

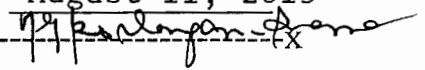
EN BANC

G.R. No. 213455 – JUAN PONCE ENRILE, *Petitioner*, v. PEOPLE OF THE PHILIPPINES, HON. AMPARO M. CABOTAJE-TANG, HON. SAMUEL R. MARTIRES and HON. ALEX L. QUIROZ OF THE THIRD DIVISION OF THE SANDIGANBAYAN, *Respondents*.

Promulgated:

August 11, 2015

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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:

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 ₱172,834,500.00 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[s] 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 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.

¹ *Ponencia*, pp. 38-39.



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 circumstances³) 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 ₱50,000,000.00.⁷

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

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).

(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 (Php 172,834,500.00) 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” ₱172.8 million (more than triple the floor amount of ₱50 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

⁸ *Rollo*, pp. 170-171.

⁹ Section 1, Rule 12, Rules.

¹⁰ Section 9, Rule 116, Rules.

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

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); *Gallejo 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

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

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.

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

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.

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

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.

with his co-accused Napoles, received from the latter, on several occasions, kickbacks of more than ₱50 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

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)

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 ₱50 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 [₱4,097,804,173.17], 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 (₱545,000,000.00), *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 [₱3,233,104,173.17] 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 Information⁴⁵ 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

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.

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*

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.

*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.

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).

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

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;

among others. Meanwhile, syndicated estafa,⁶¹ qualified trafficking in persons,⁶² possession of prohibited drugs⁶³ and illegal recruitment in large scale⁶⁴ 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

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 (₱2,000,000.00) but not more than Five million pesos (₱5,000,000.00);

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 (₱500,000.00) to Ten million pesos (₱10,000,000.00) 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

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 ₱50,000,000. 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

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 (₱2,000,000.00) nor more than Five million pesos (₱5,000,000.00) 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.

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.

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.

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).



ANTONIO T. CARPIO
Associate Justice

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

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	<i>Ponencia</i> of Brion, <i>J.</i>	Ombudsman Resolution of 28 March 2014 (Resolution) and Dissent of Carpio, <i>J.</i>
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 ₱172,834,500 without hampering Enrile’s right to respond x x x. (p. 28) Enrile should likewise know the approximate dates at least of the receipt of the kickbacks and	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 ₱172,834,500 ²).

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 ₱172,834,500.

² Namely, ₱1,500,000 in 2004; ₱14,662,000 in 2005; ₱13,300,000 in 2006; ₱27,112,500 in 2007; ₱62,550,000 in 2008; ₱23,750,000 in 2009 and ₱30,000,000 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.

	<p>commissions, so that he could prepare the necessary pieces of evidence x x x to disprove the allegations against him. (p. 28)</p>	
<p>Describe each project identified, how and by whom identified, the nature, location and cost of each project.</p>	<p>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)</p>	<p>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, 65³ 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)</p>
<p>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?</p>	<p>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)</p>	<p>The details sought and granted are found on pp. 11, 14 of the Resolution.⁵</p> <p>The other details sought by petitioner are found on pp. 15-16 of the Resolution. (see note 6)</p>

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.

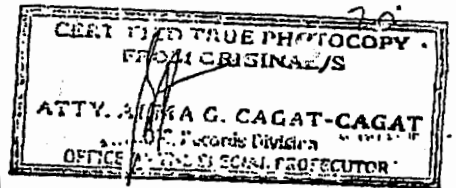
⁵ The Resolution stated that the relevant implementing agencies are the National Agribusiness Corporation (NABCOR), National Livelihood Development Corporation (NLDC) and Technology Resource Center (TRC).



Republic of the Philippines

OFFICE OF THE OMBUDSMAN

OMBUDSMAN BLDG., AGHAM ROAD, NORTH TRIANGLE, DILIMAN, QUEZON CITY



ANNEX

**NATIONAL BUREAU OF
INVESTIGATION (NBI)
REP. BY: Asst. Dir. MEDARDO
DE LEMOS**

**OMB-C-C-13-0318
FOR: VIOLATION OF RA 7080
(PLUNDER)
(Criminal Case)**

ATTY. LEVITO I. 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. GUANIZO
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
MALOU¹
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

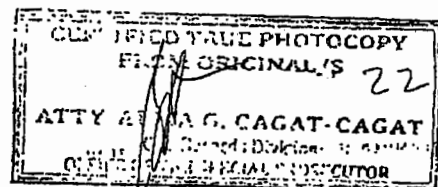
Respondents.

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FIELD INVESTIGATION OFFICE

OMB-C-C-13-0396

¹ See note 116.



OFFICE OF THE OMBUDSMAN
Complainant,

**FOR: VIOLATION OF SEC. 3 (e)
RA 3019, RA 7080 (PLUNDER)
(Criminal Case)**

- versus -

JUAN PONCE ENRILE
Senator
Senate of the Philippines

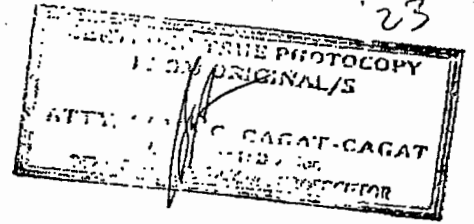
JESSICA LUCILA GONZALES REYES
Former Chief of Staff
JOSE ANTONIO VALERA EVANGELISTA II
Former Director IV/ Deputy Chief of Staff
Both of the Office of Senator Enrile

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 VILARALVO-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 Investigators² 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

² Per Office Order No. 349, Series of 2013.

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 HEAD COPY
 ORIGINALS
 CACAT

Ruby Tuason (Tuason)	Private respondent
Alan A. Javellana (Javellana)	Former President National Agribusiness Corporation
Gondelina Guadalupe Amata (Amata)	President Nat'l 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 Cuñanan (Cuñanan)	Deputy Director General Technology Resource Center
Victor Roman Cacal (Cacal)	Paralegal National Agribusiness Corporation
Romulo M. Relevo (Relevo)	National Agribusiness Corporation
María 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

³ See note 116 which identifies her as Rosario Nuñez.

⁴ See note 116 which identifies her as Lalaine Panle.

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	Management (DBM)
Malou ⁵	Office of the Undersecretary for Operations/Department of Budget and Management (DBM)
JOHN and JANE DOES	

The FIO₂ 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**:

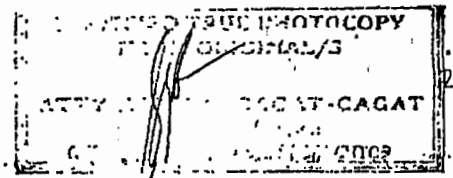
Name	Position/Agency
Juan Ponce Enrile (Enrile)	Senator
Jessica Lucila Gonzales Reyes (Reyes)	Chief of Staff /Office of Senator Enrile
Jose Antonio Valera Evangelista II (Evangelista)	Former Director V/Deputy Chief of Staff Office of Senator Enrile
Alan Alunan Javellana (Javellana)	Former President National 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 Gagnii Sevidal (Sevidal)	Director IV National Livelihood Development Corporation
Ofelia Olento Ordoñez (Ordoñez)	Cashier IV

⁵ See note 116 which identifies her as Marilou Bare.
⁶ Records, pp. 5-157, Blue Folder, OMB-C-C-13-0396.

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 CH. Records Division
 OFFICE OF THE SPECIAL PROSECUTOR

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		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 Tuason (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 Lim⁷ and his sister, Janet Lim Napoles⁸ (Napoles), before the Regional Trial Court of Makati City where it remains pending.

⁷ Still at large.

