused of the crime charged with and to enable the court to pronounce judgment. The particularity must be such that persons of ordinary intelligence may immediately know what the Information means.[50]

The general function of a bill of particulars, whether in civil or criminal proceedings, is to guard against surprises during trial. It is not the function of the bill to furnish the accused with the evidence of the prosecution. Thus, the prosecutor shall not be required to include in the bill of particulars matters of evidence relating to how the people intend to prove the elements of the offense charged or how the people intend to prove any item of factual information included in the bill of particulars.[51]

C.2. Origin of bill of particulars in criminal cases[52]

Even before the promulgation of the 1964 Rules of Court, when the applicable rules for criminal procedure was still General Order No. 58,[53] the Court had already recognized the need for a bill of particulars in criminal cases. This recognition came despite the lack of any specific provision in General Order No. 58 setting out the rules for a bill of particulars in criminal cases.

In *U.S. v. Schnee*,[54] the issue presented was whether a bill of particulars was available in a criminal case for estafa after the accused had already been arraigned. The Court essentially ruled that there was no specific provision of law expressly authorizing the filing of specifications or bills of particulars in criminal cases, and held that:

We know of no provision either in General Orders, No. 58, or in the laws existing prior thereto which requires the Government to furnish such a bill of particulars, and we accordingly hold that it was not error on the part of the court below to refuse to do so.

In *U.S. v. Cernias*,[55] however, the Court formally recognized the existence and applicability of a bill of particulars in criminal cases. In this case, the prosecution filed an information charging Basilio Cernias with several counts of brigandage before the Court of First Instance of Leyte. In overruling the accused's objection, the Court declared that the prosecution's act of specifying certain acts done by the conspirators in the Information "did no more than to furnish the defendant with a bill of particulars of the facts which it intended to prove at the trial x x x." [56]

In sum, the Court essentially held that a detailed complaint or information is not objectionable, and that the details it contains may be properly considered as specifications or bill of particulars.[57]

In *People v. Abad Santos*,[58] the court first recognized a bill of particulars, as a right that the accused may ask for from the court. In this case, the prosecution charged respondent Joseph Arcache with the crime of treason before the People's Court. The Information filed against the accused contained, in counts 2 and 3, the phrase "and other similar equipment."

The counsel for the accused verbally petitioned the People's court to order the prosecution to "make more specific [the] phrase 'and other similar equipment,'" which request the People's Court granted. The People of the Philippines filed a petition for certiorari, but the Court dismissed this petition.

In upholding the order of the People's Court, the Court ruled that "in the absence of specific provisions of law prohibiting the filing of specifications or bills of particulars in criminal cases, their submission may be permitted, as they cannot prejudice any substantial rights of the accused. On the contrary, they will serve to apprise the accused clearly of the charges filed against them, and thus enable them to prepare intelligently whatever defense or defenses they might have.[59]

Notably, *Abad Santos* emphasized the importance of a bill of particulars in criminal cases, stating that "x x x inasmuch as in criminal cases not only the liberty but even the life of the accused may be at stake, it is always wise and proper that the accused should be fully apprised of the true charges against them, and thus avoid all and any possible surprise, which might be detrimental to their rights and interests; and ambiguous phrases should not, therefore, be permitted in criminal complaints or informations; and if any such phrase has been included therein, on motion of the defense, before the commencement of the trial, the court should order either its elimination as surplusage or the filing of the necessary specification, which is but an amendment in mere matters of form." [60]

In these cited cases, the Courts did not rely on the Rules of Court to provide for a bill of particulars in criminal cases. A specific provision granting the accused the right "to move for or demand a more definite statement or a bill of particulars" was not incorporated as a formal rule until the 1964 Rules of Court,[61] under its Section 6, Rule 116. This initial provision later became Section 10 of Rule 116 under the 1985 Rules of Criminal Procedure[62] and Section 9 of Rule 116 under the Revised Rules of Criminal Procedure, as amended.[63]

C.3. The Distinctive Role of a Bill of Particulars

When allegations in an Information are vague or indefinite, the remedy of the accused is not a motion to quash, but a motion for a bill of particulars.

The purpose of a bill of particulars is to supply vague facts or allegations in the complaint or information to enable the accused to properly plead and prepare for trial. It presupposes a valid Information, one that presents all the elements of the crime charged, albeit under vague terms. Notably, the specifications that a bill of particulars may supply are only formal amendments to the complaint or Information.

In *Virata v. Sandiganbayan*,[64] the Court expounded on the purpose of a bill of particulars as follows:

It is the office or function, as well as the object or purpose, of a bill of particulars to amplify or limit a pleading, specify more minutely and particularly a claim or defense set up and pleaded in general terms, give information, not contained in the pleading, to the opposite party and the court as to the precise nature, character, scope, and extent of the cause of action or defense relied on by the pleader, and apprise the opposite party of the case which he has to meet, to the end that the proof at the trial may be limited to the matters specified, and in order that surprise at, and needless preparation for, the trial may be avoided, and that the opposite party may be aided in framing his answering pleading and preparing for trial. It has also been stated

that it is the function or purpose of a bill of particulars to define, clarify, particularize, and limit or circumscribe the issues in the case, to expedite the trial, and assist the court. A general function or purpose of a bill of particulars is to prevent injustice or do justice in the case when that cannot be accomplished without the aid of such a bill.[65]

x x x x [Emphasis ours.]

Notably, the failure of the accused to move for the specification of the details desired deprives him of the right to object to evidence that could be introduced and admitted under an Information of more or less general terms but which sufficiently charges the accused with a definite crime.[66]

Although the application for the bill of particulars is one addressed to the sound discretion of the court[67] it should nonetheless exercise its discretion within the context of the facts and the nature of the crime charged in each case and the right of the accused to be informed of the nature and cause of accusation against him. As articulated in the case of *People v. Iannone*: [68]

It is beyond cavil that a defendant has a basic and fundamental right to be informed of the charges against him so that he will be able to prepare a defense. Hence the courts must exercise careful surveillance to ensure that a defendant is not deprived of this right by an overzealous prosecutor attempting to protect his case or his witnesses. Any effort to leave a defendant in ignorance of the substance of the accusation until the time of trial must be firmly rebuffed. This is especially so where the indictment itself provides a paucity of information. In such cases, the court must be vigilant in safeguarding the defendant's rights to a bill of particulars and to effective discovery. Should the prosecutor decide to use an indictment which, although technically sufficient, does not adequately allow a defendant to properly prepare for trial, he may well run afoul of the defendant's right to be informed of the accusations against him.

Thus, if the Information is lacking, a court should take a liberal attitude towards its granting[69] and order the government to file a bill of particulars elaborating on the charges. Doubts should be resolved in favor of granting the bill[70] to give full meaning to the accused's Constitutionally guaranteed rights.

Notably, the government cannot put the accused in the position of disclosing certain overt acts through the Information and withholding others subsequently discovered, all of which it intends to prove at the trial. This is the type of surprise a bill of particulars is designed to avoid.[71] The accused is entitled to the observance of all the rules designated to bring about a fair verdict.

This becomes more relevant in the present case where the crime charged carries with it the severe penalty of capital punishment and entails the commission of several predicate criminal acts involving a great number of transactions spread over a considerable period of time.

C.4. Motion to Quash vs. Motion for Bill of Particulars

A bill of particulars presupposes a valid Information while a motion to quash is a jurisdictional defect on account that the facts charged in the Information does not constitute an offense.[72]

Justice Antonio T. Carpio, in his dissent, avers that the allegations in the information are not vague because the Information needs only allege the ultimate facts constituting the offense for which the accused stands charged, not the finer details of why and how the illegal acts alleged were committed. In support of his position, Justice Carpio cited the cases of *Miguel v. Sandiganbayan*, [73] *Go v. Bangko Sentral ng Pilipinas*, [74] and *People v. Romualdez*, [75] among others, to support the superfluity of the details requested by Enrile.

Justice Carpio's reliance on these cases is misplaced for they involve the issue of quashal of an information on the ground that the facts charge do not constitute an offense, rather than a request for bill of particulars. That is,

these cited cases involve the critical issue of the validity of an information, and not a request for specificity with request to an offense charged in an information.

On the other hand, the cases of *People v. Sanico*,^[76] *People v. Banzuela*,^[77] *Pielago v. People*,^[78] *People v. Rayon, Sr.*,^[79] *People v. Subesa*,^[80] *People v. Anguac*,^[81] and *Los Baños v. Pedro*,^[82] which were likewise cited by Justice Carpio, involve the issue that an Information only need to allege the ultimate facts, and not the specificity of the allegations contained in the information as to allow the accused to prepare for trial and make an intelligent plea.^[83]

Notably, in *Miguel*,^[84] to which Justice Carpio concurred, this Court mentioned that the proper remedy, if at all, to a supposed ambiguity in an otherwise valid Information, is merely to move for a bill of particulars and not for the quashal of an information which sufficiently alleges the elements of the offense charged.^[85]

Clearly then, a bill of particulars does not presuppose an invalid information for it merely fills in the details on an otherwise valid information to enable an accused to make an intelligent plea and prepare for his defense.

I stress, however, that the issue in the present case involves abuse of discretion for denying Enrile's request for a bill of particulars, and not a motion to quash.

If the information does not charge an offense, then a motion to quash is in order.^[86]

But if the information charges an offense and the averments are so vague that the accused cannot prepare to plead or prepare for trial, then a motion for a bill of particulars is the proper remedy.^[87]

Thus viewed, a motion to quash and a motion for a bill of particulars are distinct and separate remedies, the latter presupposing an information sufficient in law to charge an offense.^[88]

D. The Grave Abuse of Discretion Issue

The grant or denial of a motion for bill of particulars is discretionary on the court where the Information is filed. As usual in matters of discretion, the ruling of the trial court will not be reversed unless grave abuse of discretion or a manifestly erroneous order amounting to grave abuse of discretion is shown.^[89]

Grave abuse of discretion refers to the capricious or whimsical exercise of judgment that amounts or is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law such as when the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.^[90] For the extraordinary writ of certiorari to lie, there must be capricious, arbitrary, or whimsical exercise of power.

It will be recalled that the Sandiganbayan denied Enrile's motion for bill of particulars on two grounds, namely:

(1) the details sought were evidentiary in nature and are best ventilated during trial; and

(2) his desired details were reiterations of the details he sought in his supplemental opposition to the issuance of a warrant of arrest.

We shall separately examine these grounds in determining whether the Sandiganbayan committed grave abuse of discretion when it denied Enrile's motion for a bill of particulars and his subsequent motion for reconsideration.

Sandiganbayan Ground #1:

The details sought were evidentiary in nature

D.1. The Law of Plunder

A determination of whether the details that Enrile sought were evidentiary requires an examination of the elements of the offense he is charged with, i.e., plunder under Republic Act No. 7080.

Section 2 of R.A. No. 7080, as amended, reads:

Section 2. Definition of the Crime of Plunder; Penalties. — Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State. [Emphasis supplied.]

Based on this definition, the elements of plunder are:

(1)

That the offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates, or other persons;

(2)

That he amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts:

(a)

through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

(b)

by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;

(c)

by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of government-owned or -controlled corporations or their subsidiaries;

(d)

by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

(e)

by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

(f)

by taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and,

(3)

That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least P50,000,000.00. [Emphasis supplied.]

D.1.a. The Conspiracy Element and its Requested Details

Taking these elements into account, we hold that Enrile's requested details on Who among the accused acquired the alleged "ill-gotten wealth" are not proper subjects for a bill of particulars.

The allegation of the Information that the accused and Jessica Lucila G. Reyes, "conspiring with one another and with Janet Lim Napoles, Ronald John Lim, and John Raymund de Asis x x x" expressly charges conspiracy.

The law on plunder provides that it is committed by "a public officer who acts by himself or in connivance with x x x." The term "connivance" suggests an agreement or consent to commit an unlawful act or deed with another; to connive is to cooperate or take part secretly with another.[91] It implies both knowledge and assent that may either be active or passive.[92]

Since the crime of plunder may be done in connivance or in conspiracy with other persons, and the Information filed clearly alleged that Enrile and Jessica Lucila Reyes conspired with one another and with Janet Lim Napoles, Ronald John Lim and John Raymund De Asis, then it is unnecessary to specify, as an essential element of the offense, whether the ill-gotten wealth amounting to at least P172,834,500.00 had been acquired by one, by two or by all of the accused. In the crime of plunder, the amount of ill-gotten wealth acquired by each accused in a conspiracy is immaterial for as long as the total amount amassed, acquired or accumulated is at least P50 million.

We point out that conspiracy in the present case is not charged as a crime by itself but only as the mode of committing the crime. Thus, there is no absolute necessity of reciting its particulars in the Information because conspiracy is not the gravamen of the offense charged.

It is enough to allege conspiracy as a mode in the commission of an offense in either of the following manner: (1) by use of the word "conspire," or its derivatives or synonyms, such as confederate, connive, collude; or (2) by allegations of basic facts constituting the conspiracy in a manner that a person of common understanding would know what is intended, and with such precision as the nature of the crime charged will admit, to enable the accused to competently enter a plea to a subsequent indictment based on the same facts.[93]

Our ruling on this point in *People v. Quitlong*[94] is particularly instructive:

A conspiracy indictment need not, of course, aver all the components of conspiracy or allege all the details thereof, like the part that each of the parties therein have performed, the evidence proving the common design or the facts connecting all the accused with one another in the web of the conspiracy. Neither is it necessary to describe conspiracy with the same degree of particularity required in describing a substantive offense. It is enough that the indictment contains a statement of the facts relied upon to be constitutive of the offense in ordinary and concise language, with as much certainty as the nature of the case will admit, in a manner that can enable a person of common understanding to know what is intended, and with such precision that the accused may plead his acquittal or conviction to a subsequent indictment based on the same facts. x x x[95]

D.1.b. The Requested Details of Enrile's PDAF

We similarly rule that the petitioner is not entitled to a bill of particulars for specifics sought under the questions –

For each of the years 2004-2010, under what law or official document is a portion of the “Priority Development Assistance Fund” identified as that of a member of Congress, in this instance, as ENRILE’s, to be found? In what amount for each year is ENRILE’s Priority Development Assistance Fund?

and

x x x what COA audits or field investigations were conducted which validated the findings that each of Enrile’s PDAF projects in the years 2004-2010 were ghosts or spurious projects?

These matters will simply establish and support the ultimate fact that Enrile’s PDAF was used to fund fictitious or nonexistent projects. Whether a discretionary fund (in the form of PDAF) had indeed been made available to Enrile as a member of the Philippine Congress and in what amounts are evidentiary matters that do not need to be reflected with particularity in the Information, and may be passed upon at the full-blown trial on the merits of the case.

D.1.b(i) The yearly PDAF Allocations

Specifically, we believe that the exact amounts of Enrile’s yearly PDAF allocations, if any, from 2004 to 2010 need not be pleaded with specific particularity to enable him to properly plead and prepare for his defense. In fact, Enrile may be in a better position to know these details than the prosecution and thus cannot claim that he would be taken by surprise during trial by the omission in the Information of his annual PDAF allocations.

Thus, whether the amounts of Enrile’s PDAF allocations have been specified or not, Enrile has been sufficiently informed that he stands charged of endorsing Napoles’ non-government organizations to implement spurious or fictitious projects, in exchange for a percentage of his PDAF.

D.1.b(ii) The details of the COA Audits

The details of the “COA audits or field investigations” only support the ultimate fact that the projects implemented by Napoles’ NGOs, and funded by Enrile’s PDAF, were nonexistent or fictitious. Thus, they are evidentiary in nature and do not need to be spelled out with particularity in the Information.

To require more details on these matters from the prosecution would amount to asking for evidentiary information that the latter intends to present at the trial; it would be a compulsion on the prosecution to disclose in advance of the trial the evidence it will use in proving the charges alleged in the indictment.

D.1.c. Other Sources of Kickbacks and Commissions

We also deny Enrile’s plea for details on who “the others” were (aside from Napoles, Lim and De Asis) from whom he allegedly received kickbacks and commissions. These other persons do not stand charged of conspiring with Enrile and need not therefore be stated with particularity, either as specific individuals or as John Does. The Court cannot second-guess the prosecution’s reason for not divulging the identity of these “others” who may potentially be witnesses for the prosecution.

What the Constitution guarantees the accused is simply the right to meet and examine the prosecution witnesses. The prosecution has the prerogative to call witnesses other than those named in the complaint or information, subject to the defense’s right to cross-examine them.[96] Making these “others” known would in fact be equivalent to the prosecution’s premature disclosure of its evidence. We stress, to the point of repetition, that a bill of particulars is not meant to compel the prosecution to prematurely disclose evidentiary matters supporting its case.

D.2. The Overt Acts constituting the “Combination” or “Series” under the Plunder Law

We hold that Enrile is entitled to a bill of particulars for specifics sought under the following questions –

What are the particular overt acts which constitute the “combination”? What are the particular overt acts which constitute the “series”? Who committed those acts? [Emphasis ours.]

D.2.a. Reason for Requirement for Particulars of Overt Acts

Plunder is the crime committed by public officers when they amass wealth involving at least P50 million by means of a combination or series of overt acts.[97] Under these terms, it is not sufficient to simply allege that the amount of ill-gotten wealth amassed amounted to at least P50 million; the manner of amassing the ill-gotten wealth – whether through a combination or series of overt acts under Section 1(d) of R.A. No. 7080 – is an important element that must be alleged.

When the Plunder Law speaks of “combination,” it refers to at least two (2) acts falling under different categories listed in Section 1, paragraph (d) of R.A. No. 7080 [for example, raids on the public treasury under Section 1, paragraph (d), subparagraph (1), and fraudulent conveyance of assets belonging to the National Government under Section 1, paragraph (d), subparagraph (3)].

On the other hand, to constitute a “series” there must be two (2) or more overt or criminal acts falling under the same category of enumeration found in Section 1, paragraph (d) [for example, misappropriation, malversation and raids on the public treasury, all of which fall under Section 1, paragraph (d), subparagraph (1)].[98]

With respect to paragraph (a) of the Information –

[i.e., by repeatedly receiving from NAPOLES and/or her representatives LIM, DE ASIS, and others, kickbacks or commissions under the following circumstances: before, during and/or after the project identification, NAPOLES gave, and ENRILE and/or REYES received, a percentage of the cost of a project to be funded from ENRILE’S Priority Development Assistance Fund (PDAF), in consideration of ENRILE’S endorsement, directly or through REYES, to the appropriate government agencies, of NAPOLES’ non-government organizations which became the recipients and/or target implementers of ENRILE’S PDAF projects, which duly funded projects turned out to be ghosts or fictitious, thus enabling NAPOLES to misappropriate the PDAF proceeds for her personal gain x x x)] –

we hold that the prosecution employed a generalized or shotgun approach in alleging the criminal overt acts allegedly committed by Enrile. This approach rendered the allegations of the paragraph uncertain to the point of ambiguity for purposes of enabling Enrile to respond and prepare for his defense. These points are explained in greater detail below.

The heart of the Plunder Law lies in the phrase “combination or series of overt or criminal acts.” Hence, even if the accumulated ill-gotten wealth amounts to at least P50 million, a person cannot be prosecuted for the crime of plunder if this resulted from a single criminal act. This interpretation of the Plunder Law is very clear from the congressional deliberations.[99]

Considering that without a number of overt or criminal acts, there can be no crime of plunder, the various overt acts that constitute the “combination” and “series” the Information alleged, are material facts that should not only be alleged, but must be stated with sufficient definiteness so that the accused would know what he is specifically charged of and why he stands charged, so that he could properly defend himself against the charge.

Thus, the several (i.e., at least 2) acts which are indicative of the overall scheme or conspiracy must not be generally stated; they should be stated with enough particularity for Enrile (and his co-accused) to be able to

prepare the corresponding refuting evidence to meet these alleged overt acts.

It is insufficient, too, to merely allege that a set of acts had been repeatedly done (although this may constitute a series if averred with sufficient definiteness), and aver that these acts resulted in the accumulation or acquisition of ill-gotten wealth amounting to at least P172,834,500.00, as in this case. The Information should reflect with particularity the predicate acts that underlie the crime of plunder, based on the enumeration in Section 1(d) of R.A. No. 7080.

A reading of the Information filed against Enrile in the present case shows that the prosecution made little or no effort to particularize the transactions that would constitute the required series or combination of overt acts.

In fact, it clustered under paragraph (a) of the Information its recital of the manner Enrile and his co-accused allegedly operated, thus describing its general view of the series or combination of overt criminal acts that constituted the crime of plunder.

Without any specification of the basic transactions where kickbacks or commissions amounting to at least P172,834,500.00 had been allegedly received, Enrile's preparation for trial is obviously hampered. This defect is not cured by mere reference to the prosecution's attachment, as Enrile already stated in his Reply that the "desired details" could not be found in the bundle of documents marked by the prosecution, which documents are not integral parts of the Information. Hence, the prosecution does not discharge its burden of informing Enrile what these overt acts were by simply pointing to these documents.

In providing the particulars of the overt acts that constitute the "combination" or "series" of transactions constituting plunder, it stands to reason that the amounts involved, or at their ball park figures, should be stated; these transactions are not necessarily uniform in amount, and cannot simply collectively be described as amounting to P172,834,500.00 without hampering Enrile's right to respond after receiving the right information.

To stress, this final sum is not a general ball park figure but a very specific sum based on a number of different acts and hence must have a breakdown. Providing this breakdown reinforces the required specificity in describing the different overt acts.

Negatively stated, unless Enrile is given the particulars and is later given the chance to object to unalleged details, he stands to be surprised at the trial at the same time that the prosecution is given the opportunity to play fast and loose with its evidence to satisfy the more than P50 Million requirement of law.

D.2.b. Approximate Dates of Commissions or Kickbacks

Enrile should likewise know the approximate dates, at least, of the receipt of the kickbacks and commissions, so that he could prepare the necessary pieces of evidence, documentary or otherwise, to disprove the allegations against him. We point out that the period covered by the indictment extends from "2004 to 2010 or thereabout," of which, we again stress that different overt acts constituting of the elements of Plunder took place during this period.

Undoubtedly, the length of time involved – six years – will pose difficulties to Enrile in the preparation of his defense and will render him susceptible to surprises. Enrile should not be left guessing and speculating which one/s from among the numerous transactions involving his discretionary PDAF funds from 2004 to 2010, are covered by the indictment.

D.2.c. The Projects Funded and NGOs Involved

Enrile is also entitled to particulars specifying the project that Enrile allegedly funded coupled with the name of Napoles' NGO (e.g., Pangkabuhayan Foundation, Inc.), to sufficiently inform Enrile of the particular transactions

referred to.[100]

Be it remembered that the core of the indictment is:

- (1) the funding of nonexistent projects using Enrile's PDAF;
- (2) Enrile's endorsement of Napoles' NGOs to the government agencies to implement these projects; and
- (3) Enrile's receipt of kickbacks or commissions in exchange for his endorsement.

Under the elaborate scheme alleged to have been committed by Enrile and his co-accused, the project identification was what started the totality of acts constituting plunder: only after a project has been identified could Enrile have endorsed Napoles' NGO to the appropriate government agency that, in turn, would implement the supposed project using Enrile's PDAF. Note that without the project identification, no justification existed to release Enrile's PDAF to Napoles' allegedly bogus NGO.

In these lights, the "identified project" and "Napoles' NGO" are material facts that should be clearly and definitely stated in the Information to allow Enrile to adequately prepare his defense evidence on the specific transaction pointed to. The omission of these details will necessarily leave Enrile guessing on what transaction/s he will have to defend against, since he may have funded other projects with his PDAF. Specification will also allow him to object to evidence not referred to or covered by the Information's ultimate facts.

D.2.d. The Government Agencies Serving as Conduits

The government agencies to whom Enrile endorsed Napoles' NGOs are also material facts that must be specified, since they served a necessary role in the crime charged – the alleged conduits between Enrile and Napoles' NGOs. They were indispensable participants in the elaborate scheme alleged to have been committed.

The particular person/s in each government agency who facilitated the transactions, need not anymore be named in the Information, as these are already evidentiary matters. The identification of the particular agency vis-à-vis Napoles' NGO and the identified project, will already inform Enrile of the transaction referred to.

In *Tantuico v. Republic*,^[101] the Republic filed a case for reconveyance, reversion, accounting, restitution, and damages before the Sandiganbayan against former President Ferdinand Marcos, Imelda Marcos, Benjamin Romualdez, and Francisco Tantuico, Jr. Tantuico filed a motion for bill of particulars essentially alleging that the complaint was couched in general terms and did not have the particulars that would inform him of the alleged factual and legal bases. The Sandiganbayan denied his motion on the ground that the particulars sought are evidentiary in nature. Tantuico moved to reconsider this decision, but the Sandiganbayan again denied his motion.

The Court overturned the Sandiganbayan's ruling and directed the prosecution to prepare and file a bill of particulars. Significantly, the Court held that the particulars prayed for, such as: names of persons, names of corporations, dates, amounts involved, a specification of property for identification purposes, the particular transactions involving withdrawals and disbursements, and a statement of other material facts as would support the conclusions and inferences in the complaint, are not evidentiary in nature. The Court explained that those particulars are material facts that should be clearly and definitely averred in the complaint so that the defendant may be fairly informed of the claims made against him and be prepared to meet the issues at the trial.

To be sure, the differences between ultimate and evidentiary matters are not easy to distinguish. While *Tantuico* was a civil case and did not involve the crime of plunder, the Court's ruling nonetheless serves as a useful guide in the determination of what matters are indispensable and what matters may be omitted in the Information, in relation with the constitutional right of an accused to be informed of the nature and cause of the accusation against him.

In the present case, the particulars on the:

- (1) projects involved;
- (2) Napoles' participating NGOs; and
- (3) the government agency involved in each transaction

will undoubtedly provide Enrile with sufficient data to know the specific transactions involved, and thus enable him to prepare adequately and intelligently whatever defense or defenses he may have.

We reiterate that the purpose of a bill of particular is to clarify allegations in the Information that are indefinite, vague, or are conclusions of law to enable the accused to properly plead and prepare for trial, not simply to inform him of the crime of which he stands accused. Verily, an accused cannot intelligently respond to the charge laid if the allegations are incomplete or are unclear to him.

We are aware that in a prosecution for plunder, what is sought to be established is the commission of the criminal acts in furtherance of the acquisition of ill-gotten wealth. In the language of Section 4 of R.A. No. 7080, for purposes of establishing the crime of plunder, it is sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy to amass, accumulate, or acquire ill-gotten wealth.[102]

The term "overall unlawful scheme" indicates a general plan of action or method that the principal accused and public officer and others conniving with him follow to achieve their common criminal goal. In the alternative, if no overall scheme can be found or where the schemes or methods used by the multiple accused vary, the overt or criminal acts must form part of a conspiracy to attain a common criminal goal.[103]

Lest Section 4 be misunderstood as allowing the prosecution to allege that a set of acts has been repeatedly done (thereby showing a 'pattern' of overt criminal acts), as has been done in the present case, we point out that this section does not dispense with the requirement of stating the essential or material facts of each component or predicate act of plunder; it merely prescribes a rule of procedure for the prosecution of plunder.

In *Estrada v. Sandiganbayan*,[104] we construed this procedural rule to mean that [w]hat the prosecution needed to prove beyond reasonable doubt was only the number of acts sufficient to form a combination or series that would constitute a pattern involving an amount of at least P50,000,000.00. There was no need to prove each and every other act alleged in the Information to have been committed by the accused in furtherance of the overall unlawful scheme or conspiracy to amass, accumulate, or acquire ill-gotten wealth.[105]

If, for example, the accused is charged in the Information of malversing public funds on twenty different (20) occasions, the prosecution does not need to prove all 20 transactions; it suffices if a number of these acts of malversation can be proven with moral certainty, provided only that the series or combination of transaction would amount to at least P50,000,000.00. Nonetheless, each of the twenty transactions should be averred with particularity, more so if the circumstances surrounding each transaction are not the same. This is the only way that the accused can properly prepare for his defense during trial.

D.3. Paragraph (b) of the Information

As his last requested point, Enrile wants the prosecution to provide the details of the allegation under paragraph (b) of the Information (i.e., x x x by taking undue advantage, on several occasions, of their official position, authority, relationships, connections, and influence to unjustly enrich themselves at the expense and to the damage and prejudice, of the Filipino people and the Republic of the Philippines) in the following manner:

Provide the details of how Enrile took undue advantage, on several occasions, of his official positions, authority, relationships, connections, and influence to unjustly enrich himself at the expense and to the damage and prejudice, of the Filipino people and the Republic of the Philippines. Was this because he received any money from the government? From whom and for what reason did he receive any money or property from the government through which he “unjustly enriched himself”? State the details from whom each amount was received, the place and the time.

Our ruling on Enrile’s desired details – specifically, the particular overt act/s alleged to constitute the “combination” and “series” charged in the Information; a breakdown of the amounts of the kickbacks and commissions allegedly received, stating how the amount of P172,834,500.00 was arrived at; a brief description of the ‘identified’ projects where kickbacks and commissions were received; the approximate dates of receipt of the alleged kickbacks and commissions from the identified projects; the name of Napoles’ non-government organizations (NGOs) which were the alleged “recipients and/or target implementors of Enrile’s PDAF projects;” and the government agencies to whom Enrile allegedly endorsed Napoles’ NGOs – renders it unnecessary to require the prosecution to submit further particulars on the allegations contained under paragraph (b) of the Information.

Simply put, the particular overt acts alleged to constitute the combination or series required by the crime of plunder, coupled with a specification of the other non-evidentiary details stated above, already answer the question of how Enrile took undue advantage of his position, authority, relationships, connections and influence as Senator to unjustly enrich himself.

We also point out that the PDAF is a discretionary fund intended solely for public purposes. Since the Information stated that Enrile, as “Philippine Senator,” committed the offense “in relation to his office,” by “repeatedly receiving kickbacks or commissions” from Napoles and/or her representatives through projects funded by his (Enrile’s) PDAF, then it already alleged how undue advantage had been taken and how the Filipino people and the Republic had been prejudiced. These points are fairly deducible from the allegations in the Information as supplemented by the required particulars.

E. The Grave Abuse of Discretion

In the light of all these considerations, we hold that the Sandiganbayan’s denial of the petitioner’s motion for a bill of particulars, on the ground that the details sought to be itemized or specified are all evidentiary – without any explanation supporting this conclusion – constitutes grave abuse of discretion.

As discussed above, some of the desired details are material facts that must be alleged to enable the petitioner to properly plead and prepare his defense. The Sandiganbayan should have diligently sifted through each detail sought to be specified, and made the necessary determination of whether each detail was an ultimate or evidentiary fact, particularly after Enrile stated in his Reply that the “desired details” could not be found in the bundle of documents marked by the prosecution. We cannot insist or speculate that he is feigning ignorance of the presence of these desired details; neither can we put on him the burden of unearthing from these voluminous documents what the desired details are. The remedy of a bill of particulars is precisely made available by the Rules to enable an accused to positively respond and make an intelligent defense.

Justice Carpio’s reference to the voluminous 144-page Ombudsman’s resolution (which found probable cause to indict the petitioner and his co-accused not only of the crime of plunder, but also for violations of several counts of the Anti-Graft and Corrupt Practice Act) to justify his argument that Enrile was already aware of the details he seeks in his motion for a bill of particulars, all the more strengthens our conclusive position that the Information for plunder filed against Enrile was ambiguous and glaringly insufficient to enable him to make a proper plea and

to prepare for trial. We reiterate, to the point of being repetitive, that the purpose of the bill of particulars in criminal cases is to supply vague facts or allegations in the complaint or information to enable the accused to properly plead and prepare for trial.

Moreover, a resolution arising from a preliminary investigation does not amount to nor does it serve the purpose of a bill of particulars.

A bill of particulars guards against the taking of an accused by surprise by restricting the scope of the proof;^[106] it limits the evidence to be presented by the parties to the matters alleged in the Information as supplemented by the bill. It is for this reason that the failure of an accused to move for a bill of particulars deprives him of the right to object to evidence which could be lawfully introduced and admitted under an information of more or less general terms which sufficiently charges the defendants with a definite crime.

The record on preliminary investigation, in comparison, serves as the written account of the inquisitorial process when the fiscal determined the existence of prima facie evidence to indict a person for a particular crime. The record of the preliminary investigation, as a general rule, does not even form part of the records of the case.^[107] These features of the record of investigation are significantly different from the bill of particulars that serves as basis, together with the Information, in specifying the overt acts constituting the offense that the accused pleaded to during arraignment.

Notably, plunder is a crime composed of several predicate criminal acts. To prove plunder, the prosecution must weave a web out of the six ways of illegally amassing wealth and show how the various acts reveal a combination or series of means or schemes that reveal a pattern of criminality. The interrelationship of the separate acts must be shown and be established as a scheme to accumulate ill-gotten wealth amounting to at least P50 million.

Plunder thus involves intricate predicate criminal acts and numerous transactions and schemes that span a period of time. Naturally, in its prosecution, the State possesses an “effective flexibility” of proving a predicate criminal act or transaction, not originally contemplated in the Information, but is otherwise included in the broad statutory definition, in light of subsequently discovered evidence. The unwarranted use of the flexibility is what the bill of particulars guards against.

Justice Carpio further argues that the ponencia transformed the nature of an action from an accusation in writing charging a person with an offense to an initiatory pleading alleging a cause of action.

We see nothing wrong with such treatment, for a motion for a bill of particulars in criminal cases is designed to achieve the same purpose as the motion for a bill of particulars in civil cases. In fact, certainty, to a reasonable extent, is an essential attribute of all pleadings, both civil and criminal, and is more especially needed in the latter where conviction is followed by penal consequences.^[108]

Thus, even if the Information employs the statutory words does not mean that it is unnecessary to allege such facts in connection with the commission of the offense as will certainly put the accused on full notice of what he is called upon to defend, and establish such a record as will effectually bar a subsequent prosecution for that identical offense.^[109]

Notably, conviction for plunder carries with it the penalty of capital punishment; for this reason, more process is due, not less. When a person’s life interest – protected by the life, liberty, and property language recognized in the due process clause – is at stake in the proceeding, all measures must be taken to ensure the protection of those fundamental rights.

As we emphasized in *Republic v. Sandiganbayan*,^[110] “the administration of justice is not a matter of

guesswork. The name of the game is fair play, not foul play. We cannot allow a legal skirmish where, from the start, one of the protagonists enters the arena with one arm tied to his back.”

Finally, we find no significance in Justice Carpio’s argument that Atty. Estelito Mendoza did not previously find vague the Information for plunder filed against President Joseph Estrada in 2001.

Under the amended Information[111] against Estrada, et al., each overt act that constituted the series or combination and corresponding to the predicate acts under Section 1(d) had been averred with sufficient particularity so that there was no doubt what particular transaction was referred to.

We point out that unlike in the Information against Enrile, the following matters had been averred with sufficient definiteness, viz: the predicate acts that constitute the crime of plunder; the breakdown of how the alleged amount of P4,097,804,173.17, more or less, had been arrived at; the participants involved in each transaction; and the specific sources of the illegal wealth amassed.

At any rate, that Atty. Mendoza did not previously question the indictment of President Estrada via a motion for bill of particulars does not ipso facto mean that the present Information for plunder filed against Enrile is not vague and ambiguous.

Sandiganbayan Ground #2:

That Enrile’s cited grounds are reiterations of the grounds previously raised

Enrile does not deny that the arguments he raised in his supplemental opposition to issuance of a warrant of arrest and for dismissal of information and in his motion for bill of particulars were identical. He argues, however, that the mere reiteration of these grounds should not be a ground for the denial of his motion for bill of particulars, since “the context in which those questions were raised was entirely different.”

While both the motion to dismiss the Information and the motion for bill of particulars involved the right of an accused to due process, the enumeration of the details desired in Enrile’s supplemental opposition to issuance of a warrant of arrest and for dismissal of information and in his motion for bill of particulars are different viewed particularly from the prism of their respective objectives.

In the former, Enrile took the position that the Information did not state a crime for which he can be convicted; thus, the Information is void; he alleged a defect of substance. In the latter, he already impliedly admits that the Information sufficiently alleged a crime but is unclear and lacking in details that would allow him to properly plead and prepare his defense; he essentially alleged here a defect of form.

Note that in the former, the purpose is to dismiss the Information for its failure to state the nature and cause of the accusation against Enrile; while the details desired in the latter (the motion for bill of particulars) are required to be specified in sufficient detail because the allegations in the Information are vague, indefinite, or in the form of conclusions and will not allow Enrile to adequately prepare his defense unless specifications are made.

That every element constituting the offense had been alleged in the Information does not preclude the accused from requesting for more specific details of the various acts or omissions he is alleged to have committed. The request for details is precisely the function of a bill of particulars.

Hence, while the information may be sufficient for purposes of stating the cause and the crime an accused is charged, the allegations may still be inadequate for purposes of enabling him to properly plead and prepare for trial.

We likewise find no complete congruence between the grounds invoked and the details sought by Enrile in his

motion for bill of particulars, and the grounds invoked in opposing the warrant for his arrest issued, so that the Sandiganbayan's action in one would bar Enrile from essentially invoking the same grounds.

The judicial determination of probable cause is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice.[112] Simply put, the judge determines whether the necessity exists to place the accused under immediate custody to avoid frustrating the ends of justice.

On the other hand, the Revised Rules of Criminal Procedure grants the accused the remedy of a bill of particulars to better inform himself of the specifics or particulars concerning facts or matters that had not been averred in the Information with the necessary clarity for purposes of his defense.

Its purpose is to better acquaint the accused of the specific acts and/or omissions in relation with the crime charged, to limit the matters and the evidence that the prosecution may otherwise be allowed to use against him under a more or less general averment, and to meet the charges head on and timely object to evidence whose inadmissibility may otherwise be deemed waived.

Based on these considerations, the question of whether there is probable cause to issue a warrant of arrest against an accused, is separate and distinct from the issue of whether the allegations in the Information have been worded with sufficient definiteness to enable the accused to properly plead and prepare his defense. While the grounds cited for each may seemingly be the same, they are submitted for different purposes and should be appreciated from different perspectives, so that the insufficiency of these grounds for one does not necessarily translate to insufficiency for the other. Thus, the resolution of the issue of probable cause should not bar Enrile from seeking a more detailed averment of the allegations in the Information.

The Sandiganbayan grossly missed these legal points and thus gravely abused its discretion: it used wrong and completely inapplicable considerations to support its conclusion.

WHEREFORE, in the light of the foregoing:

a. We PARTIALLY GRANT the present petition for certiorari, and SET ASIDE the Sandiganbayan's resolutions dated July 11, 2014, which denied Enrile's motion for bill of particulars and his motion for reconsideration of this denial.

b. We DIRECT the People of the Philippines to SUBMIT, within a non-extendible period of fifteen (15) days from finality of this Decision, with copy furnished to Enrile, a bill of particulars containing the facts sought that we herein rule to be material and necessary. The bill of particulars shall specifically contain the following:

1. The particular overt act/s alleged to constitute the "combination or series of overt criminal acts" charged in the Information.
2. A breakdown of the amounts of the "kickbacks or commissions" allegedly received, stating how the amount of P172,834,500.00 was arrived at.
3. A brief description of the 'identified' projects where kickbacks or commissions were received.
4. The approximate dates of receipt, "in 2004 to 2010 or thereabout," of the alleged kickbacks and commissions from the identified projects. At the very least, the prosecution should state the year when the kickbacks and transactions from the identified projects were received.
5. The name of Napoles' non-government organizations (NGOs) which were the alleged "recipients and/or target implementors of Enrile's PDAF projects."

6. The government agencies to whom Enrile allegedly endorsed Napoles' NGOs. The particular person/s in each government agency who facilitated the transactions need not be named as a particular.

All particulars prayed for that are not included in the above are hereby denied.

SO ORDERED.

Velasco, Jr., Leonardo-De Castro, Bersamin, Perez, and Mendoza, JJ., concur.

Peralta, J., joins J. Bernabe's opinion.

Perlas-Bernabe, J., see separate concurring opinion.