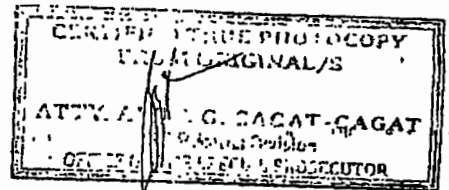
⁸ Presently detained in Port Sto. Domingo, Sta. Rosa, Laguna.



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:

⁹ Luy, Sula and Suñas have been admitted into the Department of Justice's Witness Protection Program.

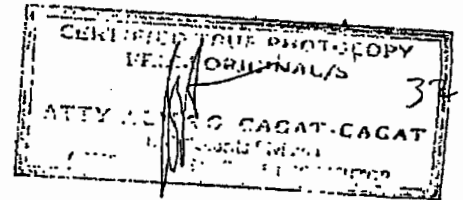


1. Either the lawmaker or Napoles would commence negotiations on the utilization of the lawmaker's PDAF;
2. The lawmaker and Napoles then discuss, and later approve, the list of projects chosen by the lawmaker, the corresponding Implementing Agency (IA), namely the National Agribusiness Corporation (NABCOR), 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);
3. 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;
4. 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



the immediate release of his allocation, which letter-request the Senate President or the Speaker, as the case may be, would then endorse to the Department of Budget and Management (DBM);

5. 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;
6. 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;
7. 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;



8. 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

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.

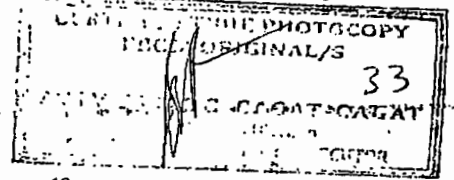
¹³ Id. at 597.

¹⁴ Id. at 600.

¹⁵ Id. at 702.

¹⁶ Id. at 706.

¹⁷ Id. at 627.



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 designated²¹ the following NGOs as "project partners" in the implementation of the livelihood projects financed by his PDAF, *viz.*

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

¹⁸ Id. at 643.

¹⁹ Id. at 665.

²⁰ Records, pp. 717, 739, 764, 784, 806, 888, Folder 4, OMB-C-C-13-0396.

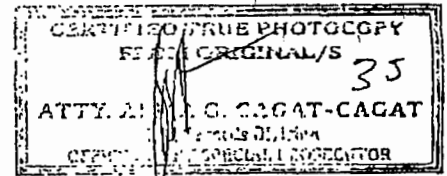
²¹ Records, pp. 740, 757, 758, 765-766, 785, 805, 818, 874, 887, Folder 4, OMB-C-C-13-0396.

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f. 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 Projects/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
	Technical Assistance Technology Transfer through Video courses (VCDs) and Printed Materials provided by TLRC	Guigaguit, Surigao del Norte San Benito, Surigao del Norte San Agustin, Surigao del Norte	50,000.00 for each municipality		
	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 Dinan, 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, Saranggani Maitum Saranggani Cagwait, Surigao del Sur Carrasacal, Surigao del Sur	25,000,000	NABCOR	SDPFFI



5. ROCS-09-00804 Php15,000,000	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 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 Agr 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 ⁶
		NABCOR-Javellana	SDPFFI-Luy	
5. ROCS-09-00804 2 MOAs ²⁶	Evangelista	NABCOR-Javellana	MAMFI-Sula	Atty. Agcaoili
		NABCOR-Javellana	SDPFFI-Luy	
6. ROCS-09-00847 5 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,

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.

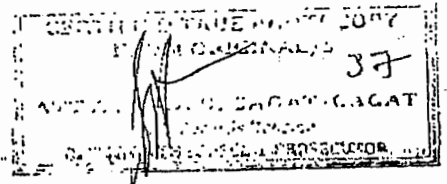
²⁶ Records, pp. 2696-2701 & 2780-2784, Folder 14, OMB-C-C-13-0396.

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.



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
	09-06-2022	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
	01-2009-051330	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

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09-10-1447	23-Sep-09	20,000,000	244574 (LBP)	NLDC-CARED
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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:

SARO	Disbursement Voucher No.	Signatories of the DV			
		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			Javellana

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-C-13-0396.
⁴² Id. at 2631.

			Guañizo		
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	Arriata
	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
G-09-07112	09-12-1834 ⁶²	Sevidal	Ordoñez	Cruz	Amata
	10-01-0004 ⁶³	Sevidal	Ordoñez	Cruz	Amata

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.

⁶⁰ 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.



10-01-0118 ⁶⁴	Sevidal	Ordoñez	Cruz	Amata
10-05-0747 ⁶⁵	Sevidal	Rodríguez	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:

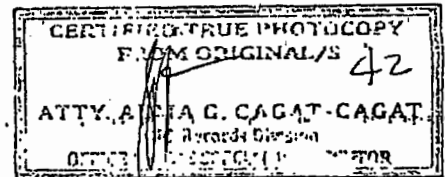
SARO No.	Disbursement Voucher No.	Check No.	Net Amount (Php) (After deducting 3% management fee)	Implementing Agency/ies & Signatories of the Check	Official Receipt Issued	Received Payment (see DV)
ROCS-07-04618	01-2007-040671	LBP 850457 ⁶⁶	4,800,000	TLRC/TRC Figura and Ortiz	CARED OR 023	Encarnacion
	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	Rodríguez
ROCS-08-05216	08-09-03572	UCPB 437226 ⁷⁴	26,190,000	NABCOR Mendoza and Javellana	SDPFFI OR 214	Luy

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.



	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

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-C-13-0396.
⁸¹ Id. at 2775.
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.



	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

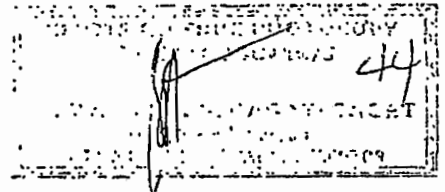
⁸⁹ Id. at 3061.
⁹⁰ Id. at 3069.
⁹¹ Records, p. 3322, Folder 17, OMB-C-C13-0396.
⁹² Id. at 3335.
⁹³ Id. at 3349.
⁹⁴ Id. at 3458.
⁹⁵ Id. at 3477.
⁹⁶ Id. at 3485.
⁹⁷ Records, p. 3574, Folder 18, OMB-C-C-13-0369.
⁹⁸ Id. at 3593.
⁹⁹ Id. at 3601.
¹⁰⁰ Id. at 3611.



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.

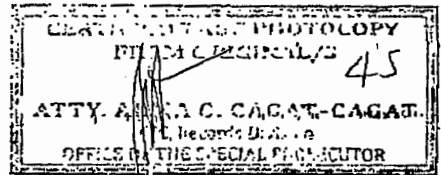
As reflected above, the signatures on the Certificates of Acceptance or Delivery Reports were forged, and the farmer-recipients enumerated on the lists of purported beneficiaries denied having received any livelihood assistance kits/packages. In fact, many of the names appearing on the lists as farmer-recipients 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 Report¹⁰¹ (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

¹⁰¹ SAOR No. 2012-03



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 whistleblowers' 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.

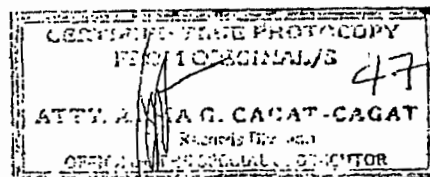
Complainants contend that the amount of Php345,000,000.00 allotted for livelihood and agricultural production projects was instead *misappropriated* and



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.