Sereno, C.J., Del Castillo, and Villarama, Jr., JJ., join the dissent of J. Carpio.

Carpio and Leonen, JJ., see dissenting opinion.

Jardeleza, J., no part.

Reyes, J., on leave.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on August 11, 2015 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on August 20, 2015, at 1:05 p.m.

Very truly yours,

(SGD.)

FELIPA G. BORLONGAN-ANAMA

Clerk of Court

[1] Rollo, pp. 3-92.

[2] The resolutions denied petitioner Enrile's motion for bill of particulars and his motion for reconsideration. Both resolutions were contained in a Minute Resolution adopted on July 11, 2014.

[3] Rollo, pp. 170-171.

[4] Id. at 174-226.

[5] Id. at 232-261.

[6] On July 24, 2014, Enrile filed a motion for reconsideration assailing the Sandiganbayan's July 3, 2014 resolution.

[7] Rollo, pp. 265-267.

[8] Id. at 84-92.

[9] Id. at 268-273. This motion includes Criminal Case Nos. SB-14-CRM-0241 to 0255 for violation of Section 3(e) of Republic Act No. 3019.

[10] Id. at 167-A-169; see also Annexes "B," "B-1," and "B-2" at 93-166.

[11] Id. at 167-A-169; signed by Presiding Justice Amparo Cabotaje-Tang and Justices Samuel Martires and Alex Quiroz.

[12] Temporary rollo, unnumbered pages.

[13] Represented by the Office of the Ombudsman, through the Office of the Special Prosecutor.

[14] Section 14(2), Article III, 1987 Constitution; see *Go v. Bangko Sentral ng Pilipinas*, G.R. No. 178429, October 23, 2009, 604 SCRA 322, 329.

[15] See Dissenting Opinion of Justice (ret.) Dante O. Tinga in *Teves v. Sandiganbayan*, 488 Phil. 311, 340 (2004), citing 21 AM JUR 2d § 325.

[16] 3 Phil. 223 (1904).

[17] Id. at 226.

[18] See *Burgos v. Sandiganbayan*, 459 Phil. 794, 806 (2003).

[19] 150-B Phil. 78, 89-90 (1972).

[20] See *City of Manila v. Hon. Laguio, Jr.*, 495 Phil. 289, 311 (2005), citing 16 C.J.S., pp. 1150-1151.

[21] 565 Phil. 172, (2007).

[22] Id. at 191-192.

[23] Id. at 192.

[24] Section 4, Rule 110, Revised Rules of Criminal Procedure.

[25] *People v. Ching*, 563 Phil. 433, 443-444 (2007).

[26] Id. at 443.

[27] See *Olivarez v. Court of Appeals*, 503 Phil. 421, 435 (2005).

[28] *People v. Romualdez, et al.*, 581 Phil. 462, 479-480 (2008).

[29] See *Salita v. Magtolis*, G.R. No. 106429, June 13, 1994, 233 SCRA 100, 105.

[30] See *Philippine Bank of Communications v. Trazo*, 531 Phil. 636, 653 (2006).

[31] See *Brundage v. KL House Construction Company*, 396 P.2d 731 (N.M. 1964).

[32] *Tantuico, Jr. v. Republic*, G.R. No. 89114, December 2, 1991, 204 SCRA 428, 437, citing *Womack v. Industrial Comm.*, 168 Colo. 364, 451 P.2d 761, 764.

[33] Id., citing *Black's Law Dictionary*, 5th Ed., p. 500.

[34] 413 Phil. 159 (2001). This case involved a violation of Batas Pambansa Blg. 22. The Court held that knowledge of insufficiency of funds is the ultimate fact, or element of the offense that needs to be proved, while dishonor of the check presented within ninety (90) days is merely the evidentiary fact of such knowledge.

[35] Id. at 175.

[36] *Romualdez v. Sandiganbayan*, 479 Phil. 265, 288-289 (2004).

[37] *Herrera*, Remedial Law, Vol. IV (Rules 110-127), Criminal Procedure, 2007 ed., p. 591.

[38] Id. at 592.

[39] Id.

[40] Id.

[41] SEC. 2. Plea of guilty to a lesser offense. — At arraignment, the accused, with the consent of the offended party and the prosecutor, may be allowed by the trial court to plead guilty to a lesser offense which is necessarily included in the offense charged. After arraignment but before trial, the accused may still be allowed to plead guilty to said lesser offense after withdrawing his plea of not guilty. No amendment of the complaint or information is necessary. (Sec. 4, cir. 38-98) (Rule 116, Rules of Criminal Procedure).

[42] See *Russell v. United States*, 369 US 749.

[43] Id. See also Rule 117, Section 5.

[44] Id.

[45] Section 3(a), Rule 117.

[46] Section 9, Rule 116.

[47] *Virata v. Sandiganbayan*, 339 Phil. 47, 62 (1997).

[48] *Remmer v. United States*, 9 Cir., 1953, 205 F.2d 277, 281; *United States v. Caserta*, 3 Cir., 1952, 199 F.2d 905.

[49] See *US v. Kelly*, 92 F. Supp. 672, 673 (W.D. Mo. 1950).

[50] *Romualdez v. Sandiganbayan*, supra note 36.

[51] *US v. Kelly*, supra note 49.

[52] Philippine setting.

[53] Criminal Procedure 1900.

[54] 7 Phil. 523, 525 (1907).

[55] 10 Phil. 682 (1908).

[56] Id. at 690.

[57] See *People v. Abad Santos*, 76 Phil. 746 (1946).

[58] Id. at 745.

[59] Id. at 746-747.

[60] Id. at 747. See also Bill of Particulars in Criminal Cases, by Angel C. Cruz, PLJ volume 23, Number 1-03, Notes and Comments, p. 438. [plj.upd.edu.ph](http://www.plj.upd.edu.ph) (<http://www.plj.upd.edu.ph>, last visited on September 17, 2014), where the concept and origin of bill of particulars was discussed more extensively. It examined, among others, the cases of *Schneer*, *Cernias*, *Veluz* and *Abad Santos*.

[61] Effective January 1, 1964.

[62] Promulgated on November 22, 1984; Effective January 1, 1985.

- [63] A.M. No. 00-5-03-SC. Effective December 1, 2000.
- [64] G.R. No. 106527, April 6, 1993, 221 SCRA 52.
- [65] *Id.* at 62-63.
- [66] See *People v. Marquez*, 400 Phil. 1313, 1321 (2000).
- [67] *Wong Tai v. United States*, 273 U.S. 77, 82, 47 S.Ct. 300, 302, 71 L.Ed. 545 (1927).
- [68] 45 N.Y. 2d 589 (1978).
- [69] *Walsh v. United States*, 371 F.2d 436 (1st Cir. 1967).
- [70] See *United States v. Tanner*, 279 F. Supp. 457, 474 (N.D. Ill. 1967).
- [71] See *United States v. Covelli*, 210 F. Supp. 589 (N.D. Ill. 1967).
- [72] Revised Rules of Criminal Procedure.
- [73] G.R. No. 172035, July 4, 2012, 675 SCRA 560.
- [74] 619 Phil. 306 (2009).
- [75] 581 Phil. 462 (2008).
- [76] G.R. No. 208469, August 13, 2014, 732 SCRA 158.
- [77] G.R. No. 202060, December 11, 2013, 712 SCRA 735.
- [78] G.R. No. 202020, March 13, 2013, 693 SCRA 476.
- [79] G.R. No. 194236, January 30, 2014, 689 SCRA 745.
- [80] G.R. No. 193660, November 16, 2011, 660 SCRA 390.
- [81] 606 Phil. 728 (2009).
- [82] 604 Phil. 215 (2009).
- [83] Section 9, Rule 116.
- [84] *Supra* note 73.
- [85] *Id.*
- [86] Section 3(a), Rule 117.
- [87] *People v. Abad Santos*, *supra* note 57.
- [88] *Du Bois v. People*, 200 Ill, 157, 66 ARR 658 (1902); *Kelly v. People*, 192 Ill, 119, 61 NE (1901), 425.
- [89] See *Republic of the Philippines v. Sandiganbayan* (2nd Div.), *supra* note 21, at 192 (2007).
- [90] See *Hegerty v. Court of Appeals*, 456 Phil. 543, 548 (2003), citing *DM Consunji, Inc. v. Esguerra*, 328 Phil. 1168, 1180 (1996).
- [91] See Separate Opinion of Justice (ret.) Jose C. Vitug in *Atty. Serapio v. Sandiganbayan* (3rd Division), 444 Phil. 499, 507 (2003).

[92] Black's Law Dictionary, 5th edition, 1979, p. 274.

[93] Estrada v. Sandiganbayan, 427 Phil. 820, 860 (2002).

[94] 354 Phil. 372 (1998).

[95] Id. at 388-389.

[96] See Section 1(a), Rule 116, Revised Rules on Criminal Procedure. The last sentence reads: The prosecution may call at the trial witnesses other than those named in the complaint or information.

[97] Boado, Leonor, Notes and Cases on the Revised Penal Code (Books 1 and 2) and Special Penal Laws, 2004 edition, p. 554.

[98] Estrada v. Sandiganbayan, 421 Phil. 290, 351 (2001).

[99] HR Committee Journal, May 7, 1991:

x x x x

CHAIRMAN GARCIA:

That's series.

HON. ISIDRO:

That is not series, it is combination.

CHAIRMAN GARCIA:

Well, however you look at it...

HON. ISIDRO:

Because when you say combination or series, we seem to say that two or more, di ba?

CHAIRMAN GARCIA:

Yeah. This distinguishes it, really, from the ordinary crimes. That is why, I said, that is a very good suggestion because if it is only one act, it may fall under ordinary crime but we have here a combination or series of overt or criminal acts.

x x x x

HON. ISIDRO:

When you say combination, two different acts? Now, a series may mean repetition of the same act?

CHAIRMAN:

Repetition.

CHAIRMAN TAÑADA:

Yes.

HON. ISIDRO:

So, in other words ... that's it. When we say combination, we mean two different acts, it cannot be a repetition of the same act.

CHAIRMAN GARCIA:

That will refer to series.

HON. ISIDRO:

No, no supposing one act is repeated, so there are two.

x x x x

See also Rufus B. Rodriguez, *The Crime of Plunder in the Philippines*, 1st edition, 2002.

[100] Per the Reflections of Justice Estela M. Perlas-Bernabe, the year of the launching of the PDAF project, as well the intended beneficiaries, need not anymore be stated in the Information.

[101] G.R. No. 89114, December 2, 1991, 204 SCRA 428.

[102] See *Garcia v. Sandiganbayan*, G.R. No. 170122, October 12, 2009, 603 SCRA 349, 361.

[103] See *Estrada v. Sandiganbayan*, *supra* note 98.

[104] *Id.* at 360-361.

[105] *Id.*

[106] *Berger v. State*, 179 Md. 410 (1941; *Hunter v. State*, 193 Md. 596 (1949).

[107] Section 7 (b), Rule 112, Revised Rules of Criminal Procedure.

[108] *State v. Canova*, 278 Md. 483, 498-99, 365 A. 2d 988, 997-98 (1976).

[109] *State v. Lassotovitch*, 162 Md. 147, 156, 159 A. 362, 366 (1932).

[110] *Republic of the Philippines v. Sandiganbayan* (2nd Division), *supra* note 21.

[111] AMENDED INFORMATION

The undersigned Ombudsman Prosecutor and OIC-Director, EPIB Office of the Ombudsman, hereby accuses former PRESIDENT OF THE PHILIPPINES, Joseph Ejercito Estrada a.k.a. “ASIONG SALONGA” AND a.k.a. “JOSE VELARDE”, together with Jose ‘Jinggoy’ Estrada, Charlie ‘Atong’ Ang, Edward Serapio, Yolanda T. Ricaforte, Alma Alfaro, JOHN DOE a.k.a. Eleuterio Tan or Eleuterio Ramos Tan or Mr. Uy, Jane Doe a.k.a. Delia Rajas, and John DOES & Jane Does, of the crime of Plunder, defined and penalized under R.A. No. 7080, as amended by Sec. 12 of R.A. No. 7659, committed as follows:

That during the period from June, 1998 to January, 2001, in the Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Ejercito Estrada, THEN A PUBLIC OFFICER, BEING THEN THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, by himself AND/OR in CONNIVANCE/CONSPIRACY with his co-accused, WHO ARE MEMBERS OF HIS FAMILY, RELATIVES BY AFFINITY OR CONSANGUINITY, BUSINESS ASSOCIATES, SUBORDINATES AND/OR OTHER PERSONS, BY TAKING UNDUE ADVANTAGE OF HIS OFFICIAL POSITION, AUTHORITY, RELATIONSHIP, CONNECTION, OR INFLUENCE, did then and there wilfully, unlawfully and criminally amass, accumulate and acquire BY HIMSELF, DIRECTLY OR INDIRECTLY, ill-gotten wealth in the aggregate amount OR TOTAL VALUE of FOUR BILLION NINETY SEVEN MILLION EIGHT HUNDRED FOUR THOUSAND ONE HUNDRED SEVENTY THREE PESOS AND SEVENTEEN CENTAVOS [P4,097,804,173.17], more or less, THEREBY UNJUSTLY ENRICHING HIMSELF OR THEMSELVES AT

THE EXPENSE AND TO THE DAMAGE OF THE FILIPINO PEOPLE AND THE REPUBLIC OF THE PHILIPPINES, through ANY OR A combination OR A series of overt OR criminal acts, OR SIMILAR SCHEMES OR MEANS, described as follows:

(a)

by receiving OR collecting, directly or indirectly, on SEVERAL INSTANCES, MONEY IN THE AGGREGATE AMOUNT OF FIVE HUNDRED FORTY-FIVE MILLION PESOS (P545,000,000.00), MORE OR LESS, FROM ILLEGAL GAMBLING IN THE FORM OF GIFT, SHARE, PERCENTAGE, KICKBACK OR ANY FORM OF PECUNIARY BENEFIT, BY HIMSELF AND/OR in connivance with co-accused CHARLIE 'ATONG' ANG, Jose 'Jinggoy' Estrada, Yolanda T. Ricaforte, Edward Serapio, AN (sic) JOHN DOES AND JANE DOES, in consideration OF TOLERATION OR PROTECTION OF ILLEGAL GAMBLING;

(b)

by DIVERTING, RECEIVING, misappropriating, converting OR misusing DIRECTLY OR INDIRECTLY, for HIS OR THEIR PERSONAL gain benefit, public funds in the amount of ONE HUNDRED THIRTY MILLION PESOS [P130,000,000.00], more or less, representing a portion of the TWO HUNDRED MILLION PESOS [P200,000,000] tobacco excise tax share allocated for the Province of Ilocor Sur under R.A. No. 7171, BY HIMSELF AND/OR in CONNIVANCE with co-accused Charlie 'Atong' Ang, Alma Alfaro, JOHN DOE a.k.a. Eleuterio Tan OR Eleuterio Ramos Tan or Mr. Uy, and Jane Doe a.k.a. Delia Rajas, AND OTHER JOHN DOES AND JANE DOES;

(c)

by directing, ordering and compelling, FOR HIS PERSONAL GAIN AND BENEFIT, the Government Service Insurance System (GSIS) TO PURCHASE 351,878,000 SHARES OF STOCK MORE OR LESS, and the Social Security System (SSS), 329,855,000 SHARES OF STOCK MORE OR LESS, OF THE BELLE CORPORATION IN THE AMOUNT OF MORE OR LESS ONE BILLION ONE HUNDRED TWO MILLION NINE HUNDRED SIXTY FIVE THOUSAND SIX HUNDRED SEVEN PESOS AND FIFTY CENTAVOS [P1,102,965,607.50] AND MORE OR LESS SEVEN HUNDRED FORTY FOUR MILLION SIX HUNDRED TWELVE THOUSAND AND FOUR HUNDRED FIFTY PESOS [P744,612,450.00], RESPECTIVELY, OR A TOTAL OF MORE OR LESS ONE BILLION EIGHT HUNDRED FORTY SEVEN MILLION FIVE HUNDRED SEVENTY EIGHT THOUSAND FIFTY SEVEN PESOS AND FIFTY CENTAVOS [P1,847,578,057.50]; AND BY COLLECTING OR RECEIVING, DIRECTLY OR INDIRECTLY, BY HIMSELF AND/OR IN CONNIVANCE WITH JOHN DOES AND JANE DOES, COMMISSIONS OR PERCENTAGES BY REASON OF SAID PURCHASES OF SHARES OF STOCK IN THE AMOUNT OF ONE HUNDRED EIGHTY NINE MILLION SEVEN HUNDRED THOUSAND PESOS [P189,700,000.00], MORE OR LESS, FROM THE BELLE CORPORATION WHICH BECAME PART OF THE DEPOSIT IN THE EQUITABLE-PCI BANK UNDER THE ACCOUNT NAME "JOSE VELARDE;"

(d)

by unjustly enriching himself FROM COMMISSIONS, GIFTS, SHARES, PERCENTAGES, KICKBACKS, OR ANY FORM OF PECUNIARY BENEFITS, IN CONNIVANCE WITH JOHN DOES AND JANE DOES, in the amount of MORE OR LESS THREE BILLION TWO HUNDRED THIRTY THREE MILLION ONE HUNDRED FOUR THOUSAND ONE HUNDRED SEVENTY THREE PESOS AND SEVENTEEN CENTAVOS [P3,233,104,173.17] AND DEPOSITING THE SAME UNDER HIS ACCOUNT NAME "JOSE VELARDE" AT THE EQUITABLE-PCI BANK.

CONTRARY TO LAW. [Underscoring in the original.]

[112] See *Alfredo C. Mendoza v. People of the Philippines and Juno Cars, Inc.*, G.R. No. 197293, April 21, 2014, 722 SCRA 647.

SEPARATE CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur with the ponencia that petitioner Juan Ponce Enrile's (Enrile) motion for a bill of particulars should be partially granted on the matters herein discussed.

I.

The sufficiency of every Information is ordained by criminal due process, more specifically under the right of the accused to be informed of the nature and cause of the accusation against him stated under Section 14, Article III of the 1987 Philippine Constitution:

Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

The remedy against an insufficient Information in that it fails to allege the acts or omissions complained of as constituting the offense is a motion to quash on the ground that the allegations of the Information do not constitute the offense charged, or any offense for that matter,[1] under Section 3 (a), Rule 117 of the Revised Rules of Criminal Procedure. Its civil case counterpart is a motion to dismiss on the ground that the complaint fails to state a cause of action.[2] Note that when the rules speak of "the acts or omissions complained of as constituting the offense," they actually pertain to the ultimate facts that comprise the alleged crime's component elements. In civil procedure, the term "ultimate facts" means the essential facts constituting the plaintiff's cause of action.[3] A fact is essential if it cannot be stricken out without leaving the statement of the cause of action insufficient.[4] Ultimate facts are important and substantial facts which either directly form the basis of the primary right and duty, or which directly make up the wrongful acts or omissions of the defendant.[5] Ultimate facts should be distinguished from evidentiary facts. In *Bautista v. Court of Appeals*,[6] a criminal case that involved a violation of Batas Pambansa Bilang 22,[7] the Court distinguished an ultimate fact from an evidentiary fact as follows:

The distinction between the elements of the offense and the evidence of these elements is analogous or akin to the difference between ultimate facts and evidentiary facts in civil cases. Ultimate facts are the essential and substantial facts which either form the basis of the primary right and duty or which directly make up the wrongful acts or omissions of the defendant, while evidentiary facts are those which tend to prove or establish said ultimate facts.[8] (Emphasis supplied)

In order to give full meaning to the right of the accused to be informed of the nature and cause of the accusation against him, not only should the Information state the acts or omissions complained of as constituting the offense (or the ultimate facts that comprise the crime's component elements), the rules also require certain facts to be stated in the Information to be deemed sufficient, namely, the name of the accused, the designation of the offense

given by the statute, the name of the offended party, the approximate date of the commission of the offense, and the place where the offense was committed[9] (other requisite facts). Absent any of these essential facts, then the accused's right to be informed of the nature and cause of the accusation against him would be violated.

While not necessary to preserve said constitutional right, for as long as there is compliance with the above-stated bare minimums, the accused is given the procedural option to file a motion for bill of particulars to specify the vague allegations in the Information. In *State v. Collett*, [10] the office of a bill of particulars in criminal cases was described as follows:

That it contemplates something over and beyond the mere essentials of the averments necessary to state an offense is, in our judgment, ascertainable from the statute itself, which requires that the bill set up specifically the nature of the offense charged. xxx. (Emphasis and underscoring supplied)

Section 9, Rule 116 of the Revised Rules of Criminal Procedure explicitly states the motion's two-fold objective:

Section 9. Bill of particulars. – The accused may, before arraignment, move for a bill of particulars to enable him properly to plead and prepare for trial. The motion shall specify the alleged defects of the complaint or information and the details desired. (Emphasis supplied)

Note that a motion under the foregoing rule is different from a motion for bill of particulars filed in a civil case under Rule 12 of the Rules of Civil Procedure, which purpose is for a party (whether plaintiff or defendant) to properly prepare his responsive pleading.[11] In a criminal case, there is no need to file a responsive pleading since the accused is, at the onset, already presumed innocent, and thus it is the prosecution which has the burden of proving his guilt beyond reasonable doubt. The plea entered by the accused during his arraignment is not the criminal case counterpart of a responsive pleading in a civil case. Arraignment is a peculiar phase of a criminal case which formally ensures the right of the accused to be informed of the nature and cause of the accusation against him. Thus, before arraignment, a motion for bill of particulars is available so that the accused can properly enter his plea, and also to later prepare his defense. On the other hand, in a civil case, which operates under the evidentiary threshold of preponderance of evidence, a motion for bill of particulars is available so that the defendant can intelligently refute the allegations in the complaint in his responsive pleading.

In a civil case, the bill later becomes relevant because, as a general rule, the trial therein will only be based on the allegations stated in the pleadings submitted by the parties. Meanwhile, in a criminal case, because of the standing presumption of innocence, the delimitation of what is to be pleaded to during arraignment and proved during trial is based on the allegations in the Information and thus operates only against the prosecution. If the Information is vague (albeit sufficient), then the accused has the remedy of a motion for bill of particulars to delimit the allegations of the Information through the bill's function of specification and, in so doing may be able to properly enter his plea and later prepare his defense.

However, in both criminal and civil cases, it is a truism that it is not the office or function of a bill of particulars to furnish evidential information, whether such information consists of evidence which the pleader proposes to introduce or of facts which constitute a defense or offset for the other party or which will enable the opposite party to establish an affirmative defense not yet pleaded.[12]

Thus, in dealing with a motion for a bill of particulars in a criminal case, judges should observe that: (a) the remedy is distinct from a motion to quash in the sense that it presupposes that the acts or offenses constituting the offense (or the ultimate facts that comprise the crime's component elements) are already stated in the Information, albeit may be couched in vague language; (b) the remedy is, as mentioned, not meant to supply evidential information (or evidentiary facts); and (c) the particulars to be allowed are only those details that would allow a man of ordinary intelligence, as may be reasonable under the circumstances, to, again, properly plead

during his arraignment and to prepare his defense for trial. Accordingly, the analysis involved in motion for bill of particulars should go beyond a simple ultimate facts-evidentiary facts dichotomy.

Also, it is significant to point out that in a situation where the accused has moved for a bill of particulars, but such motion is denied by the trial court, absent any restraining order from the proper court, the arraignment of the accused should still proceed; otherwise, it would be fairly easy for every accused to delay the proceedings against him by the mere expedient of filing a motion for a bill of particulars. Thus, the accused, on the scheduled date of arraignment, must enter a plea, and if he refuses upon his insistence for a bill of particulars, then, in accordance with Section 1 (c),^[13] Rule 116 of the Rules of Criminal Procedure, the trial court shall enter a plea of not guilty for him. However, if the trial court's denial of such motion is later reversed by a higher court, then the accused may manifest that he is changing his plea upon consideration of the bill of particulars submitted, which, by supplementary application of the Rules of Civil Procedure, forms part of the Information.^[14] It should be stressed that since a motion for bill of particulars is not an objection on the sufficiency but on the vagueness of the Information, then the Information remains valid. As there is no objection on the validity of the Information, then the arraignment and the plea entered during the proceedings whether by the court or the accused should equally be deemed valid and therefore, not set aside.

II.

Enrile is charged with Plunder specifically in relation to the anomalous scheme behind the utilization of his Priority Development Assistance Fund (PDAF).^[15] Statutorily defined, Plunder is committed by a "public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d) [of Republic Act No. 7080,^[16] or the Plunder Law], in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00)."^[17] It is comprised of the following elements:

First, that the offender is a public officer;

Second, that he amasses, accumulates or acquires ill-gotten wealth through a combination or series^[18] of overt or criminal acts described in Section 1(d); and

Third, that the aggregate amount or total value of the ill-gotten wealth is at least P50,000,000.00.

Plunder's peculiar nature as a composite scheme employed by a public officer to loot the coffers of the government translates into the proposition that the accused should be able to "dissect" the parts which make up the whole. Thus, only by affording the accused a reasonable opportunity to intelligently refute each component criminal act would he then be able to disprove that there exists a combination or series thereof or, if so existing, the combination or series of acts did not allow him to amass or accumulate the total amount of at least P50,000,000.00.

A Plunder charge takes on a more complicated complexion when made in the context of the PDAF. In such an instance, each predicate overt act would pertain to the transaction wherein the kickback or commission has been acquired by the accused (PDAF transaction). Due to its complexity, an Information for a Plunder PDAF charge should contain the following details so that the accused may properly plead and prepare his defense thereto: (a) the ghost or fictitious project which was supposedly funded by the PDAF; (b) the amount (or a reasonable approximate thereof) of the kickback or commission supposedly involved in the PDAF transaction; (c) the date or approximate date on which the PDAF transaction had transpired; (d) if coursed through an NGO, the name of the NGO through which the PDAF kickbacks were furtively facilitated; and (e) if so involving another government

agency, the name of the agency to whom the PDAF was endorsed.

As an alternative, the Information may also make explicit reference to the Prosecutor's Resolution finding probable cause against the accused. However, the Prosecution must cite in the Information the specific portions of its Resolution referred to so as not to confuse the accused on what details are being alluded to when the Information is read to him in open court, to which he bases his plea during arraignment.[19] While it is recognized that the accused, who participates in a preliminary investigation, cannot feign ignorance of the finer details stated in the Prosecutor's Resolution, courts cannot assume that said details are automatically integrated in the Information. This is because the Prosecutor's Resolution is a product of a preliminary investigation proceeding meant only to determine if probable cause exists and thusly, if the Prosecution should file the corresponding Information before the court. Besides, the filing of an Information is an executive function; thus, it is up to the Prosecution to incorporate thereto the details for which it desires to proceed its case against the accused.

III.

The Information against Enrile reads:

In 2004 to 2010 or thereabout, in the Philippines, and within this Honorable Court's jurisdiction, above-named accused JUAN PONCE ENRILE, then a Philippine Senator, JESSICA LUCILA G. REYES, then Chief of Staff of Senator Enrile's Office, both public officers, committing the offense in relation to their respective offices, conspiring with one another and with JANET LIM NAPOLES, RONALD JOHN LIM, and JOHN RAYMUND DE ASIS, did then and there willfully, unlawfully, and criminally amass, accumulate, and/or acquire ill-gotten wealth amounting to at least ONE HUNDRED SEVENTY TWO MILLION EIGHT HUNDRED THIRTY FOUR THOUSAND FIVE HUNDRED PESOS (Php172,834,500.00) through a combination or series of overt criminal acts, as follows:

(a) by repeatedly receiving from NAPOLES and/or her representatives LIM, DE ASIS, and others, kickbacks or commissions under the following circumstances: before, during and/or after the project identification, NAPOLES gave, and ENRILE and/or REYES received, a percentage of the cost of a project to be funded from ENRILE'S Priority Development Assistance Fund (PDAF), in consideration of ENRILE'S endorsement, directly or through REYES, to the appropriate government agencies, of NAPOLES' non-government organizations which became the recipients and/or target implementers of ENRILE'S PDAF projects, which duly-funded projects turned out to be ghosts or fictitious, thus enabling NAPOLES to misappropriate the PDAF proceeds for her personal gain; and

(b) by taking undue advantage, on several occasions of their official positions, authority, relationships, connections, and influence to unjustly enrich themselves at the expense and to the damage and prejudice, of the Filipino people and the Republic of the Philippines.

With the Information merely confined to these allegations and to the end that the accused may properly plead and prepare his defense during trial, I, similar to the ponencia, therefore find it proper to partially grant Enrile's motion for bill of particulars, and concomitantly have the prosecution submit such bill to reflect the following matters:

1. "The particular overt act/s alleged to constitute the "combination" and "series" charged in the Information." [20]

This should not be construed as a particular, but rather a broad statement that encapsulates the motion's prayer. Each "overt act" pertains to each PDAF transaction which particulars are sought for in the more specific statements below.

2. “A breakdown of the amounts of the kickbacks and commissions allegedly received stating how the amount of P172,834,500.00 was arrived at.”[21]

The amount of kickbacks and commissions is essential to each PDAF transaction, which, in turn, forms part of the whole Plunder scheme alleged by the prosecution. In order for the accused to identify the PDAF transaction attributed to him, for which he bases his plea during arraignment, he must be informed of the amount involved in each transaction. Because a Plunder conviction necessitates that the total PDAF transactions breach the P50,000,000.00 threshold, knowledge of such amounts is vital to the defense. It also guides the trial court to render the proper judgment.

There is no need to specify the nature of the ill-gotten wealth the accused allegedly amassed, accumulated, or acquired. As I see it, the type of ill-gotten wealth is only an evidentiary fact which supports the ultimate fact that the accused had amassed, accumulated, or acquired more than P50,000,000.00 in kickbacks and commissions. What is essential is that the ill-gotten wealth, regardless of its form, breaches the P50,000,000.00 threshold, the necessary details of which may be sufficiently supplied by the breakdown above- discussed.

3. “The approximate dates of receipt of the alleged kickbacks and commissions since the overt acts to which the kickbacks and commissions relate, allegedly took place from 2004 to 2010. At the very least, the prosecution should state the year when the kickbacks and transactions had been received.”[22]

Similar to the ponencia,[23] I find that it is insufficient for the Information to just provide a broad time frame of six (6) years, more or less, to situate the occurrence of all the alleged PDAF transactions. In *Rocaberte v. People*,[24] the Court ruled that the Theft Information against the accused therein was seriously defective, for “[i]t places on him and his co-accused the unfair and unreasonable burden of having to recall their activities over a span of more than 2,500 days [(or 6 years)]. It is a burden nobody should be made to bear.”[25] The same logic obtains here.

The year of the launching of each PDAF project need not be specified, as the ponencia now agrees. The year of launching of the PDAF project may not necessarily be the same as the year in which the PDAF is diverted. A project may last for several years from launching and the PDAF kickbacks may have been sporadically diverted throughout its course. It must be recalled that the charge here involves the accumulation of ill-gotten wealth by receiving a portion of the PDAF as commission and kickbacks. Thus, what is relevant is the year when the PDAF is diverted, not the year when the “cover project” is launched.

4. “A brief description of the ‘identified’ projects where kickbacks and commissions were received.”[26]

Project identification stands at the core of every PDAF transaction: it is the preliminary and necessary step to cast a veil of ostensible legitimacy to the scheme. Because it is the transaction’s primary identifier, it is essential that the accused, during his arraignment, be informed of what project the PDAF transaction he is charged of is connected to. In this regard, it is also obvious that the name of the project is significant in the preparation of his defense.

Only the project name should be stated. There is no need to go beyond this and provide a brief description of the project (its nature, e.g., farm inputs, equipment, and the year it was launched), and the intended beneficiaries, to which the ponencia accedes. At best, these are evidentiary facts which support the conclusions from which the ultimate fact, i.e., the name of the project, is premised on.

5. “The name of Napoles’ NGOs which were the alleged recipients and target implementors of Enrile’s PDAF projects.”[27]

The Napoles’ NGOs were used basically as shell entities to which the PDAF kickbacks were fraudulently

funneled. As such, they figure into a significant role in each PDAF transaction. Stating the vehicle of facilitation provides the accused basic information of the means by which the PDAF transaction in which he was supposedly involved was employed. The ponencia correctly pointed out that “only after a project has been identified could Enrile endorse Napoles’ NGOs to the appropriate government agency that, in turn, would implement the supposed project using Enrile’s PDAF.”[28] The alleged interplay of Enrile’s office and Napoles’ NGO’s was taken judicial notice by the Court in *Belgica v. Ochoa, Jr.*:[29]

Recently, or in July of the present year [(i.e., 2013)], the National Bureau of Investigation (NBI) began its probe into allegations that “the government has been defrauded of some P10 Billion over the past 10 years by a syndicate using funds from the pork barrel of lawmakers and various government agencies for scores of ghost projects.” The investigation was spawned by sworn affidavits of six (6) whistle-blowers who declared that JLN Corporation – “JLN” standing for Janet Lim Napoles (Napoles) – had swindled billions of pesos from the public coffers for “ghost projects” using no fewer than 20 dummy NGOs for an entire decade. While the NGOs were supposedly the ultimate recipients of PDAF funds, the whistle-blowers declared that the money was diverted into Napoles’ private accounts. Thus, after its investigation on the Napoles controversy, criminal complaints were filed before the Office of the Ombudsman, charging five (5) lawmakers for Plunder [(among others, Enrile)], and three (3) other lawmakers for Malversation, Direct Bribery, and Violation of the Anti-Graft and Corrupt Practices Act. Also recommended to be charged in the complaints are some of the lawmakers’ chiefs-of-staff or representatives, the heads and other officials of three (3) implementing agencies, and the several presidents of the NGOs set up by Napoles.[30] (Emphases and words in brackets supplied; citations omitted)

Accordingly, an identification of the NGOs (and, as below discussed, the government agencies) involved in each PDAF transaction is therefore integral to the defense.

6. “The government agencies to whom Enrile allegedly endorsed Napoles’ NGOs. We reiterate that the particular person/s in each government agency who facilitated the transactions need not anymore be named in the Information.”[31]

As aptly observed by the ponencia,[32] government agencies have been allegedly used as conduits between Enrile and the Napoles’ NGOs. The justification behind their inclusion is the same as that of the above.

The names of the public officer’s agents or employees through which he courses through the “groundwork” of his scheme, i.e., the actual exchange of money, need not be provided. These involve mere evidentiary facts that only tend to prove the ultimate fact that the public officer concerned indeed received kickbacks and commissions. In this case, what remains paramount is that the Information state that Enrile received kickbacks from Napoles, et al. in connection with the ghost projects wherein the former’s PDAF was disbursed through the facility of his office. Regardless of who delivered and received the actual amounts, it is clear from the Information that Enrile’s office as Philippine Senator was used to operate the scheme.

IV.

As a final point, it should be elucidated that “[t]he factual premises for the allegation that Enrile took undue advantage of his official position in order to enrich himself to the damage and prejudice of the Filipino people and the Republic of the Philippines x xx”[33] should not be provided by the prosecution.

The facts already alleged in the Information and the particulars granted are already sufficient to make out how Enrile took undue advantage of his official position. It will be recalled that the Information already alleges that Enrile, in his capacity as Senator from 2004-2010, conspired with Reyes, Napoles, Lim and De Asisin accumulating, amassing or acquiring P172,834,500.00 in ill-gotten wealth by receiving kickbacks and

commission from projects funded by his PDAF, by endorsing Napoles-controlled NGOs to government agencies. From these allegations alone, the charge already conveys how Enrile supposedly took undue advantage of his office (for how else is he alleged to have diverted the funds) to the damage of the Filipino people (by depriving them of the public funds). In other words, it is fairly deducible from the allegations in the Information that Enrile must have taken undue advantage of his official position as Philippine Senator in order to manipulate the disposition of his PDAF and to obtain numerous kickbacks from Napoles. The damage and prejudice to the Filipino people and the Republic are also self-evident from the context of the Plunder charge, more so, one specifically on the PDAF scheme.

While the prosecution may have indeed quoted Section 1(d) (6) of the Plunder Law,[34]the language of the phrase “[b]y taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines,”[35] is – according to its natural import – fully descriptive of the Plunder PDAF charge. It is common understanding that such an offense pertains to the act of taking undue advantage of a member of Congress of his PDAF, through his post-enactment authority. Since public funds are misappropriated, damage and prejudice has been obviously caused to the Filipino People. Therefore, it is unnecessary to split hairs on what this phrase means.As instructed in *Potter v. U.S.*:[36]

The offense charged is a statutory one, and while it is doubtless true that it is not always sufficient to use simply the language of the statute in describing such an offense, x xx yet if such language is, according to the natural import of the words, fully descriptive of the offense, then ordinarily it is sufficient.

ACCORDINGLY, subject to the qualifications herein made, I vote to PARTIALLY GRANT the petition.

[1] “As a general proposition, a motion to quash on the ground that the allegations of the information do not constitute the offense charged, or any offense for that matter, should be resolved on the basis alone of said allegations whose truth and veracity are hypothetically admitted. The informations need only state the ultimate facts; the reasons therefor could be proved during the trial.

The fundamental test in reflecting on the viability of a motion to quash under this particular ground is whether or not the facts asseverated, if hypothetically admitted, would establish the essential elements of the crime defined in the law. In this examination, matters aliunde are notconsidered. However, inquiry into facts outside the information may be allowed where the prosecution does not object to the presentation thereof.” (*Valencia v. Sandiganbayan*, 477 Phil. 103, 112 [2004]; citations omitted)

[2] Section 1 (g), Rule 16, RULES OF CIVIL PROCEDURE.

[3] *Tantuico, Jr. v. Republic*, G.R. No. 89114, December 2, 1991, 204 SCRA 428, 437 (1991), citing *Remitere v. Yulo*, 123 Phil. 57, 62 (1966).

[4] *Id.*

[5] *Id.*

[6] 413 Phil. 159 (2001).

[7] Entitled “AN ACT PENALIZING THE MAKING OR DRAWING AND ISSUANCE OF A CHECK WITHOUT SUFFICIENT FUNDS OR CREDIT AND FOR OTHER PURPOSES” (approved on April 3, 1979).

[8] *Bautista v. Court of Appeals*, *supra* note 6, at 175.

[9] Section 6, Rule 110, REVISED RULES OF CRIMINAL PROCEDURE.

[10] 58 N.E. 2d 417 (1944).

[11] Section 1, Rule 12 of the RULES OF CIVIL PROCEDURE states:

Section 1. When applied for; purpose. – Before responding to a pleading, a party may move for a definite statement or for a bill of particulars of any matter which is not averred with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading. If the pleading is a reply, the motion must be filed within ten (10) days from service thereof. Such motion shall point out the defects complained of, the paragraphs wherein they are contained, and the details desired.

[12] Tan v. Sandiganbayan, 259 Phil. 502, 513 (1989), citing 71 C.J.S. Pleading S 376.

[13] Section 1. Arraignment and plea; how made. –

x x x x

(c) when the accused refuses to plead or makes a conditional plea, a plea of not guilty shall be entered for him.

[14] Section 6, Rule 13 of the RULES OF CIVIL PROCEDURE states:

Section. 6. Bill a part of pleading. – A bill of particulars becomes part of the pleading for which it is intended.

[15] See Information; rollo, pp. 170-171.

[16] “AN ACT DEFINING AND PENALIZING THE CRIME OF PLUNDER” (approved on July 12, 1991).

[17] As amended by RA 7659 entitled “AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES” (approved on December 13, 1993).

[18] In Estrada v. Sandiganbayan (421 Phil. 290, 351 [2001]), it was explained:

Combination - the result or product of combining; the act or process of combining. To combine is to bring into such close relationship as to obscure individual characters.

Series - a number of things or events of the same class coming one after another in spatial and temporal succession.

That Congress intended the words “combination” and “series” to be understood in their popular meanings is pristinely evident from the legislative deliberations on the bill which eventually became RA 7080 or the Plunder Law.

[19] Section 1 (a), Rule 116 of the REVISED RULES OF CRIMINAL PROCEDURE states:

Section 1. Arraignment and plea; how made. —

(a) The accused must be arraigned before the court where the complaint or information was filed or assigned for trial. The arraignment shall be made in open court by the judge or clerk by furnishing the accused with a copy of the complaint or information, reading the same in the language or dialect known to him, and asking him whether he pleads guilty or not guilty. The prosecution may call at the trial witnesses other than those named in the complaint or information.

[20] Ponencia, p. 32.

[21] Id.

[22] Id.

[23] Id. at 24.

[24] 271 Phil. 154 (1991).

[25] Id. at 160.

[26] Ponencia, p. 33.

[27] Id.

[28] Id. at 24.

[29] G.R. Nos. 208566, 208493 & 209251, November 19, 2013, 710 SCRA 1.

[30] Id. at 80.

[31] Ponencia, p. 33.

[32] Id. at 27.

[33] Id. at 33.

[34] Id. at 27.

[35] See Information; rollo, p. 171.

[36] 155 U.S. 438; 15 S. Ct. 144; 39 L. Ed. 214; (1894); citation omitted.

DISSENTING OPINION

CARPIO, J.:

I dissent from the ponencia which partially grants petitioner's motion for a bill of particulars and directs the Ombudsman to file an Amended Information containing the following particulars:

- The particular overt act/s alleged to constitute the "combination" and "series" charged in the Information.
- A breakdown of the amounts of the kickbacks and commissions allegedly received, stating how the amount of P172,834,500.00 was arrived at.
- A brief description of the 'identified' projects where kickbacks and commissions were received.
- The approximate dates of receipt, "in 2004 to 2010 or thereabout," of the alleged kickbacks and commissions from the identified projects. At the very least, the prosecution should state the year when the kickbacks and transactions from the identified projects were received.
- The name[s] of Napoles' non-government organizations (NGOs) which were the alleged "recipients and/or target implementors of Enrile's PDAF projects."
- The government agencies to whom Enrile allegedly endorsed Napoles' NGOs. The particular person/s in each government agency who facilitated the transactions need not anymore be named as a particular in the Information.[1]

These particulars do not refer to ultimate facts, but rather to evidentiary matters which unduly expand the details specifically required in Section 6, Rule 110 of the Rules of Court for a sufficient Information.

Information Filed Against Petitioner Sufficient

An Information charging a person with an offense is sufficient if, among others, it states “the acts or omissions complained of as constituting the offense,” using “ordinary and concise language.”[2] The minimum requirement is that the allegations in the Information state the basic, ultimate facts constituting the elements of the offense (and aggravating or qualifying circumstances[3]) such that if the accused is later on prosecuted for the same offense, he can claim prior jeopardy.[4] All other details can be left out, to be supplied during the presentation of the prosecution’s case during trial. After all, what the Constitution guarantees to the accused is that he is informed of the “nature and cause of the accusation against him”[5] and not of the “dates, names, amounts, and other sundry details” relating to the offense charged. If “a person of common understanding x x x [can] know what offense is being charged x x x,”[6] then the Information is free from any taint of deficiency.

Thus, Section 6, Rule 110 of the Rules of Court (Rules) succinctly states:

A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. (Emphasis supplied)

Petitioner Juan Ponce Enrile (petitioner) stands charged before the Sandiganbayan’s Third Division (Sandiganbayan) with the offense of plunder as defined under Republic Act No. 7080 (RA 7080). The elements of this offense are:

- (1) [T]he offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons;
- (2) [H]e amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts described in Section 1(d) of RA 7080 as amended; and
- (3) [T]he aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least P50,000,000.00.[7]

In relation to the second element, the six modes of accumulating ill-gotten wealth under Section 1(d) of RA 7080 are:

- (a) through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
- (b) by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer;
- (c) by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of Government owned or controlled corporations or their subsidiaries;
- (d) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;
- (e) by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or
- (f) by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic

of the Philippines.

The Information filed against petitioner provides:

x x x x

In 2004 to 2010 or thereabout, in the Philippines, and within this Honorable Court's jurisdiction, above-named accused JUAN PONCE ENRILE, then a Philippine Senator, JESSICA LUCILA G. REYES, then Chief of Staff of Senator Enrile's Office, both public officers, committing the offense in relation to their respective offices, conspiring with one another and with JANET LIM NAPOLES, RONALD JOHN LIM, and JOHN RAYMUND DE ASIS, did then and there willfully, unlawfully, and criminally amass, accumulate, and/or acquire ill-gotten wealth amounting to at least ONE HUNDRED SEVENTY TWO MILLION EIGHT HUNDRED THIRTY FOUR THOUSAND FIVE HUNDRED PESOS (Php172,834,500.00) through a combination or series of overt criminal acts, as follows:

(a) by repeatedly receiving from NAPOLES and/or her representatives LIM, DE ASIS, and others, kickbacks or commissions under the following circumstances: before, during and/or after the project identification, NAPOLES gave, and ENRILE and/or REYES received, a percentage of the cost of a project to be funded from ENRILE's Priority Development Assistance Fund (PDAF), in consideration of ENRILE's endorsement, directly or through REYES, to the appropriate government agencies, of NAPOLES' non-government organizations which became the recipients and/or target implementors of ENRILE's PDAF projects, which duly-funded projects turned out to be ghosts or fictitious, thus enabling NAPOLES to misappropriate the PDAF proceeds for her personal gain;

(b) by taking undue advantage, on several occasions, of their official positions, authority, relationships, connections, and influence to unjustly enrich themselves at the expense and to the damage and prejudice, of the Filipino people and the Republic of the Philippines.[8]

By simply juxtaposing Section 1 and Section 2 of RA 7080, on the one hand, and the allegations in the Information, on the other hand, it becomes immediately apparent that the Information filed against petitioner complies with the requirements under the Rules and the Constitution. The Information alleges, in ordinary and concise language, all the elements of plunder as defined in RA 7080 by stating that:

(1) Petitioner, an incumbent "Philippine Senator," is a "public officer[]";

(2) Petitioner, together with several co-accused, in conspiracy with them, "amass[ed], accumulated and/or acquired ill-gotten wealth" by:

(a) receiving personally or through a co-accused "kickbacks or commissions" from another co-accused (Janet Lim Napoles [Napoles]) in exchange for his endorsement to Napoles' non-governmental organizations (NGOs) of government projects funded by petitioner's discretionary funds (falling under Section 1(d)(b) of RA 7080); and

(b) taking undue advantage of his official position to unjustly enrich himself at the expense and to the damage and prejudice of the Filipino people (falling under Section 1(d)(f) of RA 7080); and

(3) The total amount of ill-gotten wealth amassed by petitioner and his co-accused is "at least" P172.8 million (more than triple the floor amount of P50 million required under Section 2 of RA 7080).

Allegations in the Information not Vague

The procedural remedy, in civil or criminal proceedings, to render vague allegations in the complaint or Information more specific is the bill of particulars. The details contained in the bill enable the respondent in the civil proceedings to "prepare his responsive pleading,"[9] and the accused in the criminal proceedings to

“properly x x x plead and prepare for trial.”[10]

Petitioner’s plea for a bill of particulars is grounded on his view that the allegations in the Information filed against him are “a series or combination of conclusions of fact and of law” not of “fact[s] and circumstance[s] x x x [constituting] the crime charged.”[11] He also finds the allegations relating to his receipt of kickbacks from projects funded by his legislative discretionary funds “a bundle of confusing ambiguity.”[12]

Petitioner prays that the prosecution provide him with details relating to the allegations in the Information on his accumulation of ill-gotten wealth, namely, the “overt acts” constituting the combination or series of criminal acts, the names of the persons who received the kickbacks, the names of the persons who gave them, the breakdown of the amounts received, the dates of receipt, the description of the nature, location and costs of the government projects funded by his discretionary funds, the dates of launching of the projects he funded, and the names of the beneficiary NGOs, among others.[13]

The ponencia finds merit in petitioner’s theory and orders the prosecution to furnish petitioner most of the details sought. As a consequence of its ruling, the ponencia directs an amendment of the Information filed against petitioner.

Petitioner and the ponencia have transformed the nature of an Information from “an accusation in writing charging a person with an offense”[14] to an initiatory pleading alleging “a cause of action.”[15] Unlike a complaint in civil proceedings which must contain all the details constituting a cause of action,[16] an Information only needs to state, in ordinary and concise language, “the acts or omissions complained of as constituting the offense” such that the accused understands the crime he is being charged with and that when he pleads to such charge, first jeopardy attaches. In other words, the Information only needs to allege the ultimate facts constituting the offense for which the accused stands charged, not the finer details of why and how the illegal acts alleged were committed. This is a long-standing and deeply entrenched rule, applied by this Court in an unbroken line of ever growing jurisprudence.[17]

Thus, for the past decade alone, we ruled in *Miguel v. Sandiganbayan*,[18] *Go v. Bangko Sentral ng Pilipinas*[19] and *People v. Romualdez*,[20] all penned by Mr. Justice Brion, that the Informations filed in those cases did not suffer from any defect as they alleged the ultimate, material facts of the offense for which the accused stood charged. The accused in *Miguel*, who stood charged with violation of Section 3(e) of Republic Act No. 3019 (RA 3019), had argued that the Information filed against him was defective because the allegation of “evident bad faith and manifest partiality” within the contemplation of such provision referred to his co-accused. We rejected such claim, noting that the allegation in question “was merely a continuation of the prior allegation of the acts”[21] of petitioner and following the rule that “[t]he test of the [I]nformation’s sufficiency is x x x whether the material facts alleged in the complaint or information shall establish the essential elements of the offense charged as defined in the law.”[22]

We applied the same rule to reject the claim of the accused in *Go*, on trial for violation of Republic Act No. 337 (General Banking Act), that the allegations in the Information filed against him were vague, a result of the prosecution’s “shotgun approach” in framing the Information.[23] We found the Information sufficient, as it complied with the rule that “an Information only needs to state the ultimate facts constituting the offense, not the finer details of why and how the illegal acts alleged amounted to undue injury or damage x x x,” adding that “[t]he facts and circumstances necessary to be included in the Information are determined by reference to the definition and elements of the specific crimes.”[24]

The accused in *Romualdez*, like the accused in *Miguel*, also questioned the sufficiency of the allegations in the Information filed against him for violation of Section 3(e) of RA 3019, contending that it failed to indicate how

his holding of dual positions caused “undue injury” to the government. We dismissed the claim, noting that “[t]he allegation of ‘undue injury’ in the Information, consisting of the extent of the injury and how it was caused, is complete” and that the details behind such element of the offense are “matters that are appropriate for the trial.”[25] We based this conclusion by reiterating that “an Information only needs to state the ultimate facts constituting the offense.”[26]

During the same decade, we applied the rule in question in *People v. Sanico*[27] (per Reyes, J.), *People v. Banzuela*[28] (per Leonardo-De Castro, J.), *Pielago v. People*[29] (per Reyes, J.), *People v. Rayon*[30] (per Brion, J.), *People v. Subesa*[31] (per Mendoza, J.), *People v. Anguac*[32] (per Velasco, J.), *Los Baños v. Pedro*[33] (per Brion, J.) and *People v. Abello*[34] (per Brion, J.) to determine the offense committed (as opposed to what is stated in the caption or preamble of the Information). The accused in *Sanico* was charged with acts of lasciviousness as penalized under the Revised Penal Code (RPC), although the allegations in the Information covered the elements for acts of lasciviousness as penalized under Republic Act No. 7610 (RA 7610). In sustaining the Court of Appeals’ imposition of the penalty under RA 7610, we ruled that the failure of the prosecution to allege violation of RA 7610 is not fatal as “[t]he character of the crime is not determined by the caption or preamble of the information nor by the specification of the provision of law alleged to have been violated, but by the recital of the ultimate facts and circumstances in the complaint or information.”[35]

In contrast with the facts in *Sanico*, the accused in *Banzuela* stood charged with acts of lasciviousness in violation of RA 7610 but the Information failed to allege the element under Section 5 of that law that the victim is a “child exploited in prostitution or subjected to other sexual abuse.” Thus, we held that the accused can only be made to suffer the penalty provided for acts of lasciviousness as penalized under the RPC because “the character of the crime is determined neither by the caption or preamble of the information[,] nor by the specification of the provision of law alleged to have been violated x x x but by the recital of the ultimate facts and circumstances in the information.”[36] We applied the same rule in *Abello* to hold the accused liable for acts of lasciviousness as penalized under the RPC even though the Information filed against him charged him with acts of lasciviousness as penalized under RA 7610 on the ground that the prosecution failed to allege and prove the element of coercion or intimidation as required under Section 5(b) of the latter law.

In *Pielago*, we held that the amendment of the Information against the accused changing the designation of the crime alleged from “acts of lasciviousness in relation to Section 5(b) of RA 7610” to “the crime of rape by sexual assault penalized under Article 266-A(2)”[37] of the RPC is not prejudicial to the accused because the original Information already alleged the elements of the latter felony and the “character of the crime is not determined by the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, but by the recital of the ultimate facts and circumstances in the complaint or information.”[38] We arrived at the same conclusion in *Subesa* where the accused was charged with acts of lasciviousness under RA 7610 but was held liable for rape under Article 266-A(2) of the RPC.

The Court again applied the rule in question in *Rayon* which presented a variance between the crime designated and the acts alleged in the Information. In that case, the accused was charged with violation of Section 10(1), Article VI of RA 7610 (penalizing, among others, other acts of abuse) but the allegations in the Information made out a violation of Section 5(b) of the same law (penalizing sexual abuse of children). In holding the accused liable for the latter crime, we reiterated the rule that “the character of the crime is not determined by the caption or preamble of the information x x x but by the recital of the ultimate facts and circumstances in the complaint or information.”[39]

Anguac, on the other hand, involved an accused who was charged with violation of Section 5(1) of RA 7610 (penalizing acts relating to child prostitution) but the acts alleged in the Information and the evidence presented

during trial made out a case for violation of Section 5(b) of that law (penalizing sexual abuse of children). In holding the accused liable for the latter offense, we again held that “the character of the crime is determined neither by the caption or preamble of the information x x x but by the recital of the ultimate facts and circumstances in the information.”[40]

Lastly, in *Los Baños*, which involved an accused who was charged with violation of Section 261(q) of the Omnibus Election Code and not with violation of its amendatory law, Section 32 of Republic Act No. 7166, we considered such omission non-consequential because both provisions punish the same act of “carrying of firearms in public places during the election period without the authority of the COMELEC,”[41] reiterating at the same time the rule that “the character of the crime is not determined by the caption or preamble of the information x x x [but] by the recital of the ultimate facts and circumstances in the complaint or information.”[42]

The Information filed against petitioner in the case at bar complies with the foregoing rule. It alleged that petitioner, a public official, conspiring with his co-accused Napoles, received from the latter, on several occasions, kickbacks of more than P50 million from fictitious projects he funded with his legislative discretionary fund through conduit NGOs controlled by Napoles, unjustly enriching himself. These allegations state the basic, ultimate facts constituting the elements of plunder as defined under RA 7080. As aptly observed by the Sandiganbayan:

An objective and judicious reading of the x x x Information shows that there is nothing ambiguous or confusing in the allegations therein. The Information clearly alleges that accused Enrile and Reyes committed the offense in relation to their respective public offices and that they conspired with each other and with accused Napoles, Lim and De Asis, to amass, accumulate, and/or acquire ill-gotten wealth amounting to at least PhP172,834,500.00. The combination or series of overt criminal acts that the said accused performed include the following circumstances: before, during and/or after the project identification, Napoles gave, and accused Enrile and/or Reyes received, a percentage of the cost of a project to be funded from Enrile’s PDAF, in consideration of Enrile’s endorsement, directly or through Reyes, to the appropriate government agencies, of Napoles’ non-government organizations (NGOs). These NGOs became the recipients and/or target implementors of Enrile’s PDAF projects, which duly-funded projects turned out to be ghosts or fictitious, thus enabling Napoles to misappropriate the PDAF proceeds for her personal gain. Sub-paragraph (b), on the other hand, alleges the predicate act that said accused Enrile and Reyes took undue advantage, on several occasions, of their official positions, authority, relationships, connections, and influence to unjustly enrich themselves at the expense and to the damage and prejudice, of the Filipino people and the Republic of the Philippines.

The Court finds that the allegations in the subject Information sufficiently comply with the requirements of Sections 6, 8 and 9 of Rule 10 of the Revised Rules of Criminal Procedure. These allegations adequately apprise the herein accused of the nature and cause of the accusations against them.[43] (Emphasis supplied)

Interestingly, the lack of allegations in an Information for plunder through receipt of kickbacks (among others) on the (1) the breakdown of the total amount of kickbacks received; (2) dates of receipt of such; (3) the names of the persons who gave the kickbacks; (4) the names of the persons who received them; and (5) the combination or series of acts involving the receipt of such kickbacks, did not elicit any complaint of vagueness from an accused whom petitioner’s counsel also represented in the Sandiganbayan. The Information for plunder filed against former President Joseph Estrada in 2001, then represented by Atty. Estelito Mendoza as lead counsel, alleged that the former received kickbacks breaching the plunder threshold of P50 million without stating the details in question. The Information reads in relevant parts:

That during the period from June, 1998 to January, 2001, in the Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Ejercito Estrada, then a public officer, being then the President of the Republic of the Philippines, by himself and/or in connivance/conspiracy with his co-accused, who are

members of his family, relatives by affinity or consanguinity, business associates, subordinates and/or other persons, by taking undue advantage of his official position, x x x did then and there wilfully, unlawfully and criminally amass, accumulate and acquire by himself, directly or indirectly, ill-gotten wealth in the aggregate amount or total value of four billion ninety seven million eight hundred four thousand one hundred seventy three pesos and seventeen centavos [P4,097,804,173.17], more or less, thereby unjustly enriching himself or themselves at the expense and to the damage of the Filipino people and the Republic of the Philippines, through any or a combination or a series of overt or criminal acts, or similar schemes or means, described as follows:

(a) by receiving or collecting, directly or indirectly, on several instances, money in the aggregate amount of five hundred forty-five million pesos (P545,000,000.00), more or less, from illegal gambling in the form of gift, share, percentage, kickback or any form of pecuniary benefit, by himself and/or in connivance with co-accused Charlie “Atong” Ang, Jose “Jinggoy” Estrada, Yolanda T. Ricaforte, Edward Serapio, and John Does and Jane Does, in consideration of toleration or protection of illegal gambling;

x x x x

(d) by unjustly enriching himself from commissions, gifts, shares, percentages, kickbacks, or any form of pecuniary benefits, in connivance with John Does and Jane Does, in the amount of more or less three billion two hundred thirty three million one hundred four thousand one hundred seventy three pesos and seventeen centavos [P3,233,104,173.17] and depositing the same under his account name “Jose Velarde” at the Equitable-PCI Bank.[44] (Emphasis supplied)

That this Court had no occasion to review the clarity of the allegations in the Estrada Information[45] for purposes of issuing a bill of particulars is no argument to ignore the import of such allegations to resolve the case at bar. On the contrary, Estrada’s decision not to seek a bill of particulars can only mean that he considered such allegations clear enough to allow him, with the aid of his counsel, now petitioner’s counsel, to “properly x x x plead and prepare for trial.”[46]

Information Considered Together With the Preliminary Investigation Resolution

The basis of petitioner’s indictment before the Sandiganbayan is a 144-page Resolution, dated 28 March 2014, of the Office of the Ombudsman (Resolution, see Annex “A”), attached to the Information and furnished to petitioner, finding probable cause to charge him for the offense of plunder.[47] The Resolution contains all the details petitioner sought in his motion for a bill of particulars and which the ponencia grants (see comparative table in Annex “B”). Thus, the “combination” or “series” of acts committed by petitioner and his co-accused constituting the offense of plunder, the form of kickbacks received by petitioner, the breakdown of the total amount of kickbacks petitioner received, the names of persons who gave and received the kickbacks, the names of the projects funded by petitioner’s pork barrel funds, their description, beneficiaries, costs, implementing agencies and partner organizations controlled by petitioner’s co-accused Janet Napoles, and the names of the government agencies to which such projects were endorsed are all found and discussed in the Resolution.[48] Petitioner also had access to the documents supporting the Resolution.[49]

The Resolution, already in petitioner’s possession, taken together with the allegations in the Information, provide petitioner with the details and information he needs to “enable him properly to plead and prepare for trial.” As an inseparable complement to the Information, the Resolution must be read together with the allegations in the Information to determine whether the allegations in the Information are vague. It is only when the allegations in the Information, taken together with the Resolution, leave ambiguities in the basic facts constituting the elements of the offense of plunder that a bill of particulars should issue. If, as here, the allegations in the Information, taken together with the Resolution, clearly make out the ultimate facts constituting the elements of plunder, a bill of

particulars is not only unnecessary but also improper.

It will not do for petitioner to feign ignorance of the fact that the Resolution contains the details he seeks from the prosecution in his motion for a bill of particulars. The Resolution is based on the affidavits of witnesses and other public documents which petitioner thoroughly parsed and attacked in his Omnibus Motion, dated 10 June 2014, filed before the Sandiganbayan, to dismiss the case against him.[50] For the same reason, petitioner's demonstrated familiarity with the details relating to the allegations in the Information filed against him overcomes the presumption that he has no "independent knowledge of the facts that constitute the offense"[51] of which he is charged.

Considering the ultimate facts alleged in the Information together with the relevant facts alleged in the Resolution indisputably involves a procedural matter, which does not encompass any constitutional right of an accused. It is an act which every accused expectedly undertakes in order to inform himself of the charges against him and intelligently prepare his defense. In short, it deals precisely with how the accused should defend himself.

Since reading the Information together with the Resolution concerns a procedural rule, and in fact is actually practiced at all times by every accused, there is no basis to require such practice to be conducted prospectively, that is, only after the promulgation of the decision in the case at bar, absent any clear showing of impairment of substantive rights.[52]

Generally, rules of procedure can be given retroactive effect. "It is axiomatic that the retroactive application of procedural laws does not violate any right of a person who may feel that he is adversely affected, nor is it constitutionally objectionable. The reason for this is that, as a general rule, no vested right may attach to, nor arise from, procedural laws."[53]

Further, requiring the accused to consider the allegations in the Information together with the allegations in the Resolution does not in any way prejudice any constitutional or substantive rights of the accused. On the contrary, such act benefits immensely the accused insofar as it adequately apprises him of the charges against him and clarifies the allegations in the Information.

Jurisprudence Cited by the Ponencia Inapplicable

The cases invoked by the ponencia as precedents for granting a bill of particulars to petitioner – Republic v. Sandiganbayan,[54] Tantuico v. Republic[55] and Virata v. Sandiganbayan,[56] among others – are not in point because none of them involved an accused who, like petitioner, underwent preliminary investigation where he was afforded access to documents supporting the charge against him. All those cases involved civil proceedings for the forfeiture of ill-gotten wealth where the respondents had no way of knowing the details of the government's case against them until after they were served a copy of the forfeiture complaints. The ambiguities in the allegations of the complaints filed against the respondents in those cases cannot be clarified by reference to other documents akin to a preliminary investigation resolution. They were left with no other recourse but to seek clarification through a bill of particulars in order to adequately prepare their responsive pleadings.

Plunder Charge Not Unique

According to the ponencia, "conviction for plunder carries with it the penalty of capital punishment, for this reason, more process is due, not less."[57] The ponencia seeks to impress that those accused of the crime of plunder must be extended special treatment, requiring evidentiary matters to be alleged in the Information, in view of the penalty involved, which is reclusion perpetua.

The penalty of reclusion perpetua is not imposable exclusively to those accused and found guilty of plunder. This

punishment likewise attaches to the crimes of murder,[58] serious illegal detention,[59] and rape,[60] among others. Meanwhile, syndicated estafa,[61] qualified trafficking in persons,[62] possession of prohibited drugs[63] and illegal recruitment in large scale[64] carry with it the penalty of life imprisonment, which is a penalty harsher than reclusion perpetua.

The ponencia gravely implies that a plunder charge uniquely places an accused in a more protective mantle, by requiring the prosecution to allege in the Information very specific details of evidentiary nature, due to the stiff penalty involved. In contrast, the Informations for other crimes, which do not even involve pilfering of public funds but likewise carry the penalty of reclusion perpetua or even, life imprisonment, are merely required to contain allegations of ultimate facts.

The ponencia exaggerates the crime of plunder by implying that it is a very complex crime involving “intricate predicate criminal acts and numerous transactions and schemes that span a period of time.”[65] The ponencia unreasonably classifies plunder as a crime more complicated to commit than other crimes similarly punishable with reclusion perpetua or with the more severe penalty of life imprisonment. As a consequence, the ponencia unjustifiably treats those accused of plunder extraordinarily. There is plainly no basis for such special treatment.

Suffice it to state, plunder is no more complex than murder or syndicated estafa, or any other crime. For instance, there is plunder if the accused public officer acquired ill-gotten wealth by committing two acts of malversation of public funds with a total amount of at least P50,000,000. Murder, on the other hand, involves killing another person attended by any of the qualifying circumstances in Article 248 of the Revised Penal Code. Meanwhile, syndicated estafa is committed by five or more persons formed with the intention of defrauding members of associations and misappropriating the latter's money. Simply put, the rule requiring merely the ultimate facts to be alleged in the Information applies equally to all types of crimes or offenses, regardless of the nature thereof. Otherwise, to accord those accused with plunder an exceptional treatment, by requiring the prosecution to allege in the Information all the unnecessary finer details in the commission of plunder, denies those charged with similarly serious or more serious crimes the equal protection of the law.

Pernicious Consequences in Granting the Petition

The ponencia's disposition of this case to (1) set aside the ruling of the Sandiganbayan as having been rendered with grave abuse of discretion even though the Sandiganbayan merely followed existing law in the proper exercise of its discretion; (2) order the prosecution to provide petitioner with most of the details listed in his motion for a bill of particulars even though petitioner had access to and possess such details; and (3) direct the prosecution to amend the Information filed against petitioner in light of its finding that the allegations in the Information are vague even though they are clear, throws in disarray the orderly application of remedial rules in criminal proceedings. The ponencia turns on its head the purpose of remedial rules of “securing a just x x x disposition of every action x x x.”[66]

More alarmingly, the ruling unwittingly opens the door for persons presently facing prosecution to seek re-arraignment and new trial. By mutating the nature of an Information to require allegation not only of the ultimate facts constituting the elements of the offense charged but also all the details substantiating them, ostensibly to satisfy the procedural due process right of the accused, the ponencia not only repeals Rules of Court provisions on the nature and content of an Information,[67] but also vastly expands the breadth of the procedural due process right of the accused to a degree unheard of since the advent of criminal procedure in this jurisdiction. As a new doctrine favoring the accused, the ruling hands to any person facing criminal prosecution today a new doctrinal basis to demand re-arraignment and re-trial on the ground of denial of due process. The Informations filed against these persons alleged only the ultimate facts, devoid of supporting details, following the Rules of

Court and relevant jurisprudence.

The Court foresaw and prevented a similar scenario from unfolding in the recent case of *Estrada v. Ombudsman*[68] where the petitioner, also a public official undergoing prosecution for plunder, sought to redefine the nature of preliminary investigation to make it comparable to administrative proceedings. We rejected such theory, cognizant of the nightmarish chaos it would unleash on the country's criminal justice system:

[T]o x x x declare that the guidelines in *Ang Tibay*, as amplified in *GSIS*, are fundamental and essential requirements in preliminary investigations will render all past and present preliminary investigations invalid for violation of constitutional due process. This will mean remanding for reinvestigation all criminal cases now pending in all courts throughout the country. No preliminary investigation can proceed until a new law designates a public officer, outside of the prosecution service, to determine probable cause. Moreover, those serving sentences by final judgment would have to be released from prison because their conviction violated constitutional due process.[69] (Emphasis supplied)

Estrada is a cautionary tale against tinkering with settled rules of criminal procedure in the guise of affording the accused his constitutional due process right.

On the other hand, the pernicious practical implications of the ponencia are: (1) the discretion of trial court judges, so vital in the performance of their day-to-day functions, will be hamstrung by this Court's loose application of the heightened certiorari standard of review of grave, not simple, abuse of discretion; (2) the remedy of a bill of particulars will become a *de riguer* tool for the accused awaiting arraignment to delay proceedings by simply claiming that the allegations in the Information filed against him are vague even though, taken together with the preliminary investigation resolution, they clearly state the ultimate facts constituting the elements of the offense charged; and (3) the prosecutorial arm of the government, already hampered with inadequate resources, will be further burdened with the task of collating for the accused the details on the allegations in the Information filed against him even though such are found in the preliminary investigation resolution.

The entire rubric of the rules of criminal procedure rests on the guarantee afforded by the Constitution that "no person shall be held to answer for a criminal offense without due process of law." [70] The "due process of law" contemplated in this guarantee, however, means procedure bounded by reason. It does not envision procedure defying law, logic and common sense.

Accordingly, I vote to DISMISS the petition for lack of grave abuse of discretion on the part of the Sandiganbayan (Third Division).

[1] Ponencia, pp. 38-39.

[2] Section 9, Rule 110, Rules.

[3] Section 9, Rule 110, Rules; *Serapio v. People*, 444 Phil. 499 (2003).

[4] *Serapio v. People*, 444 Phil. 499, 561 (2003) (Sandoval-Gutierrez, J., dissenting) citing *Battle v. State*, 365 So. 2d 1035, 1037 (1979).

[5] Section 14, Article III, Constitution.

[6] Section 9, Rule 110, Rules.

[7] See *Estrada v. Sandiganbayan*, 421 Phil. 290, 343-344 (2001).

[8] *Rollo*, pp. 170-171.

[9] Section 1, Rule 12, Rules.

[10] Section 9, Rule 116, Rules.

[11] Rollo, p. 69.

[12] Id. at 66.

[13] Id. at 66-67.

[14] Section 4, Rule 110, Rules.

[15] Section 3, Rule 6, Rules.

[16] Under Section 1, Rule 8 of the Rules, “Every pleading shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts. x x x.”

[17] Miguel v. Sandiganbayan, G.R. No. 172035, 4 July 2012, 675 SCRA 560; Go v. Bangko Sentral ng Pilipinas, 619 Phil. 306 (2009); Lazarte, Jr. v Sandiganbayan, 600 Phil. 475 (2009); People v. Romualdez, 581 Phil. 462 (2008); People v. Batin, 564 Phil. 249 (2007); Caballero v. Sandiganbayan, 560 Phil. 302 (2007); Cruz v. Sandiganbayan, 504 Phil. 321 (2005); Domingo v. Sandiganbayan, 379 Phil. 708 (2000); Socrates v. Sandiganbayan, 324 Phil. 151 (1996); Gallego v. Sandiganbayan, 201 Phil. 379 (1982). For the application of the rule to determine the crime charged, see People v. Sanico, G.R. No. 208469, 13 August 2014, 733 SCRA 158; People v. Banzuela, G.R. No. 202060, 11 December 2013, 712 SCRA 735; Pielago v. People, G.R. No. 202020, 13 March 2013, 693 SCRA 476; People v. Rayon, G.R. No. 194236, 30 January 2013, 689 SCRA 745; People v. Subesa, G.R. No. 193660, 16 November 2011, 660 SCRA 390; Flordeliz v. People, 628 Phil. 124 (2010); People v. Sumingwa, 618 Phil. 650 (2009); People v. Anguac, 606 Phil. 728 (2009); Los Baños v. Pedro, 604 Phil. 215 (2009); People v. Abello, 601 Phil. 373 (2009); Olivarez v. Court of Appeals, 503 Phil. 421 (2005); Malto v. People, 560 Phil. 119 (2007); Reyes v. Camilon, G.R. No. 46198, 20 December 1990, 192 SCRA 445; People v. Mendoza, 256 Phil. 1136 (1989).

[18] G.R. No. 172035, 4 July 2012, 675 SCRA 560.

[19] 619 Phil. 306 (2009).

[20] 581 Phil. 462 (2008).

[21] Supra at 570.

[22] Supra at 570. Emphasis supplied.

[23] Supra at 313, 315.

[24] Supra at 317. Internal citation omitted; emphasis supplied.

[25] Supra at 484.

[26] Supra at 484.

[27] G.R. No. 208469, 13 August 2014.

[28] G.R. No. 202060, 11 December 2013, 712 SCRA 735.

[29] G.R. No. 202020, 13 March 2013, 693 SCRA 476.

- [30] G.R. No. 194236, 30 January 2013, 689 SCRA 745.
- [31] G.R. No. 193660, 16 November 2011, 660 SCRA 390.
- [32] 606 Phil. 728 (2009).
- [33] 604 Phil. 215 (2009).
- [34] 601 Phil. 373 (2009).
- [35] *Supra*. Emphasis supplied.
- [36] *Supra* at 762. Internal citation omitted; emphasis supplied.
- [37] *Supra* at 487.
- [38] *Supra* at 488. Internal citation omitted; emphasis supplied.
- [39] *Supra* at 759-760. Internal citation omitted; emphasis supplied.
- [40] *Supra* at 739. Internal citation omitted.
- [41] *Supra* at 236.
- [42] *Supra* at 236. Internal citation omitted; emphasis supplied.
- [43] Resolution dated 3 July 2014 (denying motion to dismiss); Comment, p. 9. In its Resolution dated 11 July 2014, denying petitioner's motion for a bill of particulars, the Sandiganbayan reiterated the observation it made in its Resolution of 3 July 2014 on the sufficiency of the allegations in the Information filed against petitioner:
- The Court already upheld the sufficiency of the allegations in the Information charging accused Enrile, among other persons, with the crime of plunder in its Resolution dated July 3, 2014. It finds no cogent reason to reconsider its ruling.
- Moreover, the "desired details" that accused Enrile would like the prosecution to provide are evidentiary in nature, which need not be alleged in the Information. x x x. (Rollo, pp. 166, 168; emphasis supplied)
- [44] *Estrada v. Sandiganbayan*, *supra* note 7, at 423-425 (2001).
- [45] *Estrada* went to this Court to assail the constitutionality of the plunder law (see *Estrada v. Sandiganbayan*, *id.*). It is of interest, however, that in dismissing *Estrada*'s petition, the Court observed that the Information filed against him contains "nothing x x x that is vague or ambiguous x x x that will confuse petitioner in his defense." *Id.* at 347.
- [46] The Informations filed against *Estrada*'s co-accused were substantially identical to that filed against him; none of them sought a bill of particulars.
- [47] Rollo, pp. 19-20; Petition, pp. 13-14.
- [48] Resolution, pp. 11-24, 28, 62-68, 83-103, 124-136.
- [49] Rollo, pp. 19-20.
- [50] *Id.* at 172-226. Petitioner assailed the contents of the affidavits and other public documents in question not because they lacked the details substantiating the charge filed against him but because he considered them either hearsay or without probative value.
- [51] *Balitaan v. CFI of Batangas*, 201 Phil. 311, 323 (1982).

[52] See Section 5 (5), Article VIII, Constitution. This provision reads:

“SECTION 5. The Supreme Court shall have the following powers:

x x x x

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.”

[53] Cheng v. Spouses Sy, 609 Phil. 617, 626 (2009), citing Tan, Jr. v. Court of Appeals, 424 Phil. 556, 559 (2002).

[54] 565 Phil. 172 (2007).

[55] G.R. No. 89114, 2 December 1991, 204 SCRA 428.

[56] G.R. No. 106527, 6 April 1993, 221 SCRA 52.

[57] Ponencia, p. 34.

[58] Article 248 of the Revised Penal Code pertinently provides:

Art. 248. Murder. – Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by reclusion perpetua to death if committed with any of the following attendant circumstances:

x x x x

[59] Article 267 of the Revised Penal Code pertinently provides:

Art. 267. Kidnapping and serious illegal detention. – Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of reclusion perpetua to death:

x x x x

[60] Articles 266-A and 266-B of the Revised Penal Code pertinently provide:

Article 266-A. Rape, When And How Committed. – Rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

- a) Through force, threat, or intimidation;
- b) When the offended party is deprived of reason or otherwise unconscious;
- c) By means of fraudulent machination or grave abuse of authority; and
- d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x

Article 266-B. Penalty. - Rape under paragraph 1 of the next preceding article shall be punished by reclusion perpetua.

[61] Presidential Decree No. 1689, dated 6 April 1980, increased the penalty for certain forms of swindling or estafa. Section 1 thereof provides:

Section 1. Any person or persons who shall commit estafa or other forms of swindling as defined in Article 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (estafa) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperatives, samahang nayon(s), or farmers associations, or of funds solicited by corporations/associations from the general public.

x x x x

[62] Republic Act No. 10364, or the “Expanded Anti-Trafficking in Persons Act of 2012” amended Sections 6 and 10 of Republic Act No. 9208 to pertinently read as follows:

Section 9. Section 6 of Republic Act No. 9208 is hereby amended to read as follows:

“SEC. 6. Qualified Trafficking in Persons. – Violations of Section 4 of this Act shall be considered as qualified trafficking:

“x x x

“(d) When the offender is a spouse, an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee;

“x x x

“(f) When the offender is a member of the military or law enforcement agencies;

“(g) When by reason or on occasion of the act of trafficking in persons, the offended party dies, becomes insane, suffers mutilation or is afflicted with Human Immunodeficiency Virus (HIV) or the Acquired Immune Deficiency Syndrome (AIDS);

“(h) When the offender commits one or more violations of Section 4 over a period of sixty (60) or more days, whether those days are continuous or not; and

“(i) When the offender directs or through another manages the trafficking victim in carrying out the exploitative purpose of trafficking.”

Section 12. Section 10 of Republic Act No. 9208 is hereby amended to read as follows:

“x x x x

(e) Any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than Two million pesos (P2,000,000.00) but not more than Five million pesos (P5,000,000.00);

x x x x”

[63] Section 11 of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 pertinently provides:

Section 11. Possession of Dangerous Drugs. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x

[64] Section 7 of Republic Act No. 8042 or the Migrant Workers and Overseas Filipinos Act of 1995, as amended by Republic Act No. 10022, pertinently provides:

x x x x

(b) The penalty of life imprisonment and a fine of not less than Two million pesos (P2,000,000.00) nor more than Five million pesos (P5,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined therein.

Section 5(m) of the same law states that: “Illegal recruitment when committed by a syndicate or in large scale shall be considered as offense involving economic sabotage.”

[65] Ponencia, p. 34.

[66] Section 6, Rule 1, Rules.

[67] Rule 110, Section 4 on the definition of an Information provides: “An Information is an accusation in writing charging a person with an offense x x x.” Rule 110, Section 6 states the rule on the sufficiency of an Information: “A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.” (Emphasis supplied)

[68] G.R. Nos. 212140-41, 21 January 2015.

[69] Id. at 34.

[70] Section 14(1), Article III, Constitution.