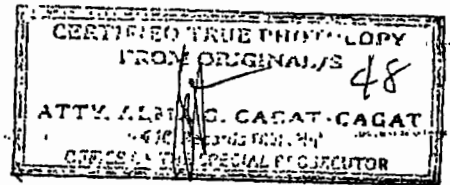
Luy, Sula and Suñas add that the pre-selected President of each of the pre-selected NGOs, in addition to being required to furnish the names of at least 5 persons to complete the list of incorporators, were obliged to sign an application for opening bank accounts in the name of the NGO, and to pre-sign 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 SDFFI, 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.

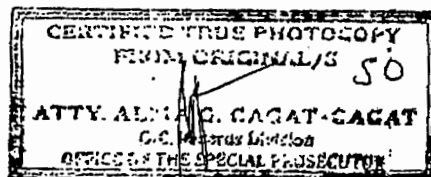
By Orders dated 19 and 29 November 2013, this Office directed respondents to file their respective counter-affidavits in these cases. Despite receipt of said Orders, respondents Ortiz, Jalandoni, De Leon, Piorato, Ornopia, Lim, Ramirez, Rodriguez, Napoles, Lawas-Yutok, Guadinez, and Cabilao failed to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

¹⁰² Records, pp. 40-109, Folder 21, OMB-C-C-13-0396.



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

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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

¹⁰³ Records, pp. 276-383, Folder 21, OMB-C C-13-0396.



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

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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

¹⁰⁴ Records, pp. 1296-1306, Folder 21, OMB-C-C-13-0396

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-Affidavit¹⁰⁵ 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

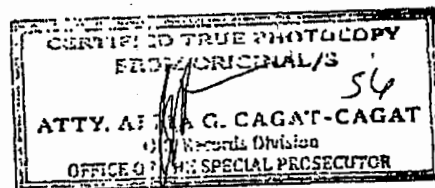
¹⁰⁵ Records, pp. 448-520, Folder 21, OMB-C-C-13-396.



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 2014¹⁰⁶ 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.

¹⁰⁶ In OMB-C-C-13-0318.

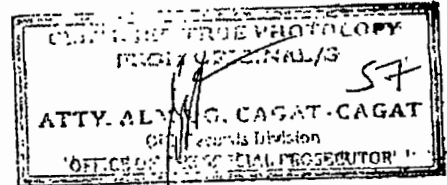


Denying any participation in the implementation of PDAF projects or having received any personal benefit in relation to PDAF projects, she maintains that her evaluation and verification reports were accurate, and she was never a party to the purported anomalies arising from PDAF-related transactions.

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-

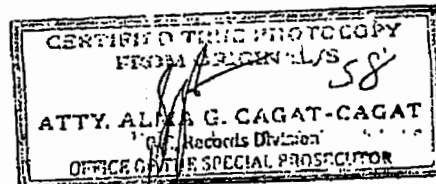
¹⁰⁷ Records, pp. 727-760, Folder 21, OMB-C-C-13-0396.



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 24¹⁰⁰ 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

¹⁰⁰ Records, pp. 845-1042, Folder 21, OMB-C-C-13-0396



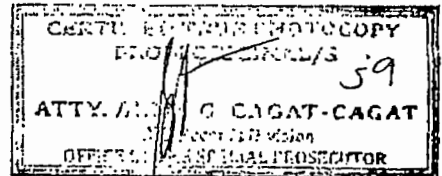
responsible for "identifying the projects, determining the project costs and choosing the NGOs" which was "manifested in the letters of Senator ENRILE"; he and other NLDC employees were merely victims of the "political climate" and "bullied into submission by the lawmakers; and he never derived any personal 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

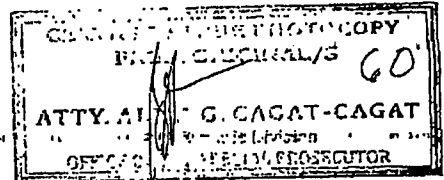
¹⁰⁹ Records, pp 780-825, Folder 21, OMB-C-C-13-0396.



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-Affidavit¹⁰ 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

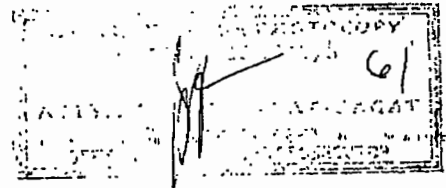
¹⁰ Records, pp. 685-689, Folder 21, OMB-C-C-13-0396.



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

¹¹¹ Id. at 180-269.



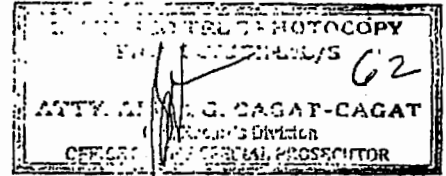
relation to the PDAF projects implemented by her office; and she is unaware whether the PDAF was abused by any or all of her co-respondents.

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

¹¹² Id. at 1278-1294.

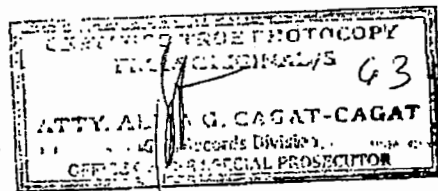
¹¹³ Records, pp. 177-181; Folder 21, OMB-C-C-13-0396.



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

¹¹⁴ *Id.* at 826-844.



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

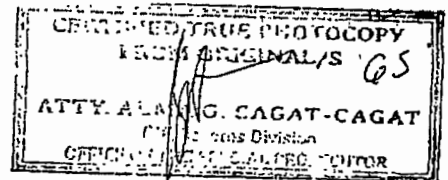
In his Counter-Affidavits dated 20 and 24 February 2014,¹¹⁵ **CUNANAN**, Deputy Director General of the TRC at the time material to the complaints, refutes the accusations against him, stating that to his recollection, TRC began receiving PDAF-related disbursements sometime in 2005; it was his previous superior, then TRC Director General Ortiz,

¹¹⁵ *Id.* at 1060-1062.



"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;"*

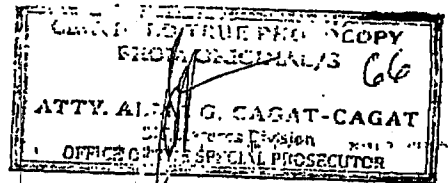
Cunanan further relates that sometime in 2006 or 2007, he met Napoles who *"introduced herself as the representative of certain legislators who supposedly picked TRC as a conduit for PDAF-funded projects;"* at the same occasion, Napoles told him that *"her principals were then Senate President Juan Ponce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

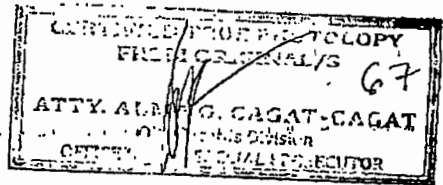
In his Counter-Affidavit dated 8 January 2014,¹¹⁶ **FIGURA**, TRC Department Manager III, denies the charges against him, stating that he does not personally know Napoles or the legislators *"who had their PDAF's (sic) coursed through TRC as implementing agency;"* he *"talked to him (witness Luy) once 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

¹¹⁶ Id. at 384-408.



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)."*

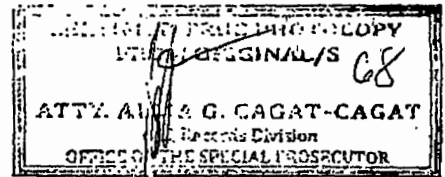
Figura adds that Ortiz issued Office Circular 000P0099, directing him (Figura) to sign checks representing PDAF releases sometime in 2007; Ortiz, however, subsequently issued Office Circular 000P0100, which increased TRC's service fee to 5% but limited his (Figura) office's participation in PDAF projects 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 aforestated 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

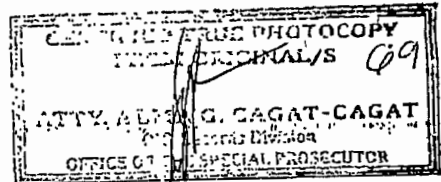
¹¹⁷ Id. at 15-39.