Republic of the Philippines
OFFICE OF THE OMBUDSMAN
OMBUDSMAN BLDG., AGHAM ROAD, NORTH TRIANGLE, DILIMAN, QUEZON CITY

NATIONAL BUREAU OF OMB-C-C-13-0318
INVESTIGATION (NBI) FOR: VIOLATION OF RA 7080
REP. BY: Asst. Dir. MEDARDO (PLUNDER)
DE LEMOS (Criminal Case)

ATTY. LEVITO D. BALIGOD

Complainants,

- versus -

JUAN PONCE ENRILE

Senator

Senate of the Philippines

JESSICA LUCILA GONZALES REYES

Former Chief of Staff
Office of Senator Enrile

JOSE ANTONIO EVANGELISTA II
Deputy Chief of Staff
Office of Senator Enrile

ALAN A. JAVELLANA
President
National Agribusiness Corporation

GONDELINA G. AMATA
President
National Livelihood Development Corporation

ANTONIO Y. ORTIZ
Director General
Technology Resource Center

DENNIS LACSON CUNANAN
Deputy Director General
Technology Resource Center

VICTOR ROMAN COJAMCO CACAL
Paralegal
National Agribusiness Corporation

ROMULO M. RELEVO
General Services Unit Head
National Agribusiness Corporation

MARIA NINEZ P. GUAÑIZO
Bookkeeper/OIC-Accounting Division
National Agribusiness Corporation

MA. JULIE A. VILLARALVO-JOHNSON
Former Chief Accountant
National Agribusiness Corporation

RHODORA BULATAD MENDOZA
Former Director for Financial Management Services/
Former Vice President for Administration and Finance
National Agribusiness Corporation

GREGORIA G. BUENAVENTURA
Division Chief, Asset Management Division
National Livelihood Development Corporation

EMMANUEL ALEXIS G. SEVIDAL
Director IV
National Livelihood Development Corporation

SOFIA D. CRUZ

Chief Financial Specialist/Project Management Assistant IV
National Livelihood Development Corporation

CHITA C. JALANDONI

Department Manager III
National Livelihood Development Corporation

FRANCISCO B. FIGURA

MARIVIC V. JOVER
Both of the Technology Resource Center

MARIO L. RELAMPAGOS

Undersecretary for Operations
Department of Budget and Management (DBM)

LEAH

LALAINÉ

MALOU[1]

Office of the Undersecretary for Operations
All of the Department of Budget and Management

JANET LIM NAPOLES

RUBY TUASON

JOCELYN DITCHON PIORATO

MYLENE T. ENCARNACION

JOHN RAYMOND (RAYMUND) DE ASIS

EVELYN D. DE LEON

JOHN/JANE DOES

Private Respondents

Respondents.

X ----- X

FIELD INVESTIGATION OFFICE OMB-C-C-13-0396
OFFICE OF THE OMBUDSMAN FOR: VIOLATION OF SEC. 3 (e)
RA 3019, RA 7080 (PLUNDER)
Complainant, (Criminal Case)

- versus -

JUAN PONCE ENRILE

Senator
Senate of the Philippines

JESSICA LUCILA GONZALES REYES

Former Chief of Staff

JOSE ANTONIO VALERA EVANGELISTA II

Former Director IV/ Deputy Chief of Staff
Both of the Office of Senator Enrile

ALAN ALUNAN JAVELLANA
President

RHODORA BULATAD MENDOZA
Former Director for Financial Management Service/
Former Vice President for Administration and Finance

VICTOR ROMAN COJAMCO CACAL
Paralegal

MARIA NINEZ PAREDES GUAÑIZO
Bookkeeper/OIC-Accounting Division
ENCARNITA CRISTINA POTIAN MUNSOD

Former Human Resources Supervisor/Manager
MA. JULIE ASOR VILLARALVO-JOHNSON
Former Chief Accountant

SHYR ANN MONTUYA
Accounting Staff/Assistant
All of the National Agribusiness Corporation

GONDELINA GUADALUPE AMATA
President (Non-elective)

CHITA CHUA JALANDONI
Department Manager III
EMMANUEL ALEXIS SEVIDAL

Director IV
OFELIA ELENTO ORDOÑEZ
Cashier IV

FILIPINA TOLENTINO RODRIGUEZ
Budget Officer IV

SOFIA DAING CRUZ
Project Development Assistant IV
All of the the National Livelihood Development Corporation

ANTONIO YRIGON ORTIZ
Former Director General
DENNIS LACSON CUNANAN
Director General

MARIA ROSALINDA MASONGSONG LACSAMANA
Former Group Manager

CONSUELO LILIAN REYES ESPIRITU
Budget Officer IV

FRANCISCO BALDOZA FIGURA
Department Manager III

MARIVIC VILLALUZ JOVER
Chief Accountant

All of the Technology Resource Center

JANET LIM NAPOLES
RUBY TUASON/TUAZON
JO CHRISTINE LIM NAPOLES
JAMES CHRISTOPHER LIM NAPOLES
EULOGIO DIMAILIG RODRIGUEZ
EVELYN DITCHON DE LEON
RONALD JOHN LIM
FERNANDO RAMIREZ
NITZ CABILAO
MARK S. OLIVEROS
EDITHA P. TALABOC
DELFIN AGCAOILI, JR.
DANIEL BALANOBA
LUCILA M. LAWAS-YUTOK
ANTONIO M. SANTOS
SUSAN R. VICTORINO
LUCITA SOLOMON
WILBERTO P. DE GUZMAN (Deceased)
JOHN DOE
JOHN (MMRC TRADING) DOE
MYLA OGERIO
MARGARITA E. GUADINEZ
JOCELYN DITCHON PIORATO
DORILYN AGBAY FABIAN
HERNANI DITCHON
RODRIGO B. GALAY
LAARNI A. UY
AMPARO L. FERNANDO
AILEEN PALALON PALAMA
JOHN RAYMOND (RAYMUND) DE ASIS
MYLENE TAGAYON ENCARNACION
RENATO SOSON ORNOPIA
JESUS BARGOLA CASTILLO
NOEL V. MACHA
Private Respondents

Respondents.

X ----- X

JOINT RESOLUTION

For resolution by the Special Panel of Investigators[2] constituted on 20 September 2013 by the Ombudsman to conduct preliminary investigation on: 1) the complaint filed on September 16, 2013 with this Office by the National Bureau of Investigation (NBI) and Atty. Levito Baligod (The NBI Complaint), for violation of Republic Act (RA) No. 7080 (An Act Defining and Penalizing the Crime of Plunder), and 2) the complaint filed on

November 18, 2013 by the Field Investigation Office (FIO), Office of the Ombudsman, for violations of Section 3(e) of RA 3019 (The Anti-Graft and Corrupt Practices Act) and Plunder, in connection with the alleged anomalous utilization of the Priority Development Assistance Fund (PDAF) of Senator Juan Ponce Enrile (Senator Enrile) from 2004 to 2010.

The NBI Complaint for Plunder, docketed as OMB-C-C-13-0318, charges the following respondents:

Name

Position/Agency

Juan Ponce Enrile (Enrile)

Senator

Jessica Lucila Gonzales Reyes (Reyes)

Chief of Staff /Office of Senator Enrile

Jose Antonio Valera Evangelista II (Evangelista)

Former Director V/Deputy Chief of Staff / Office of Senator Enrile

Janet Lim Napoles (Napoles)

Private respondent

Ruby Tuason (Tuason)

Private respondent

Alan A. Javellana (Javellana)

Former President

National Agribusiness Corporation

Gondelina Guadalupe Amata (Amata)

President

National Livelihood Development Corp.

Antonio Yrigon Ortiz (Ortiz)

Director General

Technology Resource Center

Jocelyn Ditchon Piorato (Piorato)

Agricultura Para Sa Magbubukid Foundation, Inc. (APMFI)

Nemesio Pablo, Jr. (Pablo)

Private respondent

Mylene Tagayon Encarnacion (Encarnacion)

Private respondent

John Raymond Sales De Asis (De Asis)

Countrywide Agri and Rural Economic Development Foundation, Inc.

Evelyn Ditchon De Leon (De Leon)

Private respondent

Dennis Lacson Cunanan (Cunanan)

Deputy Director General
Technology Resource Center

Victor Roman Cacal (Cacal)

Paralegal
National Agribusiness Corporation

Romulo M. Relevo (Relevo)

National Agribusiness Corporation

Maria Ninez Guañizo (Guañizo)

Bookkeeper/OIC Accounting Division
National Agribusiness Corporation

Ma. Julie Asor Villaralvo-Johnson (Johnson)

Former Chief Accountant/National Agribusiness Corporation

Rhodora Bulatad Mendoza (Mendoza)

Former Director for Financial Management Services and Former Vice President for Administration and Finance/National Agribusiness Corporation

Gregoria G. Buenaventura (Buenaventura)

National Livelihood Development Corporation

Emmanuel Alexis Gagni Sevidal (Sevidal)

Director IV
National Livelihood Development Corporation

Sofia Daing Cruz (Cruz)

Chief Financial Specialist/Project Development Assistant IV/National Livelihood Development Corporation

Chita Chua Jalandoni (Jalandoni)

Department Manager III
National Livelihood Development Corporation

Francisco Baldoza Figura (Figura)

Department Manager III
Technology Resource Center

Marivic Villaluz Jover (Jover)

Chief Accountant/ Technology Resource Center

Mario L. Relampagos (Relampagos)

Undersecretary for Operations/Department of Budget and Management (DBM)

Leah[3]

Office of the Undersecretary for Operations/Department of Budget and Management (DBM)

Lalaine[4]

Office of the Undersecretary for Operations/Department of Budget and Management (DBM)

Malou[5]

Office of the Undersecretary for Operations/Department of Budget and Management (DBM)

JOHN and JANE DOES

The FIO complaint,[6] on the other hand, docketed as OMB-C-C-13-0396, charges the following individuals with Plunder and violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act:

Name

Position/Agency

Juan Ponce Enrile (Enrile)

Senator

Jessica Lucila Gonzales Reyes (Reyes)

Chief of Staff /Office of Senator Enrile

Jose Antonio Valera Evangelista II (Evangelista)

Former Director V/Deputy Chief of Staff
Office of Senator Enrile

Alan Alunan Javellana (Javellana)

Former President
National Agribusiness Corporation

Rhodora Bulatad Mendoza (Mendoza)

Former Director for Financial Management Services and Former Vice President for Administration and Finance
National Agribusiness Corporation

Victor Roman Cacal (Cacal)

Paralegal
National Agribusiness Corporation

Maria Ninez Paredes Guañizo (Guañizo)

Bookkeeper/OIC Accounting Division
National Agribusiness Corporation

Encarnita Cristina Potian Munsod (Munsod)

Former Manager of Human Resources Administrative Service Division
National Agribusiness Corporation

Ma. Julie Asor Villaralvo-Johnson (Johnson)

Former Chief Accountant
National Agribusiness Corporation

Shyr Ann Montuya (Montuya)

Accounting Assistant
National Agribusiness Corporation

Gondelina Guadalupe Amata (Amata)

President
National Livelihood Development Corporation

Chita Chua Jalandoni (Jalandoni)

Department Manager III
National Livelihood Development Corporation

Emmanuel Alexis Gagni Sevidal (Sevidal)

Director IV
National Livelihood Development Corporation

Ofelia Olento Ordoñez (Ordoñez)

Cashier IV

National Livelihood Development Corporation

Filipina Tolentino Rodriguez (Rodriguez)

Budget Officer IV
National Livelihood Development Corporation

Sofia Daing Cruz (Cruz)

Chief Financial Specialist/Project Development Assistant IV
National Livelihood Development Corporation

Antonio Yrigon Ortiz (Ortiz)

Director General
Technology Resource Center

Dennis Lacson Cunanan (Cunanan)

Deputy Director General
Technology Resource Center

Maria Rosalinda Masongsong Lacsamana (Lacsamana)

Former Group Manager

Technology Resource Center

Consuelo Lilian Reyes Espiritu (Espiritu)

Budget Officer IV

Technology Resource Center

Francisco Baldoza Figura (Figura)

Department Manager III

Technology Resource Center

Marivic Villaluz Jover (Jover)

Chief Accountant

Technology Resource Center

Janet Lim Napoles (Napoles)

Private respondent

Ruby Tuason/Ruby Tuazon (Tuason)

Private respondent

Jo Christine Lim Napoles (Jo Christine)

Private respondent

James Christopher Lim Napoles (James Christopher)

Private respondent

Eulogio Dimailig Rodriguez (Rodriguez)

Private respondent

Evelyn Ditchon De Leon (De Leon)

Private respondent

Ronald John Lim (Lim)

Private respondent

Fernando Ramirez (Ramirez)

Private respondent

Nitz Cabilao (Cabilao)

Private respondent

Atty. Mark S. Oliveros (Oliveros)

Notary Public

Atty. Editha P. Talaboc (Talaboc)

Notary Public

Atty. Delfin Agcaoili, Jr. (Agcaoili)

Notary Public

Atty Daniel Balanoba (Balanoba)

Notary Public

Atty. Lucila M. Lawas-Yutoc (Yutoc)

Notary Public

Atty. Antonio M. Santos (Santos)

Notary Public

Susan R. Victorino (Victorino)

Certified Public Accountant

Lucita P. Solomon (Solomon)

Certified Public Accountant

Wilberto P. De Guzman (De Guzman)

Certified Public Accountant

John Doe

Proprietor of Nutrigrowth Philippines

John Doe

Proprietor of MMRC Trading

Myla Ogerio (Ogerio)

Agri and Economic Program for Farmers Foundation, Inc.

Margarita A. Guadinez (Guadinez)

Agri and Economic Program for Farmers Foundation, Inc.

Jocelyn Ditchon Piorato (Piorato)

Agricultura Para Sa Magbubukid Foundation, Inc.

Dorilyn Agbay Fabian (Fabian)

Agricultura Para Sa Magbubukid Foundation, Inc.

Hernani Ditchon (Ditchon)

Agricultura Para Sa Magbubukid Inc.

Rodrigo B. Galay (Galay)

Employee/Agricultura Para sa Magbubukid Foundation, Inc.

Laarni A. Uy (Uy)

Employee/Agricultura Para sa Magbubukid Foundation, Inc.

Amparo L. Fernando (Fernando)

Countrywide Agri and Rural Economic Development Foundation, Inc.

Aileen Palalon Palama (Palama)

Countrywide Agri and Rural Economic Development Foundation, Inc.

John Raymond Sales De Asis (De Asis)

Countrywide Agri and Rural Economic Development Foundation, Inc.

Mylene Tagayon Encarnacion (Encarnacion)

Countrywide Agri and Rural Economic Development Foundation, Inc.

Renato Soson Ornopia (Ornopia)

Masaganang Ani Para Sa Magsasaka Foundation, Inc.

Jesus Bargola Castillo (Castillo)

People's Organization for Progress and Development Foundation, Inc.

Noel V. Macha (Macha)

Employee/Social Development Program for Farmers Foundation, Inc.

Having arisen from the same or similar facts and transactions, these cases are resolved jointly.

I. THE FACTUAL BACKGROUND

On March 22, 2013, agents of the NBI, acting on a complaint from the parents of Benhur Luy (Luy) that Luy had been illegally detained, swooped down on the South Wing Gardens of the Pacific Plaza Tower in Bonifacio Global City, Taguig City and rescued Luy. A criminal case for Serious Illegal Detention was soon after filed against Reynald Lim[7] and his sister, Janet Lim Napoles[8] (Napoles), before the Regional Trial Court of Makati City where it remains pending.

Before the NBI, Luy claimed that he was detained in connection with the discharge of his responsibilities as the “lead employee” of the JANET LIM NAPOLES Corporation (JLN) which, by his account, had been involved in overseeing anomalous implementation of several government-funded projects sourced from, among others, the Priority Development Assistance Fund (PDAF) of several congressmen and senators of the Republic. The NBI thus focused on what appeared to be misuse and irregularities attending the utilization and implementation of the PDAF of certain lawmakers, in connivance with other government employees, private individuals and non-governmental organizations (NGOs) which had been set up by JLN employees, upon the instructions of Napoles.

In the course of the NBI investigation which included conduct of interviews and taking of sworn statements of Luy along with several other JLN employees including Marina Sula (Sula) and Merlina Suñas (Suñas)[9] (the whistleblowers), the NBI uncovered the “scheme” employed in what has now been commonly referred to as the PDAF or Pork Barrel Scam, outlined in general as follows:

- Either the lawmaker or Napoles would commence negotiations on the utilization of the lawmaker's PDAF;

- The lawmaker and Napoles then discuss, and later approve, the list of projects chosen by the lawmaker, the corresponding Implementing Agency (IA), namely the National Agribusiness Corporation (NABCOR), the National Livelihood Development Corporation (NLDC), and the Technology Resource Center (TRC [formerly Technology and Livelihood Resource Center]), through which the projects would be coursed, and the project cost, as well as the lawmaker's "commission" which would range between 40%-60% of either the project cost or the amount stated in the Special Allotment Release Order (SARO);
- After the negotiations and upon instructions from Napoles, Luy prepares the so-called "listing" which contains the list of projects allocated by the lawmaker to Napoles and her NGOs, the name of the IA, and the project cost;
- The lawmaker would then adopt the "listing" and write to the Senate President and the Finance Committee Chairperson, in the case of a Senator, and to the House Speaker and Chair of the Appropriations Committee, in the case of a Congressman, requesting Budget and Management (DBM);
- The DBM soon issues a SARO addressed to the chosen IA indicating the amount deducted from the lawmaker's PDAF allocation, and later issues a Notice of Cash Allocation (NCA) to the IA which would thereafter issue a check to the Napoles-controlled NGO listed in the lawmaker's endorsement;
- Napoles, who recommends to the lawmaker the NGO which would implement the project, directs her employee to prepare a letter for the lawmaker's signature endorsing the selected NGO to the IA. The IA later prepares a Memorandum of Agreement (MOA) covering the project to be executed by the lawmaker or his/her authorized staff member, the IA and the chosen NGO;
- The Head of the IA, in exchange for a 10% share in the project cost, subsequently releases the check/s to the Napoles-controlled NGO from whose bank accounts Napoles withdraws the proceeds thereof;
- Succeeding tranche payments are released by the IA upon compliance and submission by the NGO of the required documents.

From 2004 to 2010, Senator Enrile, then and presently a senator of the Republic of the Philippines,[10] continuously indorsed the implementation of his PDAF-funded livelihood and agricultural production projects in different parts of the country to NGOs associated with, or controlled by, private respondent Napoles.

From 2007 to 2009, a total of Php345,000,000.00 covered by nine (9) SAROs was taken from his PDAF, to wit:

1. ROCS-07-04618 dated 06 March 2007;[11]
2. ROCS-08-01347 dated 31 January 2008;[12]
3. ROCS-08-05216 dated 11 June 2008;[13]
4. ROCS-08-07211 dated 3 October 2008;[14]
5. ROCS-09-00804 dated 13 February 2009;[15]
6. ROCS-09-00847 dated 12 February 2009;[16]
7. ROCS-09-04952 dated 09 July 2009;[17]
8. ROCS-09-04996 dated 10 July 2009;[18]
9. G-09-07112 dated 25 September 2009.[19]

After the SAROs were released by the DBM, Senator Enrile, through his Chief of Staff respondent Reyes,[20] identified the following Government-Owned and-Controlled Corporations (GOCCs) as the IAs of the projects to

be funded by his PDAF: a) NABCOR, b) NLDC, and c) the TRC.

Senator Enrile, through Reyes, authorized respondent Evangelista to act for him, deal with the parties involved in the process, and sign documents necessary for the immediate and timely implementation of his PDAF-funded projects.

Through Evangelista, the Senator also designated[21] the following NGOs as “project partners” in the implementation of the livelihood projects financed by his PDAF, viz:

- Agri and Economic Program for Farmers Foundation, Inc. (AEPFFI) of which respondent Nemesio C. Pablo, Jr. was President;
- Agricultura Para sa Magbubukid Foundation, Inc. (APMFI) of which respondent Jocelyn D. Piorato was President;
- Countrywide Agri and Rural Economic Development Foundation, Inc. (CARED) of which Simonette Briones was President;
- Masaganang Ani Para sa Magsasaka Foundation, Inc. (MAMFI) of which witness Marina Sula was President;
- People’s Organization for Progress and Development Foundation, Inc., (POPDFI) of which witness Merlina Suñas was President; and
- Social Development Program for Farmer’s Foundation, Inc. (SDPFFI) of which witness Benhur Luy was President.

The following table discloses the details of Senator Enrile’s utilization of his Php345,000,000.00 PDAF:

SARO NO. & Amount (in Php)

Projects/ Activities

Beneficiaries/ LGUs

Total Pojects/ Activities Costs (in PHP)

Implementing Agency

Project Partners /NGOs

1. ROCS-07- 04618

Php20,000,000

Financial Assistance Grants/Subsidies for Tools and Implements

Bacuag, Surigao del Norte

4,800,000.00 for each municipality

TRC/TLRC

CARED

Guigaguit, Surigao del Norte

Technical Assistance Technology Transfer through Video courses (VCDs) and Printed Materials provided by TLRC

San Benito, Surigao del Norte

50,000.00 for each municipality

San Agustin, Surigao del Norte

Service Fee (3%) by TLRC

150,000.00 for each municipality

2. ROCS-08- 01347

Php25,000,000

Vegetable Seeds, Hand Tools, Gloves, Masks, Vest, Cap, Garden, Tools, and Knapsack Sprayer

Passi City, Iloilo Sta. Maria, Bulacan Doña Remedios Trinidad, Bulacan Mabuhay, Zamboanga Sibugay Dinas, Zamboanga del Sur

5,000,000 for each municipality

NABCOR**POPFDI****3. ROCS-08- 05216**

Php50,000,000

1,294 sets of Fertilizer, Gardening Packages, and Knapsack sprayer

Don Marcelino, Davao del Sur Banaybanay, Davao Oriental Manukan, Zamboanga del Norte Magpet, North Cotabato

20,000,000

NABCOR**MAMFI**

General Tinio, Nueva Ecija Tuamuini, Isabela La Trinidad, Benguet San Juan, Batangas Boac, Marinduque

30,000,000

NABCOR

SDPFFI**4. ROCS-08- 07211**

Php50,000,000

Agricultural Production Package (knapsack sprayer, fertilizer, and gardening tools)

Kibungan, Benguet San Gabriel, La Union Luna, La Union Natividad, Pangasinan Passi City, Iloilo

25,000,000

NABCOR**MAMFI**

Glan, Sarangani Maitum Sarangani Cagwait, Surigao del Sur Carrasacal, Surigao del Sur

25,000,000

NABCOR**SDPFFI****5. ROCS-09- 00804**

Php25,000,000

Agricultural Production Packages (farm inputs)

Lagangilang, Abra Tuba, Benguet Bacnotan, La Union

15,000,000

NABCOR**MAMFI**

Malungan, Sarangani Marihatag, Surigao del Sur

10,000,000

NABCOR**SDPFFI****6. ROCS-09- 00847**

Php25,000,000

Agricultural Livelihood Assistance Packages (vegetable seeds, production tools and accessories like planting

materials, various tools for backyard gardening, sprayers, and agricultural chemicals)

Umingan, Pangasinan Rosales, Pangasinan San Agustin, Surigao del Sur San Luis, Surigao del Sur San Juan, La Union

25,000,000

TLRC/TRC

APMFI

7. ROCS-09- 04952

Php50,000,000

604 Agricultural Improvement Livelihood Packages (sprayers, bottles of fertilizers, rake and pick mattock)

Hingyon, Ifugao Divilacan, Isabela Umingan, Pangasinan Doña Remedios Trinidad, Bulacan Oas, Albay

25,000,000

NLDC

AEPFFI

Alubijid, Misamis Oriental Llorente, Eastern Samar Bansalan, Davao del Sur Montevista, Compostela Valley
Tupi, South Cotabato

25,000,000

NLDC

APMFI

8. ROCS-09- 04996

Php60,000,000

1,159 sets of Small Scale Agri Package

Balaoan, La Union Sta. Maria, Pangasinan Boac, Marinduque Pantukan, Compostela Valley

40,000,000

NLDC

CARED

Sablan, Benguet & Sta. Maria, Bulacan

20,000,000

NLDC

MAMFI

9. G-09- 07112

Php40,000,000

Bacnotan, La Union Supiden, La Union San Juan, La Union San Gabriel, La Union

40,000,000

NLDC

CARED

The funds representing the activities costs were transferred from the IAs to the NGOs/project partners pursuant to several MOAs signed by the following individuals:

SARO No. & No. of MOAs

Signatories to the MOA

Notary Public

Office of Senator Enrile

Implementing Agencies

NGO/Project Partner

1. ROCS-07-04618

4 MOAs[22]

Evangelista

TRC-Ortiz

CARED-Encarnacion

Atty. Talaboc

2. ROCS- 08-01347

1 MOA[23]

NABCOR- Javellana

POPDFI-Suñas

Atty. Balanoba

3. ROCS-08-05216

2 MOAs[24]

NABCOR-Javellana

MAMFI-Sula

Atty. Lawas-Yutoc

NABCOR-Javellana

SDPFFI-Luy

4. ROCS-08-07211

2 MOAs[25]

Evangelista

NABCOR- Javellana

MAMFI-Sula

Atty. Agcaoili

NABCOR- Javellana

SDPFFI-Luy

5. ROCS-09-00804

2MOAs[26]

Evangelista

NABCOR- Javellana

MAMFI-Sula

Atty. Agcaoili

NABCOR- Javellana

SDPFFI-Luy

6. ROCS-09-008475

MOAs[27]

Evangelista

TRC-Ortiz

APMFI-Piorato

Atty. Talaboc

7. ROCS-09-04952

2 MOAs[28]

Evangelista

NLDC-Amata

AEPFFI- Pablo, Jr.

Atty. Santos

NLDC-Amata

APMFI- Piorato

8. ROCS-09-04996

2 MOAs[29]

Evangelista

NLDC-Amata

CARED-Briones

Atty. Santos

NLDC-Amata

MAMFI-Sula

9. G-09-07112

1 MOA[30]

Evangelista

NLDC-Amata

CARED-Briones

Atty. Santos

After the execution of the MOAs, the agricultural and livelihood assistance kits/packages were supposed to be delivered by the NGOs to identified beneficiaries/municipalities in different parts of the country, but, as will be stated later, no deliveries were made.

The NGOs/project partners were later paid in full by the IAs upon the NGOs' submission of Disbursement, Progress, Accomplishment, Fund Utilization, Inspection, and Delivery Reports, as well as the Certificates of Acceptance. The details of payments to the NGOs/project partners are reflected in the table below:

SARO No.

Disbursement Voucher (DV) No.

Date of DV

Amount of DV
(PhP)

Check No.

Paying Agency/Claimant or Payee

ROCS-07-04618

01-2007-040671

Undated

5,000,000

850457 (LBP)

TRC-CARED

01-2007 -040672

Undated

5,000,000

860458 (LBP)

TRC-CARED

01-2007 -040669

Undated

5,000,000

850460 (LBP)

TRC-CARED

01-2007-040670

Undated

5,000,000

850462 (LBP)

TRC-CARED

ROCS-08-01347

08-04-01201

11-Apr-08

21,825,000

0000416657 (UCPB)

NABCOR- POPDFI

08-07-02312

09-Jul-08

2,425,000

0000417294 (UCPB)

NABCOR-POPDFI

ROCS-08-05216

08-09-03575

23-Sep-08

17,460,000

437227 (UCPB)

NABCOR-MAMFI

09-04-1622

19-May-09

1,940,000

46937 (UCPB)

NABCOR-MAMFI

ROCS-08-05216

08-09-03572

23-Sep-08

26,190,000

437226 (UCPB)

NABCOR-SDPFFI

09-05-1751

25-May-09

2,910,000

455997 (UCPB)

NABCOR-SDPFFI

ROCS-08-07211

09-05-1773

27-May-09

3,637,500

462921 (UCPB)

NABCOR-MAMFI

09-06-2025

15-Jun-09

20,612,500

462940 (UCPB)

NABCOR-MAMFI

ROCS-08-07211

09-05-1774

27-May-09

3,637,500

462922 (UCPB)

NABCOR- SDPFFI

09-06-2022

15-Jun-09

20,612,500

462938 (UCPB)

NABCOR- SDPFFI

ROCS-09-00804

09-05-1767

27-May-09

2,182,500

462919 (UCPB)

NABCOR- MAMFI

09-06-2028

15-Jun-09

12,367,500

462939 (UCPB)

NABCOR- MAMFI

ROCS-09-00804

09-06-1825

01-Jun- 09

1,455,000

462926 (UCPB)

NABCOR- SDPFFI

09-06-2027

15-Jun-09

8,245,000

462939 (UCPB)

NABCOR- SDPFFI

ROCS-09-00847

01-2009-040929

Undated

20,000,000

890099 (LBP)

TLRC-APMFI

01-2009-051300

04-Jun-09

2,500,000

917019 (BP)

TLRC-APMFI

09-10-1530

26-Oct-09

8,000,000

244589 (LBP)

CARED-NLDC

ROCS-09-04996

09-09-1355

23-Sept-09

6,000,000

244554 (LBP)

MAMFI-NLDC

09-10-1443

12-Oct-09

10,000,000

244570 (LBP)

MAMFI-NLDC

09-10-1534

26-Oct-09

4,000,000

244585 (LBP)

MAMFI-NLDC

G-09-07112

09-12-1834

16-Dec-09

12,000,000

244622 (LBP)

CARED-NLDC

10-01-0004

07-Jan-10

20,000,000

244632 (LBP)

CARED-NLDC

10-01-0118

25-Jan-10

8,000,000

244649 (LBP)

CARED-NLDC

10-05-0747

06-May-10

4,000,000

260944 (LBP)

CARED-NLDC

ROCS-09-04952

09-09-1353

18 -Sep-09

7,500,000

244552 (LBP)

NLDC-AEPFFI

09-10-1444

12-Oct-09

12,500,000

244571 (LBP)

NLDC-AEPFFI

09-10-1540

26-Oct-09

5,000,000

244590 (LBP)

NLDC-AEPFFI

ROCS-09-04952

09-09-1358

23-Sep-09

7,500,000

244557 (LBP)

NLDC-APMFI

09-10-1449

12-Oct-09

12,500,000

244576 (LBP)

NLDC-APMFI

09-10-1535

26-Oct-09

5,000,000

244592 (LBP)

NLDC-APMFI

ROCS-09-04996

09-09-1354

23-Sep-09

12,000,000

244553 (LBP)

NLDC-CARED

09-10-1447

23-Sep-09

20,000,000

244574 (LBP)

NLDC-CARED

Signatories to all the Disbursement Vouchers (DVs) covering payment by the IAs for the agricultural and livelihood projects, who are respondents herein, are indicated in the table below:

Signatories of the DV

SARO

Disbursement Voucher No.

BOX A

(Expenses/Advances necessary, lawful, and incurred under my direct supervision

BOX B

Supporting Documents Complete and Proper/Budget Utilization/Verification /Certification as to Cash/Fund Availability

Certified by/supporting documents attached

BOX C

(Approved for Payment)

ROCS-07- 04618

01-2007-040571[31]

Figura

Allen T. Baysa

Jover

Ortiz

01-2007-040672[32]

Figura

Allen T. Baysa

Jover

Ortiz

01-2007-040669[33]

Figura

Allen T. Baysa

Jover

Ortiz

01-2007-040670[34]

Figura

Allen T. Baysa

Jover

Ortiz

ROCS-08-01347

08-04-01201[35]

Munsod

Johnson

Javellana

08-07-02312[36]

Relevo

Johnson

Javellana

ROCS-08-05216

08-09-03575[37]

Cacal

Guañizo

Javellana

09-04-1622[38]

Cacal

Guañizo

Javellana

08-09-03572[39]

Cacal

Guañizo

Javellana

09-05-1751[40]

Cacal

Guañizo

Javellana

ROCS-08-07211

09-05-1773[41]

Cacal

Guañizo

Javellana

09-06-2025[42]

Cacal

Guañizo

Javellana

ROCS-08-07211

09-05-1773[43]

Cacal

Guañizo

Javellana

09-06-2022

Cacal

Guañizo

Javellana

ROCS-09-00804

09-05-1767[44]

Cacal

Guañizo

Javellana

09-06-2028[45]

Cacal

Guañizo

Javellana

09-06-1825[46]

Cacal

Guañizo

Javellana

09-06-2027[47]

Cacal

Guañizo

Javellana

ROCS-09-00847

01-2009-040929[48]

Cunanan

Consuelo Lilian Espiritu

Jover

Ortiz

01-2009-051300[49]

Cunanan

Consuelo Lilian Espiritu

Jover

Ortiz

ROCS-09-04952

09-09-1353[50]

Sevidal

Ordoñez

Cruz

Amata

09-10-1444[51]

Sevidal

Ordoñez

Cruz

Amata

09-10-1540[52]

Sevidal

Ordoñez

Cruz

Amata

ROCS-09-04952

09-09-1358[53]

Sevidal

Ordoñez

Cruz

Amata

09-10-1449[54]

Sevidal

Ordoñez

Cruz

Amata

09-10-1535[55]

Sevidal

Ordoñez

Cruz

Amata

ROCS-09-04996

09-09-1354[56]

Sevidal

Ordoñez

Cruz

Amata

09-101447[57]

Sevidal

Ordoñez

Cruz

Amata

09-101530[58]

Sevidal

Ordoñez

Cruz

Amata

09-09-1355[59]

Sevidal

Ordoñez

Cruz

Amata

09-10-1443[60]

Sevidal

Ordoñez

Cruz

Amata

09-10-1534[61]

Sevidal

Ordoñez

Cruz

Amata

G-09-07112

09-12-1834[62]

Sevidal

Ordoñez

Cruz

Amata

10-01-0004[63]

Sevidal

Ordoñez

Cruz

Amata

10-01-0118[64]

Sevidal

Ordoñez

Cruz

Amata

10-05-0747[65]

Sevidal

Rodriguez

Cruz

Amata

Details of the checks issued by the IAs in payment of the projects, and the signatories thereto are indicated in the following table:

SARO No.

Disbursement Voucher No.

Check No.

Net Amount (Php)

(After deducting 3% management fee)

Implementing Agency/ies & Signatories of the Check

Official Receipt Issued

Received Payment
(see DV)

ROCS-07-04618

01-2007-040671

LBP 850457[66]

4,800,000

TLRC/TRC
Figura and Ortiz

CARED
OR 023

Encarnacion

01-2007-040672

LBP 850458[67]

4,800,000

TLRC/TRC
Figura and Ortiz

CARED
OR 022

Encarnacion

01-2007-040669

LBP 850460[68]

4,800,000

TLRC/TRC
Figura and Ortiz

CARED
OR 025

Encarnacion

01-2007-040670

LBP 850462[69]

4,800,000

TLRC/TRC
Figura and Ortiz

CARED
OR 021

Encarnacion

ROCS-08-01347

08-04-01201

UCPB 0000416657[70]

21,825,000

NABCOR

Mendoza and Javellana

POPDFI

OR 001426

Suñas

08-07-02312

UCPB 0000417294[71]

2,425,000

NABCOR

Mendoza and Javellana

POPDFI

OR 3765

Suñas

ROCS-08-05216

08-09-03575

UCPB 437227[72]

17,460,000

NABCOR

Mendoza and Javellana

MAMFI

OR 3615

Sula

09-04-1622

UCPB 455913[73]

1,940,000

NABCOR

Mendoza and Javellana

MAMFI

OR 3625

Rodriguez

ROCS-08-05216

08-09-03572

UCPB 437226[74]

26,190,000

NABCOR

Mendoza and Javellana

SDPFFI

OR 214

Luy

09-05-1751

UCPB 455997[75]

2,910,000

NABCOR

Mendoza and Javellana

SDPFFI

OR 269

Rodriguez

ROCS-08-07211

09-05-1773

UCPB 462921[76]

3,637,500

NABCOR

Mendoza and Javellana

MAMFI

OR 3628

Sula

09-06-2025

UCPB 462940[77]

20,612,500

NABCOR

Mendoza and Javellana

OR

3574

de Asis

ROCS-08-07211

09-05-1774

UCPB 462922[78]

3,637,500.00

SDPFFI

OR 267

de Asis

09-06-2022

UCPB 462938[79]

20,612,500

SDPFFI

OR 301

Luy

ROCS-09-00804

09-05-1767

UCPB 462919[80]

2,182,500

MAMFI

OR 3627

Sula

09-06-2028

UCPB 462937

12,367,500

NABCOR

Mendoza and Javellana

OR

3573

de Asis

ROCS-09-00804

09-06-1825

UCPB 462926[81]

1,455,000

NABCOR
Mendoza and Javellana

OR
273

Luy

09-06-2027

UCPB 462939[82]

8,245,000

NABCOR
Mendoza and Javellana

OR
303

Luy

ROCS-09-00847

01-2009-040929

LBP 890099[83]

20,000,000

TLRC/TRC
Ortiz and Figura

OR
204

Rodrigo B. Calay

01-2009-051300

LBP 917019[84]

2,500,000

TLRC/TRC
Ortiz and Figura

OR

Rodrigo B. Calay

ROCS-09-04952

09-09-1353

LBP 0000244552[85]

6,750,000

NLDC

Jalandoni and Amata

AEPFFI

OR 0255

Suñas

09-10-1444

LBP 244571[86]

12,500,000

NLDC

Jalandoni and Amata

AEPFFI

OR 0256

Suñas

09-10-1540

LBP 244590[87]

5,000,000

NLDC

Jalandoni and Amata

AEPFFI

OR 0257

Suñas

ROCS-09-04952

09-09-1358

LBP 244557[88]

6,750,000

NLDC

Jalandoni and Amata

APMFI

OR

411

Laarni A. Uy

09-10-1449

LBP 244576[89]

12,500,000

NLDC

Jalandoni and Amata

APMFI

OR 412

Laarni A. Uy

09-10-1535

LBP 244592[90]

5,000,000

NLDC

Jalandoni and Amata

APMFI

OR 415

Laarni A. Uy

ROCS-09-04996

09-09-1354

LBP 244553[91]

10,800,000

NLDC

Jalandoni and Amata

CARED

OR 147

de Asis

09-101447

LBP 244574[92]

20,000,000

NLDC

Jalandoni and Amata

CARED

OR 149

de Asis

09-101530

LBP 244589[93]

8,000,000

NLDC

Jalandoni and Amata

CARED

OR 153

de Asis

ROCS-09- 04996

09-09-1355

LBP 244554[94]

5,400,000

NLDC

Jalandoni and Amata

MAMFI

OR 3596

Rodriguez

09-10-1443

LBP 244570[95]

10,000,000

NLDC

Jalandoni and Amata

MAMFI

OR 3598

Rodriguez

09-10-1534

LBP 244585[96]

4,000,000

NLDC

Jalandoni and Amata

MAMFI

OR 3652

Rodriguez

G-09- 07112

09-12-1834

LBP 244622[97]

10,800,000

NLDC

Jalandoni and Amata

CARED

OR 155

de Asis

10-01-0004

LBP 244632[98]

20,000,000

NLDC

Jalandoni and Amata

CARED

OR 156

de Asis

10-01-0118

LBP 244649[99]

4,000,000

NLDC

Jalandoni and Amata

CARED

OR 157

de Asis

10-05-0747

LBP 260944[100]

4,000,000

NLDC

Jalandoni and Amata

de Asis

Field verifications conducted by complainant FIO revealed that the Php345,000,000.00 PDAF of Senator Enrile was never used for the intended projects. It appears that the documents submitted by the NGOs/project partners to the IAs such as Disbursement, Progress, Accomplishment, Fund Utilization, Inspection, and Delivery Reports, as well as Certificates of Acceptance, were all fabricated.

The livelihood and agricultural production kits/packages never reached the intended beneficiaries, i.e., either there were no projects or goods were never delivered. The mayors and the municipal agriculturists, who had reportedly received the livelihood assistance kits/packages for their respective municipalities, never received anything from the Office of Senator Enrile, the IA, or any of the project partners. None of the mayors or municipal agriculturists were even aware of the projects.

As reflected above, the signatures on the Certificates of Acceptance or Delivery Reports were forged, and the farmer-recipients enumerated on the lists of purported beneficiaries denied having received any livelihood assistance kits/packages. In fact, many of the names appearing on the lists as farmer-recipients were neither residents nor registered voters of the place where they were listed as beneficiaries, were fictitious, or had jumbled surnames while others were already deceased. In other words, these livelihood projects were “ghost projects.”

The Commission on Audit (COA), through its Special Audits Office, conducted an audit of the PDAF allocations and disbursements covering the period 2007-2009 subject of these complaints, its findings of which are found in the COA Special Audits Office Report[101] (the “2007-2009 COA Report”).

Among the observations of the COA were: (a) the implementing agencies, including NABCOR, NLDC and TRC, did not actually implement the PDAF-funded projects; instead, the agencies released the funds to the NGOs, albeit charging a “management fee” therefor; (b) the direct releases of PDAF disbursements to NGOs contravened the DBM’s regulations considering that the same were not preceded by endorsements from the executive departments exercising supervisory powers over the IAs; (c) worse, the releases were made essentially at the behest of the sponsoring legislator; (d) almost all of the NGOs that received PDAF releases did not have a track record on the implementation of government projects, and their addresses were dubious; (e) the selection of the NGOs, as well as the procurement of the goods for distribution to the beneficiaries, did not undergo public bidding; and (f) some of the suppliers who allegedly provided the goods to the NGOs denied ever having dealt with these NGOs, contrary to the NGOs’ claims.

The COA also found that the selections of the NGO were not compliant with the provisions of COA Circular No. 2007-001 and GPPB Resolution No. 12-2007; the suppliers and reported beneficiaries were unknown or cannot be located at their given address; the NGOs had provided non-existent addresses or their addresses were traced to mere shanties or high-end residential units without any signage; and the NGOs submitted questionable documents, or failed to liquidate or fully document the utilization of funds.

Verily, the findings in the 2007-2009 COA Report jibe with the whistle blowers testimonies and are validated by the results of the FIO’s on-site field verification.

IN FINE, the PDAF-funded projects of Senator Enrile were “ghost” or inexistent.

Complainants contend that the amount of Php345,000,000.00 allotted for livelihood and agricultural production projects was instead misappropriated and converted to the personal use and benefit of Senator Enrile in conspiracy with Napoles and the rest of respondents.

Witnesses Luy, Sula, and Suñas claim that the six foundation-NGOs endorsed by Senator Enrile were all dummies of Napoles, who operated them from her JLN office at Unit 2502, Discovery Center Suites, Ortigas Center, Pasig City, and were created for the purpose of funnelling the PDAF through NABCOR, NLDC, and TRC/TLRC; the

majority of the incorporators, officers, and members of these NGOs are household helpers, relatives, employees and friends of Napoles; some incorporators/corporators of the NGOs were aware of their involvement in the creation thereof while others were not; and the signatures in the Articles of Incorporation of the NGOs of those unaware of their involvement were forged.

Luy, Sula and Suñas add that the pre-selected President of each of the pre-selected NGOs, in addition to being required to furnish the names of at least 5 persons to complete the list of incorporators, were obliged to sign an application for opening bank accounts in the name of the NGO, and to pre-sign blank withdrawal slips; these NGOs maintained bank accounts with either METROBANK Magdalena Branch or LANDBANK EDSA-Greenhills Branch, from which Napoles would withdraw and/or cause the withdrawal of the proceeds of checks paid by the IAs to the NGOs involved.

Per Luy's records, Senator Enrile received, through respondents Reyes and Tuason, total commissions, rebates, or kickbacks amounting to at least Php172,834,500.00 from his PDAF-funded projects from 2004 to 2010: Php1,500,000.00 for 2004; Php14,622,000.00 for 2005; Php13,300,000.00 for 2006; Php27,112,500.00 for 2007; Php62,550,000.00 for 2008; Php23,750,000.00 for 2009; and Php30,000,000.00 for 2010. The "payoffs" usually took place at the JLN office in Ortigas. In fact, Luy, Sula and Suñas often heard Napoles refer to Senator Enrile by his code name "Tanda" and saw Napoles hand over the money meant for the Senator to Tuason at the premises of JLN. The cash would come either from Luy's vault or from Napoles herself.

On the other hand, Napoles' share of the money from Senator Enrile's PDAF was by the claim of witnesses Luy, Sula, Suñas, delivered in cash by them, along with respondents Encarnacion and De Asis, either at the JLN office or at Napoles' residence at 18B, 18th Floor, North Wing Pacific Plaza Tower Condominium, Taguig City. In the event of space constraints at her residence, Napoles would deposit some of the cash to the bank accounts of the following companies which she owned:

Registered Owner of the Account

Bank

Account Number

JO-CHRIS Trading

Metrobank

7255-50955-8

JO-CHRIS Trading

Metrobank

007-026-51152-2

(Checking Account)

JO-CHRIS Trading

Metrobank

3600024885

JLN Corporation

Metrobank

073-3-07352390-8

JLN Corporation

Metrobank

007-073-50928-5
(Checking Account)

JCLN Global Properties Development Corporation

Metrobank

007-035-52543-9

II. THE CHARGES

The NBI thus charges Senator Enrile with PLUNDER for acquiring/receiving on various occasions, in conspiracy with his co-respondents, commissions, kickbacks, or rebates, in the total amount of at least Php172,834,500.00 from the “projects” financed by his PDAF from 2004 to 2010.

The FIO, on the other hand, charges Senator Enrile and the rest of respondents with violating SECTION 3(E) of RA 3019 as amended, for giving unwarranted benefits to private respondent Napoles and SDDFI, APMFI, CARED, MAMFI, POPFDI and APMFI in the implementation of his PDAF-funded “projects,” thus, causing undue injury to the government in the amount of Php345,000,000.00.

By Orders dated 19 and 29 November 2013, this Office directed respondents to file their respective counter-affidavits in these cases. Despite receipt of said Orders, respondents Ortiz, Jalandoni, De Leon, Piorato, Ornopia, Lim, Ramirez, Rodriguez, Napoles, Lawas-Yutok, Guadinez, and Cabilao failed to file any counter-affidavits, prompting this Office to consider them having waived their right to file the same.

Despite earnest efforts, copies of the same Orders could not be served on respondents Lacsamana and Santos, Proprietors of Nutrigrowth Philippines and MMRC Trading, respectively, Hernani Ditchon, Uy, Galay, Macha, Talaboc, Castillo, Balanoba, Oliveros, Ogerio, Fabian, and Fernando, they being said to be unknown at their last or given addresses, or had moved out and left no forwarding address, or were non-existent.

II. RESPONDENTS’ COUNTER-AFFIDAVITS

In his Counter-Affidavit dated 20 December 2013,[102] SENATOR ENRILE decries the accusations against him, alleging that it was unfortunate that, “in the twilight years of (his) government service, ... (he) stand(s) accused of trumped up charges of corruption” as he has never been charged with any administrative or criminal offense in his more than 40 years in the civil service; at the time material to the charges, the PDAF was a legitimate source of funds for projects sponsored by legislators; the implementation of PDAF-related projects “is the exclusive function and responsibility of the executive department” such that the IAs and the DBM should have strictly complied with laws and rules on government expenditures to prevent possible misuse or irregularities; IAs were responsible for ensuring that the NGOs tasked to implement the projects were legitimate; and his only involvement in the utilization of the PDAF was to endorse specific projects for local government units.

He maintains that he did not persuade, influence or induce any official or employee of the IAs concerned to violate existing procurement or audit laws and rules; as a member of the legislative branch, he has no power of control or supervision over IAs, which are part of the executive branch; he did not endorse any NGO as conduit for the implementation of the PDAF projects; it was Napoles and her cohorts “who persuaded and influenced the

implementing agencies to violate their duties and functions;” complainants’ witnesses never

categorically identified him as one of those who received kickbacks arising from PDAF transactions and neither was he mentioned as among those public officers who visited Napoles’ offices; he never authorized anyone to transact with, much less receive commissions, kickbacks or rebates “from the Napoles group;” he never had personal dealings related to the PDAF with Tuason; all authorizations he issued to Reyes and Evangelista were limited to lawful acts; and evidence allegedly showing that he personally benefitted from the PDAF anomaly is hearsay.

For her part, REYES alleges in her Consolidated Counter-Affidavit dated 26 December 2013,[103] that the averments in the complaints are hearsay as they are not based on personal knowledge of complainants’ agents or their witnesses; their statements are inadmissible based on the *res inter alios acta* rule; she did not commit any illegal or prohibited act in relation to the PDAF projects; and her signatures in eight letters and two liquidation reports pertaining to the PDAF transactions, and which contain the names of the IAs and NGOs allegedly tasked to implement the projects, were forgeries; she did not receive any amount from the PDAF nor connive with any of her co-respondents to acquire, amass or accumulate ill-gotten wealth; and none of the “overt or criminal acts” constitutive of Plunder has been shown to be present.

EVANGELISTA, in his Joint Counter-Affidavit dated 20 December 2013, asserts that the complaints failed to specify the acts or omissions committed by him which constitute the offense/s charged and that most, if not all, statements of complainants’ witnesses are hearsay; he was impleaded because of his association with Senator Enrile, his former superior; during his tenure of office, “all that the office of Senator Enrile has done, or may do, was to identify, endorse or recommend particular projects;” it was the DBM and the IAs which handled the actual release of the PDAF; and Senator Enrile’s office “did not have any say in the actual implementation of any project.” He insists that his signatures in letters addressed to the IAs as well as in MOAs pertaining to PDAF projects were “immaterial – funds would still have been released, the projects implemented, and the PDAF diverted, whether or not (he) signed those documents;” some of the signatures appearing in the PDAF documents are forgeries; he was not among those identified by witnesses Luy and Suñas as a recipient of PDAF-related kickbacks; and he did not personally know Tuason or Napoles and neither has he met with them.

In her Counter-Affidavit dated 21 February 2014,[104] TUASON admits personally knowing Napoles, having met her in 2004. She claims that because of her (Tuason) association with former President Joseph E. Estrada, she was requested by Napoles to refer her (Napoles) to politicians; and to accommodate Napoles, she (Tuason) approached and informed Reyes that Napoles wished to transact with Senator Enrile in relation to the latter’s PDAF, to which request Reyes agreed.

She “believed that Atty. Gigi Reyes had the full authority to act for and on behalf of Senator Enrile with respect to his PDAF allocations;” she (Tuason) acted as the “go-between” of Napoles and Senator Enrile’s PDAF-related arrangements; after Reyes or Evangelista informed her (Tuason) that a budget from the PDAF was available, she would relay the information to Napoles or Luy who would then prepare a listing of projects available, indicating the IAs, which would be sent to Reyes; Reyes would, thereafter, endorse said list to the DBM, and after the listing was released by Senator Enrile’s office to the DBM, Napoles would give her (Tuason) a partial payment of the commission due her, which was usually delivered by Luy or other Napoles employees; and she relied on records kept by Luy on the amounts received because she did not keep her own records.

She admits having received amounts corresponding to Senator Enrile’s kickbacks from the PDAF projects which she personally delivered to Reyes. To her knowledge, her commissions represented 5% of the transaction/project amount involved, while Senator Enrile’s share was 40%. She adds that there were times when Napoles would

withhold the release of her (Tuason) commissions, without clear justification.

NATIONAL LIVELIHOOD DEVELOPMENT CORPORATION (NLDC) RESPONDENTS

Denying any involvement in the misuse of the PDAF or of having profited from it, AMATA, NLDC's President, avers in her 20 January 2014 Counter-Affidavit[105] that, cognizant of the possibility of political pressure, she had at the outset "manifested...her discomfort from (sic) the designation of NLDC as one of the Implementing Agencies for PDAF" and "did not want to be involved in the distribution of PDAF," "kept a distance from the solons and the NGOs" involved in PDAF-related transactions, and had repeatedly requested in writing the DBM to exclude her agency from those authorized to implement PDAF-related projects; save for these instant complaints, she has not been formally charged with any administrative or criminal case in her more than 25 years in the civil service; and to ensure transparency, she "caused the preparation of standard Memorandum of Agreement (MOA) for PDAF transactions providing the safety nets for NLDC, as well as a Process Flow Chart to clearly identify the responsibilities and accountabilities of the [s]olons, the NGOs and the NLDC PDAF internal processors for easy tracking of liabilities and irregularities that may be committed."

BUENAVENTURA, then a regular employee of the NLDC, avers in her Counter-Affidavit dated 20 January 2014[106] that in her processing of documents relating to PDAF projects, she "did not do anything illegal or violate the instructions of (her) immediate superior"; in accordance with her functions, she "checked and verified the endorsement letters of Senator Enrile, which designated the NGOs that would implement his PDAF projects and found them to be valid and authentic"; and she also confirmed the authenticity of the authorization given by Senator Enrile to his subordinates regarding the monitoring, supervision and implementation of PDAF projects.

Denying any participation in the implementation of PDAF projects or having received any personal benefit in relation to PDAF projects, she maintains that her evaluation and verification reports were accurate, and she was never a party to the purported anomalies arising from PDAF-related transactions.

In her Counter-Affidavit dated 27 January 2014,[107] ORDOÑEZ, NLDC Cashier IV, argues that her participation in the PDAF projects implemented by her office was limited to having certified that "budgets and funds were available" in the corresponding Disbursement Vouchers; the filing of the complaints "may be premature because of failure to observe provisions of the 2009 COA Rules of Procedure," considering that the COA has not yet disallowed the PDAF-related expenditures; and she never misappropriated, converted, misused, or malversed public funds drawn from the PDAF nor did she take advantage of her position to process the release of PDAF sums, let alone personally benefit from these releases.

Claiming to have never met respondents Napoles or Enrile let alone conspire with them, Ordoñez claims that as far as she is concerned, "the PDAF transaction was known to the NLDC Board of Trustees and top management;" she and her co-respondents, "lowly Government employees who were dictated upon," were mere victims "bullied into submission by the lawmakers;" despite their pleas, the DBM refused to help in getting the NLDC removed from the list of agencies authorized to implement PDAF projects; and she performed her duties in good faith and was "not in a position to negate or defy these actions of the Lawmakers, DBM and the NLDC Board of Trustees."

In his Counter-Affidavits dated 15 and 24[108] February 2014, SEVIDAL, NLDC Director IV, denies having committed the offenses charged. He alleges that complainant FIO submitted a false certificate of non-forum shopping, the NBI having already filed an earlier criminal complaint against him arising from the same set of facts averred in the FIO's criminal complaint; the filing of the criminal charges was premature because the disallowances issued by the COA are not yet final and executory; he was not among those NLDC employees identified by complainants' witnesses who supposedly planned and implemented PDAF-funded projects and points to Senator Enrile and Napoles, not NLDC employees, as the parties responsible for the misuse of the

PDAF. He insists that Senator Enrile, through Reyes and Evangelista, were responsible for “identifying the projects, determining the project costs and choosing the NGOs” which was “manifested in the letters of Senator ENRILE”; he and other NLDC employees were merely victims of the “political climate” and “bullied into submission by the lawmakers”; and he never derived any personal benefit from the purported misuse of the PDAF.

NATIONAL AGRIBUSINESS CORPORATION (NABCOR) RESPONDENTS

Denying the charges against him in his Counter-Affidavit dated 6 February 2014,[109] JAVELLANA, NABCOR President, states in essence that he did not personally prepare the checks, vouchers, memoranda of agreement and other similar documents pertaining to NABCOR-implemented projects funded by PDAF as he merely signed and approved the PDAF documents in good faith, after his subordinates had signed the same and recommended their approval to him; and he did not conspire with anyone to defraud the government.

MENDOZA, in her Counter-Affidavit dated 6 March 2014, alleges that being a mere employee of NABCOR, she “acted only upon stern instructions and undue pressure exerted upon us by our agency heads;” she signed checks relating to PDAF disbursements, specifically those covered by SARO Nos. ROCS 08-01347, 08-05216, 08-07211, 09-00804, because she was “designated and authorized to sign” by respondent Javellana, and these checks “were already signed by NABCOR President ... JAVELLANA prior to the signing of the herein Respondent ... and checks were released upon the instruction of ... JAVELLANA;” she “was given instruction to process payments to suppliers and NGOs, without proper bidding and without complete documentary requirements;” sometime in 2011, Javellana terminated her services from NABCOR “due to her knowledge of irregularities in NABCOR;” and she denies having obtained any personal benefit from the alleged misuse of the PDAF.

In his Counter-Affidavit[110] and Supplemental Counter-Affidavit dated 11 December 2013 and 22 January 2014, respectively, CACAL, NABCOR Paralegal, refutes the charges against him, which to him are unsupported by the evidence. He claims that he signed Box “A” of the DVs relating to SARO Nos. ROCS-08-01347, ROCS-08-05216, ROCS-08-07211 and ROCS-09-00804 in compliance with his official functions and pursuant to the stern directives of his superiors, namely, Javellana and Mendoza; by the time the vouchers are presented to him for signature, Javellana and Mendoza have already signed Boxes “B” and “C” therein and they have “already prepared and signed” the corresponding checks drawn from PDAF funds, which is “indicative of their interest to fast track the transaction;” he never met with either the legislators or Napoles, his interaction in relation to PDAF-related projects having been limited to Luy; he always examined the voucher’s supporting documents before issuing the aforementioned certification; he previously recommended to his superiors that the agency observe COA Memorandum Circular No. 2007-001 and revise the draft MOA used in PDAF-related transactions but was yelled at and berated by Javellana whenever he would question some of the apparent irregularities in the PDAF documents. He maintains that he did not personally benefit from the implementation of PDAF projects.

In her 02 January 2014 Counter-Affidavit,[111] CRUZ, NLDC Chief Financial Specialist/Project Management Assistant IV, denies the charges, claiming that she only certified the existence, not the authenticity of PDAF documents in the exercise of her duties; she did not conspire with anyone to commit the offenses charged nor did she receive anything in relation to the PDAF projects implemented by her office; and she is unaware whether the PDAF was abused by any or all of her co-respondents.

In her March 14, 2014 Counter-Affidavit,[112] JOHNSON, NABCOR former Chief Accountant, points out that there is nothing in the complaint “that would show, or even minutely imply that (she) was part of an express conspiracy” to commit the offenses charged; the complaints do not specifically allege the wrongful acts or

omissions she committed as her participation in the PDAF transactions was merely ministerial in nature, limited to a verification of “whether or not the documents enumerated on the face of the disbursement voucher were attached to that disbursement voucher;” and that her job did not include examining the authenticity of the vouchers or the signatures thereon.

MUNSOD, former Human Resources Supervisor/Manager, in her Counter-Affidavit dated 27 December 2013,[113] contends that she was impleaded for having signed DV No. 08-04-0129 in 2008 pertaining to a PDAF-related project implemented by POPDFI; her certification therein that the expense was necessary and lawful was a purely ministerial function, and was issued only after examining the voucher and the supporting documents because she “did NOT find any irregularity on the face thereof that would create in my mind any doubt as to the legality and integrity of the said Voucher;” and she had no knowledge of “any agreement or arrangement on the disbursement of the funds mentioned in the Voucher.”

Claiming to have been unfairly used or exploited by those involved in the misuse of the PDAF, MONTUYA, NABCOR Accounting Staff Assistant, avers in her Counter-Affidavit dated 18 February 2014,[114] that she was impleaded in relation to the inspection reports she signed in relation to the project covered by SARO No. ROCS-08-07211 and 09-08804; she was under the direct supervision of respondent Mendoza and part of her duties was to comply with directives issued by Mendoza, including the processing of the release of sums drawn from Enrile’s PDAF; and the inspection reports relating to PDAF-related projects were merely pro-forma and stored in NABCOR computers. Montuya relates that she once accompanied Mendoza in inspecting fertilizers stored in a warehouse in Pandi, Bulacan and even took pictures of these kits; only after the criminal complaints were filed did she find out from witness Sula that these fertilizers were owned by Napoles; she could have inspected other items for distribution in the PDAF-related projects but Mendoza refused to authorize her and NABCOR did not offer to defray the expenses for such inspections; she has never met Enrile or Napoles, let alone conspire with them to defraud the government; and did not benefit from any of these projects.

Refuting the charges against her in her Counter-Affidavit filed on 28 January 2014, GUAÑIZO, NABCOR Bookkeeper/OIC Accounting Division, claims that the complaints did not specify the extent of her participation in the assailed scheme; no substantial evidence exists to support the charges, hence, the lack of probable cause; and she still has remedies within the COA Rules to question the COA report.

TECHNOLOGY RESOURCE CENTER (TRC) RESPONDENTS

In his Counter-Affidavits dated 20 and 24 February 2014,[115] CUNANAN, Deputy Director General of the TRC at the time material to the complaints, refutes the accusations against him, stating that to his recollection, TRC began receiving PDAF-related disbursements sometime in 2005; it was his previous superior, then TRC Director General Ortiz, “who directly dealt with and supervised the processing of all PDAF[-]related projects of the TRC;” Lacsamana, then TRC Group Manager, assisted Ortiz in the implementation of PDAF projects and “reported directly to Director General Ortiz’s Office in this regard;” he and other colleagues from TRC “assumed PDAF[-]funded projects to be regular and legitimate projects;” because of measures instituted by Ortiz, he (Cunanan), then Deputy Director General, “did not participate in the processing of said projects except in the performance of (his) ministerial duty as a co-signatory of vouchers, checks and other financial documents of TRC;” and Ortiz, Lacsamana and Figura, TRC Department Manager III, were “the ones who actually dealt with the Offices of the Legislators concerned as well as the NGOs, which supposedly implemented the projects;”

Cunanan further relates that sometime in 2006 or 2007, he met Napoles who “introduced herself as the representative of certain legislators who supposedly picked TRC as a conduit for PDAF-funded projects;” at the same occasion, Napoles told him that “her principals were then Senate President Juan Ponce Enrile, Senators

Ramon “Bong” Revilla, Jr., Sen. Jinggoy Ejercito Estrada;” in the course of his duties, he “often ended up taking and/or making telephone verifications and follow-ups and receiving legislators or their staff members;” during his telephone verifications, he was able to speak with Reyes, who was acting in behalf of her superior, Senator Enrile; Reyes confirmed to him that she and Evangelista “were duly authorized by respondent Enrile” to facilitate his PDAF projects and she also affirmed to him that the signatures appearing in communications sent to TRC were, indeed, hers and Evangelista’s; he occasionally met with Luy, who pressured him to expedite the release of the funds by calling the offices of the legislators; and that after he was appointed as TRC’s Director General in 2010, he exerted all efforts to have his agency removed from the list of agencies authorized to implement PDAF projects. He maintains he did not benefit from the alleged misuse of the PDAF.

In his Counter-Affidavit dated 8 January 2014,[116] FIGURA, TRC Department Manager III, denies the charges against him, stating that he does not personally know Napoles or the legislators “who had their PDAF’s (sic) coursed through TRC as implementing agency;” he “talked to him (witness Luy) once over the telephone and vividly remember [being berated by] him as he was name-dropping people from DBM and Malacañang just to compel me to release from the Legal Department the MOA of his foundation which was being reviewed by my office;” when TRC began implementing PDAF projects in 2007, he and other TRC colleagues welcomed this development because “it would potentially generate income for TRC which does not receive any subsidy from the National Government” but the service fee of 1% earned by TRC from implementing PDAF projects “was too negligible;” he was told by TRC’s management that “legislators highly recommended certain NGO’s(sic)/Foundations as conduit implementors and since PDAF’s (sic) are their discretionary funds, they have the prerogative to choose their NGO’s (sic);” TRC’s management also warned him that “if TRC would disregard it (choice of NGO), they (legislators) would feel insulted and would simply take away their PDAF from TRC, and TRC losses (sic) the chance to earn service fees;” and Cunanan was among those who objected to his (Figura) proposal that TRC increase its service fee from 1% to 10%, claiming that “if we imposed a 10% service fee, we would totally drive away the legislators and their PDAF’s (sic).”

Figura adds that Ortiz issued Office Circular 000P0099, directing him (Figura) to sign checks representing PDAF releases sometime in 2007; Ortiz, however, subsequently issued Office Circular 000P0100, which increased TRC’s service fee to 5% but limited his (Figura) office’s participation in PDAF projects to reviewing MOA; his having signed checks and other PDAF documents were in good faith and in compliance with his designated tasks; he did not personally benefit from the TRC’s implementation of PDAF projects; he is uncertain if Cunanan or Ortiz benefitted from the projects but to his recollection, they repeatedly expressed undue interest in the transactions; Cunanan “would frequently personally follow up in my office the review of the MOA or my signature on the checks,” even name-dropping then First Gentleman Jose Miguel Arroyo whenever “he requested me to fast track processing of the PDAF documents;” as regards Ortiz, “his office would sometimes inquire on the status of a particular PDAF;” he tried his best to resist the pressure exerted on him and did his best to perform his duties faithfully; and he and other low- ranking TRC officials had no power to “simply disregard the wishes of Senator Enrile,” especially on the matter of public bidding for the PDAF projects.

JOVER, TRC Chief Accountant, alleges in her Counter-Affidavit dated 12 December 2013,[117] that she was implicated in the instant complaints for “having certified in the Disbursement Vouchers for the aforesated project x x x that adequate funds/budgetary allotment of the amount is properly certified, supported by documents;” her issuance of such certification was ministerial in nature, considering other TRC officials already certified, in the same vouchers, that “expenses/cash advance is necessary, lawful and incurred under direct supervision” and “expenses/cash advance is within budget” when these documents were referred to her; her duty was limited to verifying if the voucher was supported by the requisite documents; it was “beyond (her) duty to personally have an actual field validation and confirmed (sic) deliveries to beneficiaries or to go on the details of the delivered

items or make a rigid inspection of the PDAF project;" she signed the vouchers "for no dishonest purpose, nor being bias and no intent on any negligence;" and she had nothing to do with "non-delivery or under delivery of PDAF project."

ESPIRITU, TRC Budget Officer IV, in her Counter-Affidavit dated 10 January 2014,[118] denies the charges against her and asserts that her participation in the PDAF-related transactions covered by SARO No. ROCS-07-07221, ROCS-08-03024 and D-0900847 was limited to having certified in the corresponding DVs that "the amount is certified within budget, supported by documents;" she issued the certifications in accordance with her ministerial functions as a budget officer and because the vouchers were, indeed, within the budget provided to her agency and supported by documentation; and the certification was issued only after her superiors, TRC's Director General and Deputy Director General, certified in the same vouchers that the expenses were lawful, necessary and incurred under their direct supervision.

DEPARTMENT OF BUDGET AND MANAGEMENT (DBM) RESPONDENTS

In their Joint Counter-Affidavit dated 2 December 2013, Rosario NUÑEZ, Lalaine PAULE, and Marilou BARE,[119] admitting that they are the DBM personnel being alluded to as Leah, Lalaine and Malou, respectively, and named as such in the caption of the NBI and Baligod Complaint, state that their names are not specifically mentioned in the NBI's complaint as among those who allegedly participated in or abated the misuse of the PDAF; and that no probable cause exists to indict them for the offenses charged.

RELAMPAGOS, DBM Undersecretary for Operations, in his Counter-Affidavit dated 13 December 2013, contends that the complaint "is insufficient in form and substance;" there is neither factual nor legal basis to indict him for Plunder as the complaint and sworn statements of witnesses do not mention his name as among those who supposedly misused the PDAF; and he performed his duties in good faith.

OTHER RESPONDENTS

In his 15 January 2014 Counter-Affidavit,[120] DE ASIS admits having been an employee of the JLN Group of Companies from 2006-2010 in various capacities as either driver, bodyguard or messenger, and that he received a salary of P10,000/month for serving as the driver and "errand boy" of Napoles. He alleges that he picked up checks for Napoles-affiliated NGOs but only because he was instructed to do so; he has no knowledge in setting up or managing corporations such as CARED, which he allegedly helped incorporate; and he did not personally benefit from the alleged misuse of the PDAF.

In her 16 January 2014 Counter-Affidavit,[121] ENCARNACION denies the charges imputed against her, insisting that she was an employee (personal assistant) of JLN Group of Companies from 2004-2008 where she received a salary of P12,000/month for overseeing the schedule and serving as "errand girl" of Napoles; she has no knowledge in setting up or managing corporations; she signed the corporate papers of Napoles-affiliated NGOs because her superiors instructed her to do so; and she derived no personal benefit from the scheme.

Denying any involvement in the irregularities arising from PDAF-related transactions, SOLOMON asserts in her 27 January 2014 Counter-Affidavit[122] that she has never met any of her co-respondents; in 2006, she performed auditing work for a number of clients, she being a certified public accountant; POPDFI, one of the NGOs allegedly affiliated with Napoles' group, was not among her clients; the signatures allegedly belonging to her and appearing in the PDAF documents are markedly different from her actual signature; and to clear her name, she is prepared to "submit (herself) willingful[ly] to a forensic examination of (her) signature with the National Bureau of Investigation (NBI)."

Denying any involvement in the alleged misuse of the PDAF, AGCAOILI, a Notary Public, alleges in his 10 December 2013 Counter-Affidavit,[123] that he never met the signatories to the MOA, reports of disbursement, board resolutions and other PDAF documents that he allegedly notarized; these PDAF documents were not reflected in the notarial reports he submitted to the Regional Trial Court of Quezon City; he cannot attest to the genuineness of these records because “he has not seen them before, nor had prior knowledge about them;” and there are discrepancies between his actual signature and the signature appearing in the PDAF documents that allegedly belong to him.

In their Joint Counter-Affidavit[124] dated 21 February 2014, Jo Christine and James Christopher Napoles, children of Janet Napoles, cite the FIO complaint’s insufficiency in form and substance for failing to specify the acts or omissions committed by them which constitute the offenses charged, thereby failing to allege and substantiate the elements of Plunder and violation of Section 3(e) of RA 3019; and the affidavits of complainant’s witnesses contain nothing more than hearsay, self-serving statements which are “not worthy of credence.”

IV. DISCUSSION

PROCEDURAL ISSUES

Respondents Relampagos, Bare, Nuñez and Paule were properly impleaded

Relampagos, Bare, Nuñez and Paule all insist that they should be dropped from these proceedings because they were never specifically named as respondents in the criminal complaints filed by the NBI and the FIO.

This Office disagrees.

Among the documents attached to and made an integral part of the NBI’s complaint is witness Luy’s Affidavit dated 12 September 2013,[125] in which he identified Relampagos, Bare, Nuñez and Paule as Janet Napoles’ “contacts” within the DBM who helped expedite the release of SAROs and NCAs relating to the PDAF:

82:

T: Mapunta naman tayo sa pagproseso ng transaction ni JANET LIM NAPOLES sa mga government projects, gaano naman katagal magproseso ng mga ito?

S: Mabilis lang po kung ikukumpara natin sa normal na transaction sa mga government agencies.

83.

T: Alam mo ba kung paano naman ito nagagawang mapabilis ni JANET LIM NAPOLES?

S: Opo, may mga contact persons na siya kasi sa DBM. Inuutusan po kami ni Madame JANET LIM NAPOLES na i-follow up sa kanila iyong mga dokumento para mapabilis ang pagpoproseso nito.

84.

T: Kilala mo ba kung sinu-sino naman itong mga contact persons ni JANET LIM NAPOLES sa DBM?

S: Sa DBM po ay sa opisina ni Usec MARIO RELAMPAGOS kami pinagpa-follow up ni Madame JANET LIM NAPOLES. Ang mga tinatawagan po namin ay sina LEA, MALOU at LALAINE na naka-assign sa office ni USEC RELAMPAGOS.

85.

T: Bakit doon kayo nagfo-follow up sa office ni USEC RELAMPAGOS?

S: Sa pagkaka-alam ko po, doon ginagawa ang SARO. (emphasis, italics and understanding supplied)

In other words, complainants' witness Luy underscores that Relampagos, Bare, Nuñez and Paule's participation in the misuse or diversion of the PDAF pertains to their expedited preparation and release of the SAROs covering PDAF projects, albeit due to ministrations of Napoles and her staff. It was for this reason that this Office ordered said public respondents to submit their counter-affidavits so that they may shed light on their supposed involvement in the so-called PDAF scam. After all, preliminary investigation is merely inquisitorial, and it is often the only means of discovering whether a person may be reasonably charged with a crime, and to enable the prosecutor to prepare his complaint or information.[126]

Notably, respondents Relampagos, Bare, Nuñez and Paule did not categorically deny witness Luy's claims of follow-ups made with the DBM. Instead, they simply deny, in general terms, having committed the offenses charged.

The FIO did not submit a false certificate of non-forum shopping

Sevidal claims that the FIO submitted a false certificate of non-forum shopping in OMB-C-C-13-0396. According to him, the FIO failed to disclose, in said certificate, that the NBI earlier filed a criminal complaint for Plunder against him and his co-respondents, docketed as OMB-C-C-13-0318, and the charges alleged therein arose from the same set of facts set forth in the FIO's complaint.

His contention fails to persuade.

Rule 7, Section 8 of the Rules of Court, which suppletorily applies to these proceedings,[127] requires the complainant's submission of a valid, duly-accomplished certificate of non-forum shopping:

Certification against forum shopping. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed. (emphasis, italics and underscoring supplied)

Based on the above provision, the complainant or initiating party is duty-bound only to disclose the existence of an earlier action or claim filed by him or her, and which involves the same issues. He or she is not required to disclose the existence of pending suits or complaints previously filed by another party.

In this case, the FIO had no obligation to disclose the existence of OMB-C-C-13-0318 for the simple reason that it was not the initiating party of this complaint. Rather, as Sevidal himself admits, the NBI, and not the FIO, is the complainant in OMB-C-C-13-0318. The FIO is not even a party to OMB-C-C-13-0318. Thus, this Office fails to see why the FIO should be faulted for not mentioning the existence of this particular complaint.

The filing of the complaints was not premature

Sevidal and Ordoñez proceed to argue that the filing of the criminal charges against them and their co-respondents is premature because the COA had yet to issue notices of disallowances (NDs) on disbursements drawn from the PDAF.

The above contention, however, has been rendered moot by the well-publicized fact that the COA had already issued several NDs covering disbursements relating to PDAF-funded projects of respondent Enrile, among other

persons, from the period 2007 to 2009.[128]

They, however, insist that the filing of the complaint remains premature even if the COA did issue NDs. According to them, the NDs are still appealable under the 2009 Revised Rules of Procedure (the 2009 COA Rules) and no administrative or criminal complaint arising from the NDs may be instituted until and unless the issuances have become final and executory. In other words, Sevidal and Ordoñez assume that the NDs, at the very least, give rise to a prejudicial question warranting the suspension of the instant preliminary investigation.

This argument cannot be sustained.

Under Rule 111, Section 7 of the Rules of Court, a prejudicial question exists when the following elements are present:

The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action and (b) the resolution of such issue determines whether or not the criminal action may proceed. (underscoring supplied)

As reflected in the above elements, the concept of a prejudicial question involves both a civil and a criminal case. There can be no prejudicial question to speak of if, technically, no civil case is pending.[129]

Proceedings under the 2009 COA Rules, including those pertaining to the NDs, are administrative in nature. Consequently, any appeal or review sought by any of herein respondents with the COA in relation to the NDs will not give rise to a prejudicial question.

Significantly, Reyna and Soria v. Commission on Audit[130] teaches that an administrative proceeding pertaining to a COA disallowance is distinct and separate from a preliminary investigation in a criminal case which may have arisen from the same set of facts. Both proceedings may proceed independently of each another. Thus, Reyna and Soria declares:

On a final note, it bears to point out that a cursory reading of the Ombudsman's resolution will show that the complaint against petitioners was dismissed not because of a finding of good faith but because of a finding of lack of sufficient evidence. While the evidence presented before the Ombudsman may not have been sufficient to overcome the burden in criminal cases of proof beyond reasonable doubt, it does not, however, necessarily follow, that the administrative proceedings will suffer the same fate as only substantial evidence is required, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

An absolution from a criminal charge is not a bar to an administrative prosecution or vice versa. The criminal case filed before the Office of the Ombudsman is distinct and separate from the proceedings on the disallowance before the COA. So also, the dismissal by Margarito P. Gervacio, Jr., Deputy Ombudsman for Mindanao, of the criminal charges against petitioners does not necessarily foreclose the matter of their possible liability as warranted by the findings of the COA. (emphasis, italics and underscoring supplied)

Moreover, nothing in existing laws or rules expressly state that a disallowance by the COA is a pre-requisite for the filing of a criminal complaint for Plunder,[131] Malversation[132] or violation of Section 3 (e) of RA 3019. In fact, an audit disallowance is not even an element of any of these offenses.

Sevidal and Ordoñez's reference to Rule XIII, Section 6 of the 2009 COA Rules also fails to impress. This provision reads:

Referral to the Ombudsman. - The Auditor shall report to his Director all instances of failure or refusal to comply with the decisions or orders of the Commission contemplated in the preceding sections. The COA Director shall see to it that the report is supported by the sworn statement of the Auditor concerned, identifying among others, the persons liable and describing the participation of each. He shall then refer the matter to the

Legal Service Sector who shall refer the matter to the Office of the Ombudsman or other appropriate office for the possible filing of appropriate administrative or criminal action. (emphasis, italics and underscoring supplied)

Evidently, this immediately-quoted COA Rule pertains to the possible filing of administrative or criminal action in relation to audit disallowance. Note that the tenor of the provision is permissive, not mandatory. As such, an audit disallowance may not necessarily result in the imposition of disciplinary sanctions or criminal prosecution of the responsible persons. Conversely, therefore, an administrative or criminal case may prosper even without an audit disallowance. Verily, Rule XIII, Section 6 is consistent with the ruling in Reyna and Soria that a proceeding involving an audit disallowance is distinct and separate from a preliminary investigation or a disciplinary complaint.

AT ALL EVENTS, Rule XIII, Section 6 pertains to the COA's filing of administrative and/or criminal cases against the concerned parties. It has no bearing on any legal action taken by other agencies not subject of the 2009 COA Rules, such as the NBI or the FIO.

SUBSTANTIVE ISSUES

The diversion or misuse of the PDAF was coursed through a complex scheme involving participants from the legislator's office, the DBM, IAs and NGOs controlled by respondent Janet Napoles.

Based on the testimonial and documentary evidence presented, the widespread misuse of the subject PDAF allotted to a legislator was coursed through a complex scheme basically involving projects supposed to have been funded by said PDAF which turned out to be inexistent or "ghost" projects. The funds intended for the implementation of the PDAF-funded project are, with the imprimatur of the legislator, the IAs and NGOs, diverted to the possession and control of Napoles and her cohorts.

The Modus Operandi

Basically, the scheme commences when Napoles first meets with a legislator and offers to "acquire" his or her PDAF allocation in exchange for a "commission" or kickback amounting to a certain percentage of the PDAF.

Once an agreement is reached, Napoles would then advance to the legislator a down payment representing a portion of his or her kickback. The legislator would then request the Senate President or the House Speaker as the case may be for the immediate release of his or her PDAF. The Senate President or Speaker would then indorse the request to the DBM.[133] This initial letter-request to the DBM contains a program or list of IAs and the amount of PDAF to be released in order to guide the DBM in its preparation and release of the corresponding SARO.

The kickbacks, around 50% of the PDAF amount involved, are received by legislators personally or through their representatives, in the form of cash, fund transfer, manager's check or personal check issued by Napoles.[134]

After the DBM issues the SARO representing the legislator's PDAF allocation, the legislator would forward a copy of said issuance to Napoles. She, in turn, would remit the remaining portion of the kickback due the legislator.[135]

The legislator would then write another letter addressed to the IAs which would identify his or her preferred NGO to undertake the PDAF-funded project. However, the NGO chosen by the legislator would be one of those organized and controlled by Napoles. These NGOs were, in fact, specifically set up by Napoles for the purpose.[136]

Upon receipt of the SARO, Napoles would direct her staff, at the time material to the cases, including witnesses Luy, Sula and Suñas, to prepare the PDAF documents for the approval of the legislator. These documents reflect, among other things, the preferred NGO to implement the undertaking, the project proposals by the identified NGO/s, and indorsement letters to be signed by the legislator and/or his staff. Once signed by the legislator or his/her authorized staff, the PDAF documents are transmitted to the IA, which, in turn, handles the preparation of the MOA relating to the project to be executed by the legislator's office, the IA and the chosen NGO.

The projects are authorized as eligible under the DBM's menu for pork barrel allocations. Note that the NGO is directly selected by the legislator. No public bidding or negotiated procurement takes place, in violation of RA 9184 or the Government Procurement Reform Act.

Napoles, through her employees, would then follow up the release of the NCA with the DBM.[137]

After the DBM releases the NCA to the IA concerned, the IA would expedite the processing of the transaction and the release of the corresponding check representing the PDAF disbursement. Among those tasked by Napoles to pick up the checks and deposit them to bank accounts in the name of the NGO concerned were witnesses Luy and Suñas as well as respondents De Leon and De Asis.[138]

Once the funds are deposited in the NGO's account, Napoles would then call the bank to facilitate the withdrawal thereof. Her staff would then withdraw the funds and remit the same to her, thereby placing said amount under Napoles' full control and possession.[139]

To liquidate the disbursements, Napoles and her staff would then manufacture fictitious lists of beneficiaries, liquidation reports, inspection reports, project activity reports and similar documents that would make it appear that the PDAF-related project was implemented.