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

¹¹⁸ Id. at 409-430.



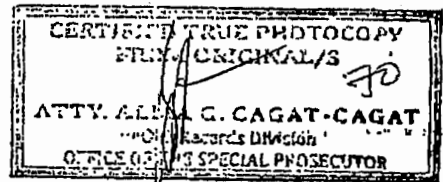
the certification was issued only after her superiors, TRC's Director General and Deputy Director General, certified in the same vouchers that the expenses were lawful, necessary and incurred under their direct supervision.

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

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.



his name as among those who supposedly misused the PDAF;
and he performed his duties in good faith.

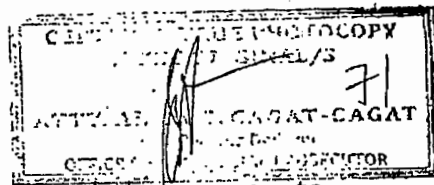
OTHER RESPONDENTS

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

¹²⁰ Records, pp. 431-447.

¹²¹ Id. at 431-438.



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-Affidavit¹²² 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

¹²² Records, pp. 720-726
¹²³ Id. at 1-11.



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.

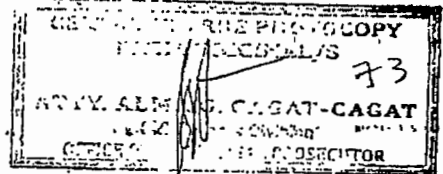
In their Joint Counter-Affidavit¹²⁴ dated 21 February 2014, Jo Christine and James Christopher Napoles, children of Janet Napoles, cite the FIO complaint's insufficiency in form and substance for failing to specify the acts or omissions committed by them which constitute the offenses charged, thereby 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

¹²⁴ pp. 1043-1059, *ibid*



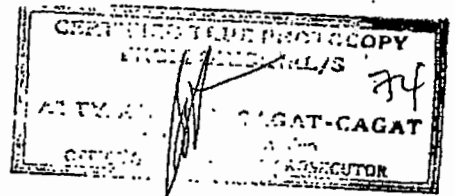
Relampagos, Bare, Nuñez and Paule all insist that they should be dropped from these proceedings because they were never specifically named as respondents in the criminal complaints filed by the NBI and the FIO.

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: Magpunta naman tayo sa pagproseso ng transaction ni JANET LIM NAPOLES sa mga government projects, gaano naman katagal magpropeso 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 LALAINÉ na naka-assign sa office ni USEC RELAMPAGOS.

¹²⁵ Records, p. 382, OMB-C-C-13-0318



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 underscoring 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,

¹²⁶ *Pilapil v. Sandiganbayan*, G.R. No. 101978, April 7, 1993.



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.

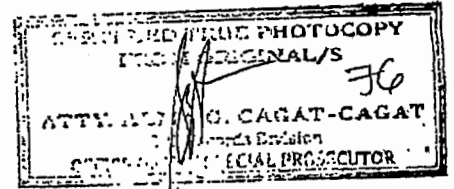
His contention fails to persuade.

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

¹²⁷ Rule V, Section 3 of Ombudsman Administrative Order No. 7, Series of 1990.



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

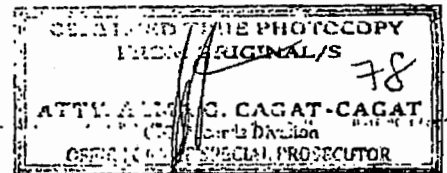
They, however, insist that the filing of the complaint remains premature even if the COA did issue NDs. According to them, the NDs are still appealable under the 2009 Revised Rules of Procedure (the 2009 COA Rules) and no administrative or criminal complaint arising from the NDs may be instituted until 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*)

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 13, 2014.



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

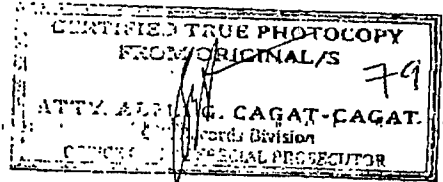
Proceedings under the 2009 COA Rules, including those pertaining to the NDs, are administrative in nature. Consequently, any appeal or review sought by any of herein respondents with the COA in relation to the NDs will not give rise to a prejudicial question.

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

¹²⁹ *Trinidad v. Ombudsman*, G.R. No. 166038, December 4, 2007.

¹³⁰ G.R. No. 167219, February 8, 2011.



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 Malversation¹³² 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)

¹³¹ As defined and penalized by RA 7080, as amended.

¹³² As defined and penalized by Article 217 of the Revised Penal Code.



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

¹³³ Records, p. 217, OMB-C-C-13-0318.

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PROSECUTOR

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

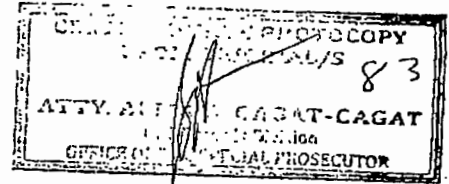
The legislator would then write another letter addressed to the IAs which would identify his or her preferred NGO to undertake the PDAF-funded project. However, the NGO chosen by the legislator would be one of those organized and controlled by Napoles. These NGOs were, in fact, specifically set up by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

¹³⁴ Id. at 221.

¹³⁵ Id. at 218.

¹³⁶ Ibid.



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

¹³⁷ Id. at 219.

¹³⁸ Id. at 219.



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.

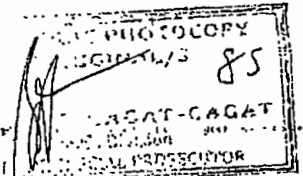
The PDAF allocation of Senator Enrile

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, CAREED, 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,

¹³⁹ Ibid.

¹⁴⁰ Records, p. 12, OMB-C-C-13-0318.



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:

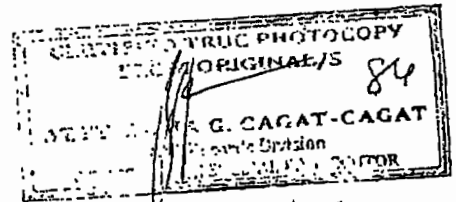
6. Since I was close to then President Estrada, Janet Napoles wanted me to refer politicians to her so I approached my friend Atty. Jessica "Gigi" Reyes, who was the Chief-of-Staff of Senator Enrile.

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

¹⁴¹ Paragraph 11, respondent Ruby Tuason's Counter-Affidavit dated 21 February 2014.



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:

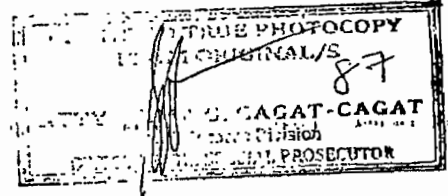
14. After the SARO and/or NCA is released, Janet Napoles would give me the full payment for delivery to Senator Enrile through Atty. Gigi Reyes.

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 nonexistent.¹⁴⁴

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

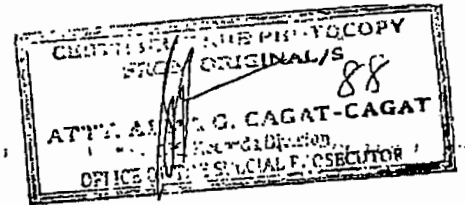
Under Section 3(e) of RA 3019, a person becomes criminally liable if three (3) elements are satisfied, *viz.*:

1. He or she must be a officer discharging administrative, judicial or official functions;
2. He or she must have acted with manifest partiality,

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.



evident bad faith or inexcusable negligence; and

3. 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.