The PDAF allocation of Senator Enrile

Based on the records, the repeated diversions of the PDAF allocated to Senator Enrile during the period 2004 to 2010 were coursed via the above-described scheme.

In the case of Senator Enrile's PDAF, the NGOs affiliated and/or controlled by Napoles that undertook to implement the projects to be funded by the PDAF were MAMFI, POPDFI, PSDFI, AMFI, CARED, PASEDFI, SDPFFI, AEPPF and KPMFI.[140] These organizations transacted through persons known to be employees, associates or relatives of Napoles, including witnesses Luy, Sula and Suñas, as well as respondents Jo Napoles, James Napoles, De Leon, Pioranto, Lim, Ramirez, Cabilao, Ogerio, Fabian, Ditchon, Galay, Uy, Fernando, De Asis, Encarnacion, Palama, Ornopia, Castillo and Macha.

Napoles, through respondent Tuason, initially approached respondent Reyes regarding a "business proposition" relating to Senator Enrile's PDAF. Tuason, in her Counter-Affidavit, declared that Reyes, who had Senator Enrile's full trust and confidence, accepted Napoles' proposition:

6. Since I was close to then President Estrada, Janet Napoles wanted me to refer politicians to her so I approached my friend Atty. Jessica "Gigi" Reyes, who was the Chief-of-Staff of Senator Enrile.

7. When I told her about the business proposition of Janet Napoles, Atty. Gigi Reyes agreed to transact the PDAF of Senator Enrile with Janet Napoles. I believed that Atty. Gigi Reyes had the full authority to act for and on behalf of Senator Enrile with respect to his PDAF allocations x x x (emphasis, italics and underscoring supplied)

Once a PDAF allocation becomes available to Senator Enrile, his staff, either Reyes or Evangelista, would inform Tuason of this development. Tuason, in turn, would relay the information to either Napoles or Luy.[141]

Tuason, who admitted having acted as a liaison between Napoles and the office of Senator Enrile, confirmed that the modus operandi described by witnesses Luy, Sula and Suñas, indeed, applied to the disbursements drawn from Senator Enrile's PDAF. Tuason's verified statements corroborate the modus operandi in carrying out the transactions and described by witnesses Luy, Sula and Suñas in their respective affidavits in support of the complaints:

11. It starts with a call or advise from Atty. Gigi Reyes or Mr. Jose Antonio Evangelista (also from the Office of Senator Enrile) informing me that a budget from Senator Enrile's PDAF is available. I would then relay this information to Janet Napoles/Benhur Luy.

12. Janet Napoles/Benhur Luy would then prepare a listing of the projects available indicating the implementing agencies. This listing would be sent to Atty. Gigi Reyes who will endorse the same to the DBM under her authority as Chief-of-Staff of Senator Enrile.

13. After the listing is released by the Office of Senator Enrile to the DBM, Janet Napoles would give me a down payment for delivery for the share of Senator Enrile through Atty. Gigi Reyes.

14. After the SARO and/or NCA is released, Janet Napoles would give me the full payment for delivery to Senator Enrile through Atty. Gigi Reyes.

15. Sometimes Janet Napoles would have the money for Senator Enrile delivered to my house by her employees. At other times, I would get it from her condominium in Pacific Plaza or from Benhur Luy in Discovery Suites. When Benhur Luy gives me the money, he would make me scribble on some of their vouchers or even sign under the name "Andrea Reyes," Napoles' codename for me. This is the money that I would deliver to Senator Enrile through Atty. Gigi Reyes.

16. I don't count the money I receive for delivery to Senator Enrile. I just receive whatever was given to me. The money was all wrapped and ready for delivery when I get it from Janet Napoles or Benhur Luy. For purposes of recording the transactions, I rely on the accounting records of Benhur Luy for the PDAF of Senator Enrile, which indicates the date, description and amount of money I received for delivery to Senator Enrile.

x x x

18. As I have mentioned above, I personally received the share of Senator Enrile from Janet Napoles and Benhur Luy and I personally delivered it to Senator Enrile's Chief-of-Staff, Atty. Gigi Reyes. There were occasions when Senator Enrile (sic) would join us for a cup of coffee when he would pick her up. For me, his presence was a sign that whatever Atty. Gigi Reyes was doing was with Senator Enrile's blessing.

Aside from Tuason's statement, the following set of documentary evidence supports the modus operandi described by witnesses Luy, Sula and Suñas: (a) the business ledgers prepared by witness Luy, showing the amounts received by Senator Enrile, through Tuason and Reyes, as his "commission" from the so-called PDAF scam;^[142] (b) the 2007-2009 COA Report documenting the results of the special audit undertaken on PDAF disbursements - that there were serious irregularities relating to the implementation of PDAF-funded projects, including those endorsed by Senator Enrile;^[143] and (c) the reports on the independent field verification conducted in 2013 by the investigators of the FIO which secured sworn statements of local government officials and purported beneficiaries of the supposed projects which turned out to be inexistent.^[144]

A violation of Section 3 (e) of RA 3019 was committed.

Under Section 3(e) of RA 3019, a person becomes criminally liable if three (3) elements are satisfied, viz.:

- He or she must be a officer discharging administrative, judicial or official functions;

- He or she must have acted with manifest partiality, evident bad faith or inexcusable negligence; and
- His or her action: (a) caused any undue injury to any party, including the Government; or (b) gave any private party unwarranted benefits, advantage or preference in the discharge of his or her functions.[145]

The presence of the foregoing is evident from the records.

First, respondents Senator Enrile, Reyes, Evangelista, Javellana, Mendoza, Cacal, Guañizo, Ortiz, Cunanan, Jover, Munsod, Relevo, Mendoza, Amata, Buenaventura, Sevidal, Jalandoni, Guañizo, Ordoñez, Cruz, Espiritu, Relampagos, Nuñez, Paule, Bare and Lacsamana were all public officers at the time material to the charges. Their respective roles in the processing and release of PDAF disbursements were in the exercise of their administrative and/or official functions.

Senator Enrile himself indorsed, in writing, the Napoles-affiliated NGO to implement projects funded by his PDAF. His trusted authorized staff, respondents Reyes and Evangelista, then prepared indorsement letters and other communications relating to the PDAF disbursements addressed to the DBM and the IAs (NABCOR, TRC and NLDC). These trusted staff also participated in the preparation and execution of MOAs with the NGOs and the IAs, inspection and acceptance reports, disbursement reports and other PDAF documents.

The DBM, through respondents Relampagos, Nuñez, Paule and Bare, then processed with undue haste the SAROs and NCAs pertaining to Senator Enrile's PDAF projects.

In turn, the heads of the IAs, NABCOR, NLDC and TRC, as well as their respective staff participated in the preparation and execution of MOAs governing the implementation of the projects. They also facilitated, processed and approved the PDAF disbursements to the questionable NGOs. The table below indicates the participation of the IA officials/employees-respondents:

NABCOR

RESPONDENT

PARTICIPATION

Alan A. Javellana

Signatory to MOAs with CARED, POPDFI, MAMFI and SDPFFI; approved disbursement vouchers relating to PDAF disbursements; and co-signed the corresponding checks issued to the NGOs.

Rhodora B. Mendoza

Co-signatory to checks issued to the NGOs; and attended inspection of livelihood kits.

Victor Roman Cacal

Assisted in the preparation/review of memoranda of agreement with NGOs; and certified in disbursement vouchers that the PDAF releases were necessary, lawful and incurred under his direct supervision.

Encarnita Cristina P. Munsod

Certified in disbursement vouchers that the PDAF releases were necessary, lawful and incurred under her direct supervision.

Romulo M. Relevo

Certified in disbursement vouchers that the PDAF releases were necessary, lawful and incurred under his direct supervision.

Ma. Ninez P. Guañizo

Certified in disbursement vouchers that funds were available and supporting documents were complete and proper.

Ma. Julie V. Johnson

Certified in disbursement vouchers that funds were available and supporting documents were complete and proper.

NLDC

RESPONDENT

PARTICIPATION

Gondelina G. Amata

Signatory to MOAs with APMFI, CARED and MAMFI; approved disbursement vouchers relating to PDAF disbursements; and co-signed the corresponding checks issued to the NGOs.

Chita C. Jalandoni

Co-signed the corresponding checks issued to the NGOs.

Emmanuel Alexis G. Sevidal

Certified in disbursement vouchers that the PDAF releases were necessary, lawful and incurred under his direct supervision.

Ofelia E. Ordoñez

Certified in disbursement vouchers that funds were available.

Sofia D. Cruz

Certified in disbursement vouchers that supporting documents were complete and proper.

Gregoria Buenaventura

Checked and verified the endorsement letters of respondent Enrile; confirmed the authenticity of the authorization given by respondent Enrile to his subordinates regarding the monitoring, supervision and implementation of PDAF projects; and prepared evaluation and verification reports.

Filipina T. Rodriguez

Certified in disbursement vouchers that funds were available.

TRC

RESPONDENT

PARTICIPATION

Antonio Y. Ortiz

Signatory to MOAs with CARED and APMFI; approved disbursement vouchers relating to PDAF disbursements; and co-signed the corresponding checks issued to the NGOs.

Dennis L. Cunanan

Certified in disbursement vouchers that the PDAF releases were necessary, lawful and incurred under his direct supervision.

Francisco B. Figura

Assisted in the preparation/review of memoranda of agreement with NGOs; certified in disbursement vouchers that the PDAF releases were necessary, lawful and incurred under his direct supervision; and co-signed the corresponding checks issued to the NGOs.

Marivic Jover

Certified in disbursement vouchers that funds were available and supporting documents were complete and proper.

Ma. Rosalinda Lacsamana

Oversaw the processing of PDAF releases to NGOs; and assisted in the preparation/review of memoranda of agreement with NGOs.

Consuelo Lilian Espiritu

Certified in disbursement vouchers that funds were available.

On the other hand, private respondents in these cases acted in concert with their co-respondents.

From the accounts of witnesses Luy, Sula, Suñas and respondent Tuason, Napoles made a business proposal to Reyes regarding the Senator's PDAF. Senator Enrile later indorsed NGOs affiliated with/controlled by Napoles to implement his PDAF-funded projects. Respondents Jo Napoles, James Napoles, De Leon, Piorato, Lim, Ramirez, Cabilao, Ogerio, Fabian, Ditchon, Galay, Uy, Fernando, De Asis, Encarnacion, Palama, Ornopia, Castillo and Macha were all working for Napoles and served as officers of her NGOs which were selected and endorsed by Senator Enrile to implement his projects. They executed MOAs relative to these undertakings in behalf of the organizations and acknowledged receipt of the checks issued by NLDC, NABCOR and TRC representing the PDAF releases.

Second, Senator Enrile and respondent-public officers of the IAs were manifestly partial to Napoles, her staff and the affiliated NGOs she controlled.

Sison v. People[146] teaches that:

“Partiality” is synonymous with “bias,” which “excites a disposition to see and report matters as they are wished for rather than as they are.”

To be actionable under Section 3 (e) of the Anti-Graft and Corrupt Practices Act, partiality must be manifest. There must be a clear, notorious and plain inclination or predilection to favor one side rather than the other. Simply put, the public officer or employee's predisposition towards a particular person should be intentional and evident.

That Napoles and the NGOs affiliated with/controlled by her were extended undue favor is manifest.

Senator Enrile repeatedly and directly indorsed the NGOs headed or controlled by Napoles and her cohorts to implement his projects without the benefit of a public bidding.

As correctly pointed out by the FIO, the Implementing Rules and Regulations of RA 9184 states that an NGO may be contracted only when so authorized by an appropriation law or ordinance:

53.11. NGO Participation. When an appropriation law or ordinance earmarks an amount to be specifically contracted out to Non-governmental Organizations (NGOs), the procuring entity may enter into a Memorandum of Agreement in the NGO, subject to guidelines to be issued by the GPPB.

National Budget Circular (NBC) No. 476,[147] as amended by NBC No. 479, provides that PDAF allocations should be directly released only to those government agencies identified in the project menu of the pertinent General Appropriations Act (GAAs). The GAAs in effect at the time material to the charges, however, did not authorize the direct release of funds to NGOs, let alone the direct contracting of NGOs to implement government projects. This, however, did not appear to have impeded Senator Enrile's direct selection of the Napoles-affiliated or controlled NGOs, and which choice was accepted in toto by the IAs.

Even assuming arguendo that the GAAs allowed the engagement of NGOs to implement PDAF-funded projects, such engagements remain subject to public bidding requirements. Consider GPPB Resolution No. 012-2007:

4.1 When an appropriation law or ordinance specifically earmarks an amount for projects to be specifically contracted out to NGOs, the procuring entity may select an NGO through competitive bidding or negotiated procurement under Section 53.11 of the IRR. (emphasis, italics and underscoring supplied)

The aforementioned laws and rules, however, were disregarded by public respondents, Senator Enrile having just chosen the Napoles-founded NGOs. Such blatant disregard of public bidding requirements is highly suspect, especially in light of the ruling in *Alvarez v. People*:^[148]

The essence of competition in public bidding is that the bidders are placed on equal footing. In the award of government contracts, the law requires a competitive public bidding. This is reasonable because "[a] competitive public bidding aims to protect the public interest by giving the public the best possible advantages thru open competition." It is a mechanism that enables the government agency to avoid or preclude anomalies in the execution of public contracts. (underlining supplied)

Notatu dignum is the extraordinary speed attendant to the examination, processing and approval by the concerned NABCOR, NLDC and TRC officers of the PDAF releases to the Napoles-affiliated or controlled NGOs. In most instances, the DVs were accomplished, signed and approved on the same day. Certainly, the required careful examination of the transactions' supporting documents could not have taken place if the DV was processed and approved in one day.

Javellana, Mendoza and Cunanan of the TRC were categorically identified by their subordinates co-respondents as those who consistently pressed for the immediate processing of PDAF releases.

Cacal pointed to Javellana and Mendoza as having pressured him to expedite the processing of the DVs:

15. In most instances, Boxes "B" and "C" were already signed wherein the herein Respondent was required to sign (sic) Box "A" of the Disbursement Vouchers. Most of the times the Box "B" and/or Box "C" of the Disbursement Vouchers were already signed ahead by Niñez Guanizo and/or Rhodora B. Mendoza and ALAN A. JAVELLANA respectively.

16. In other instances, the checks for PDAF releases were already prepared and signed by NABCOR President ALAN A. JAVELLANA and VP for Finance RHODORA B. MENDOZA attached to the Disbursement Voucher before the herein Respondent were made signs Box "A" of the said Disbursement Vouchers. This is indicative of the target⁵ (sic) Municipalities and immediately stern instructions of herein Respondent's superiors to sign the Disbursement Voucher immediately for reasons that it is being followed up by the concerned NGO. Furthermore, the herein Respondent relied on the duly executed Memorandum of Agreement by and between NABCOR, NGO and the Office of the Legislator. According to the said MOA, initial release of funds will be undertaken by NABCOR upon signing thereof. Hence, payment and/or release of fund to the

NGO became a lawful obligation of NABCOR.

x x x

18. On many instances, sternly ordered [sic] the NABCOR VP for Admin. and Finance RHODORA B. MENDOZA to herein Respondent to immediately sign Box “A” of the Disbursement Voucher even if the NGOs have not yet complied with the other documentary requirements to be attached to the said Disbursement Voucher on the basis on [sic] the commitment of the NGO to submit the other required documents (emphasis, italics and underscoring supplied)

In his Counter-Affidavit, respondent Figura claimed that:

x x x

b) In the course of my review of PDAF documents, DDG Dennis L. Cunanan would frequently personally follow up in my office the review of the MOA or my signature on the checks. He would come down to my office in the third floor and tell me that he had a dinner meeting with the First Gentleman and some legislators so much that he requested me to fast track processing of the PDAF papers. Though I hate name-dropping, I did not show any disrespect to him but instead told him that if the papers are in order, I would release them before the end of working hours of the same day. This was done by DDG many times, but I stood my ground when the papers on PDAF he’s following up had deficiencies (emphasis, italics and underscoring supplied)

Worth noting too is the extraordinary speed Relampagos and his co-respondents from the DBM processed the documents required for the release of the PDAF as witnesses Luy and Suñas positively attest to, viz: the DBM’s expedited processing of the requisite SAROs and NCAs was made possible through the assistance provided by Nuñez, Paule and Bare. Relampagos being their immediate superior, they could not have been unaware of the follow-ups made by Napoles’ staff with regard to the SARO and NCA.

The concerned officials of NABCOR, NLDC and TRC did not even bother to conduct a due diligence audit on the selected NGOs and the suppliers chosen by the NGO to provide the livelihood kits, which supply thereof was, it bears reiteration, carried out without the benefit of public bidding, in contravention of existing procurement laws and regulations.

In addition to the presence of manifest partiality on the part of respondent public officers, evident bad faith is present.

Evident bad faith connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. It contemplates a state of mind affirmatively operating with furtive design or with some motive of self- interest or ill will or for ulterior purposes.[149]

That several respondent public officers unduly benefited from the diversion of the PDAF is borne by the records.

As earlier mentioned, Tuason claimed that she regularly remitted significant portions (around 50%) of the diverted sums to Reyes, which portions represented Senator Enrile’s “share” or “commission” in the scheme, thus:

14. After the SARO and/or NCA is released, Janet Napoles would give me the full payment for delivery to Senator Enrile through Atty. Gigi Reyes.

x x x

16. I don’t count the money I receive for delivery to Senator Enrile. I just receive whatever was given to me. The money was all wrapped and ready for delivery when I get it from Janet Napoles or Benhur Luy. For

purposes of recording the transactions, I rely on the accounting records of Benhur Luy for the PDAF of Senator Enrile, which indicates the date, description and amount of money I received for delivery to Senator Enrile. (underlining supplied)

Notably, Tuason admits having received a 5% commission for acting as liaison between Napoles and respondents Enrile and Reyes.

Aside from Enrile and Reyes, respondents Javellana, Cunanan, Ortiz and Sevidal were identified by witness Luy as among those who received portions of the diverted amounts:[150]

126.

T: May nabanggit ka na may 10% na napupunta sa president o head ng agency, sino itong tinutokoy mo?

S: Ang alam ko nakita kong tumanggap ay sila ALLAN JAVELLANA ng NABCOR, DENNIS CUNANAN at ANTONIO Y. ORTIZ ng TRC. Nasabi din sa akin ni EVELYN DE LEON na may inaabot din kina GIGI BUENAVENTURA at ALEXIS SEVIDAL ng NLDC. (emphasis, italics and underscoring supplied)

Witness Sula, in her Affidavit dated 12 September 2013,[151] also identified Amata as among those who benefited from the PDAF disbursements:

k) Ms. GONDELINA AMATA (NLDC) – Nakilala ko siya noong may sakit ang kanyang asawa na nagpapagamot sa NKTi Hospital. Silang mag-asawa ay nagpunta din sa office sa 2502 Discovery Center, Ortigas. Ako rin ang nagdala ng pera para sa pambayad ng gamot. May tatlong (3) beses ko po silang dinalhan ng pera sa hospital. (underlining supplied)

Indubitably, repeatedly receiving portions of sums of money wrongfully diverted from public coffers constitutes evident bad faith.

Third, the assailed PDAF-related transactions caused undue injury to the Government in the amount of Php345,000,000.00.

Based on the 2007-2009 COA Report as well as the independent field verifications conducted by the FIO, the projects supposedly funded by Senator Enrile's PDAF were "ghost" or inexistent. There were no livelihood kits distributed to beneficiaries. Witnesses Luy, Sula and Suñas declared that, per directive given by Napoles, they made up lists of fictitious beneficiaries to make it appear that the projects were implemented, albeit none took place.

Instead of using the PDAF disbursements received by them to implement the livelihood projects, respondents Jo Napoles, James Napoles, De Leon, Piorato, Lim, Ramirez, Cabilao, Ogerio, Fabian, Ditchon, Galay, Uy, Fernando, De Asis, Encarnacion, Palama, Ornopia, Castillo and Macha, as well as witnesses Luy, Sula and Suñas, all acting for Napoles, continuously diverted these sums amounting to Php345,000,000.00 to Napoles' control.

Certainly, these repeated, illegal transfers of public funds to Napoles' control, purportedly for projects which did not, however, exist, and just as repeated irregular disbursements thereof, represent quantifiable, pecuniary losses to the Government constituting undue injury within the context of Section 3(e) of RA 3019.[152]

Fourth, respondents Enrile, Reyes, Evangelista, Javellana, Mendoza, Cacal, Guañizo, Ortiz, Cunanan, Jover, Munsod, Relovo, Mendoza, Amata, Buenaventura, Sevidal, Jalandoni, Guañizo, Ordoñez, Cruz, Espiritu, Relampagos, Nuñez, Paule, Bare and Lacsamana, granted respondents Janet Napoles, Jo Napoles, James Napoles, De Leon, Piorato, Lim, Ramirez, Cabilao, Ogerio, Fabian, Ditchon, Galay, Uy, Fernando, De Asis, Encarnacion, Palama, Ornopia, Castillo and Macha unwarranted benefits.

Jurisprudence teaches that unwarranted benefits or privileges refer to those accommodations, gains or perquisites that are granted to private parties without proper authorization or reasonable justification.[153]

In order to be found liable under the second mode of violating Section 3(e) of RA 3019, it suffices that the offender has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions.[154] Respondents Senator Enrile, Reyes, Evangelista, Javellana, Mendoza, Cacal, Guañizo, Ortiz, Cunanan, Jover, Munsod, Relevo, Mendoza, Amata, Buenaventura, Sevidal, Jalandoni, Guañizo, Ordoñez, Cruz, Espiritu, Relampagos, Nuñez, Paule, Bare and Lacsamana, did just that. That they repeatedly failed to observe the requirements of RA 9184, its implementing rules and regulations, GPPB regulations as well as national budget circulars, shows that unwarranted benefit, advantage or preference was given to private respondents. The NGOs represented by them were chosen to undertake the implementation of PDAF projects without the benefit of a fair system in determining the best possible offer for the Government. Napoles, who controlled the NGOs personally chosen by Senator Enrile, was able to unduly profit from the fictitious transactions.

Moreover, the NGOs selected by Senator Enrile did not appear to have the capacity to implement the undertakings to begin with. At the time material to the charges, these entities did not possess the required accreditation to transact with the Government, let alone possess a track record in project implementation to speak of.

In spite of the aforesaid irregularities, respondents Javellana, Mendoza, Cacal, Guañizo, Ortiz, Cunanan, Jover, Munsod, Relevo, Mendoza, Amata, Buenaventura, Rodriguez, Sevidal, Jalandoni, Guañizo, Ordoñez, Cruz, Espiritu, Relampagos, Nuñez, Paule, Bare and Lacsamana, with indecent haste, processed the SAROs and NCAs needed to facilitate the release of the funds, as well as expedited the release of the PDAF disbursements to the NGOs affiliated with or controlled by Napoles. These efforts to accommodate her NGOs and allow her to repeatedly receive unwarranted benefits from the inexistent projects are too obvious to be glossed over.

ALL TOLD, there is probable cause to indict the following respondents named in the table below, for 15 counts of violation of Section 3 (e) of RA 3019, the material details of which are indicated also in the table:

IMPLEMENTING AGENCY/NGOs

DISBURSEMENT VOUCHERS NO.

TOTAL AMOUNT

RESPONDENTS

TRC-CARED

01-2007-040669, 01-2007-040670, 01-2007-040671, 01-2007-040672

20,000,000

Enrile, Reyes, Evangelista, Tuason, Relampagos, Nuñez, Paule, Bare, Ortiz, Cunanan, Figura, Lacsamana, Espiritu, Jover, Janet Napoles, Jo Napoles, James Napoles, Eulogio Rodriguez, De Leon, Lim, Ramirez, Cabilao, Fernando, Palama, De Asis and Encarnacion.

TRC-APMFI

01-2009-040929, 01-2009-051300

22,500,000

Enrile, Reyes, Evangelista, Tuason, Relampagos, Nuñez, Paule, Bare, Ortiz, Cunanan, Figura, Lacsamana, Espiritu, Jover, Janet Napoles, Jo Napoles, James Napoles, Eulogio Rodriguez, De Leon, Lim, Ramirez,

Cabilao, Pioranto, Fabian, Ditchon, Galay and Uy.

NABCOR-POPFI

08-04-01201, 08-07-02312

24,250,000

Enrile, Reyes, Evangelista, Tuason, Relampagos, Nuñez, Paule, Bare, Javellana, Mendoza, Munsod, Relevo, Johnson, Janet Napoles, Jo Napoles, James Napoles, Eulogio Rodriguez, De Leon, Lim, Ramirez and Cabilao.

NABCOR-MAMFI

08-09-3575, 09-04-1622

19,400,000

Enrile, Reyes, Evangelista, Tuason, Relampagos, Nuñez, Paule, Bare, Javellana, Mendoza, Cacal, Guañizo, Janet Napoles, Jo Napoles, James Napoles, Eulogio Rodriguez, De Leon, Lim, Ramirez, Cabilao and Ornopia.

NABCOR-SDPFFI

08-09-3572, 09-05-1751

29,100,000

Enrile, Reyes, Evangelista, Tuason, Relampagos, Nuñez, Paule, Bare, Javellana, Mendoza, Cacal, Guañizo, Janet Napoles, Jo Napoles, James Napoles, Eulogio Rodriguez, De Leon, Lim, Ramirez, Cabilao and Macha.

NABCOR-MAMFI

09-05-1773, 09-06-2025

24,250,000

Enrile, Reyes, Evangelista, Tuason, Relampagos, Nuñez, Paule, Bare, Javellana, Mendoza, Cacal, Guañizo, Janet Napoles, Jo Napoles, James Napoles, Eulogio Rodriguez, De Leon, Lim, Ramirez, Cabilao and Ornopia.

NABCOR-SDPFFI

09-05-1774, 09-06-2022

24,250,000

Enrile, Reyes, Evangelista, Tuason, Relampagos, Nuñez, Paule, Bare, Javellana, Mendoza, Cacal, Guañizo, Janet Napoles, Jo Napoles, James Napoles, Eulogio Rodriguez, De Leon, Lim, Ramirez, Cabilao and Macha.

NABCOR-MAMFI

09-05-1767, 09-06-2028

14,550,000

Enrile, Reyes, Evangelista, Tuason, Relampagos, Nuñez, Paule, Bare, Javellana, Mendoza, Cacal, Guañizo, Janet Napoles, Jo Napoles, James Napoles, Eulogio Rodriguez, De Leon, Lim, Ramirez, Cabilao and Ornopia.

NABCOR-SDPFFI

09-06-1825, 09-06-2027

9,700,000

Enrile, Reyes, Evangelista, Tuason, Relampagos, Nuñez, Paule, Bare, Javellana, Mendoza, Cacal, Guañizo, Janet Napoles, Jo Napoles, James Napoles, Eulogio Rodriguez, De Leon, Lim, Ramirez, Cabilao and Macha.

NLDC-CARED

09-10-1530

8,000,000

Enrile, Reyes, Evangelista, Tuason, Relampagos, Nuñez, Paule, Bare, Amata, Sevidal, Ordoñez, Filipina Rodriguez, Cruz, Jalandoni, Janet Napoles, Jo Napoles, James Napoles, Eulogio Rodriguez, De Leon, Lim, Ramirez, Cabilao, Fernando, Palama, De Asis and Encarnacion.

NLDC-MAMFI

09-09-1355, 09-10-1443, 09-10-1534

20,000,000

Enrile, Reyes, Evangelista, Tuason, Relampagos, Nuñez, Paule, Bare, Amata, Sevidal, Ordoñez, Filipina Rodriguez, Cruz, Jalandoni, Janet Napoles, Jo Napoles, James Napoles, Eulogio Rodriguez, De Leon, Lim, Ramirez, Cabilao and Ornopia.

NLDC-CARED

09-12-1834, 10-01-0004, 10-01-0118, 10-05-0747

44,000,000

Enrile, Reyes, Evangelista, Tuason, Relampagos, Nuñez, Paule, Bare, Amata, Sevidal, Ordoñez, Filipina Rodriguez, Cruz, Jalandoni, Janet Napoles, Jo Napoles, James Napoles, Eulogio Rodriguez, De Leon, Lim, Ramirez, Cabilao, Fernando, Palama, De Asis and Encarnacion.

NLDC-AEPFFI

09-091353, 09-10-1444, 09-10-1540

25,000,000

Enrile, Reyes, Evangelista, Tuason, Relampagos, Nuñez, Paule, Bare, Amata, Sevidal, Ordoñez, Filipina Rodriguez, Cruz, Jalandoni, Janet Napoles, Jo Napoles, James Napoles, Eulogio Rodriguez, De Leon, Lim, Ramirez, Cabilao, Ogerio and Guadinez.

NLDC-APMFI

09-09-1358, 09-10-1449, 09-10-1535

25,000,000

Enrile, Reyes, Evangelista, Tuason, Relampagos, Nuñez, Paule, Bare, Amata, Sevidal, Ordoñez, Filipina Rodriguez, Cruz, Jalandoni, Janet Napoles, Jo Napoles, James Napoles, Eulogio Rodriguez, De Leon, Lim, Ramirez, Cabilao, Pioranto, Fabian, Ditchon, Galay and Uy.

NLDC-CARED

09-09-1354, 09-10-1447

32,000,000

Enrile, Reyes, Evangelista, Tuason, Relampagos, Nuñez, Paule, Bare, Amata, Sevidal, Ordoñez, Filipina Rodriguez, Cruz, Jalandoni, Janet Napoles, Jo Napoles, James Napoles, Eulogio Rodriguez, De Leon, Lim, Ramirez, Cabilao, Fernando, Palama, De Asis and Encarnacion.

Probable cause for Plunder exists.

Plunder is defined and penalized under Section 2 of RA No. 7080,[155] as amended:

Sec. 2. Definition of the Crime of Plunder; Penalties. - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d)[156] hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.

As laid down in *Joseph Ejercito Estrada vs. Sandiganbayan*,[157] the elements of Plunder are:

- That the offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons;

- That he amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts:

- (a) through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

- (b) by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer;

- (c) by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of Government owned or controlled corporations or their subsidiaries;

- (d) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

- (e) by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

- (f) by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and,

- That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least P50,000,000.00.[158] (emphasis supplied)

The presence of the foregoing elements has been sufficiently established.

First, it is undisputed that Senator Enrile was a public officer at the time material to the charges.[159]

Second, he amassed, accumulated or acquired ill- gotten wealth.

As disclosed by the evidence, he repeatedly received sums of money from Napoles for indorsing her NGOs[160] to implement the projects to be funded by his PDAF. Senator Enrile, through his authorized representative Reyes, agreed to transact his PDAF with Napoles who acted through Tuason.[161]

As outlined by witnesses Luy, Sula and Suñas, which was corroborated by Tuason: once a PDAF allocation becomes available to Senator Enrile, his staff, in the person of either respondent Reyes or Evangelista, would inform Tuason of this development. Tuason, in turn, would relay the information to either Napoles or Luy. Napoles or Luy would then prepare a listing[162] of the projects available where Luy would specifically indicate the implementing agencies. This listing would be sent to Reyes who would then endorse it to the DBM under her authority as Chief-of-Staff of Senator Enrile. After the listing is released by the Office of Senator Enrile to the DBM, Janet Napoles would give Tuason a down payment for delivery to Senator Enrile through Reyes. After the SARO and/or NCA is released, Napoles would give Tuason the full payment for delivery to Senator Enrile through Atty. Gigi Reyes.

It bears noting that money was paid and delivered to Senator Enrile even before the SARO and/or NCA is released. Napoles would advance Senator Enrile's down payment from her own pockets upon the mere release by his Office of the listing of projects to the DBM, with the remainder of the amount payable to be given after the SARO representing the legislator's PDAF allocation was released by the DBM and a copy of the SARO forwarded to Napoles.

Significantly, after the DBM issues the SARO, Senator Enrile, through his staff members Reyes or Evangelista, would then write another letter addressed to the IAs which would identify and indorse Napoles' NGOs as his preferred NGO to undertake the PDAF-funded project,[163] thereby effectively designating in writing the Napoles-affiliated NGO to implement projects funded by his PDAF. Along with the other PDAF documents, the indorsement letter of Senator Enrile is transmitted to the IA, which, in turn, handles the preparation of the MOA concerning the project, to be entered into by the Senator's Office, the IA and the chosen NGO.

As previously discussed, such indorsements enabled Napoles to gain access[164] to substantial sums of public funds. The collective acts of Senator Enrile, Napoles, et al. allowed the illegal diversion of public funds to their own personal use.

It cannot be gainsaid that the sums of money received by Senator Enrile amount to "kickbacks" or "commissions" from a government project within the purview of Sec. 1 (d) (2)[165] of RA 7080. He repeatedly received commissions, percentage or kickbacks, representing his share in the project cost allocated from his PDAF, from Napoles or her employees or cohorts in exchange for his indorsement of Napoles's NGOs to implement his PDAF-funded projects.

Worse, the evidence indicates that he took undue advantage of his official position, authority and influence to unjustly enrich himself at the expense, and to the damage and prejudice of the Filipino people and the Republic of the Philippines, within the purview of Sec. 1 (d) (6) of RA 7080.[166] He used and took undue advantage of his official position, authority and influence as a Senator of the Republic of the Philippines to access his PDAF and illegally divert the allocations to the possession and control of Napoles and her cohorts, in exchange for commissions, kickbacks, percentages from the PDAF allocations.

Undue pressure and influence from Senator Enrile's Office, as well as his indorsement of Napoles' NGOs, were brought to bear upon the public officers and employees of the IAs.

Figura, an officer from TRC, claimed that the TRC management told him: “legislators highly recommended certain NGOs/Foundations as conduit implementors and since PDAFs are their discretionary funds, they have the prerogative to choose their NGO’s”; and the TRC management warned him that “if TRC would disregard it (choice of NGO), they (legislators) would feel insulted and would simply take away their PDAF from TRC, and TRC losses (sic) the chance to earn service fees.” Figura claimed that he tried his best to resist the pressure exerted on him and did his best to perform his duties faithfully; [but] he and other low-ranking TRC officials had no power to “simply disregard the wishes of Senator Enrile,” especially on the matter of disregarding public bidding for the PDAF projects.[167]

Cunanan,[168] another public officer from the TRC, narrates that he met Napoles sometime in 2006 or 2007, who “introduced herself as the representative of certain legislators who supposedly picked TRC as a conduit for PDAF-funded projects;” at the same occasion, Napoles told him that “her principals were then Senate President Juan Ponce Enrile, Senators Ramon “Bong” Revilla, Jr., Sen. Jinggoy Ejercito Estrada;” in the course of his duties, he “often ended up taking and/or making telephone verifications and follow-ups and receiving legislators or their staff members;” during his telephone verifications, he was able to speak with Reyes, who was acting in behalf of her superior, public respondent Enrile; Reyes confirmed to him that she and public respondent Evangelista “were duly authorized by respondent Enrile” to facilitate his PDAF projects and she also affirmed to him that the signatures appearing in communications sent to TRC were, indeed, hers and Evangelista’s; and he occasionally met with witness Luy, who pressured him into expediting the release of the funds by calling the offices of the legislators.

NLDC’s Amata also mentioned about undue pressure surrounding the designation of NLDC as one of the IAs for PDAF.[169] Her fellow NLDC employee, Buenaventura[170] adds that in accordance with her functions, she “checked and verified the endorsement letters of Senator Enrile, which designated the NGOs that would implement his PDAF projects and found them to be valid and authentic;” she confirmed the authenticity of the authorization given by Enrile to his subordinates regarding the monitoring, supervision and implementation of PDAF projects; and her evaluation and verification reports were accurate.

Another NLDC officer, Sevidal,[171] claimed that Senator Enrile and Napoles, not NLDC employees, who were responsible for the misuse of the PDAF; Senator Enrile, through Reyes and Evangelista, were responsible for “identifying the projects, determining the project costs and choosing the NGOs” which were “manifested in the letters of Senator Enrile;” and that he and other NLDC employees were victims of the “political climate,” “bullied into submission by the lawmakers.”

NLDC’s Ordoñez[172] claimed that as far as she was concerned, she and her co-respondents, “lowly Government employees who were dictated upon,” were victims, “bullied into submission by the lawmakers;” and she performed her duties in good faith and was “not in a position to negate or defy these actions of the Lawmakers, DBM and the NLDC Board of Trustees.”

The corroborative evidence evinces that Senator Enrile used and took undue advantage of his official position, authority and influence as a Senator to unjustly enrich himself at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

The PDAF was allocated to Senator Enrile by virtue of his position, hence, he exercised control in the selection of his priority projects and programs. He indorsed Napoles’ NGOs in consideration for the remittance of kickbacks and commissions from Napoles. These circumstances were compounded by the fact that the PDAF-funded projects were “ghost projects” and that the rest of the PDAF allocation went into the pockets of Napoles and her cohorts. Undeniably, Senator Enrile unjustly enriched himself at the expense, and to the damage and prejudice of

the Filipino people and the Republic of the Philippines.

Third, the amounts received by Senator Enrile through kickbacks and commissions, amounted to more than Fifty Million Pesos (P50,000,000.00).

Witness Luy's ledger[173] shows, among others, that Senator Enrile received the following amounts as and by way of kickbacks and commissions:

Year

Sums received by Senator Enrile

2004

PhP 1,500,000.00

2005

PhP 14,622,000.00

2006

PhP 13,300,000.00

2007

PhP 27,112,500.00

2008

PhP 62,550,000.00

2009

PhP 23,750,000.00

2010

PhP 30,000,00.00

Total:

Php 172,834,500.00

The aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired by Senator Enrile stands at PhP172,834,500.00, at the very least.[174]

The sums were received by the Senator through his Chief of Staff, Reyes, as earlier discussed.

Napoles provided these kickbacks and commissions. Witnesses Luy and Suñas, and even Tuason, stated that Napoles was assisted in delivering the kickbacks and commissions by her employees and cohorts, namely: John Raymund de Asis,[175] Ronald John Lim[176] and Tuason.

Senator Enrile's commission of the acts covered by Section 1 (d) (2) and Section 1 (d) (6) of R.A. No. 7080 repeatedly took place over the years 2004 to 2010. This shows a pattern – a combination or series of overt or criminal acts – directed towards a common purpose or goal which is to enable the Senator to enrich himself illegally.

Senator Enrile, taking undue advantage of official position, authority, relationship, connection or influence as a

Senator acted, in connivance with his subordinate and duly authorized representative Reyes, to receive commissions and kickbacks for indorsing the Napoles NGOs to implement his PDAF-funded project, and likewise, in connivance with Napoles assisted by her employees and cohorts Tuason, John Raymund de Asis, and Ronald John Lim who delivered the kickbacks to him. These acts are linked by the fact that they were plainly geared towards a common goal which was to amass, acquire and accumulate ill-gotten wealth amounting to at least PhP172,834,500.00 for Senator Enrile.

Probable cause therefore exists to indict Senator Enrile, Reyes, Napoles, Tuason, de Asis and Lim for Plunder under RA No. 7080.

Conspiracy is established by the evidence presented.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[177]

Direct proof of conspiracy is rarely found because criminals do not write down their lawless plans and plots. Nevertheless, the agreement to commit a crime may be deduced from the mode and manner of the commission of the offense, or inferred from acts that point to a joint purpose and design, concerted action and community of interest.[178] Conspiracy exists among the offenders when their concerted acts show the same purpose or common design, and are united in its execution.[179]

When there is conspiracy, all those who participated in the commission of the offense are liable as principals, regardless of the extent and character of their participation because the act of one is the act of all.[180]

As extensively discussed above, the presence of conspiracy among respondents Enrile, Reyes, Evangelista, Javellana, Mendoza, Cacal, Guañizo, Ortiz, Cunanan, Jover, Munsod, Relevo, Mendoza, Amata, Buenaventura, Rodriguez, Sevidal, Jalandoni, Guañizo, Ordoñez, Cruz, Espiritu, Relampagos, Nuñez, Paule, Bare, Lacsamana, Tuason, Janet Napoles, Jo Napoles, James Napoles, De Leon, Pioranto, Lim, Ramirez, Cabilao, Ogerio, Fabian, Ditchon, Galay, Uy, Fernando, De Asis, Encarnacion, Palama, Ornopia, Castillo and Macha is manifest.