¹⁴⁵ *Citicutan v. People*, G.R. No. 175991, August 31, 2011



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

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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."

¹⁴⁶ G.R. Nos. 170339, 170398-403, March 9, 2010, 614 SCRA 670.



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

¹⁴⁷ Otherwise known as "Guidelines for the Release and Utilization of the PDAF for FY 2001 and thereafter."

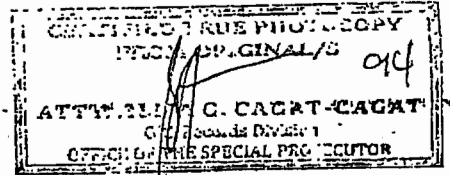
directly released only to those government agencies identified in the project menu of the pertinent General Appropriations Act (GAAs). The GAAs in effect at the time material to the charges, however, did not authorize the direct release of funds to NGOs, let alone the direct contracting of NGOs to implement 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

¹⁴⁸ G.R. No. 192591, June 29, 2011.



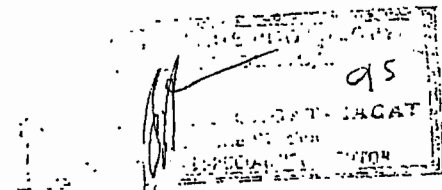
The essence of competition in public bidding is that the bidders are placed on equal footing. In the award of government contracts, the law requires a competitive public bidding. This is reasonable because "[a] competitive public bidding aims to protect the public interest by giving the public the best 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 ABCOR, 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.

Cagat 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. Merceda and ALAN A. JAVELLANA respectively.



16. In other instances, the checks for PDAF releases were a ready 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.

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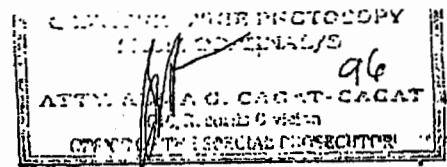
18. On many instances, sternly ordered [sic] the NABCOR VP for Admin. and Finance RHODORA B. MENDOZA to herein Respondent to immediately sign Box "A" of the Disbursement Voucher even if the NGOs have not yet complied with the other documentary requirements to be attached to the said Disbursement Voucher 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



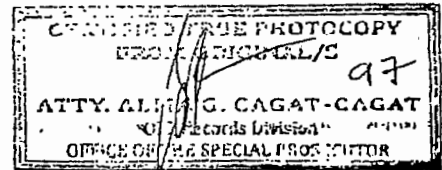
documents required for the release of the PDAF as witnesses Luy and Suñas positively attest to, *viz*: the DBM's expedited processing of the requisite SAROs and NCAs was made possible through the assistance provided by Nuñez, Paule and Bare. Relampagos being their immediate superior, they could not have 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

¹⁴⁹ *People v. Alianza*, G.R. No. 171671, June 18, 2012.



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.

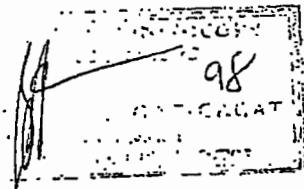
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16. I don't count the money I receive for delivery to Senator Enrile. I just receive whatever was given to me. The money was all wrapped and ready for delivery when I get it from Janet Napoles or Benhur Luy. For purposes of recording the transactions,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

¹⁵⁰ Records, p. 392, OMB-C-C-13-0318.



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:

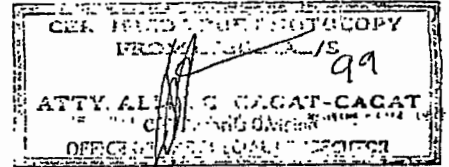
k) Ms. GONDELINA AMATA (NLDC) - Nakilala ko siya noong may sakit ang kanyang asawa na nagpapagamot sa NKTII Hospital. Silang mag-asawa ay nagpunta din sa office sa 2502 Discovery Center, Ortigas. Ako rin ang nagdala ng pera para sa pambayad ng gamot. May tatlong (3) beses ko po silang dinalhan ng pera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

¹⁵¹ Id. at 268.



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,

¹⁵² *Llorente v. Samliganayan*, 350 Phil. 620 (1978).



Relevo, Mendoza, Amata, Buenaventura, Sevidal, Jalandoni, Guañizo, Ordoñez, Cruz, Espiritu, Relampagos, Nuñez, Paule, Bare and Laçsamana, 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.

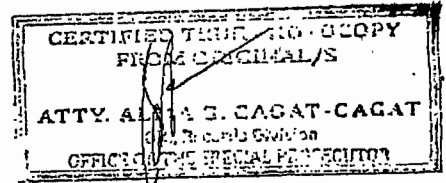
Jurisprudence teaches that unwarranted benefits or privileges refer to those accommodations, gains or perquisites that are granted to private parties without proper authorization or reasonable justification.¹⁵³

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 Laçsamana, did just that. That they repeatedly failed to observe the requirements of RA 9184, its implementing

¹⁵³ *Gallego y. 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.

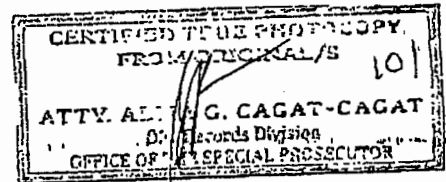
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rules and regulations, GPPB regulations as well as national budget circulars, shows that unwarranted benefit, advantage or preference was given to private respondents. The NGOs represented by them were chosen to undertake the implementation of PDAF 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.

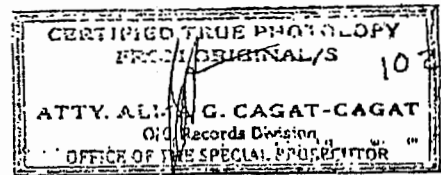
In spite of the aforesaid irregularities, respondents Javellana, Mendoza, Cacal, Guañizo, Ortiz, Cunanan, Jover, Munsod, Relevo, Mendoza, Amata, Buenaventura, Rodriguez, Sevidal, Jalandoni, Guañizo, Ordoñez, Cruz, Espiritu, Relampagos, Nuñez, Paule, Bare and Lacsamana, with indecent haste, processed 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



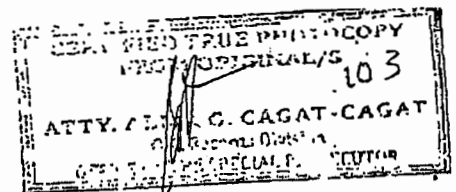
or controlled by Napoles. These efforts to accommodate her NGOs and allow her to repeatedly receive unwarranted benefits from the inexistent projects are too obvious to be glossed over.

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:

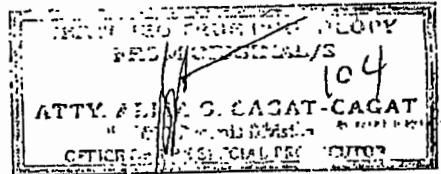
IMPLEMENTING AGENCY/NGOs	DISBURSEMENT VOUCHERS NO.	TOTAL AMOUNT	RESPONDENTS
TRC-CARED	01-2007-040669, 01-2007-040670, 01-2007-040671, 01-2007-040672	20,000,000	Enrile, Reyes, Evangelista, Tuason, Relampagos, Nuñez, Paule, Bare, Ortiz, Cunanan, Figura, Lacsamana, Espiritu, Jover, Janet Napoles, Jo Napoles, 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.
NAI COF-POPDFI	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:

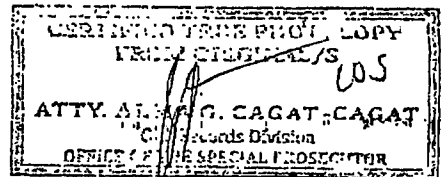
Sec. 2. Definition of the Crime of Plunder; Penalties. - Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d)¹⁵⁶ hereof in the aggregate amount

¹⁵⁵ Republic Act No. 7080, July 12, 1991, as amended by R.A 7659, December 13, 1993.

¹⁵⁶ Section (d) of the same statute stated in Section 2 above reads:

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;



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:

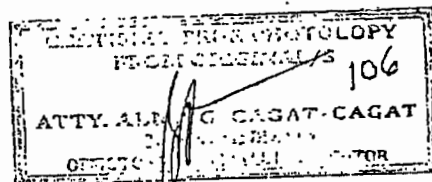
1. That the **offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons;**
2. That he **amassed, accumulated or acquired ill-gotten wealth** through a combination or series of the following overt or criminal acts:

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. L. No. 148 160, November 19, 2001.



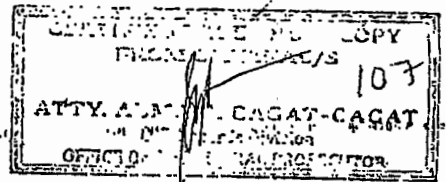
- (a) through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
- (b) by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any 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,

3. 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)

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.



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 NGOs¹⁶⁰ 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 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 —

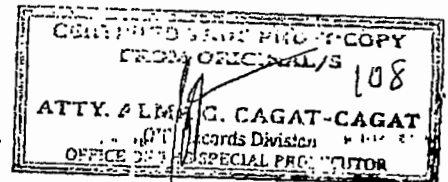
"... under Sec. 1 (d) of the law, a 'pattern' consists of at least a combination or series of overt or criminal acts enumerated in subsections (1) to (6) of Sec. 1 (d). Secondly, pursuant to Sec. 2 of the law, the pattern of overt or criminal acts is directed towards a common purpose or goal which is to enable the public officer to amass, 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 In particular, these NGOs were MAMFI, POPDF, PSDFI, AMPFI, CARED, PASEDFI, SDPFFI, AEPFF and KPFI.

¹⁶¹ As narrated by Tuason, who admitted having acted as a liaison between private respondent Janet Napoles and the office of respondent Enrile:

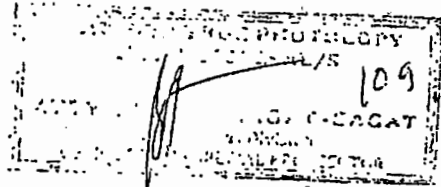
Janet Napoles, through respondent Tuason, initially approached Reyes regarding a "business proposition" relating to respondent Enrile's PDAF; and Reyes, who had Enrile's full confidence, accepted Napoles' proposition to transact the PDAF of Senator Enrile with Janet Napoles.



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 listing¹⁶² 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

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.



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.

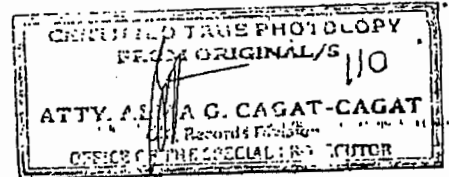
Significantly, after the DBM issues the SARO, Senator Enrile, through his staff members Reyes or Evangelista, would then write another letter addressed to the IAs which would identify and indorse Napoles' NGOs as his preferred NGO to undertake the PDAF-funded project,¹⁶³ thereby effectively designating 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 access¹⁶⁴ to substantial sums of public funds.

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



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

implementing agency concerned, the latter would expedite the processing of the transaction and the release of the corresponding check representing the PDAF disbursement.

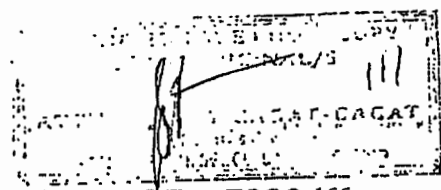
Once the funds are deposited in the NGO's account, respondent Janet Napoles would then call the bank to facilitate the withdrawal thereof. Her staff would then withdraw the funds involved and remit the same to her, thus placing said amount under Napoles' full control and possession.

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;



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.

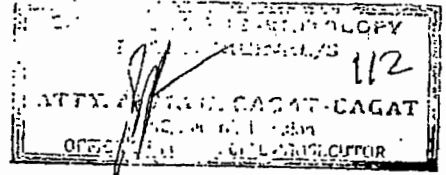
Undue pressure and influence from Senator Enrile's Office, as well as his indorsement of Napoles' NGOs, were brought to bear upon the public officers and employees of the IAs.

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"*

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.



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

¹⁶⁷ Counter-Affidavit dated 8 January 2014.

¹⁶⁸ Counter-Affidavit dated 20 February 2014.

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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, Buenaventura¹⁷⁰ 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**

¹⁶⁹ Counter-Affidavit dated 20 January 2014.

¹⁷⁰ Counter-Affidavit dated 20 January 2014.

¹⁷¹ Counter-Affidavit dated 15 January 2014.

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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 Ordoñez¹⁷² 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

¹⁷² Court of Appeals A.M. No. 100-00000, dated 27 January 2014.



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 ledger¹⁷³ 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 30,000,000.00
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

¹⁷³ See the Business Ledgers attached to Luy, Suñas, Gertrudes Luy, Batal-Macalintal, Abundo and Lingo's *Pinagsumangal/Pinagpang Salaysay* dated 11 September 2013.

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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 Lim¹⁷⁶ and Tuason.

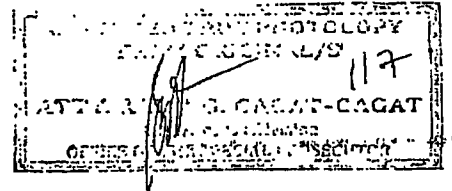
Senator Enrile's commission of the acts covered by Section 1 (d) (2) and Section 1 (d) (6) of R.A. No. 7080 repeatedly took place over the years 2004 to 2010. This shows a pattern – a combination or series of overt or criminal acts – directed towards a common purpose or goal which is to enable the Senator 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

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 PhP 172,834,500.00. 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).



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

¹⁷⁷ Article 8 of the Revised Penal Code.

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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.

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.

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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

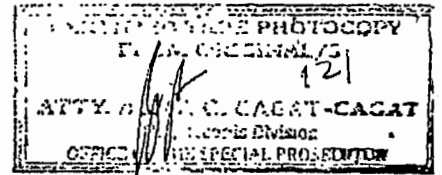
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certifications, approvals, and signatures found in the
corresponding DVs and checks.

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 those 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

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.

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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

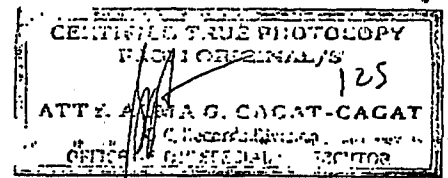
Besides, respondent Evangelista, in his Letter dated 2 August 2012¹⁸⁵ to the COA, *admitted* the authenticity of his signatures appearing in the PDAF documents, save for those found in documents relating to PDAF disbursements of *another* legislator. His letter reads, in part:

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.

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.



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

¹⁸⁶ G.R. No. 156249, March 7, 2007.



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

¹⁸⁷ G.R. No. 122 173, July 18, 2000.

¹⁸⁸ *Vide Ferrera v. Ferrera*, G.R. No. 191889, January 31, 2011.

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, Elevo 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:

¹⁸⁹ 257 Phil. 794 (1989).



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.