To be able to repeatedly divert substantial funds from the PDAF, access thereto must be made available, and this was made possible by Senator Enrile who indorsed NGOs affiliated with or controlled by Napoles to implement his PDAF-related undertakings. Reyes and Evangelista prepared the requisite indorsement letters and similar documentation addressed to the DBM and the IAs which were necessary to ensure that the chosen NGO would be awarded the project.

Relampagos, Paule, Bare and Nuñez, as officers of the DBM, were in regular contact with Napoles and her staff who persistently followed up the release of the coveted SAROs and NCAs. It was on account of their persistence that the DBM immediately released the SAROs and NCAs to the concerned IAs. In turn, Javellana, Mendoza, Cacal, Guañizo, Ortiz, Cunanan, Jover, Munsod, Relevo, Mendoza, Amata, Buenaventura, Sevidal, Jalandoni, Guañizo, Ordoñez, Cruz, Espiritu and Lacsamana, as officers of the IAs, prepared, reviewed and entered into the MOAs governing the implementation of the projects. And they participated in the processing and approval of the PDAF disbursements to the questionable NGOs. The funds in question could not have been transferred to these NGOs if not for their certifications, approvals, and signatures found in the corresponding DVs and checks.

Once the fund releases were successfully processed by the IAs, Jo Napoles, James Napoles, De Leon, Pioranto, Lim, Ramirez, Cabilao, Ogerio, Fabian, Ditchon, Galay, Uy, Fernando, De Asis, Encarnacion, Palama, Ornopia, Castillo and Macha, in behalf of the NGOs in question and under the direction of Janet Napoles, would pick up the corresponding checks and deposit them in accounts under the name of the NGOs. The proceeds of the checks would later be withdrawn from the banks and brought to the offices of Janet Napoles, who would then proceed to

exercise full control and possession over the funds.

Jo Napoles, James Napoles, De Leon, Pioranto, Lim, Ramirez, Cabilao, Ogerio, Fabian, Ditchon, Galay, Uy, Fernando, De Asis, Encarnacion, Palama, Ornopia, Castillo and Macha, again on orders of Janet Napoles, would prepare the fictitious beneficiaries list and other similar documents for liquidation purposes, to make it appear that the projects were implemented.

For their participation in the above-described scheme, Senator Enrile, Javellana, Cunanan, Amata, Buenaventura and Sevidal were rewarded with portions of the PDAF disbursements from Napoles. Senator Enrile's share or commission was coursed by Napoles through Tuason who, in turn, delivered the same to and received by Reyes.

ALL TOLD, there is a cohesion and interconnection in the above-named respondents' intent and purpose that cannot be logically interpreted other than to mean the attainment of the same end that runs through the entire gamut of acts they perpetrated separately. The role played by each of them was so indispensable to the success of their scheme that, without any of them, the same would have failed.

There is no evidence showing that the signatures of respondents Enrile, Reyes or Evangelista in the PDAF documents were forged.

Reyes and Evangelista argue that the signatures appearing in the letters, MOAs, liquidation reports and similar PDAF documents attributed to them and Senator Enrile are mere forgeries. They deny having signed these documents and disclaim any participation in the preparation and execution thereof.

In support of her claim, Reyes submitted an Affidavit dated 6 December 2013 executed by Rogelio G. Azores (Azores), who claims to be a former NBI document examiner and now works as a freelance consultant, and who represents himself to be an expert in the examination of documents "to determine their authenticity and the genuineness of signatures appearing thereon."

Azores stated that his services were engaged by Reyes to "determine whether or not the signatures of Ms. Reyes appearing in certain documents were her true and genuine signatures;" in the course of his engagement, he gathered samples of Reyes' signatures appearing in several documents she signed during her tenure as Enrile's chief-of-staff; he compared these sample signatures with the signatures appearing in the PDAF documents which are attributed to Reyes; based on his examination, there were "significant differences in habit handwriting characteristics existing between the questioned signatures of 'Atty. Jessica Lucila G. Reyes' on one hand, and the standard signatures of Atty. Jessica Lucila G. Reyes on the other hand;" and in his opinion, the signatures allegedly belonging to Reyes and appearing in the PDAF documents are forgeries.

Respondents Reyes and Evangelista's claim fails to convince.

Forgery is not presumed; it must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery.[181]

It bears stressing that Senator Enrile, in his Letter dated 21 March 2012,[182] confirmed to the COA that: (a) he authorized respondents Reyes and Evangelista to sign letters, MOAs and other PDAF documents in his behalf; and (b) the signatures appearing in the PDAF documents as belonging to respondents Reyes and Evangelista are authentic. The pertinent portion of the Senator's letter reads:

I confirm that Atty. Jessica L. G. Reyes, Chief of Staff, Office of the Senate President, and Mr. Jose A. V. Evangelista II, Deputy Chief of Staff, Office of the Senate President, have been authorized to sign pertinent documents to ensure the proper implementation of such livelihood projects subjects to pertinent government accounting and auditing laws, rules and regulations. The signatures appearing in the documents enumerated are

those of my authorized representatives. (emphasis, italics and underscoring supplied)

It bears noting at this juncture that the Senator has not disclaimed authorship of the 21 March 2012 letter. That the Senator readily authenticated Reyes and Evangelista's signatures is not difficult to understand, the two having been members of his confidential staff for many years.

Nonetheless, Reyes and Evangelista strongly deny having signed the PDAF documents and insist that they did not participate in the preparation or execution thereof. Mere denial is insufficient, however, to disprove the authenticity of their signatures appearing in the PDAF documents.[183] This holds true especially in Evangelista's case. The MOAs bearing his questioned signatures are notarized documents that enjoy the presumption of regularity and can be overturned only by clear and convincing evidence.[184]

Besides, respondent Evangelista, in his Letter dated 2 August 2012[185] to the COA, admitted the authenticity of his signatures appearing in the PDAF documents, save for those found in documents relating to PDAF disbursements of another legislator. His letter reads, in part:

As confirmed in the letter of the Senate President dated 21 March 2012, Atty. Jessica L. G. Reyes, Chief of Staff, Office of the Senate President, and I have been authorized to sign pertinent documents to ensure the proper implementation of livelihood projects subject to pertinent government accounting and auditing laws, rules and regulations.

However, please be informed that the subject signatures on the following documents submitted regarding the livelihood projects implemented by the 3rd District of Davao City (in the total amount of P15 Million Pesos released to the National Agribusiness Corporation on 9 July 2009 as requested by former Rep. Ruy Elias Lopez) are not my signatures:

- a) Certificate of Acceptance dated 4 May 2010 (Annex 16)
- b) List of Beneficiaries by Barangay (Annex 17) (emphasis, italics and underscoring supplied)

Regarding affiant Azores' assertion that the signatures of Reyes in the PDAF documents were forgeries because they and Reyes' standard signatures had "significant differences in habit handwriting characteristics," the same deserves scant consideration.

Mere variance of the signatures in different documents cannot be considered as conclusive proof that one is forged. As *Rivera v. Turiano*[186] teaches:

This Court has held that an allegation of forgery and a perfunctory comparison of the signatures by themselves cannot support the claim of forgery, as forgery cannot be presumed and must be proved by clear, positive and convincing evidence, and the burden of proof lies in the party alleging forgery. Even in cases where the alleged forged signature was compared to samples of genuine signatures to show its variance therefrom, this Court still found such evidence insufficient. It must be stressed that the mere variance of the signatures cannot be considered as conclusive proof that the same were forged. (emphasis, italics and underscoring supplied)

Moreover, the observations of affiant Azores in his Affidavit and Examination Report dated 10 October 2013 do not meet the criteria for identification of forgery as enunciated in *Ladignon v. Court of Appeals*:[187]

The process of identification, therefore, must include the determination of the extent, kind, and significance of this resemblance as well as of the variation. It then becomes necessary to determine whether the variation is due to the operation of a different personality, or is only the expected and inevitable variation found in the genuine writing of the same writer. It is also necessary to decide whether the resemblance is the result of a more or less skillful imitation, or is the habitual and characteristic resemblance which naturally appears in a genuine writing. When these two questions are correctly answered the whole problem of identification is solved. (underlining supplied)

In his Affidavit and Examination Report, affiant Azores simply concluded that the signatures in the PDAF documents and Reyes' sample signatures "were not written by one and the same person."

AT ALL EVENTS, this Office, after a prima facie comparison with the naked eyes of the members of the Panel of Investigators between the signatures appearing in the PDAF documents that are attributed to respondents Senator Enrile, Reyes and Evangelista and their signatures found in their respective counter-affidavits, opines that both sets of signatures appear to have been affixed by one and the same respective hands.[188] In the absence of clear and convincing evidence, this Office thus finds that the questioned signatures on the relevant documents belong to respondents Enrile, Reyes and Evangelista.

The Arias doctrine is not applicable to these proceedings.

Javellana argues that he cannot be held accountable for approving the PDAF releases pertaining to those projects assigned to NABCOR because he only issued such approval after his subordinates, namely, respondents Mendoza, Cacal, Relevo and other NABCOR officials involved in the processing and/or implementation of PDAF-funded projects, examined the supporting documents, assured him of the availability of funds and recommended the approval of the disbursements.

Similarly, Cunanan claims that he approved the PDAF releases relating to projects assigned to TRC only after his subordinates at the agency recommended such approval.

Simply put, Javellana and Cunanan invoke the ruling in *Arias v. Sandiganbayan*.^[189] Reliance thereon is misplaced.

Arias squarely applies in cases where, in the performance of his official duties, the head of an office is being held to answer for his act of relying on the acts of his subordinate:

We would be setting a bad precedent if a head of office plagued by all too common problems - dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence - is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority.

x x x

We can, in retrospect, argue that Arias should have probed records, inspected documents, received procedures, and questioned persons. It is doubtful if any auditor for a fairly sized office could personally do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. x x x There has to be some added reason why he should examine each voucher in such detail. Any executive head of even small government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling.

There should be other grounds than the mere signature or approval appearing on a voucher to sustain a conspiracy charge and conviction.^[190] (emphasis, italics and underscoring supplied)

The above pronouncement readily shows that the Arias doctrine does not help the cause of Javellana and Cunanan.

First, the Arias doctrine applies only if it is undisputed that the head of the agency was the last person to sign the vouchers, which would show that he was merely relying on the prior certifications and recommendations of his

subordinates. It will not apply if there is evidence showing that the head of agency, before a recommendation or certification can be made by a superior, performs any act that would signify his approval of the transaction. In other words, the Arias doctrine is inapplicable in cases where it is the head of agency himself or herself who influences, pressures, coerces or otherwise convinces the subordinate to sign the voucher or recommend the approval of the transaction.

In Javellana's case, Cacal stated in his Counter-Affidavit that he signed the disbursement vouchers pertaining to PDAF disbursements because Javellana directed him to do so. In support of his claim, Cacal submitted a document entitled "Authorization" issued and signed by respondent Javellana which states:

In order to facilitate processing of payments and in the exigency of the service, MR. VICTOR ROMAN CACAL, Paralegal, this Office is hereby authorized to sign BOX A of the Disbursement Vouchers of all transactions related to PDAF Project.

This authorization takes effect starting August 20, 2008. (underscoring supplied)

Cacal, in his Supplemental Affidavit, also claimed that Javellana, among others, already signed the checks and other documents even before he (Cacal) could sign Box "A" of the disbursement vouchers:

15. In most instances, Boxes "B" and "C" were already signed wherein the herein Respondent was required to sing (sic) Box "A" of the Disbursement Vouchers. Most of the times the Box "B" and/or Box "C" of the Disbursement Vouchers were already signed ahead by Niñez Guanizo and/or Rhodora B. Mendoza and ALAN A. JAVELLANA respectively.

16. In other instances, the checks for PDAF releases were already prepared and signed by NABCOR President ALAN A. JAVELLANA and VP for Finance RHODORA B. MENDOZA attached to the Disbursement Voucher before the herein Respondent were made signs Box "A" of the said Disbursement Vouchers. This indicative of the target⁵ (sic) Municipalities and immediately stern instructions of herein Respondent's superiors to sign the Disbursement Voucher immediately for reasons that it is being followed up by the concerned NGO. Furthermore, the herein Respondent relied on the duly executed Memorandum of Agreement by and between NABCOR, NGO and the Office of the Legislator. According to the said MOA, initial release of funds will be undertaken by NABCOR upon signing thereof. Hence, payment and/or release of fund to the NGO became a lawful obligation of NABCOR.

x x x

18. On many instances, sternly ordered [sic] the NABCOR VP for Admin. and Finance RHODORA B. MENDOZA to herein Respondent to immediately sign Box "A" of the Disbursement Voucher even if the NGOs have not yet complied with the other documentary requirements to be attached to the said Disbursement Voucher on the basis on [sic] the commitment of the NGO to submit the other required documents (emphasis, italics and underscoring supplied)

Cacal added that he was constrained to sign the disbursement vouchers due to pressure exerted by his superiors:

19. In many instances wherein the Respondent questioned the attachments/documents in the said vouchers regarding the disbursements of the PDAF of legislators the respondent was herein threatened and/or coerced by his superiors. (emphasis, italics and underscoring supplied)

Since the subordinate himself vehemently disputes having recommended the approval of the fund release to his superior, this Office is not inclined to apply the Arias doctrine. Note that the Arias doctrine is only applied in cases where it is undisputed that the recommendation of the subordinate preceded the superior's approval, and not in situations where it is the superior who persuades or pressures the subordinate to favorably recommend approval.

Second, the Arias doctrine, even assuming that it is applicable, does not ipso facto free the heads of agencies from criminal, civil or administrative liability. The ruling merely holds that the head of agency cannot be deemed to be a co- conspirator in a criminal offense simply because he signed and/or approved a voucher or document that facilitated the release of public funds.[191]

In the present cases, the liability of Javellana and Cunanan is not based solely on their approval of the vouchers and other papers relating to PDAF projects implemented by NABCOR and/or TRC, but on their own overt acts showing their undue interest in the release of PDAF funds. In short, Javellana and Cunanan's actions indicate that they wanted the funds released as soon as possible, regardless of whether applicable laws or rules governing the disbursements had been observed or complied with.

As discussed above, Javellana's own subordinate stated that the latter actually pre-signed the checks pertaining to PDAF releases even before the DVs were duly accomplished and signed.

Figura declared in his Counter-Affidavit that Cunanan constantly followed up with him (Figura) the expedited processing of PDAF documents:

b) In the course of my review of PDAF documents, DDG Dennis L. Cunanan would frequently personally follow up in my office the review of the MOA or my signature on the checks. He would come down to my office in the third floor and tell me that he had a dinner meeting with the First Gentleman and some legislators so much that he requested me to fast track processing of the PDAF papers. Though I hate name-dropping, I did not show any disrespect to him but instead told him that if the papers are in order, I would release them before the end of working hours of the same day. This was done by DDG many times, but I stood my ground when the papers on PDAF he's following up had d eficiencies x x x (emphasis, italics and underscoring supplied)

Likewise, witness Luy in his Sworn Statement dated 12 September 2013[192] stated that Javellana and Cunanan were among those he saw receive a percentage of the diverted PDAF sums from Napoles:

126.

T: May nabanggit ka na may 10% na napupunta sa president o head ng agency, sino itong tinutukoy mo?

S: Ang alam ko nakita kong tumanggap ay sila Allan Javellana ng NABCOR, DENNIS CUNANAN at ANTONIO Y. ORTIZ ng TRC emphasis, italics and underscoring supplied)

Furthermore, this Office takes note of the fact that witness Luy, during the legislative inquiry conducted by the Senate Committee on Accountability of Public Officers and Investigations (the Senate Blue Ribbon Committee) on 7 November 2014, testified that he personally knew Javellana as among those who benefited from Napoles for his role in the PDAF releases, viz:

Luy said he saw Napoles giving money to officials of implementing agencies at her office.

"When Ms. Napoles gives the instruction to prepare the money and their 10-percent commission, I will so prepare it. I will type the voucher and have it checked by my seniors or by her daughter Jo Christine," Luy said. "I will bring the money to her office and there are instances when she and I will meet the person and give the money contained in a paper bag."

Luy said he saw Alan Javellana, a former president of the National Agribusiness Corp., and Antonio Ortiz, former head of the Technology Resource Center, receive their respective payoffs.[193] (emphasis, italics and underscoring supplied)

On 6 March 2014, witness Luy again testified before the Senate Blue Ribbon Committee that Cunanan was among those who received undue benefits from the PDAF scam through kickbacks given by Napoles:

The principal whistleblower in the pork barrel scam Benhur Luy said Thursday that Dennis Cunanan, the former chief of the Technology Resource Center who wants to turn state witness, personally received P960,000 in kickbacks from Janet Lim Napoles, contrary to his claims.

In the continuation of the Blue Ribbon Committee hearings on the pork barrel scam, Luy said he personally saw Cunanan carrying a bagful of money after meeting Napoles at the JLN Corp. office at the Discovery Suites in Ortigas, Pasig City.

Luy said he was instructed by Napoles to prepare the P960,000 intended for Cunanan, representing his commission for the pork barrel coursed through the TRC. He then handed the money to his co-worker, Evelyn De Leon, who was present at the meeting room with Napoles and Cunanan.

“When Dencu (referring to Dennis Cunanan) emerged out of the conference room, I saw him carrying the paper bag,” Luy said. Asked if he saw Cunanan receive the money, Luy answered: “After the meeting, I saw the paper bag. He was carrying it.” (emphasis, underscoring and italics supplied)[194]

The immediately-quoted chronicle of the testimonies of Luy indubitably indicates that respondents Javellana and Cunanan did not approve the PDAF releases because they relied on the recommendation of their subordinates; rather, they themselves wanted the funds released of their own volition.

IN FINE, this Office holds that the Arias doctrine is not applicable to the heads of agencies impleaded in these proceedings including Javellana and Cunanan.

There is no probable cause to indict public respondent Montuya.

Montuya, an Accounting Assistant at NABCOR, is impleaded for allegedly preparing the inspection reports pertaining to livelihood projects funded by PDAF and covered by SARO Nos. ROCS-08-0516,[195] ROCS-08-07211[196] and ROCS-08-00804.[197] She, however, denies having participated in the misuse of the PDAF and insists that she actually did conduct physical inspections of the agricultural packages at warehouses and prepared the corresponding reports. She alleges that she was supervised in her inspection by her superior, respondent Mendoza.

This Office finds in favor of Montuya.

The Office takes note that her inspection of the livelihood kits took place after NABCOR released the PDAF disbursements to SDPFFI. In other words, her actions were unrelated, let alone necessary, to NABCOR’s improper transfer of public funds to SDPFFI.

Indeed the Office finds no fault in Montuya’s actions. Her inspection reports simply reflect what she saw during the inspection, i.e., that there were livelihood kits at the Bulacan warehouses where Mendoza brought her. Montuya, in the course of her inspection, was not duty-bound to inquire beyond the existence of the livelihood kits as her job was limited to conducting a physical inspection of the items in question. Mendoza brought her to the Bulacan warehouses and showed her (Montuya) the livelihood kits subject of the inspection. In fact, she (Mendoza) even co-signed the inspection report in relation to the livelihood project covered by SARO Nos. ROCS-08-0516. She was given instructions by Mendoza on how to conduct the inspections and prepare the corresponding reports.

In any event, Montuya was under the full supervision and control of her superior Mendoza during the inspections.

Unlike Mendoza, however, there is no evidence indicating that Montuya was unduly interested in the PDAF releases, received any particular benefit therefrom or was involved in NABCOR’s processing/facilitation of PDAF disbursements to SDPFFI. The criminal charges against her must thus be dismissed.

There is no probable cause to indict private respondents Oliveros, Talaboc, Agcaoili, Balanoba, Lawas-Yutok, Santos, Victorino and Solomon.

Respondents Oliveros, Talaboc, Agcaoili, Balanoba, Lawas-Yutok and Santos, who were supposed to be notaries public at the time material to the charges, are impleaded in these proceedings for having allegedly allowed Napoles and her staff to use their notarial seals in notarizing MOAs and other similar PDAF documents. Likewise, respondents Victorino and Solomon were impleaded because they prepared independent auditor's reports for some of the Napoles-affiliated NGOs which received funds drawn from Senator Enrile's PDAF.

The criminal charges against the above-named notaries public and certified public accountants must also be dismissed.

As notaries public, Oliveros, Talaboc, Agcaoili, Balanoba, Lawas-Yutok and Santos' duty in relation to the notarial act of acknowledgment of public instruments is to make sure that: (a) the parties acknowledging the instrument personally appear before them at the time of the notarization; and (b) said parties are personally known to them and, for this purpose, require the presentation of competent evidence of identity.[198] They are not required to inquire as to the contents of the instrument, let alone the motives of the acknowledging parties who executed said document. This Office cannot, therefore, assume that respondents Oliveros, Talaboc, Agcaoili, Balanoba, Lawas-Yutok and Santos were aware of the contents of the PDAF documents when they notarized the same.

Similarly, respondents Victorino and Solomon were implicated because they prepared the independent auditor's reports of some of the NGOs used in the diversion of the PDAF. The preparation of these reports, however, is not directly related to or an act necessary to carrying out the irregular transfer of funds from the IAs to the NGOs involved. There is no indication that either Victorino or Solomon knew that the reports they prepared would be used for nefarious purposes, let alone evidence showing that they were actively involved in the systematic diversion of the PDAF.

Respecting the subject notaries public, even if they, indeed, allowed other persons to use their notarial seals and notarize documents in their names, these acts are not indispensable to the commission of Plunder or violation of Section 3(e) of R.A. 3019. If at all, the acts complained of constitute violations of the 2004 Rules on Notarial Practice.[199] Similarly, any irregularity in the public accountants' preparation of the audit reports may render them liable for violation of RA 9298[200] or other similar laws or rules.

The criminal charges against respondents Oliveros, Talaboc, Agcaoili, Balanoba, Lawas-Yutok, Santos, Victorino and Solomon must thus be dismissed for insufficient evidence. The dismissal of said charges, however, is without prejudice to any action that may be taken against them by the appropriate body or office in relation to any possible violation of the 2004 Rules on Notarial Practice, R.A. No. 9298, or other applicable laws or rules.

Respondents' defenses are best left to the trial court's consideration during trial on the merits.

Respondent public officers insist that they were motivated by good faith, and acted in accordance with existing laws and rules, and that the disbursements from the PDAF were all regular and above board.

During preliminary investigation, this Office does not determine if the evidence on record proves the guilt of the person charged beyond reasonable doubt. It merely ascertains whether there is sufficient ground to engender a well-founded belief that a crime has been committed; that the respondent charged is probably guilty thereof, and should be held for trial; and that based on the evidence presented, the Office believes that the respondent's assailed act constitutes the offense charged.[201]

Public respondents' claims of good faith and regularity in their performance of official functions fail.

As earlier reflected, the sworn statements of witnesses, the disbursement vouchers, the indorsed/encashed checks, the MOAs with NGOs, the written requests, liquidation reports, confirmation letters and other evidence on record indubitably indicate that respondents Senator Enrile, Reyes, Evangelista, Javellana, Mendoza, Cacal, Guañizo, Ortiz, Cunanan, Jover, Munsod, Relevo, Mendoza, Amata, Buenaventura, Sevidal, Jalandoni, Guañizo, Ordoñez, Cruz, Espiritu, Relampagos, Nuñez, Paule, Bare and Lacsamana, as well as respondents Tuason, Janet Napoles, Jo Napoles, James Napoles, De Leon, Pioranto, Lim, Ramirez, Cabilao, Ogerio, Fabian, Ditchon, Galay, Uy, Fernando, De Asis, Encarnacion, Palama, Ornopia, Castillo and Macha, conspired with one another to repeatedly raid the public treasury through what appears to be the drawing of cash advances from the PDAF allocated to respondent Enrile, albeit for fictitious projects.

Consequently, they must be deemed to have illegally conveyed public funds in the amount of Php345,000,000.00, more or less, to the possession and control of questionable NGOs affiliated with Napoles, and thereafter allowed Enrile to acquire and amass ill-gotten proceeds through kickbacks in the sum of Php172,834,500.00, which is in excess of Php50,000,000.00.

At any rate, specifically with respect to Plunder, good faith is neither an element nor a defense.

AT ALL EVENTS, respondents Senator Enrile, Reyes, Evangelista, Javellana, Mendoza, Cacal, Guañizo, Ortiz, Cunanan, Jover, Munsod, Relevo, Mendoza, Amata, Buenaventura, Sevidal, Jalandoni, Guañizo, Ordoñez, Cruz, Rodriguez, Espiritu, Relampagos, Nuñez, Paule, Bare and Lacsamana's claims of good faith and regularity in the performance of their duties are defenses in violation of R.A. No. 3019 which are best raised during trial proper. As explained in *Deloso v. Desierto*:^[202]

We agree with public respondents that the existence of good faith or lack of it, as elements of the crimes of malversation and violation of Section 3 (e), R.A. No. 3019, is evidentiary in nature. As a matter of defense, it can be best passed upon after a full-blown trial on the merits. (emphasis and italics supplied)

It bears reiterating that, indeed, preliminary investigation is a merely inquisitorial mode of discovering the persons who may be reasonably charged with a crime.^[203] It is not the occasion for the full and exhaustive display of the parties' evidence, including respondents-movants' respective defenses.^[204] Precisely there is a trial on the merits for this purpose.

WHEREFORE, this Office, through the undersigned:

(a) FINDS PROBABLE CAUSE to indict for:

[PLUNDER- 1 Count]

i.

Juan Ponce Enrile, Jessica Lucila G. Reyes, Ruby C. Tuason, Janet Lim Napoles, Ronald John Lim and John Raymund De Asis, acting in concert, for PLUNDER (Section 2 in relation to Section 1 (d) [1], [2] and [6] of R.A. No. 7080, as amended), in relation to Enrile's ill-gotten wealth in the aggregate sum of Php172,834,500.00, representing kickbacks or commissions received by Enrile from Napoles in connection with Priority Development Assistance Fund (PDAF)-funded government projects and by reason of his office or position;

[VIOLATION OF SECTION 3 (E) OF R.A. NO. 3019 – 15 Counts]

- Juan Ponce Enrile, Jessica Lucila G. Reyes, Jose Antonio V. Evangelista II, Ruby C. Tuason, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, Antonio Y. Ortiz, Dennis L. Cunanan, Francisco B.

Figura, Ma. Rosalinda Lacsamana, Consuelo Lilian R. Espiritu, Marivic V. Jover, Janet Lim Napoles, Jo Christine L. Napoles, James Christopher L. Napoles, Eulogio D. Rodriguez, Evelyn D. De Leon, Ronald John Lim, Amparo L. Fernando, Fernando Ramirez, Nitz Cabilao, Aileen Palama, John Raymund De Asis and Mylene T. Encarnacion, acting in concert, for VIOLATION OF SECTION 3 (E) OF R.A. NO. 3019 in relation to fund releases amounting to Php20,000,000.00 drawn from Enrile's PDAF and coursed through the Technology Resource Center (TRC) and Countrywide Agri and Rural Economic and Development Foundation, Inc. (CARED), as reflected in Disbursement Vouchers (DV) No. 01-2007-040669, 01-2007-040670, 01-2007-040671 and 01-2007-040672;

- Juan Ponce Enrile, Jessica Lucila G. Reyes, Jose Antonio V. Evangelista II, Ruby C. Tuason, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, Antonio Y. Ortiz, Dennis L. Cunanan, Francisco B. Figura, Ma. Rosalinda Lacsamana, Consuelo Lilian R. Espiritu, Marivic V. Jover, Janet Lim Napoles, Jo Christine L. Napoles, James Christopher L. Napoles, Eulogio D. Rodriguez, Evelyn D. De Leon, Ronald John Lim, Amparo L. Fernando, Fernando Ramirez, Nitz Cabilao, Jocelyn D. Piorato, Dorilyn A. Fabian, Hernani Ditchon, Rodrigo B. Galay and Laarni A. Uy, acting in concert, for VIOLATION OF SECTION 3 (E) OF R.A. NO. 3019 in relation to fund releases amounting to Php22,500,000.00 drawn from Agricultura Para sa Magbubukid Foundation, Inc. (APMFI), as reflected in DV No. 01-2009-040929 and 01-2009-051300;

- Juan Ponce Enrile, Jessica Lucila G. Reyes, Jose Antonio V. Evangelista II, Ruby C. Tuason, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, Alan A. Javellana, Rhodora B. Mendoza, Encarnita Christina P. Munsod, Romulo Relevo, Maria Julie A. Villaralvo-Johnson, Janet Lim Napoles, Jo Christine L. Napoles, James Christopher L. Napoles, Eulogio D. Rodriguez, Evelyn D. De Leon, Ronald John Lim, Fernando Ramirez and Nitz Cabilao, acting in concert, for VIOLATION OF SECTION 3 (E) OF R.A. NO. 3019 in relation to fund releases amounting to Php24,250,000.00 drawn from Enrile's PDAF and coursed through the National Agribusiness Corporation (NABCOR) and People's Organization for Progress and Development Foundation, Inc. (POPDI), as reflected in DV No. 08-04-01201 and 08-07-02312;

- Juan Ponce Enrile, Jessica Lucila G. Reyes, Jose Antonio V. Evangelista II, Ruby C. Tuason, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, Alan A. Javellana, Rhodora B. Mendoza, Victor Roman C. Cacal, Ma. Ninez P. Guañizo, Janet Lim Napoles, Jo Christine L. Napoles, James Christopher Napoles, Eulogio D. Rodriguez, Evelyn D. De Leon, Ronald John Lim, Fernando Ramirez, Nitz Cabilao and Renato S. Ornopia, acting in concert, for VIOLATION OF SECTION 3 (E) OF R.A. NO. 3019 in relation to fund releases amounting to Php19,400,000.00 drawn from Enrile's PDAF and coursed through NABCOR and Masaganang Ani Para sa Magsasaka Foundation, Inc. (MAMFI), as reflected in DV No. 08-09-3575 and 09-04-1622;

- Juan Ponce Enrile, Jessica Lucila G. Reyes, Jose Antonio V. Evangelista II, Ruby C. Tuason, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, Alan A. Javellana, Rhodora B. Mendoza, Victor Roman C. Cacal, Ma. Ninez P. Guañizo, Janet Lim Napoles, Jo Christine L. Napoles, James Christopher Napoles, Eulogio D. Rodriguez, Evelyn D. De Leon, Ronald John Lim, Fernando Ramirez, Nitz Cabilao and Noel V. Macha, acting in concert, for VIOLATION OF SECTION 3 (E) OF R.A. NO. 3019 in relation to fund releases amounting to Php29,100,000.00 drawn from Enrile's PDAF and coursed through NABCOR and Social Development Program for Farmers Foundation, Inc. (SDPFFI), as reflected in DV No. 08-09-3572 and 09-05-1751;

- Juan Ponce Enrile, Jessica Lucila G. Reyes, Jose Antonio V. Evangelista II, Ruby C. Tuason, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, Alan A. Javellana, Rhodora B. Mendoza, Victor Roman C. Cacal, Ma. Ninez P. Guañizo, Janet Lim Napoles, Jo Christine L. Napoles, James Christopher Napoles, Eulogio D. Rodriguez, Evelyn D. De Leon, Ronald John Lim, Fernando Ramirez, Nitz Cabilao and Renato S.

Ornopia, acting in concert, for VIOLATION OF SECTION 3 (E) OF R.A. NO. 3019 in relation to fund releases amounting to Php24,250,000.00 drawn from Enrile's PDAF and coursed through NABCOR and MAMFI, as reflected in DV No. 09-05-1773 and 09-06-2025;

- Juan Ponce Enrile, Jessica Lucila G. Reyes, Jose Antonio V. Evangelista II, Ruby C. Tuason, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, Alan A. Javellana, Rhodora B. Mendoza, Victor Roman C. Cacal, Ma. Ninez P. Guañizo, Janet Lim Napoles, Jo Christine L. Napoles, James Christopher Napoles, Eulogio D. Rodriguez, Evelyn D. De Leon, Ronald John Lim, Fernando Ramirez, Nitz Cabilao and Noel V. Macha, acting in concert, for VIOLATION OF SECTION 3 (E) OF R.A. NO. 3019 in relation to fund releases amounting to Php24,250,000.00 drawn from Enrile's PDAF and coursed through NABCOR and SDPFFI, as reflected in DV No. 09-05-1774 and 09-06-2022;

- Juan Ponce Enrile, Jessica Lucila G. Reyes, Jose Antonio V. Evangelista II, Ruby C. Tuason, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, Alan A. Javellana, Rhodora B. Mendoza, Victor Roman C. Cacal, Ma. Ninez P. Guañizo, Janet Lim Napoles, Jo Christine L. Napoles, James Christopher Napoles, Eulogio D. Rodriguez, Evelyn D. De Leon, Ronald John Lim, Fernando Ramirez, Nitz Cabilao and Renato S. Ornopia, acting in concert, for VIOLATION OF SECTION 3 (E) OF R.A. NO. 3019 in relation to fund releases amounting to Php14,550,000.00 drawn from Enrile's PDAF and coursed through NABCOR and MAMFI, as reflected in DV No. 09-05-1767 and 09-06-2028;

- Juan Ponce Enrile, Jessica Lucila G. Reyes, Jose Antonio V. Evangelista II, Ruby C. Tuason, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, Alan A. Javellana, Rhodora B. Mendoza, Victor Roman C. Cacal, Ma. Ninez P. Guañizo, Janet Lim Napoles, Jo Christine L. Napoles, James Christopher Napoles, Eulogio D. Rodriguez, Evelyn D. De Leon, Ronald John Lim, Fernando Ramirez, Nitz Cabilao and Noel V. Macha, acting in concert, for VIOLATION OF SECTION 3 (E) OF R.A. NO. 3019 in relation to fund releases amounting to Php9,700,000.00 drawn from Enrile's PDAF and coursed through NABCOR and SDPFFI, as reflected in DV No. 09-06-1825 and 09-06-2027;

- Juan Ponce Enrile, Jessica Lucila G. Reyes, Jose Antonio V. Evangelista II, Ruby C. Tuason, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, Gondelina G. Amata, Emmanuel Alexis G. Sevidal, Ofelia E. Ordoñez, Filipina T. Rodriguez, Sofia D. Cruz, Chita C. Jalandoni, Janet Lim Napoles, Jo Christine L. Napoles, James Christopher L. Napoles, Eulogio D. Rodriguez, Evelyn D. De Leon, Ronald John Lim, Amparo L. Fernando, Fernando Ramirez, Nitz Cabilao, Aileen Palama, John Raymund De Asis and Mylene T. Encarnacion, acting in concert, for VIOLATION OF SECTION 3 (E) OF R.A. NO. 3019 in relation to fund releases amounting to Php8,000,000.00 drawn from Enrile's PDAF and coursed through the National Livelihood Development Corporation (NLDC) and CARED, as reflected in DV No. 09-10-1530;

- Juan Ponce Enrile, Jessica Lucila G. Reyes, Jose Antonio V. Evangelista II, Ruby C. Tuason, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, Gondelina G. Amata, Emmanuel Alexis G. Sevidal, Ofelia E. Ordoñez, Filipina T. Rodriguez, Sofia D. Cruz, Chita C. Jalandoni, Janet Lim Napoles, Jo Christine L. Napoles, James Christopher Napoles, Eulogio D. Rodriguez, Evelyn D. De Leon, Ronald John Lim, Fernando Ramirez, Nitz Cabilao and Renato S. Ornopia, acting in concert, for VIOLATION OF SECTION 3 (E) OF R.A. NO. 3019 in relation to fund releases amounting to Php20,000,000.00 drawn from Enrile's PDAF and coursed through NLDC and MAMFI, as reflected in DV No. 09-09-1355, 09-10-1443 and 09-10-1534;

- Juan Ponce Enrile, Jessica Lucila G. Reyes, Jose Antonio V. Evangelista II, Ruby C. Tuason, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, Gondelina G. Amata, Emmanuel Alexis G. Sevidal, Ofelia E. Ordoñez, Filipina T. Rodriguez, Sofia D. Cruz, Chita C. Jalandoni, Janet Lim Napoles, Jo Christine L.

Napoles, James Christopher L. Napoles, Eulogio D. Rodriguez, Evelyn D. De Leon, Ronald John Lim, Amparo L. Fernando, Fernando Ramirez, Nitz Cabilao, Aileen Palama, John Raymund De Asis and Mylene T. Encarnacion, acting in concert, for VIOLATION OF SECTION 3 (E) OF R.A. NO. 3019 in relation to fund releases amounting to PHP44,000,000.00 drawn from Enrile's PDAF and coursed through the NLDC and CARED, as reflected in DV No. 09-12-1834, 10-01-0004, 10-01-0118 and 10-05-0747;

- Juan Ponce Enrile, Jessica Lucila G. Reyes, Jose Antonio V. Evangelista II, Ruby C. Tuason, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, Gondelina G. Amata, Emmanuel Alexis G. Sevidal, Ofelia E. Ordoñez, Filipina T. Rodriguez, Sofia D. Cruz, Chita C. Jalandoni, Janet Lim Napoles, Jo Christine L. Napoles, James Christopher L. Napoles, Eulogio D. Rodriguez, Evelyn D. De Leon, Ronald John Lim, Fernando Ramirez, Nitz Cabilao, Myla Ogerio and Margarita P. Guadinez, acting in concert, for VIOLATION OF SECTION 3 (E) OF R.A. NO. 3019 in relation to fund releases amounting to Php25,000,000.00 drawn from Enrile's PDAF and coursed through the NLDC and Agri and Economic Program for Farmers Foundation, Inc. (AEPFFI), as reflected in DV No. 09-091353, 09-10-1444 and 09-10-1540;

- Juan Ponce Enrile, Jessica Lucila G. Reyes, Jose Antonio V. Evangelista II, Ruby C. Tuason, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, Gondelina G. Amata, Emmanuel Alexis G. Sevidal, Ofelia E. Ordoñez, Filipina T. Rodriguez, Sofia D. Cruz, Chita C. Jalandoni, Janet Lim Napoles, Jo Christine L. Napoles, James Christopher L. Napoles, Eulogio D. Rodriguez, Evelyn D. De Leon, Ronald John Lim, Amparo L. Fernando, Fernando Ramirez, Nitz Cabilao, Piorato, Fabian, Hernani Ditchon, Galay and Laarni A. Uy, acting in concert, for VIOLATION OF SECTION 3 (E) OF R.A. NO. 3019 in relation to fund releases amounting to Php25,000,000.00 drawn from Enrile's PDAF and coursed through the NLDC and APMFI, as reflected in DV No. 09-09-1358, 09-10-1449 and 09-10-1535;

- Juan Ponce Enrile, Jessica Lucila G. Reyes, Jose Antonio V. Evangelista II, Ruby C. Tuason, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, Gondelina G. Amata, Emmanuel Alexis G. Sevidal, Ofelia E. Ordoñez, Filipina T. Rodriguez, Sofia D. Cruz, Chita C. Jalandoni, Janet Lim Napoles, Jo Christine L. Napoles, James Christopher L. Napoles, Eulogio D. Rodriguez, Evelyn D. De Leon, Ronald John Lim, Amparo L. Fernando, Fernando Ramirez, Nitz Cabilao, Aileen Palama, John Raymund De Asis and Mylene T. Encarnacion, acting in concert, for VIOLATION OF SECTION 3 (E) OF R.A. NO. 3019 in relation to fund releases amounting to Php32,000,000.00 drawn from Enrile's PDAF and coursed through the NLDC and CARED, as reflected in DV No. 09-09-1354, 09-10-1447;

and accordingly RECOMMENDS the immediate filing of the corresponding Informations against them with the Sandiganbayan;

(b)

DISMISSES the criminal charges against Mark S. Oliveros, Editha P. Talaboc, Delfin Agcaoili, Jr., Daniel Balanoba, Lucila M. Lawas-Yutok, Antonio M. Santos, Montuya for insufficiency of evidence;

(c)

FURNISHES copies of this Joint Resolution to the Anti- Money Laundering Council for its appropriate action on the possible violations by the above-named respondents of the Anti-Money Laundering Act, considering that Plunder and violation of Section 3 (e) of R.A. No. 3019 are considered unlawful activities under this statute;

(d)

FURNISHES copies of this Joint Resolution to the Supreme Court, Integrated Bar of the Philippines, and the

Professional Regulation Commission for appropriate action on the alleged misconduct committed by notaries public Oliveros, Talaboc, Agcaoili, Balanoba, Lawas-Yutok and Santos, Solomon and Victorino; and

(e)

DIRECTS the Field Investigation Office to conduct further fact-finding investigation on the possible criminal and/or administrative liability of Javellana, Mendoza, Ortiz, Cunanan, Amata, Sevidal and other respondents who may have received commissions and/or kickbacks from Napoles in relation to their participation in the scheme subject of these cases.