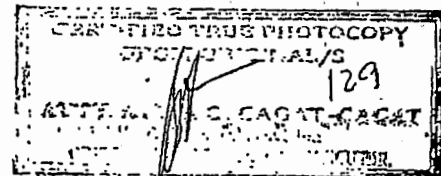
There should be other grounds than the mere signature or approval appearing on a voucher to sustain a conspiracy charge and conviction.¹⁹⁰ (emphasis, italics and underscoring supplied)

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

¹⁹⁰ It is



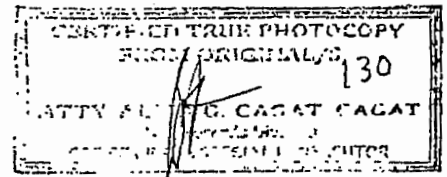
agency, before a recommendation or certification can be made by a superior, performs any act that would signify his approval of the transaction. In other words, the *Arias* doctrine is inapplicable in cases where it is the head of agency himself or herself who influences, pressures, coerces or otherwise 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 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.

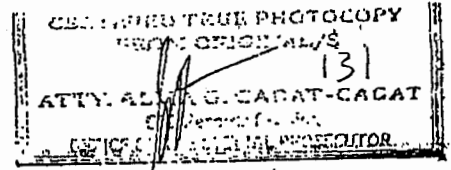
16. In other instances, the checks for PDAF releases were already prepared and signed by NABCOR President ALAN A. JAVELLANA and VP for Finance RHODORA B. MENDOZA attached to the Disbursement Voucher before the herein Respondent were made signs Box "A" of the said Disbursement Vouchers. This indicative 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*)

Cagal 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*)

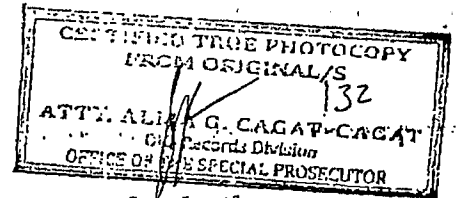


Since the subordinate himself vehemently disputes having recommended the approval of the fund release to his superior, this Office is not inclined to apply the *Arias* doctrine. Note that the *Arias* doctrine is only applied in cases where it is *undisputed* that the recommendation of the subordinate 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

¹⁹¹ *Vide Jaca v. People, Gavlasa v. People, Cesa v. People*, G.R. Nos 166967, 166974 and 167167, January 28, 2013.



funds released as soon as possible, regardless of whether applicable laws or rules governing the disbursements had been observed or complied with.

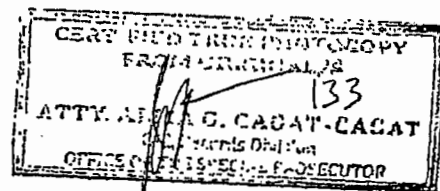
As discussed above, Javellana's own subordinate stated that the latter actually pre-signed the checks pertaining to PDAF releases even before the DVs were duly accomplished and signed.

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 deficiencies x x x (emphasis, italics and underscoring supplied)

Likewise, witness Luy in his Sworn Statement dated 12 September 2013¹⁹² stated that Javellana and Cunanan were among those he saw receive a percentage of the diverted PDAF sums from Napoles:

¹⁹² Records, p. 392, OMB-C-C-13-0318.



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.... *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:

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 3, 2014.



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 course 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.

¹⁹⁴ Macon Raraos-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-2m-benhur/> last March 7, 2014 and last accessed on 24 March 2014.

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*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-08-07211¹⁹⁶ 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

¹⁹⁵ Records, p. 1836, OMB-C-C-13-0318.

¹⁹⁶ Id. at 1914.

¹⁹⁷ Id. at 1950.

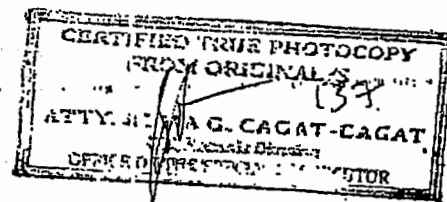


inspection, i.e., that there were livelihood kits at the Bulacan warehouses where Mendoza brought her. Montuya, in the course of her inspection, was not duty-bound to inquire beyond the existence of the livelihood kits as her job was limited to conducting a physical inspection of the items in question. 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, Agcao li,
Balanoba, Lawas-Yut k,*



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

¹⁹⁸ Rule 2 (b) (1) and (2), A.M. No. 02-8-13-SC.

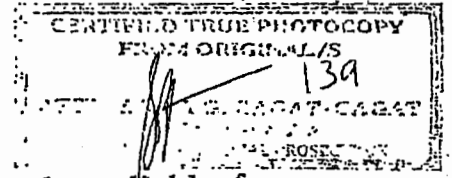
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instrument, let alone the motives of the acknowledging parties who executed said document. This Office cannot, therefore, assume that respondents Oliveros, Talaboc, Agcaoili, Balanoba, Lawas-Yutok and Santos were aware of the contents of the PDAF documents 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'

¹⁹⁹ A. I. No. 07-3-13-SC.



preparation of the audit reports may render them liable for violation of RA 9298²⁰⁰ 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

²⁰⁰ Otherwise known as the "Philippine Accountancy Act of 2001."

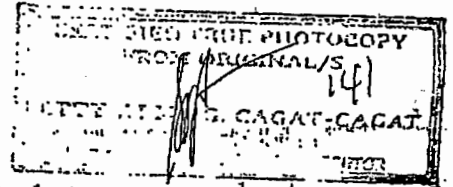


whether there is sufficient ground to engender a well-founded belief that a crime has been committed; that the respondent charged is probably guilty thereof, and should be held for trial; and that based on the evidence presented, the Office believes that the respondent's assailed act constitutes the 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, Mansod, Relevo, Mendoza, Amata, Buenaventura, Sevidal, Jalandoni, Guañizo, Ordoñez, Cruz, Espiritu, Relampagos, Nunez, Paule, Bare and Lacsamana, as well as respondents Tuason, Janet Napoles, Jo Napoles, James Napoles, De Leon, Porinto, 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

²⁰¹ *De la Cruz v. Desierto, et al.*, G.R. No. 129930, September 9, 1999.



drawing of funds 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 or 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

²⁰² *Supra* at note 198.



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

²⁰³ *Paderanga v. Drilon*, G. R. No. 96080 April 19, 1991, 196 SCRA 93, 94.
²⁰⁴ *Drilon v. Court of Appeals*, G.R. No. 115823, July 5, 1996.



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

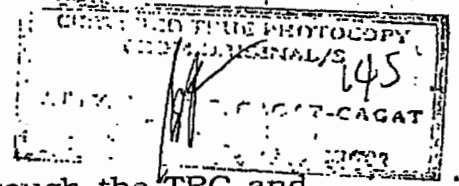
Counts]

- i. 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, Araparo 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



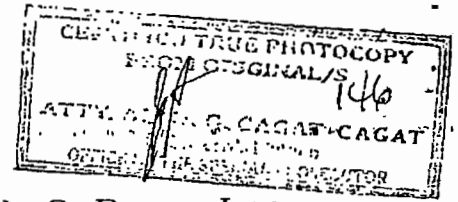
in relation to fund releases amounting to P'ip20,000,000.00 drawn from Enrile's PDAF and coursed through the Technology Resource Center (TRC) and Countrywide Agri and Rural Economic and Development Foundation, Inc. (CARED), as reflected in Disbursement Voucers (DV) No. 01-2007-040669, 01-2007-040670, 01-2007-040671 and 01-2007-040672;

- ii. 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, Araparo 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 P'ip22,500,000.00 drawn from



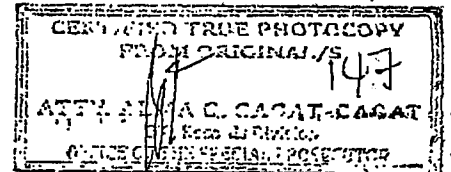
Enrile's PDAF and coursed through the TRC and Agricultura Para sa Magbubukid Foundation, Inc. (APMFI), as reflected in DV No. 01-2009-040929 and 01-2009-051300;

- iii. 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. Javeilana, 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;



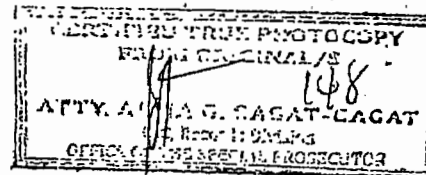
iv. Juan Ponce Enrile, Jessica Lucila G. Reyes, Jose Antonio V. Evangelista II, Ruby C. Tuason, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, Alan A. Javellana, Rhodora B. Mendoza, Victor Roman C. Cacal, Ma. Ninez P. Guañizo, Janet Lim Napoles, Jo Christine L. Napoles, James Christopher 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;

v. 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;

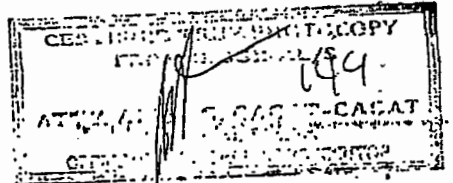
- vi. Juan Ponce Enrile, Jessica Lucila G. Reyes, Jose Antonio V. Evangelista II, Ruby C. Tuason, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, Alan A. Javellana, Rhodora B. Mendoza, Victor Roman C. Cacal, Ma. Ninez P. Guañizo, Janet Lim Napoles, Jo Christine L. Napoles, James Christopher 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;

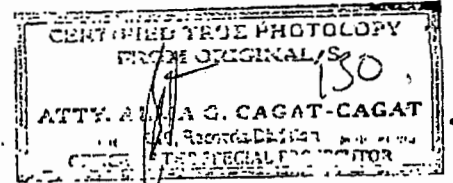
- vii. Juan Ponce Enrile, Jessica Lucila G. Reyes, Jose Antonio V. Evangelista II, Ruby C. Tuason, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, Alan A. Javellana, Rhodora B. Mendoza, Victor Roman C. Cacal, Ma. Ninez P. Guañizo, Janet Lim Napoles, Jo Christine L. Napoles, James Christopher 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;

- viii. 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.



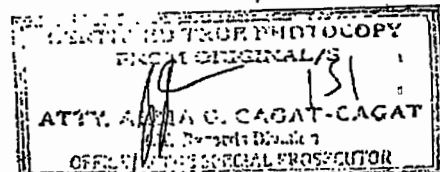
Guañizo, Janet Lim Napoles, Jo Christine L. Nápoles, James Christopher Napoles, Eulogio D. Rodriguez, Evelyn D. De Leon, Ronald John Lim, Fernando Ramirez, Nitz Cabilao and Renato S. Ornopia, acting in concert, for VIOLATION OF SECTION 3 (E) OF R.A. NO. 3019 in relation to fund releases amounting to 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;

- ix. Juan Ponce Enrile, Jessica Lucila G. Reyes, Jose Artonio 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

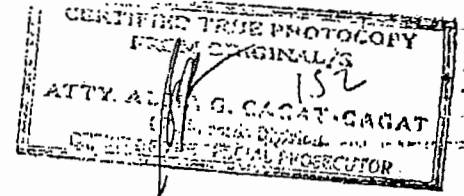


NABCOR and SDPFFI, as reflected in DV No. 09-06-1825 and 09-06-2027;

- x. 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;
- xi. Juan Ponce Enrile, Jessica Lucila G. Reyes, Jose Antonio V. Evangelista II, Ruby C. Tuason, Mario

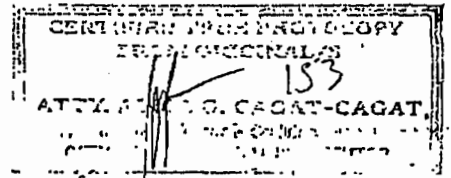


- L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, Gondelina G. Amata, Emmanuel Alexis G. Sevidal, Ofelia E. Ordoñez, Filipina T. Rodriguez, Sofia D. Cruz, Chita C. Jalandoni, Janet Lim Napoles, Jo Christine L. Napoles, James Christopher Napoles, Eulogio D. Rodriguez, Evelyn D. De Leon, Ronald 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;
- xii. Juan Ponce Enrile, Jessica Lucila G. Reyes, José 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;

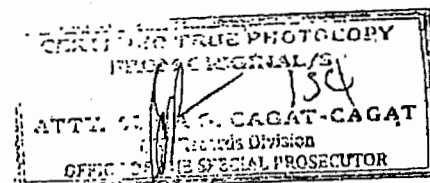
- xiii. Juan Ponce Enrile, Jessica Lucila G. Reyes, Jose Antonio V. Evangelista II, Ruby C. Tuason, Mario L. Relampagos, Rosario Nuñez, Lalaine Paule, Marilou Bare, Gondelina G. Amata, Emmanuel Alexis G. Sevidal, Ofelia E. Ordoñez, Filipina T. Rodriguez, Sofia D. Cruz, Chita C. Jalandoni, Janet Lim Napoles, 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;

xiv. 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;

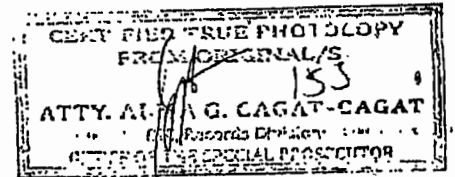
xv. Juan Ponce Enrile, Jessica Lucila G. Reyes, Jose Antonio V. Evangelista II, Ruby C. Tuason, Mario



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;

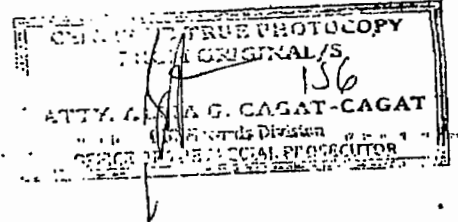
and accordingly RECOMMENDS the immediate filing of the corresponding Informations against them with the Sandiganbayan;

(b) **DISMISSES** the criminal charges against Mark S. Oliveros, Editha P. Talaboc, Delfin Agcaoili, Jr., Daniel Balanoba, Lucila M. Lawas-Yutok, Antonio M. Santos,



Lucita P. Solomon, Susan R. Victorino and Shyr Ann 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**


CSA

M.A. CHRISTIAN O. UY
Graft Investigation and Prosecution Officer IV
Chairperson


RUTH LAURA A. MELLA
Graft Investigation and Prosecution Officer II
Member


FRANCISCA M. SERFINO
Graft Investigation and Prosecution Officer II
Member

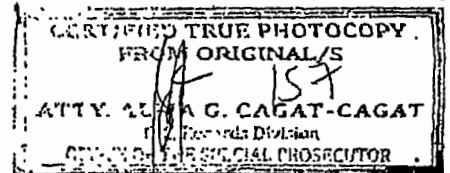

ANNA FRANCESCA M. LIMBO
Graft Investigation and Prosecution Officer II
Member


JASMINE ANN B. GAPATAN
Graft Investigation and Prosecution Officer I
Member

APPROVED / ~~DISAPPROVED~~




CONCHITA CARPIO MORALES
Ombudsman *31 March /14*



Copy Furnished:

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FIELD INVESTIGATION OFFICE
Complainant
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MARIVIC V. JOVER
Respondent
3 Gumamela St., Ciudad Licel, Banaba, San Mateo, Rizal

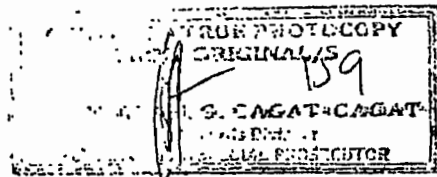
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Respondent
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Taytay, Rizal

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