SO ORDERED.

Quezon City, Philippines, 28 March 2014.

SPECIAL PANEL

PER OFFICE ORDER NO. 349, SERIES OF 2013

(Sgd.) M.A. CHRISTIAN O. UY

Graft Investigation and Prosecution Officer IV
Chairperson

(Sgd.) RUTH LAURA A. MELLA

Graft Investigation and Prosecution Officer II
Member

(Sgd.) FRANCISCA M. SERFINO

Graft Investigation and Prosecution Officer II
Member

(Sgd.) ANNA FRANCESCA M. LIMBO

Graft Investigation and Prosecution Officer II
Member

(Sgd.) JASMINE ANN B. GAPATAN

Graft Investigation and Prosecution Officer I
Member

APPROVED/DISAPPROVED

(Sgd.) CONCHITA CARPIO MORALES

Ombudsman

Copy Furnished:

NATIONAL BUREAU OF INVESTIGATION

Complainant

NBI Bldg., Taft Avenue, Ermita, Manila

LEVITO D. BALIGOD

Complainant

Villanueva & Baligod, 3/F The Lydia Bldg.

39 Polaris St., Bel-air, Makati

FIELD INVESTIGATION OFFICE

Complainant

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Respondent

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Pasig City

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Sta. Maria, Bulacan

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Respondent

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Respondent

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Muntinlupa City

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Quezon City

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Filipina T. Rodriguez Road,
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Ortigas Center, Pasig City

OFELIA E. ORDOÑEZ

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c/o National Livelihood Development Corporation,
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845 Arnaiz Ave., Makati City

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Respondent

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JOSE P. VILLAMOR

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Vargas Avenue cor. Meralco Ave., Ortigas Center, Pasig City

CALILUNG LAW OFFICE

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San Fernando, Pampanga

EVITA MAGNOLIA I. ANSALDO

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Jo Christine L. Napoles, James Christopher L. Napoles
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Center, West Tower, Ortigas Center
Pasig City

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Counsel for respondents Evelyn D. De Leon and Jocelyn Piorato
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Bgy. BF, Parañaque City 1720

EULOGIO RODRIGUEZ

Respondent

JLN Corporation Offices, Discovery Suites
Ortigas Center, Pasig City

FERNANDO RAMIREZ

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Muntinlupa City

NITZ CABILAO

Respondent

Block 10, Lot 5, Daet St., South City Homes
Biñan, Laguna

MARK S. OLIVEROS

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Suite 2604 PSE East Tower, Exchange Road
Ortigas, Pasig City

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Mezzanine Floor, Café Adriatico Bldg.
Adriatico cor. Padre Faure Sts., Manila

DELFIN AGCAOILI, JR.

Respondent

13 Caimito St., Payatas, Quezon City

LUCILA M. LAWAS-YUTOK

Respondent

686-B Shaw Blvd., Kapitolyo, Pasig City

SUSAN VICTORINO

Respondent

132 M. H. Del Pilar St., Sto. Tomas, Pasig City

LUCITA P. SOLOMON

Respondent

33-C Matiaga St., Teachers' Village, Quezon City

PROPRIETOR OF NUTRIGROWTH PHILIPPINES, MPC

Respondent

949 Instruccion St., Sampaloc, Manila

PROPRIETOR OF MMRC TRADING

Respondent

88 Buklod ng Nayon, Sangandaan, Caloocan City

MYLA OGERIO

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Block 24, Lot 9, Iligan St., Phase I, EP Village,

Taguig City or Block 23, Lot 1, Road 18 Street,
AFPOVAI, Phase 2, Western Bicutan, Taguig City

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Respondent

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Biñan, Laguna

HERNANI DITCHON

Respondent

Bgy. Sta. Fe, Bacolod City, Negros Occidental

RODRIGO B. GALAY

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Biñan, Laguna or 5270 Romero St., Bgy. Dionisio,
Parañaque City

LAARNI A. UY

Respondent

Block 23, Lot 24 Dumaguete Street, South City Homes,
Biñan, Laguna or 5270 Romero St., Bgy. Dionisio,
Parañaque City

AMPARO L. FERNANDO

Respondent

14-O Samson St., Baritan, Malabon City

AILEEN P. PALAMA

Respondent

16-A Guevarra St., Paltok, Quezon City or 712 San Gabriel Compound,
Llano Novaliches, Caloocan City

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Respondent

495 ME Ilang-Ilang St., T. S. Cruz, Almanza 2, Las Piñas or
A. Calauan St., Cataingan, Masbate

JESUS B. CASTILLO

Respondent

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Negros Occidental

NOEL V. MACHA

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2502 Discovery Center, 25 ADB Avenue,
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Lot 28 Iligan St., South City
Homes, Biñan, Laguna

MYLENE T. ENCARNACION

Respondent

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Taytay, Rizal

JOHN RAYMOND DE ASIS

Respondent

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TS Cruz, Almanza 2, Las Piñas

HEIRS OF WILBERTO P. DE GUZMAN

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Dona Julia Vargas Ave. & Jade Drive,

Ortigas Center, Pasig City 1605

[1] See note 116.

[2] Per Office Order No. 349, Series of 2013.

[3] See note 116 which identifies her as Rosario Nuñez.

[4] See note 116 which identifies her as Lalaine Paule.

[5] See note 116 which identifies her as Marilou Bare.

[6] Records, pp. 5-157, Blue Folder, OMB-C-C-13-0396.

[7] Still at large.

[8] Presently detained at Fort Sto. Domingo, Sta. Rosa, Laguna.

[9] Luy, Sula and Suñas have been admitted into the Department of Justice's Witness Protection Program.

[10] Records, pp. 165-167, Folder 1, OMB-C-C-13-0396.

[11] Records, p. 547, Folder 3, OMB-C-C-13-0396 (Annex W-10).

[12] Id. at 581.

[13] Id. at 597.

[14] Id. at 600.

[15] Id. at 702.

[16] Id. at 706.

[17] Id. at 627.

- [18] Id. at 643.
- [19] Id. at 665.
- [20] Records, pp. 717,739, 764, 784, 806, 888, Folder 4, OMB-C-C-13-0396.
- [21] Records, pp.740, 757-758, 765-766, 785, 805, 818, 874, 887, Folder 4, OMB-C-C-13-0396.
- [22]Records, pp. 1964-1967, 1971-1974, 1978-1981, 1985-1988, Folder 11, OMB-C-C-13-0396.
- [23] Id. at 2064-2066.
- [24] Records, pp. 2118-219 & 2213-2214, Folder 12, OMB-C-C-13-0396.
- [25] Id. at 2482-2486 & 2541-2545.
- [26] Records, pp. 2696-2701 & 2780-2784, Folder 14, OMB-C-C-13-0396.
- [27] Records, pp. 2862-2886, Folder 15, OMB-C-C-13-0396.
- [28] Records, pp.2935-2940 & 3046-3051, Folder 16, OMB-C-C-13-0396.
- [29] Records, pp. 3325-3330 & 3461-3466, Folder 17, OMB-C-C-13-0396.
- [30] Records, pp. 3577-3582, Folder 18, OMB-C-C-13-0396.
- [31] Records, p. 1935, Folder 11, OMB-C-C-13-0396.
- [32] Id. at 1938.
- [33] Id. at 1941.
- [34] Id. at 1944.
- [35] Id. at 2006.
- [36] Id. at 2008.
- [37] Records, p. 2111, Folder 12, OMB-C-C-13-0396.
- [38] Id. at 2116.
- [39] Id. at 2329.
- [40] Id. at 2326.
- [41] Records, p. 2624, Folder 13, OMB-C-C13-0396.
- [42] Id. at 2631.
- [43] Id. at 2624.
- [44] Id. at 2694.
- [45] Id. at 2707.
- [46] Id.at 2775.
- [47] Id. at 2707.
- [48] Records, p. 2825, Folder 15, OMB-C-C-13-0396.

- [49] Id. at 2831.
- [50] Records, p. 2933, Folder 16, OMB-C-C-13-0396
- [51] Id. at 2950.
- [52] Id. at 2955.
- [53] Id. at 3044.
- [54] Id. at 3062.
- [55] Id. at 3070.
- [56] Records, p. 3323, Folder 17, OMB-C-C-13-0397.
- [57] Id. at 3336.
- [58] Id. at 3350.
- [59] Id. at 3459.
- [60] Id. at 3478.
- [61] Id. at 3486.
- [62] Records, p. 3576, Folder 18, OMB-C-C-13-0397.
- [63] Id. at 3594.
- [64] Id. at 3602.
- [65] Id. at 3612.
- [66] Records, p. 1933, Folder 11, OMB-C-C-13-0396.
- [67] Id. at 1936.
- [68] Id. at 1939.
- [69] Id. at 1942.
- [70] Id. at 2007.
- [71] Id. at 2009.
- [72] Records, p. 2112, Folder 12, OMB-C-C-13-0396.
- [73] Id. at 2115.
- [74] Id. at 2330.
- [75] Id. at 2327.
- [76] Records, p. 2625, Folder 13, OMB-C-C-13-0396.
- [77] Id. at 2632.
- [78] Id. at 2535.
- [79] Id. at 2547.

- [80] Records, p. 2694, Folder 14, OMB-C-C13-0396.
- [81] Id. at 2776.
- [82] Id. at 2788.
- [83] Records, p. 2823, Folder 15, OMB-C-C-13-0396.
- [84] Records, p. 2830, Folder 15, OMB-C-C-13-0396.
- [85] Records, p. 2932, Folder 16, OMB-C-C-13-0396.
- [86] Id. at 2949.
- [87] Id. at 2954.
- [88] Id. at 3043.
- [89] Id. at 3061.
- [90] Id. at 3069.
- [91] Records, p. 3322, Folder 17, OMB-C-C13-0396.
- [92] Id. at 3335.
- [93] Id. at 3349.
- [94] Id. at 3458.
- [95] Id. at 3477.
- [96] Id. at 3485.
- [97] Records, p. 3574, Folder 18, OMB-C-C-13-0369.
- [98] Id. at 3593.
- [99] Id. at 3601.
- [100] Id. at 3611.
- [101] SAOR No. 2012-03
- [102] Records, pp. 40-109, Folder 21, OMB-C-C-13-0396.
- [103] Records, pp. 276-383, Folder 21, OMB-C-C-13-0396.
- [104] Records, pp. 1296-1306, Folder 21, OMB-C-C-13-0396.
- [105] Records, pp. 448-520, Folder 21, OMB-C-C-13-396.
- [106] In OMB-C-C-13-0318.
- [107] Records, pp. 727-760, Folder 21, OMB-C-C-13-0396.
- [108] Records, pp. 845-1042, Folder 21, OMB-C-C-13-0396.
- [109] Records, pp.780-825, Folder 21, OMB-C-C-13-0396.
- [110] Records, pp. 685-689, Folder 21, OMB-C-C-13-0396.

[111] Id. at 180-269.

[112] Id. at 1278-1294.

[113] Records, pp. 177-181, Folder 21, OMB-C-C-13-0396.

[114] Id. at 826-844.

[115] Id. at 1060-1062.

[116] Id. at 384-408.

[117] Id. at 15-39.

[118] Id. at 409-430.

[119] Were not originally impleaded in the caption of the complaints as respondents by the NBI and Baligod. In the course of the preliminary investigation, the Panel of Investigators ordered them to submit counter-affidavits in light of the impression that they were the parties to the scheme.

[120] Records, pp. 431-447.

[121] Id. at 431-438.

[122] Records, pp. 720-726.

[123] Id. at 1-14.

[124] pp. 1043-1059, *ibid.*

[125] Records, p. 382, OMB-C-C-13-0318.

[126] *Pilapil v. Sandiganbayan*, G.R. No. 101978, April 7, 1993.

[127] Rule V, Section 3 of Ombudsman Administrative Order No. 7, Series of 1990.

[128] TJ Burgonio, "Return pork, 4 solons told," *Philippine Daily Inquirer*, electronically published on February 1, 2014 at <http://newsinfo.inquirer.net/572215/return-pork-4-solons-told> and last accessed on March 18, 2014.

[129] *Trinidad v. Ombudsman*, G.R. No. 166038, December 4, 2007.

[130] G.R. No. 167219, February 8, 2011.

[131] As defined and penalized by RA 7080, as amended.

[132] As defined and penalized by Article 217 of the Revised Penal Code.

[133] Records, p. 217, OMB-C-C-13-0318.

[134] Id. at 221.

[135] Id. at 218.

[136] *Ibid.*

[137] Id. at 219.

[138] Id. at 219.

[139] *Ibid.*

- [140] Records, p. 12, OMB-C-C-13-0318.
- [141] Paragraph 11, respondent Ruby Tuason's Counter-Affidavit dated 21 February 2014.
- [142] Records, pp. 240-241, OMB-C-C-13-0318.
- [143] Id at 850-1065.
- [144] Records, pp. 35-104, OMB-C-C-13-0396.
- [145] *Catacutan v. People*, G.R. No. 175991, August 31, 2011.
- [146] G.R. Nos. 170339, 170398-403, March 9, 2010, 614 SCRA 670.
- [147] Otherwise known as "Guidelines for the Release and Utilization of the PDAF for FY 2001 and thereafter."
- [148] G.R. No. 192591, June 29, 2011.
- [149] *People v. Atienza*, G.R. No. 171671, June 18, 2012.
- [150] Records, p. 392, OMB-C-C-13-0318.
- [151] Id. at 268.
- [152] *Llorente v. Sandiganbayan*, 350 Phil. 820 (1998).
- [153] *Gallego v. Sandiganbayan*, G.R. No. L-57841, July 30, 1982 and *Cabrera, et al. v. Sandiganbayan*, G.R. Nos. 162314-17, October 25, 2004.
- [154] *Sison v. People*, G.R. No. 170339, 170398-403, March 9, 2010.
- [155] Republic Act No. 7080, July 12, 1991, as amended by RA 7659, December 13, 1993.
- [156] Section 1 (d) of the same statute stated in Section 2 above reads:
- d) Ill-gotten wealth means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:
 - 1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
 - 2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;
 - 3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or -controlled corporations and their subsidiaries;
 - 4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including promise of future employment in any business enterprise or undertaking;
 - 5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or
 - 6) By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the

Republic of the Philippines.

[157] G.R. No. 148560, November 19, 2001.

[158] The terms “combination,” “series,” and “pattern” were likewise defined in *Estrada vs. Sandiganbayan*, supra, as follows:

Thus when the Plunder Law speaks of "combination," it is referring to at least two (2) acts falling under different categories of enumeration provided in Sec. 1, par. (d), e.g., raids on the public treasury in Sec. 1, par. (d), subpar. (1), and fraudulent conveyance of assets belonging to the National Government under Sec. 1, par. (d), subpar. (3).

On the other hand, to constitute a "series" there must be two (2) or more overt or criminal acts falling under the same category of enumeration found in Sec. 1, par. (d), say, misappropriation, malversation and raids on the public treasury, all of which fall under Sec. 1, par. (d), subpar. (1). Verily, had the legislature intended a technical or distinctive meaning for "combination" and "series," it would have taken greater pains in specifically providing for it in the law.

As for "pattern," we agree with the observations of the Sandiganbayan 9 that this term is sufficiently defined in Sec. 4, in relation to Sec. 1, par. (d), and Sec. 2 —

“... under Sec. 1 (d) of the law, a 'pattern' consists of at least a combination or series of overt or criminal acts enumerated in subsections (1) to (6) of Sec. 1 (d). Secondly, pursuant to Sec. 2 of the law, the pattern of overt or criminal acts is directed towards a common purpose or goal which is to enable the public officer to a mass, accumulate or acquire ill-gotten wealth. And thirdly, there must either be an 'overall unlawful scheme' or 'conspiracy' to achieve said common goal. As commonly understood, the term 'overall unlawful scheme' indicates a 'general plan of action or method' which the principal accused and public officer and others conniving with him, follow to achieve the aforesaid common goal. In the alternative, if there is no such overall scheme or where the schemes or methods used by multiple accused vary, the overt or criminal acts must form part of a conspiracy to attain a common goal.”

[159] He was a Senator from 2004 to 2010 and was reelected in 2010; his term ends in 2016.

[160] To repeat, these NGOs were MAMFI, POPDF, PSDFI, AMPFI, CARED, PASEDFI, SDPFFI, AEPPF and KPMFI.

[161] As narrated by Tuason, who admitted having acted as a liaison between private respondent Janet Napoles and the office of respondent Enrile:

Napoles, through respondent Tuason, initially approached Reyes regarding a “business proposition” relating to respondent Enrile’s PDAF; and Reyes, who had Enrile’s full confidence, accepted Napoles’ proposition to transact the PDAF of Senator Enrile with Janet Napoles.

[162] This “listing” is a letter from the legislator containing a program or list of implementing agencies and the amount of PDAF to be released as to guide the DBM in its preparation and release of the corresponding SARO. This is also a formal request of the legislator to the DBM for the release of his or her PDAF.

[163] Upon receipt of the SARO, respondent Janet Napoles would direct her staff, then including witnesses Luy, Sula and Suñas, to prepare the PDAF documents for the approval of the legislator and reflecting the preferred NGO to implement the undertaking, including: (a) project proposals by the identified NGO/s; and (b) indorsement letters to be signed by the legislator and/or his staff.

Enrile’s trusted staff, Reyes and Evangelista, then signed the indorsement letters and other communications relating to the PDAF disbursements addressed to the DBM and the implementing agencies (NABCOR, TRC and

NLDC). They also participated in the preparation and execution of memoranda of agreement with the NGO and the implementing agency, inspection and acceptance reports, disbursement reports and other PDAF documents.

[164] After indorsement by Senator Enrile and processing by the implementing agencies, the projects are authorized as eligible under the DBM's menu for pork barrel allocations; Napoles, through her employees, would then follow up the release of the NCA with the DBM. After the DBM releases the NCA to the implementing agency concerned, the latter would expedite the processing of the transaction and the release of the corresponding check representing the PDAF disbursement.

Once the funds are deposited in the NGO's account, respondent Janet Napoles would then call the bank to facilitate the withdrawal thereof. Her staff would then withdraw the funds involved and remit the same to her, thus placing said amount under Napoles' full control and possession.

From her 50% share, Napoles then remits a portion (around 10%) thereof to officials of the implementing agencies who facilitated the transaction as well as those who served as her liaison with the legislator's office.

[165] Section 1. Definition of terms. - As used in this Act, the term:

d. "Ill-gotten wealth" means any asset, property, business enterprise or material possession of any person within the purview of Section two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;

[166] Section 1. Definition of terms. - As used in this Act, the term:

d. "Ill-gotten wealth" means any asset, property, business enterprise or material possession of any person within the purview of Section two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

6) By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

[167] Counter-Affidavit dated 8 January 2014.

[168] Counter-Affidavit dated 20 February 2014.

[169] Counter-Affidavit dated 20 January 2014.

[170] Counter-Affidavit dated 20 January 2014.

[171] Counter-Affidavit dated 15 January 2014.

[172] Counter-Affidavit dated 27 January 2014.

[173] See the Business Ledgers attached to Luy, Suñas, Gertrudes Luy, Batal-Macalintal, Abundo and Lingo's Pinagsamang Sinumpaang Salaysay dated 11 September 2013.

[174] It is noted that Luy and Suñas claimed that the total commissions received by Senator Enrile was PhP363,276,000.00, representing 50% of PhP726,550,000.00 of Enrile's PDAF allocations. However, Luy was only able to record in his ledger the aggregate amount PhP172,834,500.00. He explained that sometimes

transactions are not recorded in his ledger because Napoles herself personally delivers the commissions to the legislators or their representatives outside the JLN Corporation office.

Hence, there are no signed vouchers presented to him (Luy); nevertheless, in these cases, Napoles merely informs him that the lawmaker's commission has been paid completely. See *Pinagsamang Sinumpaang Salaysay* dated 11 September 2013, Records, p. 8, OMB-C-C-13-0318.

[175] According to witnesses Luy and Suñas: De Asis and Lim, along with witnesses Luy and Suñas, prepares the money to be delivered to the legislators and/or their representatives. See p. 3 of *Pinagsamang Sinumpaang Salaysay* dated 11 September 2013, Records, (OMB-C-C-13-0318).

[176] According to witnesses Luy and Suñas: De Asis and Lim, along with witnesses Luy and Suñas, prepares the money to be delivered to the legislators and/or their representatives. See p. 3 of *Pinagsamang Sinumpaang Salaysay* dated 11 September 2013, Records, (OMB-C-C-13-0318).

[177] Article 8 of the Revised Penal Code.

[178] *People v. Hapa*, G.R. No. 125698, July 19, 2001, 361 SCRA 361.

[179] *People v. Olazo and Angelio*, G.R. No. 197540, February 27, 2012, citing *People v. Bi-Ay, Jr.*, G.R. No. 192187, December 13, 2010, 637 SCRA 828, 836.

[180] *People v. Forca*, G.R. No. 134938, June 8, 2000.

[181] *JN Development Corporation v. Philippine Export and Foreign Loan Guarantee Corporation*, G.R. No. 151060 and *Cruz v. Philippine Export and Foreign Loan Guarantee Corporation*, G.R. No. 151311, August 31, 2005, 468 SCRA 555, 569-570.

[182] Records, p. 1073, OMB-C-C-13-0318.

[183] *Supra*, *JN Development Corporation v. Philippine Export and Foreign Loan Guarantee Corporation*. Also *Ladignon v. Court of Appeals*, G.R. No. 122973, July 18, 2000.

[184] *Delfin, et al. v. Billones, et al.*, G.R. No. 146550, March 17, 2006.

[185] Records, p. 1075, OMB-C-C-13-0318.

[186] G.R. No. 156249, March 7, 2007.

[187] G.R. No. 122973, July 18, 2000.

[188] *Vide Fernando v. Fernando*, G.R. No. 191889, January 31, 2011.

[189] 259 Phil. 794 (1989).

[190] *Ibid*.

[191] *Vide Jaca v. People, Gaviosa v. People, Cesa v. People*, G.R. Nos 166967, 166974 and 167167, January 28, 2013.

[192] Records, p. 392, OMB-C-C-13-0318.

[193] Norman Bordadora and TJ Burgonio, "Benhur Luy upstages Napoles in Senate hearing," electronically published by the Philippine Daily Inquirer at its website located at <http://newsinfo.inquirer.net/522831/benhur-luy-upstages-napoles-in-senate-hearing#ixzz2wqP0PnoP> on November 8, 20.

[194] Macon Ramos-Araneta, "Cunanan got pork cuts," electronically published by Manila Standard Today at its website located at <http://manilastandardtoday.com/2014/03/07/-cunanan-got-pork-cuts-i-saw-him-carry-bag-with-p-9m-benhur/> last March 7, 2014 and last accessed on 24 March 2014.

[195] Records, p. 1836, OMB-C-C-13-0318.

[196] Id. at 1914.

[197] Id. at 1950.

[198] Rule IV, Section 2 (b) (1) and (2), A.M. No. 02-8-13-SC.

[199] A.M. No. 02-8-13-SC.

[200] Otherwise known as the "Philippine Accountancy Act of 2004."

[201] Deloso, et al. v. Desierto, et al., G.R. No. 129939, September 9, 1999.

[202] Supra at note 198.

[203] Paderanga v. Drilon, G.R. No. 96080 April 19, 1991, 196 SCRA 93, 94.

[204] Drilon v. Court of Appeals, G.R. No. 115825, July 5, 1996.

COMPARATIVE TABLE ON THE DETAILS SOUGHT IN PETITIONER'S MOTION FOR BILL OF PARTICULARS WHICH THE PONENCIA GRANTS, THE CONTENTS OF THE OMBUDSMAN RESOLUTION DATED 28 MARCH 2014 AND THE DISSENT OF CARPIO, J.

Petitioner's Motion for Bill of Particulars

Ponencia of Brion, J.

Ombudsman Resolution of 28 March 2014 (Resolution) and Dissent of Carpio, J.

What are the particular overt acts which constitute the "combination"? What are the particular overt acts which constitute the "series"? Who committed these acts?

GRANTED. x x x x [T]he various overt acts that constitute the "combination" and "series" the Information alleged, are material facts that should not only be alleged, but be stated with sufficient definiteness so that the accused would know what he is specifically charged of and why he stands charged, so he can properly defend himself x x x. (p. 27)

The details sought and granted are discussed on pp. 11-24, 62-68 of the Resolution.[1]

If [the kickbacks were received] on several occasions and in different amounts, specify the amount on each occasion and the corresponding date of receipt.

GRANTED. [T]he amounts involved x x x should be stated; these transactions are not necessarily uniform in amount and cannot simply collectively be described as amounting to P172,834,500 without hampering Enrile's right to respond x x x. (p. 28)

The details sought and granted are found on p. 28 of the Resolution. (Indicating the breakdown of kickbacks petitioner indirectly received from Napoles annually during the period 2004-2010, totaling P172,834,500[2]).

Enrile should likewise know the approximate dates at least of the receipt of the kickbacks and commissions, so that he could prepare the necessary pieces of evidence x x x to disprove the allegations against him. (p. 28)

Describe each project identified, how and by whom identified, the nature, location and cost of each project.

GRANTED. x x x [T]he “identified project” and “Napoles' NGO” are material facts that should be clearly and definitely stated in the Information to allow Enrile to adequately prepare his defense evidence on the specific transaction pointed to. (p. 29)

The details sought and granted are found on pp. 14-16 of the Resolution. (The list of the Napoles NGOs is found on pp. 14, 65[3] while a tabular list of the projects in question, their respective beneficiaries, costs, implementing agencies and partner Napoles NGOs is found on pp. 15-16.[4])

When and to whom did Enrile endorse the projects in favor of “Napoles [NGOs]” which became the recipients and/or target implementors of Enrile’s PDAF Projects? Name the Napoles NGOs which became the recipients/target implementors of Enrile’s PDAF Projects. Who paid Napoles, and from whom did Napoles collect the funds for the projects which turned out to be ghosts or fictitious? Who authorized the payments for each project?

GRANTED. The government agencies to whom Enrile endorsed Napoles’ NGOs are also material facts that must be specified, since they served a necessary role in the crime charged – the alleged conduits between Enrile and Napoles’ NGOs x x x. (p. 29)

The details sought and granted are found on pp. 11, 14 of the Resolution.[5]

The other details sought by petitioner are found on pp. 15-16 of the Resolution. (see note 6)

[1] In its Resolution, the Office of the Ombudsman (Ombudsman) found that the accused’s modus operandi, encompassing the series or combination of acts within the meaning of the Plunder Law, consists of petitioner’s staff, either through Atty. Jessica Reyes (Reyes) or Atty. Jose Antonio Evangelista II, tipping the camp of his co-accused Janet Napoles (Napoles) of available pork barrel funds for use in a pre-agreed scheme to funnel such funds to Napoles’ private organizations (NGOs) to finance ghost projects concocted by Napoles in exchange for kickbacks or commissions indirectly paid to petitioner and his co-accused, with Napoles and other public officials also receiving their share of “commissions.” This modus operandi, the Ombudsman stated, was followed in nine projects funded by petitioner’s pork barrel funds for which petitioner received a total kickback of at least P172,834,500.

[2] Namely, P1,500,000 in 2004; P14,662,000 in 2005; P13,300,000 in 2006; P27,112,500 in 2007; P62,550,000 in 2008; P23,750,000 in 2009 and P30,000,000 in 2010. The Resolution stated (p. 28) that these figures were based on the entries in the ledger kept by Benhur Luy (Luy), a key prosecution witness. Such entries are evidentiary matters which are properly disclosed during trial and need not be alleged in the Information.

[3] The Resolution identified these NGOs as Agri and Economic Program for Farmers Foundation, Inc. (AEPPF); Agricultura Para sa Magbubukid Foundation, Inc. (APMFI); Countrywide Agri and Rural Economic Development Foundation, Inc. (CARED); Masaganang Ani Para sa Magsasaka Foundation, Inc. (MAMFI); People’s Organization for Progress and Development Foundation, Inc. (POPDFI); and Social Development Program for Farmers Foundation, Inc. (SDPFFI).

[4] The Resolution listed nine (9) projects.

[5] The Resolution stated that the relevant implementing agencies are the National Agribusiness Corporation (NABCOR), National Livelihood Development Corporation (NLDC) and Technology Resource Center (TRC).

DISSENTING OPINION

LEONEN, J.:

I concur with the dissenting opinion of Senior Associate Justice Antonio Carpio. I join his view that the text of the Information, in the context of the entire process participated in by petitioner (accused in the Sandiganbayan), sufficiently provides him with the notice required so that he can enter his plea. When he entered his plea, the details of the facts that would lead to proof of his culpability could be further specified in pre-trial or during the trial itself. Furthermore, I see no impediment for petitioner to avail himself of discovery procedures.

Therefore, the Petition should be denied, there being no grave abuse of discretion on the part of the Sandiganbayan.

The ponencia initially enumerated ten (10) matters, sufficient particulars on which “the prosecution must provide [petitioner] with . . . to allow him to properly enter his plea and prepare for his defense.”[1]

Justice Estela Perlas-Bernabe, in her Concurring and Dissenting Opinion, agreed with the first five (5) items of these enumerated matters, partly agreed with the sixth,[2] and disagreed with the others.

The revised ponencia then adopted Justice Perlas-Bernabe’s position except for the last item[3] in the original ten (10) matters. The list was limited accordingly.

I maintain my position that within its discretion, the Sandiganbayan did not make an error in allowing either the amendment by the prosecution or the filing of bill of particulars on the six (6) matters enumerated by Justice Perlas-Bernabe, which were adopted in the revised ponencia. Further clarity in the facts would have been desirable but not necessary for due process requirements.

In particular, it was not necessary for the prosecution to state the approximate dates or the exact year when the alleged kickbacks were received. Plunder, unlike ordinary crimes, is not committed through one isolated act, but rather, through a combination or series of overt acts.[4]

Informations for plunder should be treated differently from informations for other crimes like murder. Murder is only committed once. A person accused of the crime may have a credible alibi, and in order to adequately prepare for his or her defense, the information must state with particularity the approximate date and time of the commission of the offense.

By its nature, plunder is committed in increments over time. It may be committed by amassing, accumulating, or acquiring ill-gotten wealth every year from the start of the first commission or kickback. The statement of a range of years in the Information, such as “2004 to 2010,” is sufficient to inform the accused that the series of overt or criminal acts were committed within this period of time.

I dissent from the majority position requiring the last matter of fact as this is already evidentiary. Thus, this is not allowed by the Rules. Upholding petitioner’s request will make it more difficult for prosecutions of public officers charged with offenses that imply betrayal of public trust.

Even the ponente, at one point, agreed that a relaxation of technical rules may be necessary to enforce accountability among public officers who hold the public’s trust. In his Separate Concurring Opinion in Re:

Allegations Made Under Oath at the Senate Blue Ribbon Committee Hearing Held on September 26, 2013 Against Associate Justice Gregory S. Ong, Sandiganbayan,[5] Justice Arturo Brion states that the strict application of the hearsay rule was detrimental to this court's sworn duty to discipline its ranks:

[T]he unnecessarily strict application of hearsay in administrative proceedings of judges has crippled this Court's capability to discipline its ranks. An examination of bribery cases involving judges show our extreme wariness in declaring that a judge had in fact been bribed, often using the hearsay rule to conclude that insufficiency of evidence prevents us from finding the judge liable for bribery. We would, however, still penalize these judges and dismiss them from office because of acts constituting gross misconduct.

I cannot help but think that we so acted because, at the back of our minds, we might have believed that the respondent judge had indeed been guilty of bribery, but our over-attachment to the hearsay rule compelled us to shy away from this reason to support our conclusion. Hence, we try to find other ways to penalize the erring judge or justice.

While this indirect approach may ultimately arrive at the desired goal of penalizing erring judges and removing the corrupt from our roster, we should realize that this approach surrenders the strong signal that a finding of guilt for bribery makes.

It must not be lost on us that we send out a message to the public, to the members of the judiciary, and to the members of the bar, every time we decide a case involving the discipline of judges: we broadcast, by our actions, that we do not tolerate the acts for which we found the erring judge guilty. This message is lost when we penalize judges and justices for gross misconduct other than bribery, when bribery was the real root cause for the disciplinary action.

I believe that the time has come for this Court to start calling a spade a spade, and make the conclusion that bribery had taken place if and when the circumstances sufficiently prove its occurrence. In making this conclusion, we should not be unduly hindered by technical rules of evidence, including hearsay, as we have the resources and experience to interpret and evaluate the evidence before us and the information it conveys.

We must not likewise get lost as we wander in our search for the proper degree of supporting evidence in administrative proceedings. This quantum of evidence should be substantial evidence because this standard provides the necessary balance and flexibility in determining the truth behind the accusations against a respondent judge, without sacrificing the necessary fairness that due process accords him and without sacrificing what is due to the institution we serve and the Filipino people.[6] (Emphasis supplied, citation omitted)

In addition, I am of the view that the nature of the privileges that petitioner enjoyed while allegedly committing the offense puts him in a different class from other accused.

The Constitution is a document that necessarily contains the fundamental norms in our legal order. These norms are articulated in various provisions. These provisions are not separate from each other. They all contribute to an ideal, which is our duty to articulate in interpretations occasioned by actual controversies properly brought before us. These provisions cannot be disembodied from each other.

Section 1 of Article III of the Constitution enshrines the right to due process:

Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.[7]

At the same time, Section 1 of Article XI of the Constitution unequivocally mandates:

Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice,

and lead modest lives.[8]

This is a unique feature of our Constitution. These words are not empty rhetoric.

Those who qualify for public office hold their title in trust. Their tenure is defined but not inherently entrenched in their person. Their temporary occupation of these offices is not a right vested in them but a privilege from the sovereign.

Public officers carry this privilege with an additional burden. “At all times[,]”[9] they are required “to be accountable to the people.”[10] They are to serve in their position with “utmost”[11] integrity.

The interpretation and application of the constitutionally guaranteed individual right to due process must also be read alongside the constitutional duty of public accountability and utmost integrity.

Public officers who hold powerful offices can potentially provide opportunities to enrich themselves at the expense of the taxpaying public. They are not in the same class as individuals charged with common offenses. The impact of the malfeasances of government officers is far-reaching and long-lasting. Plunder of the public coffers deprives the poor, destitute, and vulnerable from the succor they deserve from their government. Economic resources that are diverted to private gain do not contribute to the public welfare. Plunder weakens and corrupts governance, thus resulting in incalculable costs for future generations. It contributes to the denial of the very basis of government—the same government that is supposed to ensure that all laws are enforced fairly and efficiently.

There is no question that all elements of the offense have been pleaded. The question is whether the language in the Information is specific enough. All words are open-textured, and there is always a hierarchy of specificity required by the context of the author and the reader.

I would have readily joined my colleagues who would advocate a stricter scrutiny—and, therefore, a restriction of a trial court’s discretion—in assessing whether the language of the Information representing ultimate facts is specific enough if this were a common crime.

For instance, if this were the usual crime charging an unlettered member of our urban slums with selling less than one-tenth of a gram of shabu, or the sordid offense in informal settlements of rape committed by fathers on their daughters, or even the usual crime of snatching a mobile phone by a desperate accused, I would have agreed to more specificity in the language contained in the Information.

But this is a different offense, one allegedly committed by a sitting public officer. The offense, if true, as well as his participation, if proven beyond reasonable doubt, is the probable contributing cause for the destitution of millions of Filipinos.

Public officers are also entitled to the constitutional guarantee of due process. In my view, the language in the Information in question sufficiently lists the ultimate facts constitutive of the offense for petitioner. Its level of specificity and the amount of discretion we should give the Sandiganbayan should be commensurate with his right to due process and with his duties as a public officer, which are mandated in the Constitution.

We can choose to narrow our vision and exact the strictest rigors of notice on a narrow and specific part of the criminal procedure’s process. Alternately, we can view the entire context for petitioner who comes before us to assess whether he has been fairly given the opportunity to know the charges against him. The constitutional requirement favoring petitioner should not be read as requiring an inordinate burden and exacting cost on the prosecution, such that it becomes a deterrent to move against erring public officials with powerful titles. After all, the People, represented by the prosecution, is also entitled to fairness and reasonability. The prosecution is also

entitled to due process. Our doctrines should thrive on the realities of present needs.

Rightly so, we should be concerned with technical rules. Also as important is that we do not lose sight of the context of these technical rules.

In this case, petitioner was properly informed. He was given sufficient information to enter his plea.

ACCORDINGLY, I vote to dismiss the Petition.

[1] Ponencia, p. 38.

[2] Id. at 38–39. In J. Perlas-Bernabe’s Concurring and Dissenting Opinion, she qualified her agreement with the following matters:

1. The particular overt act/s alleged to constitute the “combination” and “series” charged in the Information.
2. A breakdown of the amounts of the kickbacks and commissions allegedly received, stating how the amount of P172,834,500.00 was arrived at.
3. A brief description of the ‘identified’ projects where kickbacks and commissions were received.
4. The approximate dates of receipt, “in 2004 to 2010 or thereabout,” of the alleged kickbacks and commissions from the identified projects. At the very least, the prosecution should state the year when the kickbacks and transactions from the identified projects were received.
5. The name of Napoles’ non-government organizations (NGOs) which were the alleged “recipients and/or target implementors of Enrile’s PDAF projects.”
6. The government agencies to whom Enrile allegedly endorsed Napoles’ NGOs. The particular person/s in each government agency who facilitated the transactions need not anymore be named in the Information.

[3] Ponencia as of August 4, 2015, p. 43. The item reads: “The factual premises for the allegation that Enrile took undue advantage of his official position, authority, relationships, connections and influence in order to enrich himself to the damage and prejudice of the Filipino people and the Republic of the Philippines. If done on several occasions, the overt acts done on each occasion must be specified.”

[4] See Rep. Act No. 7080, sec. 2, which defines plunder as:

Section 2. Definition of the Crime of Plunder; Penalties. — Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1(d) hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by reclusion perpetua to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State. (As amended by RA 7659, approved Dec. 13, 1993.)

[5] A.M. No. SB-14-21-J [Formerly A.M. No. 13-10-06-SB], September 23, 2014, 736 SCRA 12 [Per Curiam, En Banc].

[6] J. Brion, Separate Concurring Opinion in Re: Allegations Made Under Oath at the Senate Blue Ribbon Committee Hearing Held on September 26, 2013 Against Associate Justice Gregory S. Ong, Sandiganbayan, A.M. No. SB-14-21-J [Formerly A.M. No. 13-10-06-SB], September 23, 2014, 736 SCRA 12, 123–124 [Per Curiam, En Banc].

[7] CONST., art. III, sec. 1.

[8] CONST., art. XI, sec. 1.

[9] CONST., art. XI, sec. 1.

[10] CONST., art. XI, sec. 1.

[11] CONST., art. XI, sec. 1.

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